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Overview

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. The deepening divisions among Member States that were

evident at the Human Rights Council (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 (DDPA). In a telling outcome, most Western States either abstained from the vote, or in the case of the US, Israel and a handful of others, they voted against it. The fact that European Union (EU) was unable to vote as a unified block provided a further indication of the depth of division that this issue arouses, even among like-minded States, and an indication of how difficult it will be to achieve consensus on a final outcome document at the upcoming Review Conference.

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.¹

On a positive note, the GA 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 GA adopted a resolution to invite the Chairperson to return in two year's time for an interactive dialogue. However this resolution also proved controversial, due to the fact it required 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. Rather than meeting CERD's request for additional meetings on an ongoing basis, approval was only granted on a temporary basis, and along with other treaty bodies, the Committee is now under pressure to solve the problem of the backlog of reports, improve the efficiency of its methods of work and maximise its use of existing resources.

Other arguments that surfaced in discussions about racism in Geneva were also carried across to New York. Foremost amongst these was the debate about how to ensure that enjoyment of the right to freedom of expression does not lead to incitement of 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.² As with the two other resolutions, this also went to a vote as the US disapproved of 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 Organization of the Islamic Conference (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.

Presentations by special procedures

Special Rapporteur on racism³

In his oral report to the Committee, **Mr. Githu Muigai**, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance:

¹ Although the GA endorsed the relevant recommendations from the Council and the Preparatory Committee, it did not allocate additional funds to facilitate participation.

² *Resolution 63/162* entitled 'Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance'.

³ More information on this special procedure and their mandate is available at <http://www2.ohchr.org/english/issues/racism/rapporteur/index.htm>.

- Emphasised his key priority since assuming the position in August 2008 had been to follow and contribute to the preparatory process for the Durban Review Conference, which he intended to remain actively engaged in until its conclusion.
- Highlighted the importance of a consensus outcome from the Review Conference and called on all States to continue their involvement in a spirit of cooperation.
- Welcomed the ‘emerging trend amongst Member States’ to support the main recommendation of 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’.
- Introduced the key issues he intended to address in the coming years:
 - a) Migrants, refugees, asylum-seekers and internally displaced persons: this would require the cooperation of relevant UN special procedures, treaty bodies and agencies, as well as civil society;
 - b) Racial and ethnic conflicts: he stressed the need for a human rights-based approach and the political will necessary to address the racial and ethnic divisions that persisted long after conflict had abated. He intended to work in close cooperation with the Special Adviser on genocide to prevent conflict using an anti-racism approach; and
 - c) Racism and poverty: these issues lay at the core of the mandate and needed to be tackled jointly, in both developed and developing countries.

Interactive dialogue⁴

Following the Special Rapporteur's presentation, several States from the African Group and the OIC engaged in the interactive dialogue. France (on behalf of the EU) was the only Western State to ask questions. As a result, the dialogue focused on only a few topics:

- Defamation of religions versus freedom of speech. Egypt opened this topic, pointing out that the UN’s Global Counter-Terrorism Strategy included a commitment to prevent defamation of religions, suggesting that this was an accepted term and an important commitment amongst Member States. Sudan and Libya emphasised the role of the media in ‘fueling the fire’ in relation to defamation of religions, and asked how the Special Rapporteur would address this. A number of States asked more generally about how he would address defamation of religions (Algeria, Cuba, Kuwait, Pakistan). *The Special Rapporteur reminded States that his predecessor had investigated these issues in detail and identified the need for a paradigm shift to move the debate from its focus on defamation of religions, to incitement of religious and racial hatred. Although this was a very complex issue, it needed to be confronted and he offered his intellectual leadership, expressing his belief that it was possible to reconcile the two rights. He stressed that freedom of expression was a ‘fundamental pillar of democratic freedom and a free society’, just as the freedom to practice one’s religion was fundamental to any civilization. Both principles had to be granted in a way that did not imperil the exercise of the other. He referred States to the documents from the recent meeting of experts in Geneva on this matter as they identified various ways to harmonize the two principles. In response to Libya’s criticism that the Special Rapporteur had not addressed its question, the Special Rapporteur added that the promotion of the right to freedom of expression should not lead to incitement of racial or religious hatred. He assured Libya that there were some areas that lay outside the protection of free speech, such as the ‘systematic ridicule of religious figures or images in a manner intended to incite religious hatred’. This was a legitimate area of concern within his mandate, on which he intended to elaborate.*
- Durban Review Conference. States asked the Special Rapporteur to provide more information about: how he would enhance State participation in preparatory processes (China); how to develop a consensus outcome document (Cuba, Pakistan); and lessons learned from the Africa Regional Preparatory Meeting (France on behalf of EU). *The Special Rapporteur responded that the Review Conference offered a ‘watershed for all’ to reaffirm the world’s commitment to: fight racism in all its manifestations; clarify*

⁴ The UN press release that covers the interactive dialogue is available at <http://www.un.org/News/Press/docs/2008/gashc3933.doc.htm>

the collective thinking on conceptual matters; and agree on the necessary responses. He said his mind 'was open' to all comments and suggestions, but offered none of his own.

