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OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
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Overview

Two of the most complicated and divisive items on the Third Committee's agenda this year were the Human Rights Council's annual report and the strategic framework for the Office of the High Commissioner for Human Rights for 2010-2011 (also referred to as Programme 19).

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Although Programme 19 was eventually adopted with little variation to the original text as drafted by the Office of the High Commissioner for Human Rights (OHCHR), it was subject to two significant obstacles. The first of these was a raft of amendments proposed by Cuba and the African Group which attempted to scale back the level of independence of the High Commissioner's office, and delegate new authorities to the Human Rights 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. However, 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 Durban Declaration and Programme of Action (DDPA). Although Australia and Canada chose to abstain, only the United States (US) shared Israel's objections and voted against Programme 19, whereas the overwhelming majority of States expressed support for OHCHR and voted to approve its strategic framework.

The Council's annual report to the GA had a similarly difficult passage through the Third Committee this year. Once the uncertainty recurring every year over how to allocate the report between the Third Committee and the General Assembly plenary was resolved, the Committee took action on three controversial recommendations that required its endorsement. The first of these, regarding the Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights* (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 dedicated to this outcome. This early adoption paved the way for the adoption of the Optional Protocol in the GA plenary on International Human Rights Day, coinciding with the General Assembly's commemoration of the 60th anniversary of the *Universal Declaration of Human Rights* (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 for Human Rights, regarded the creation of an individual complaints mechanism to address violations of economic, social and cultural rights as the closure of an historic protection gap.

The fate of the Council's two other recommendations to the GA was notable for very different reasons. Although the GA adopted these recommendations in a single resolution, the text provided only luke-warm support for them, which resulted in neither being allocated funds for implementation. 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 Council's universal periodic review (UPR) process, including webcasting and the translation of official documents. The other recommended that the GA 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.

This uncertainty, 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 for Human Rights and the Council. This debate looks set to see Western States seeking to bolster or at least defend the independence of the High Commissioner for Human Rights and her Office, and those belonging to the Non-Aligned Movement (NAM) and the Organisation of the Islamic Conference (OIC) intent on strengthening the Council's authority *vis-a-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 GA plenary was also raised with greater frequency this year, suggesting that more States were beginning to formulate their views on this in anticipation of the upcoming review of the Council in 2011.

Discussions indicated not only that there was little consensus on this matter, but that that some States were compiling a grab-bag 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 an adequate and realistic agenda for the review is developed.

Please refer to the technical annex to this report for a complete list of the reports and resolutions the Committee considered in relation to the Human Rights Council report and the work of OHCHR.

Presentation by the High Commissioner

On 22 October 2008, the High Commissioner for Human Rights, **Ms. Navanethem Pillay**, addressed the Third Committee for the first time since taking office in September 2008.¹ In her wide-ranging presentation, the High Commissioner:

- Described her priority in fulfilling her mandate as the implementation of human rights norms on the ground so that all people could enjoy the rights outlined in the UDHR. Her goal was the achievement of a global culture of human rights, and she was committed to 'truth, impartiality and integrity, with no tolerance for double-standards or selectivity.' She encouraged States to regard human rights as a unifying force within and among cultures, not a source of division.
- Undertook to strengthen the international human rights system and UN mechanisms by: promoting universal ratification and implementation of treaties; strengthening of the treaty bodies; strongly supporting the special procedures and encouraging new mandates as needed; and building on OHCHR's existing field presences and country engagement (with both governments and civil society organisations) to create national systems for protection and recourse for victims.
- Undertook to engage with UN bodies based in New York (such as the GA, Security Council and Peacebuilding Commission) and continue close cooperation with the Secretary-General.
- Identified emerging human rights issues requiring attention:
 1. climate change, particularly given its impact on the right to food, adequate housing and water;
 2. global food crisis and the need to address its underlying causes such as land ownership;
 3. global economic crisis and its impact on the poorest;
 4. integration of a human rights-based approach to the achievement of the Millennium Development Goals;
 5. counter-terrorism legislation that resulted in inappropriate restrictions on fundamental freedoms and civil liberties or was inconsistent with human rights obligations such as protection from torture and access to due process;
 6. migration and human trafficking; and
 7. racism, xenophobia, intolerance and discrimination – all States needed to participate in the Durban Review Conference and reconsider their decision to withdraw.
- Expressed confidence that States working in partnership with civil society could advance human rights.