- Discrimination against migrants, immigrants and asylum seekers based on race and/or religion. Sudan raised this in the context of Europe and North America. Egypt was concerned these forms of discrimination were occurring under the guise of protecting national security, and were restricting the movement of migrants and asylum seekers. Libya called for migration to be regulated as a means of addressing the organised crime associated with the illegal movement of migrant workers and the adverse impacts on transit and destination countries. Algeria asked how to protect migrants given the policies of some developed countries in response to the economic crisis. Pakistan asked how the work of the previous Special Rapporteur on discrimination against migrants and racial/ethnic minorities would be continued. *The Special Rapporteur explained he was yet to build the necessary expertise regarding the topic of asylum seekers, particularly those travelling to developed countries. He intended to work with other special procedures including the Special Rapporteur on migrants, recognising this was a very specialised area in which new forms of racism and xenophobia were emerging and needed to be addressed.*
- Country visits. France (on behalf of the EU) was interested in where the Special Rapporteur would like to visit. Sudan asked for more information about the previous mandate holder's visit to the USA. *The Special Rapporteur advised he had requested to visit South Africa and would like to visit Germany, Mexico, United Arab Emirates, Bolivia, Indonesia, Sudan. He had also renewed his predecessor's request to visit a number of other countries. Regarding the report on the visit to the US, his predecessor was preparing this and the Special Rapporteur would be happy to present it to the GA's next session.*

Presentation by the Chairperson of CERD⁵

In her oral report to the Committee, **Ms. Fatimata-Binta Victoire Dah**, Chairperson of the Committee on the Elimination of Racial Discrimination (CERD):

- Welcomed the opportunity to brief the Third Committee, noting it was the first such invitation to the Chairperson of CERD, and very timely in the lead up to the Durban Review Conference.
- Presented CERD's reports covering its 70th - 73rd sessions.
- Assured the Committee that CERD remained 'committed to a continual process of improving its methods of work' and updated the Committee on recent developments in this respect, including its:
 - a) adoption of revised reporting guidelines for use by States that had submitted a Common Core Document, and new guidelines for its early warning and urgent action procedure;
 - b) decision to begin elaboration of a general recommendation on 'special measures'; and its
 - c) interest in establishing an ongoing dialogue with the Human Rights Council on the UPR process.
- Drew attention to CERD's increasing backlog of State party reports, indicating this was related to the high number of ratifications (173) and its comparatively short meeting time of 6 weeks per year.
- Requested the GA approve the extension of its meeting time by two additional weeks per year (i.e. one additional week per session) commencing in 2010, as requested by CERD.

The Committee did not engage in an interactive dialogue with the Chairperson of CERD as the relevant GA resolution had only invited her to present an oral report on the work of the Committee.⁶

Presentation by the Vice-Chairperson of Durban Preparatory Committee⁷

⁵ The UN press release that covers the presentation of the report is available at <http://www.un.org/News/Press/docs/2008/gashc3933.doc.htm>

⁶ A/RES/61/148, available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

⁷ The UN press release that covers the presentation of the report by the Vice-Chairperson is available at <http://www.un.org/News/Press/docs/2008/gashc3934.doc.htm> .

Although the Chairperson of the Committee, H.E. Ms. Najat Al-Hajjaji, was scheduled to report to the Third Committee on 3 November 2008, delegations were advised that day that she was not able to attend. Despite questions from Cuba and Brazil, no explanation for her inability was provided. Instead, **Mr. Luvoyo L. Ndimeni**, the Vice-Chairperson of the Preparatory Committee for the Durban Review Conference, presented the oral report on 4 November 2008. He:

- Presented reports on the first and second substantive sessions of the Preparatory Committee, emphasising that all decisions had been adopted by consensus.
- Outlined the key outcomes of the two substantive sessions, notably: agreement on the structure of the outcome document; establishment of the Inter-Sessional Open-ended Intergovernmental Working Group; and a decision to hold a third substantive session in Geneva from 15-17 April 2009.
- Outlined the objectives of the Review Conference as agreed at the organisational session which included: review of the effectiveness of the existing Durban follow-up mechanisms; promotion of universal ratification of the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*; and sharing of best practices.
- Noted that limited participation in the preparatory process by a range of stakeholders continued to be a ‘major impediment’, and was due to insufficient financial resources being made available.
- Called for greater financial contributions towards the Durban Review Conference process to encourage participation by representatives from least developed countries, national human rights institutions, NGOs.