Interactive dialogue

There was an implicit agreement amongst States that this first exchange with the High Commissioner should be used to welcome her into the role and inquire about her priorities. Hence many States expressed their support for Ms. Pillay's appointment, including several African States, who welcomed the appointment of 'a true daughter of Africa' to the position.² Nonetheless, some challenging questions were posed regarding the management and future work of OHCHR, which she responded to directly and in a 'matter of fact' manner:

¹ The UN press release that covers the High Commissioner's presentation and interactive dialogue is available at <http://www.un.org/News/Press/docs/2008/gashc3925.doc.htm>

² Egypt, Algeria.

- States held mixed views on the benefits of OHCHR's field offices. Some States expressed their appreciation and support for OHCHR's field presences and emphasised their indispensability.³ However others raised concerns about: how field offices were financed (Egypt), the degree to which the priorities of the host country guided OHCHR's work (Sudan), whether OHCHR had a bias towards locating field offices in developing countries, and in so doing stigmatised the human rights record of these countries (Cuba). *The High Commissioner clarified that country engagement was about partnership, and this was the overarching principle guiding OHCHR's work at the country level. OHCHR did not undertake any project at the country level without the prior approval of the relevant government. Acknowledging that there appeared to be a misconception among some Member States that a human rights field presence somehow implied that State was a human rights violator, the High Commissioner stressed that field presences were designed to build the capacity of the host country. She advised she would visit both developed and developing countries to assess human rights situations and would be guided by the principle of non-selectivity in carrying out her mandate.*
- Although a number of States expressed their full support for the independence of the High Commissioner and/or praised OHCHR for its work,⁴ others provided advice to the High Commissioner on how to approach her role and relationship with the Council. Liechtenstein commented that OHCHR's presence was 'not sufficiently felt' in New York, and thus a human rights perspective was not being adequately incorporated into the work of the Secretary-General's office, the UN Secretariat or the UN's intergovernmental bodies. China suggested OHCHR strengthen its cooperation with the Council, strictly adhere to its legislative mandate from the GA, and increase the transparency of its work. *The High Commissioner shared Liechtenstein's concerns about the profile of human rights in New York and reassured the Committee she was committed to bolstering OHCHR's work at Headquarters as a priority. She had already lodged a request for the establishment of an Assistant Secretary-General level position in OHCHR's New York office to ensure that human rights were included in high-level policy meetings. She appealed to all States to support that request and encourage human rights mainstreaming.*
- Some States sought an assessment of the Council's universal periodic review (UPR) process from the High Commissioner (Sudan, USA). Others asked whether the High Commissioner had any recommendations for States to consider in developing and presenting their UPR reports to maximise the benefits of the process (Argentina, Colombia). Malaysia questioned the utility of country situation reports in the GA, given that the UPR mechanism was now functioning. *The High Commissioner thought the mechanism was 'meeting expectations' and operating in a constructive manner. However given that only 32 States had been reviewed, she declined to offer a premature assessment. As the UPR proceeded further, OHCHR would be better able to assess where the greatest needs were and what further guidance would be needed. To improve their UPR reporting, the High Commissioner referred States to the work of the mandate holders and reports received from field offices, and reminded States that OHCHR was committed to helping them in their preparation of UPR reports.*
- A number of States sought a response from the High Commissioner to their concerns about the lack of geographical representation (Egypt, Cuba) and gender balance (Chile) within OHCHR. *The High Commissioner assured the Committee that she took both issues seriously. OHCHR should be a model for, and representative of, cultural diversity, and achieving this would only enhance its credibility. She wanted all rights holders to see themselves reflected in the staff of the Office, and different understandings of human rights norms promoted by her Office. Stating that gender balance within OHCHR would be one of her priorities, the High Commissioner said this would be addressed in the near future by senior staff through the implementation of Programme 19.*
- Other reoccurring themes in the interactive dialogue were: Durban Review Conference (Algeria, Chile, France (on behalf of EU), Iran, Liechtenstein); freedom of speech/religious tolerance (Lebanon, Chile, Pakistan); strengthening OHCHR's work on economic, social and cultural rights, as well as the right to

³ Australia, Canada, Columbia, France (on behalf of the EU), Switzerland.

⁴ Argentina, Australia, Canada, France on behalf of the EU, UK, Switzerland.

development (Cuba, Egypt, Malaysia, Sudan, Russian Federation); how to respond to the current global crises and climate change (Lebanon, Russian Federation).