The Third Committee did not engage in an interactive dialogue with the Vice-Chairperson. However in the subsequent general discussion on racism, France (on behalf of the EU) noted that there had been insufficient time during the Preparatory Committee’s substantive sessions for observers, particularly civil society organisations, to express themselves. Further, France was concerned by the ‘political difficulties’ that some civil society organisations had encountered when seeking accreditation to attend the sessions, and emphasised the need for all delegations to respect the right of civil society to freedom of expression.

General discussion on racism⁸

Following these presentations, the Committee held a general discussion on racial discrimination over the course of two days. Many States took part in the discussion and several regional and political group statements were delivered. A number of States aligned themselves with the statement delivered by Antigua and Barbuda (on behalf of the G77 and China).⁹ Although the focus of most statements was on the Durban Review Conference, other themes were also addressed:

- *Durban Review Conference.* France (on behalf of the EU) outlined what the Review Conference should *not* do, warning that any attempts to restrict the right to freedom of speech would be ‘unacceptable’ to the EU. It reminded delegations that the EU had voted in support of the Review Conference on the condition that it ‘focus exclusively on the implementation of the DDPA, without any re-examination of these documents’. This remained the basis on which it would participate in the preparatory process and the Review Conference, and it appealed to all States to put more effort into the development of a ‘balanced and operational’ final outcome document. The UK added that it would find any attempts to trivialize or deny the Holocaust ‘unacceptable’; there could be no attempt to repeat the displays of anti-Semitism that were evident at the first Durban Conference; and the Review Conference must address the discrimination faced by the lesbian, gay, bisexual and transgender community.

Brazil and Mexico outlined the main outcomes of the Brasilia Regional Preparatory Conference for the Review Conference. Among these was need for States to incorporate a gender perspective in

⁸ The UN press releases that cover the general discussion from 3-4 November are available at <http://www.un.org/News/Press/docs/2008/gashc3933.doc.htm> and <http://www.un.org/News/Press/docs/2008/gashc3934.doc.htm>

⁹ Zimbabwe (on behalf of SADC), Algeria, Bangladesh, Cuba, Egypt, Iran, Libya, Mauritania, Sudan, Syria.

measures to combat racism; increase their dialogue with NGOs and civil society; and develop protective measures to address violence and discrimination against indigenous peoples, migrant workers and individuals on the basis of their sexual orientation and gender identity, particularly where such violence was perpetrated by police.

Antigua and Barbuda (on behalf of G77 and China) and Zimbabwe (on behalf of SADC)¹⁰ both called on States to contribute more to the voluntary fund for the Review Conference to boost participation by civil society representatives from developing countries and the African Diaspora. They encouraged the GA to approve extra-budgetary funds to ensure the participation of representatives from least developed countries. In their view, the Review Conference should: ensure there is no impunity for criminal acts of violence associated with racism; provide maximum protection and remedies to victims; pay more attention to discrimination on the basis of economic, social and cultural rights; and achieve a consensus outcome.

The US and Israel criticised the draft outcome document, which the US said contained ‘dozens of unfair, unbalanced and often flatly untrue statements’ about Israel, and glaring omissions in relation to more serious problems in other parts of the world. They believed the Review Conference would be used as anti-Semitic platform, rather than an opportunity to combat racism.