General discussion

Using the general discussion segment of a variety of agenda items, some States expressed views on the role of the High Commissioner and her office, as well as her relationship with the Council.⁵ A smaller number of States also made suggestions about how to deal with the 'division of labour' between the Council, the Third Committee and the GA plenary. Although these issues had been raised in previous sessions of the Third Committee, they were raised with greater frequency this year, and the increased detail in their comments indicated that States were beginning to formulate their views. This may have been in anticipation of the March 2009 session of the Council when a more expansive and confrontational debate with the High Commissioner about these issues is expected, as well as the upcoming 2011 review of the Council. Among the comments made were the following:

- *Egypt* called for a clearer commitment from States not to supersede the mandates of the Third Committee as the expert negotiating body of the GA on human rights issues. Equally, there should be a clearer commitment not to surpass the mandates of the Human Rights Council through the presentation of country-specific resolutions, or by attempts to broaden the mandate of OHCHR. It called on States to respect the authority of the GA and the Economic and Social Council (ECOSOC) to supervise the activities of the Council, special procedures and treaty bodies. Egypt also called for: more funds to be allocated to national capacity building in OHCHR's field offices, a balance to be struck between OHCHR's assessed regular budget and voluntary contributions, and for a reduction in the percentage of its earmarked funding.
- *France (on behalf of the EU)* was of the view that OHCHR should 'have all necessary resources at its disposal to independently determine its plan for strategic management and undertake its work in Geneva and on the ground, particularly in the area of technical assistance.' The EU also advised that 'the rules currently governing [OHCHR's] budgetary policy and human resources should be maintained.' It welcomed the expansion of OHCHR's 'on-the-ground activities' and the establishment of regional offices. The capacity building assistance OHCHR provided at the country and regional level opened the way for real improvements in human rights outcomes. In a similar vein, *Switzerland* was concerned about the intensity of the workload of OHCHR, and opposed any moves by the Council to establish control over its activities, priority setting or field work.
- *Indonesia* felt it was 'timely' for the Third Committee to pay a greater attention to the division of labour between the Third Committee and the Council. It suggested the Third Committee should 'focus on policy-oriented discussion, to provide strategic policy recommendations to the GA, which will guide the international community, including the Human Rights Council, in further enhancing the promotion and protection of all human rights.' Further, 'country-based review was now the purview of the Council' under its UPR mechanism.
- *Liechtenstein* elaborated on its point that OHCHR needed to have a stronger impact on policy development at UN Headquarters. It supported the elevation of OHCHR in New York to the level of Assistant Secretary-General to promote the mainstreaming of human rights in the Secretariat, but pointed out that the real challenge was for States to ensure that decision-making in the UN's intergovernmental bodies took into account the human rights dimension. For example, the High Commissioner should be able to address the Security Council as needed. On the relationship between the GA and the Council, Liechtenstein hoped for a pragmatic and permanent solution to the question of the allocation of the Council's annual report. Further, it believed the decisions of the Council should be better known in New York and suggested they be discussed by the GA throughout the year. It warned that this increased

⁵ Most of the comments were made under the Committee's General Discussion on the various sub-items of agenda item 64, 'Promotion of Human Rights', which occurred between 21 – 30 October 2008.

awareness of the work of the Council should not come at the expense of the Council's autonomy in decision-making.

- *Belarus* called for the competencies of the Third Committee and the Council to be outlined so that there would be a clearer understanding of which body had the institutional framework necessary to consider the human rights situations in specific countries. Implicit in its statement was the belief that the Council had the greater competency and the Third Committee should end its practice of country resolutions.

Human Rights Council Report

The content of this year's report from the Council differed from past practice. Rather than containing the Council's work for the twelve months concluding 30 June of the current year, the report also incorporated the outcomes of the Council's most recent 9th session, which concluded in September 2008. This meant the report was divided into two documents, the first containing the resolutions, decisions and Presidential statements adopted by the Council at its 6th, 7th and 8th sessions, as well as its 5th, 6th and 7th special sessions.⁶ The second, supplementary report contained the outcomes of its 9th session.⁷ The Secretariat took this new approach to the compilation of the report following a request by some NAM States. As the GA resolution that established the Council stipulated only that the Council was required to report annually to the GA, there was no basis on which to deny the request to include the outcomes of the Council's most recent session. It remains to be seen if this will establish a new precedent for future annual reports from the Council.

Allocation of the report

As was the case last session, the General Committee of the GA was confronted with the question of how to allocate the Council's report between the Third Committee and the GA plenary. This remained a matter for discussion because the resolution that established the Council required only that the Council report to the GA, without clarifying which body of the Assembly should deal with it substantively.⁸ Further, each of the Council's two reports to the GA to date had been dealt with using a different model,⁹ and the General Committee decided to develop a third model this session.