- *Emergence of new forms of discrimination since the adoption of the DDPA.* Antigua and Barbuda (G77 and China) welcomed legislative and administrative measures at all levels of government to give effect to the DDPA, but stressed that this was not enough to keep pace with new and emerging forms of discrimination. These included: increased racial profiling and diminished civil liberties since 11 September 2001; resurgent racist violence; misuse of the right to freedom of speech to incite racial and religious hatred; and the use of information technology, particularly the internet, to disseminate racist propaganda.
- *Need for additional protocol(s) to ICERD.* Antigua and Barbuda (G77 and China) welcomed the Human Rights Council's decision at its third session to establish an Ad Hoc Committee to elaborate complementary standards in the form of either a convention or additional protocol(s) to *ICERD*. They argued this would bridge the gaps in the Convention and create new normative standards to combat emerging forms of racism, as well as racial and religious hatred. South Korea welcomed the first meeting of the Ad Hoc Committee earlier in the year, but stressed that consensus had to be reached within the international community before new standards could be developed. France (on behalf of the EU) took a very different approach, emphasising that the existing normative framework must first be implemented in full before embarking on the development of a new one. It argued any new norms should aim to *increase* the scope of human rights law, not undermine or restrict it.
- *Discrimination against and criminalization of groups of migrants on the basis of race.* Antigua and Barbuda (G77 and China) reminded the Committee of the work of the immediate past Special Rapporteur on racism, who had 'spoken out' against the 'exclusively security-based approach' of some States towards immigrants and foreign nationals. Similar concerns were expressed by Zimbabwe (on behalf of SADC). Cuba and the Russian Federation took this further, singling out the EU's 'return doctrine' on migrants for particular criticism.
- *Trans-Atlantic Slave Trade.* Antigua and Barbuda (G77 and China) and Guyana (on behalf of the Caribbean Community) both drew attention to commemorations marking the first International Remembrance of the Victims of Slavery and the Trans-Atlantic Slave Trade, as well as the recent GA resolution adopted to establish a permanent memorial to the victims. Guyana expressed support for the recommendation of the Working Group of Experts on People of African Descent to develop a racial equality index as a tool to be better assess discrimination faced by people of African descent.
- *Freedom of expression and the fight against racism and religious intolerance.* The US reminded other governments which gaoled or punished individuals for expressing views contrary to those of the State, that more freedom of speech was needed, not less. Libya and Pakistan condemned the defamation of religion and Islamophobia that had occurred since 11 September 2001. They criticized Western States that had condoned media campaigns against Muslims and Islam using the guise of freedom of

¹⁰ Southern African Development Community.

expression. Pakistan called on the Special Rapporteur to focus on violations of articles 19 and 20 of *ICERD* as a means of addressing this problem.

Key resolutions

Inadmissibility of practices that contribute to racism¹¹

In keeping with past practice, the Russian Federation sponsored this annual resolution entitled 'Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance'. When it introduced the resolution,¹² Russia explained that the actions of neo-Nazis and skinheads against minorities, immigrants and 'people of other skin colour' had continued to increase since last year's resolution. This upsurge in violence was recognised by the Special Rapporteur, and given the approaching Durban Review Conference, it was important for the GA to condemn these manifestations of racism and xenophobia. The resolution called on States to take specific measures to combat the phenomena at both the national and international levels. On the eve of the 70th anniversary of the beginning of World War II, Russia stressed the need for all States to show broad support for the resolution.

Although this year's text was similar to last year, there were a couple of notable additions, which the Russian Federation believed made the text 'more balanced':

- in new operative paragraph 12, the GA requested the Special Rapporteur prepare a report for submission to its next session and to the Human Rights Council on the implementation of the resolution. This report should be based on the views of States and NGOs, which the Special Rapporteur was already required to report on to the Human Rights Council; and
- new language was added to operative paragraphs 2 and 6 to extend the existing expression of 'deep concern' about attempts to glorify the Nazi movement and former Waffen SS members to include attempts to declare 'those who fought against the anti-Hitler coalition or collaborated with the Nazi movement as participants of national liberation movements'. Russia explained it was 'unacceptable' when those involved in Nazi crimes were treated as heroes. Further, it was 'blasphemous towards veterans of World War II' and corrupted the minds of younger generations when those promoting racial superiority were glorified and not punished as required under international law.

The vote¹³

The Third Committee took action on the resolution on 18 November 2008. As in previous years, a vote was requested by the US. Although the majority of Member States supported the adoption of the resolution, most Western States abstained (122:1:54). This was almost identical to last year's vote in the Third Committee, which was also called by the US (122:1:52).

Only a few States made statements to explain their vote. Although both France (on behalf of the EU) and the US both reaffirmed their commitment to the fight against racism and the particularly 'odious' nature of neo-Nazism, they had different reasons for not supporting the resolution:

- The EU was critical of Russia's 'refusal to hear' its concerns or suggestions on how to 'refine' the text in a manner that would allow it to support adoption. As in previous years, the EU was critical of the selective approach of the text which diverted attention from it regarded as 'central concerns'. More emphasis was needed on the implementation of articles 4 and 5 of *ICERD* and other sources of international law, and the current references to the Nuremberg trial needed to be corrected to better

¹¹ A/C.3/63/L.49, available at <http://www.un.org/ga/third/63/propolist.shtml>

¹² The UN press release covering the introduction of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3937.doc.htm>

¹³ The UN press release covering the adoption of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3938.doc.htm> .

combat intolerance. The EU also criticised the new language requiring the Special Rapporteur to report to the Council and the GA 'from within existing resources'. It argued that the mandate from the Council already required the Special Rapporteur to report on these issues, and given the limited resources and the need to address emerging forms of racism, this requirement would 'seriously undermine' a global approach to addressing racism and xenophobia.

- The US criticised the resolution's failure to appropriately differentiate between actions and statements that should be protected by freedom of expression, and actions and statements designed to incite hatred and violence, which should be prohibited.
- Ukraine abstained from voting because the resolution failed to recognise neo-Stalinists as a dangerous group promoting anti-Semitism and racial intolerance.

The resolution was also subject to a vote in the GA plenary on 18 December 2008. Although a few more States voted in favour of the resolution, and the Marshall Islands joined with the US to vote against it, there was otherwise little change from the vote in the Third Committee (129:2:54). This outcome was also very similar to the to last year's vote in the GA plenary (130:2:53).

Global efforts to eliminate racism, follow-up to DDPA¹⁴

The full title of the resolution was 'Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action'. As in previous years, the main sponsor was the Group of 77 and China, represented this year by Antigua and Barbuda, and the resolution enjoyed cross-regional support. An appropriation from the UN's regular budget of \$570,400 was sought to convene a third substantive session of the Preparatory Committee and to fund the work of the Intergovernmental Working Group on the Durban Review Conference.¹⁵

Only a few informal negotiations on the text were held, the last of these being an all-day meeting close to the very end of the Third Committee's session. Most States were of the view that Antigua and Barbuda and South Africa were cooperative and fair-minded in their approach and keen to achieve a consensus outcome. Negotiations also benefitted from a proactive and constructive approach by New Zealand and Switzerland. However, the fact that consensus was not achieved was due in part to the rushed nature of the negotiations, as well as a lack of willingness to compromise on the part of some States.

When introducing the resolution, Antigua and Barbuda explained that it included a number of important updates on last year's text.¹⁶ Key among these was the need for the GA to endorse the decisions from the first two substantive sessions of the Preparatory Committee, as well as the decision it adopted at its organisational meeting requesting the GA provide extra-budgetary resources to cover the cost of participation by various groups in the Review Conference. As in previous years, the text set out the agreed principles that underpinned the Review Conference, including the principle not to re-open the DDPA, and called upon all States to accede to the *ICERD* as a matter of urgency. In an effort to avoid the late submission of reports to the GA, a new addition this year was the recommendation that no meeting of the Human Rights Council on the follow-up to the DDPA overlap with meetings of the GA on this issue. The G77 and China looked forward to adoption of the text by consensus.

In addition to these new provisions in the text, Antigua and Barbuda proposed a number of new paragraphs, several of which related to the Preparatory Committee for the Durban Review Conference. However, when it

¹⁴ A/C.3/63/L.51/Rev.1, available at <http://www.un.org/ga/third/63/propslist.shtml>

¹⁵ See A/C.3/63/L.70 for details on the Programme Budget Implication (PBI), available at <http://www.un.org/ga/third/63/propslist.shtml> .

¹⁶ The UN press release covering the introduction of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3939.doc.htm> .

came time for the Committee to take action on the resolution, many of these proposals were ultimately deleted. Although this meant that the final draft text bore a closer resemblance to that adopted by the GA last year,¹⁷ some contentious paragraphs were retained. For example, operative paragraph 36 initially ‘welcomed’ the convening of the first session of the Ad Hoc Committee on the Elaboration of Contemporary Standards and sought to give directions to this Committee.¹⁸ To reflect the fact that the EU and others had voted against the establishment of this Committee at the Council, the final draft only ‘took note’ of the first session of the Ad Hoc Committee, but the remainder of the paragraph, which a number of States objected to, was retained.

In terms of additional funding to encourage broader participation in the Durban Review Conference, the text endorsed all decisions of the Preparatory Committee, several of which appealed to the GA for this kind of support.¹⁹ For example, the GA was requested to ‘allocate adequate resources from the regular budget’ to facilitate participation in the Review Conference by relevant treaty bodies and special procedures of the Council. Following negotiations, an additional paragraph was added to request the Secretary-General and the High Commissioner for Human Rights to ‘encourage contributions to the voluntary fund’ for the Review Conference, and to ‘appeal for contributions from extra-budgetary resources to cover the costs of participation of representatives of Least Developed Countries’ in the Review Conference.²⁰ However the GA did not seek a larger appropriation to fund broader participation at the Review Conference, indicating that this should occur using existing resources.