Following two meetings of the General Committee, it was eventually decided that the Council's report should first be sent to the Third Committee. The General Committee limited the Third Committee's role to consideration and action on the recommendations of the Council to the GA, of which there were three. The report was later taken up by the GA plenary, which was asked to consider and take action on the report as a whole.

This compromise met with general support amongst the members of the Third Committee, although there were some critical voices. Liechtenstein, New Zealand and Switzerland favoured the approach taken in 2006 which sent the report as a whole first to the GA plenary for a general debate, and then invited the Third Committee to hold a general debate and take action on its recommendations. In their view, this approach was consistent with the GA resolution that established the Council and reflected the elevated status of the Council as the UN's principal body with responsibility for human rights. Algeria was critical of the continued lack of a clear practice on the question of allocation of the report, and suggested the General Committee should have retained the approach adopted last year. Sudan argued that the universal membership and human rights expertise of the Third Committee meant it should be the primary body to consider the Council's report. In contrast, Brazil, Japan and Rumania suggested this responsibility should rest with the GA plenary to reflect

⁶ A/63/53, available at <http://www.un.org/ga/third/63/docslist.shtml>

⁷ A/63/53/Add.1, available at <http://www.un.org/ga/third/63/docslist.shtml>

⁸ GA Resolution 60/251. Although that resolution clearly stated that the Council was a subsidiary body of the GA, it was silent on what if any relationship the Council should have with the GA's Third Committee.

⁹ See ISHR's *New York Alert* on the opening of the 63rd session of the GA, dated 6 October 2008, p.9. Available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

the importance of human rights as one of the three pillars of the UN. Expressing concern about the ‘disconnect’ between Geneva and New York, Slovenia questioned whether one report from the Council each year was sufficient, and recommended that the President of the Council provide informal briefings to the President of the GA and the Chairperson of the Peacebuilding Commission on a regular basis.

The Council’s recommendations

The Council's report contained over 100 resolutions, many of which included general recommendations. However, only three of the Council’s recommendations needed the endorsement of the GA to be implemented. Unfortunately, the report presented to the GA did not contain a summary that extracted the three recommendations, which meant some States were unclear about what recommendations they were being asked to endorse. Adding to the challenge this year was the fact that each of the Council’s three recommendations to the GA was controversial in its own right:

- *Resolution 8/2* recommended the GA adopt the text of the Optional Protocol to the *International Covenant on Civil and Political Rights*. Although this had had been adopted by consensus in the Council, a number of States were known to be critical of the Council’s decision-making process and/or sceptical of the need for the protocol;¹⁰
- *Resolution 9/18*, which was adopted by a vote of the Council, recommended that the GA consider the report of the Council's high-level mission to Beit Hanoun in the OPT with the participation of members of the mission. However, given the strong criticism of the Council's 'biased' and 'obsessive' approach towards Israel by States such as the US, it was expected that this recommendation would encounter opposition in the GA ; and
- *Decision 9/103* which was adopted in the Council by consensus, recommended that the GA ensure the establishment of an Office of the President of the Human Rights Council. Although many States supported this initiative in principle, the Council's resolution containing the decision was broader in scope and sought additional resources to cover a range of costs associated with the UPR process, including translation of official documents and webcasting. Thus when the Secretary-General submitted the Programme Budget Implications to the GA, the overall figure of more than \$5million to implement the resolution seemed excessive to many States.

General discussion

On 31 October, the President of the Council presented the Council’s annual report to the Third Committee, which then held a general discussion on the subject. The majority of States used the opportunity to reflect on the Council’s progress since its establishment in 2006. The most common points of reflection were:

- *The ‘constructive’ and ‘cooperative’ nature of the UPR process.* Some States interpreted the overall success of the UPR as a sign of the Council’s maturity and ability to live up to its ideals of non-politicisation, objectivity and non-selectivity.¹¹ Cuba added that the legitimacy of the Council depended on the success of the UPR, warning that if the Council became a ‘court to judge countries of the South’, it would fail. South Korea and Japan warned against premature assessments of the UPR, while other States noted only that it was a significant development that had the potential to improve the human rights situation on the ground.¹²

¹⁰ For further information, see ISHR’s *New York Alert* on the outcomes of the 63rd session of the GA, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192 and the chapter entitled ‘Major developments in international human rights law’ in ISHR’s *Human Rights Monitor 2008*, forthcoming on our website, www.ishr.ch

¹¹ Belarus, Cuba, Algeria, Sudan, Pakistan, Egypt.

¹² Bangladesh, Columbia, Malaysia, Ukraine, Slovenia, Haiti.