In a departure from last year’s text, the final draft only ‘expressed appreciation for the work done by the former Special Rapporteur’ on racism, rather than ‘full support and appreciation’ for his work.²¹ On a positive note, this year’s text included new language to ‘express appreciation’ to the High Commissioner for her ‘commitment to contribute to the successful outcome of the Durban Review Conference including her appeal to all member states and other stakeholders to participate’.

The seventh session of the Human Rights Council in March 2008 adopted a resolution that picked up on a number of the issues addressed in the GA’s resolution. The Council resolution entitled ‘From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance’²² was sponsored by Egypt on behalf of the African Group. It emphasised the need for greater political will to effectively combat racism, and urged all States to ‘take decisive steps’ in this respect. Further, it welcomed the work of the subsidiary organs of the Council including the Intergovernmental Working Group on the Effective Implementation of the DDPA, and the Ad Hoc Committee on the Elaboration of Complementary Standards. As was the case in the GA, this resulted in the resolution being subject to a vote (34:0:13). European and some Asian Member States abstained on the grounds that the resolution was not balanced and selectively focused on aspects of the DDPA.

The vote²³

The Third Committee took action on the resolution on 25 November 2008, and as was the case last year, Israel was quick to call for a vote. Although the resolution was adopted, the voting pattern was markedly

¹⁷ General Assembly *Resolution 62/220*, available at <http://www.un.org/ga/62/resolutions.shtml>

¹⁸ OP36 of L.51/Rev.1 as orally revised. The GA ‘requested’ the Ad Hoc Committee to ‘comply with the mandate contained in Human Rights Council decision 3/103 of 18 December 2006.

¹⁹ OP51 of L.51/Rev.1 as orally revised.

²⁰ OP57 of L.51/Rev.1 as orally revised.

²¹ See OP41 of A/RES/62/220.

²² The current resolution *Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action* was introduced last year before the Third Committee with the same title of the resolution at the HRC. However, this titled was criticised by several States and ultimately Pakistan as the main sponsor, changed the title of the GA resolution.

²³ The UN press release covering the adoption of the resolution in the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3942.doc.htm> .

different to last year's as a result of a split in the vote of the EU which resulted in most EU States abstaining and only a handful voting against the resolution (130:11:35).²⁴ Last year the EU had voted as a block to oppose the resolution (119:45:6).

The explanations of vote that followed shed light on the reasons behind this change in voting pattern. France (on behalf of the EU) and New Zealand (on behalf of Norway) both expressed appreciation for the efforts of the main sponsor to address many of their concerns with the text, but noted some could not be resolved. France thanked both Antigua and Barbuda and South Africa for their 'open and constructive approach' in the informal negotiations, suggesting that with more time, they might have reached a consensus text. However, both France and New Zealand pointed to the retention of the reference to the Ad Hoc Committee on the Elaboration of Contemporary Standards as an example of why they were not able to vote in favour of the resolution. New Zealand objected to any moves by the GA to give directions to subsidiary organs of the GA, including the Ad Hoc Committee. In addition, France expressed concern about language on freedom of expression and opinion that was retained.²⁵

The US and Israel voted against the resolution for very different reasons. Israel explained that it would not be participating in the Durban Review Conference, as this would be a platform to 'legitimise intolerance, extremism and anti-Semitism'. Although the US agreed with many provisions of the resolution, it objected to the level of support expressed for the Review Conference, the fact that there was to be any follow-up to it, and that additional funding was being sought to facilitate this follow-up. Also concerned by the cost of the Review Conference, Japan explained that it had abstained from the vote and hoped that the Secretariat would 'continue to minimise' any costs associated with the Review Conference.

The programme budget implications of the resolution delayed its consideration by the GA plenary until 24 December 2008. The GA adopted the resolution as orally revised, but the EU vote remained split as the majority of its Member States abstained (109:13:35). The 11 States that had voted against the resolution in the Third Committee this year were joined by the Marshall Islands and Palau in the GA. This was a very different outcome as compared to last year's vote in the GA plenary when the EU had voted as a block against the resolution (105:46:6).

International Convention on Racial Discrimination²⁶

Slovenia and Belgium were the main sponsors of this biannual resolution, co-sponsored on a cross-regional basis. Its main objective this year was to give effect to CERD's request to increase its annual meeting time by two weeks, effective 2010. The resolution outlined the main reasons for the Committee's growing backlog, including its high number of ratifications and limited annual meeting time, as compared to other treaty bodies. Further, the resolution invited the Chairperson of CERD to return in two year's time to present an oral report to the GA and, in contrast to the Third Committee's experience this year, engage in an interactive dialogue. The budget implications of the resolution related primarily to the costs of the additional meeting time for CERD, which totalled close to \$2.25 million.²⁷

The final text of the resolution represented a compromise between those States who supported CERD being granted additional meeting time on an ongoing basis, and those who opposed any extra meeting time. This latter group, involving the US, Japan and Singapore, argued that the Committee should address its report

²⁴ EU Member States that voted against the resolution: Czech Republic, Denmark, Monaco, Netherlands, Poland, Romania, UK. Other States that voted against the resolution: Australia, Canada, Israel, US.

²⁵ OP 10 of L.51/Rev.1 as orally revised.

²⁶ A/C.3/63/L.53 and A/C.3/63/L.53/Rev.1 available at <http://daccessdds.un.org/doc/UNDOC/LTD/N08/606/67/PDF/N0860667.pdf?OpenElement> .

²⁷ A/C.3/63/L.72. Paragraph 5 of the PBI estimated that 'the additional meeting time would allow the Committee to consider approximately six additional reports per year.

backlog by improving the efficiency of its working methods, rather than seeking the more costly alternative of more meeting time.

Although CERD's request for an additional 2 weeks of meetings per year was carried over to the revised text, the compromise entailed this being granted as a temporary measure that would operate from August 2009 until 2011. In addition, a number of paragraphs were added that reflected the GA's desire to see all treaty bodies improve the efficiency of their working methods and not accumulate significant backlogs or request extra-budgetary resources. This was prompted in part by the fact the GA received a similar request for additional meeting time from the Committee on the Rights of the Child (CRC) and the Committee on Migrant Workers (although only the CRC request had programme budget implications). As a result, all members of CERD were 'encouraged' to participate in the annual inter-Committee meetings and meetings of chairpersons of treaty bodies in order to: solve the problem of the backlog of reports, identify efficiencies, maximise the use of resources and share best practices. Further, OHCHR was requested to prepare a report evaluating CERD's meeting time, and 'taking into account a more comprehensive approach towards the backlog of human rights treaty bodies and the increasing number of States parties'. The GA will consider the report at its main session in 2010.

The vote²⁸

The Third Committee took action on the resolution on 18 November 2008. In contrast to previous years when it was adopted by consensus, the resolution was subject to two votes. The first of these was called by the US and related to a vote on a key paragraph, which was retained. The second was a vote on the resolution as a whole, at the request of Egypt, which was unanimously supported (178:0:0).

The process of adoption was mired by a lengthy procedural tussle between Egypt and the Chairperson of the Third Committee. This was triggered by the US' decision to call for a vote on operative paragraph 13, the key paragraph of the resolution that granted additional meeting time to CERD on a temporary basis. At the time of calling for this vote, the US indicated it intended to join with consensus and support the adoption of the resolution as a whole. The Committee voted overwhelmingly to retain the paragraph (165:1:8)²⁹ and then sought to move on to the adoption of the resolution as a whole.

It was at this point that Egypt argued that once the Committee had voted on a paragraph of a resolution, the GA's Rules of Procedure required it to vote on the resolution as a whole, rather than proceeding to adopt it by consensus. The Committee debated this point at length, with some States siding with the Chairperson and the Secretary's interpretation of the Rules and Committee precedent, and others siding with Egypt's. In an effort to overcoming the impasse, the Chairperson eventually called for a vote on the resolution as a whole, which was adopted. Very few States had the energy or inclination to explain their vote after the procedural debate, although Japan made a point of telling CERD it should work within existing time limits and increase its efficiency.

Action on the resolution in the GA plenary was delayed by the programme budget implications, and eventually took place on 24 December 2008. It was adopted by consensus, as was the case in previous GA sessions.

Looking forward

²⁸ The UN press release on the introduction of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3939.doc.htm> . The UN press release on the adoption of the resolution at the Third Committee is available at <http://www.un.org/News/Press/docs/2008/gashc3940.doc.htm> .

²⁹ The US voted against the resolution. Fiji, Japan, Malaysia, Mozambique, Poland, Singapore, Sri Lanka and the UK abstained.

Events at the GA this year only served to confirm widespread concerns amongst States that achieving consensus at the Durban Review Conference may prove an impossible goal. This was despite the best efforts of the High Commissioner, 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 to concentrate on where common ground existed or could be built to address the continuing scourge of racism, xenophobia and intolerance.

The GA 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. As a result, just months out from its scheduled start date, it remained unclear whether delegations from developing countries, NGOs and representatives of national human rights institutions would be able to attend. This uncertainty, 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 auger well for global efforts to combat racism.

Background

The General Assembly is the main deliberative organ of the UN. It is composed of representatives of all Member States and has a general mandate to discuss and make recommendations on any matters within the scope of the *United Nations Charter*. Under Article 13 of the Charter, the General Assembly is specifically mandated to ‘initiate studies and make recommendations for the purpose of ...assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’. The regular session of the General Assembly runs from the beginning of September to the end of December. Each year the GA addresses over 150 agenda items, which are considered either in the plenary or in one of its six committees.³⁰ The Third Committee (Social, Cultural, and Humanitarian) addresses most agenda items relevant to human rights defenders, including advancement of women, children’s rights, the rights of indigenous peoples, the elimination of racism, and human rights questions. Numerous special procedures also report to the Third Committee on a number of these issues and engage in an interactive dialogue with States. The Fifth Committee (Administrative and Budgetary) is also particularly relevant to human rights defenders since it evaluates and approves the budgetary requirements arising out of the work of the other five committees. After completing their work, the Third and the Fifth Committee, as well as the other four main committees, submit draft resolutions to the General Assembly for final adoption.

³⁰ For further information on the main committees of the GA, refer to the ISHR’s General Assembly Fact Sheet: the General Assembly’s main committees, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

Technical Annex

Reports

- Note by the Secretary-General transmitting the interim report of the Special Rapporteur on global efforts for the elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the DDPA (A/63/339)
- Report of the Secretary-General on the financial situation of the CERD (A/63/306)
- Report of the Secretary-General on the status of the *ICERD* (A/63/473)
- Report of the Human Rights Council on the preparations for the Review Conference on the implementation of the Durban Declaration and Programme of Action (A/63/112 and A/63/112/Add.1)
- Report of the Secretary-General on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the DDPA (A/63/366)
- Report of the CERD on its seventy-second session (*Suppl. No. 18*) (A/63/18).

Special procedures

Special procedure	Date for renewal of mandate	GA report number	Date of presentation of report	Date of last presentation of report/s to Human Rights Council	Next report to Human Rights Council due
SR on Racism	2011	A/63/339	3 November 2008	9 th Session, 19 September 2008 ³¹ (A/HRC/9/12)	11 th Session, 2-18 June 2009

³¹ Mr. Githu Muigai presented a report prepared by his predecessor, Mr. Doudou Diène, on all manifestations of defamation of religions, and in particular on the serious implications of Islamophobia, on the enjoyment of all rights. A report on the Mr Muigai's interactive dialogue with the Council is available at http://www.ishr.ch/index.php?option=com_docman&task=doc_details&gid=91&Itemid=99999999

Key resolutions

Initial resolution number/final number	Main Sponsor	Title	Previous GA resolution	Action
A/C.3/63/L.53 /Rev.1 and A/RES/63/243	Belgium & Slovenia	International Convention on the Elimination of All Forms of Racial Discrimination	61/148 ³² biennial	Adopted by C3 21 Nov 2008 vote: 178:0:0 Adopted by GA 24 Dec 2008 consensus
A/C.3/63/L.49 and A/RES/63/162	Russian Federation	Inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance	62/142 ³³ annual	Adopted by C3 18 Nov 2008 Vote:122-1-54 Adopted by GA 18 Dec 2008 vote: 129:2:54
A/C.3/63/L.51/ Rev.1 and A/RES/63/242	Antigua & Barbuda (G77 & China)	Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of & follow-up to the DDPA	62/220 ³⁴ annual	Adopted by C3 25 Nov 2008 vote:130:11:35 Adopted by GA 24 Dec 2008 vote: 109:13:35

³² See ISHR's report on the GA's 61th session, available at http://www.ishr.ch/hrm/archive/GA/GA61/racism_61.pdf

³³ See ISHR's report on racism from the GA's 62nd session, available at http://www.ishr.ch/hrm/hrm2007/ISHRmonitor_07_General_Assembly.pdf

³⁴ See ISHR's report on racism from the GA's 62nd session, available at http://www.ishr.ch/hrm/hrm2007/ISHRmonitor_07_General_Assembly.pdf

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