- *Expressions of support for the adoption of the protocol to ICESCR.*¹³ Only a few States supported the endorsement of the other Council recommendations requiring action by the Third Committee.¹⁴
- *The relationship between the Council, the Third Committee and OHCHR.* Belarus referred to the need for closer coordination between the Council and OHCHR, particularly in relation to programme planning. This would avoid the current, ‘unacceptable’ situation where programs were determined without the participation of the State concerned. Further, the task of monitoring human rights situations should be focused on the Council, given its mechanisms to do so in the form of the UPR, the treaty bodies and special procedures. Bangladesh and Egypt thought the mandates of the Council and the Third Committee should be complementary, and looked forward to discussing this further.
- *Review, rationalisation and improvement of the special procedures.* Bangladesh felt the completion of this process had improved the quality of the mandate holders, but warned against the proliferation of mandates. Belarus emphasised the need for mandate holders to strictly comply with the Council’s Code of Conduct.

The statements by US and Israel differed markedly from those of other delegations as a result of their criticism of the Council. Israel’s statement was more measured, comprising of a series of questions to the President of the Council, which he was unable to respond to, given it was not an interactive dialogue. Israel asked the President: how he would address the imbalance in the Council’s agenda, given its separate agenda item on Palestine; when the mandate of the Special Rapporteur on the OPT would be reviewed; and what measures would be taken to ensure the Durban Review Conference did not degenerate into an anti-Semitic or anti-Zionist platform.

The US condemned the Council, accusing it of ‘eroding the UN’s role as the pre-eminent advocate’ for human rights. Although it acknowledged there were some gains, the US provided an extensive list of where it considered the Council acted in a manner contrary to its mandate, including the Council’s:

- refusal to review or amend the mandate on the OPT;
- resolutions and decisions regarding freedoms of expression, opinion and religion;
- inaction on the ‘deplorable’ human rights situations in Zimbabwe, Cuba, Syria and the DPRK;
- ‘elimination’ of the mandate on the Democratic Republic of the Congo, and its failure to renew the mandate on Darfur for a full year; and
- provision of limited time to NGOs to speak during the UPR process.

The President of the Council presented the Council’s report to the GA plenary on 4 November. Echoing the comments of some States in the Third Committee, the President appealed to States for greater objectivity and patience when evaluating the Council, suggesting that two years was not sufficient time to ‘judge and condemn’ the body. Ambassador Costea, the former President of the Council, speaking as the representative of Rumania, made a similar comment, adding that the credibility of the Council was still at stake. Now that the institution-building phase was complete, he said it was important for the Council to address gross violations, follow up on its decisions and resolutions, and ‘insulate’ its mechanisms from continual modification.

Of the 15 States that addressed the GA, most reflected broadly on the achievements of the Council, and some outlined how it could strengthen its effectiveness. Some of the common points of reflection included:

- *The need for the Council to develop a more predictable and manageable annual program of work.* Switzerland and New Zealand pointed out that the proliferation of Council meetings meant it was effectively permanently in session. This left little time for consolidation of the wealth of information the Council processed, and distracted members from the task of implementation and follow up of their

¹³ Algeria, Chile, Cuba, Egypt, France (on behalf of EU), Portugal, Spain, Slovenia, Sudan.

¹⁴ The recommendation on Beit Hanoun was supported by Sudan. The recommendation to establish an Office of the President of the Council was supported by Malaysia and Slovenia.

decisions. Switzerland suggested the Council address specific themes at each of its three annual sessions, rather than trying to work through the entire agenda.

- *Suggestions for the review of the Council in 2011.* The Russian Federation called for a comprehensive review that would include: a systematic assessment of the strengths and weaknesses of the special procedures; consideration of a change in the status of the Council; review of the Council's mandate, composition, agenda and program of work; review of OHCHR's activities, including planning, implementation and rationalisation of programs at all levels. Further, the current modalities (including categories for inclusion of various participants in the review) should be strictly applied. Mexico appealed for the review to be used to strengthen the Council and elevate its status within the UN hierarchy.
- *Relationship between the Council, GA plenary and the Third Committee.* Switzerland was frustrated that there was still no clear understanding of the competencies between these bodies. It suggested the GA with its universal membership should serve as a general forum for discussion and play a programming role, while the Council should have an operational role. This would allow the GA to ask the Council to discuss a theme and report back on operational follow up. A more dynamic and positive relationship was needed, rather than a rigid set of competencies. Iran suggested that the Council should be the 'focal point' for all action on human rights, while the Third Committee should focus on policy-oriented discussions and report on these to the GA plenary. Brazil advised that it was sufficient for the GA plenary to consider the Council's report. This would allow the Council to focus on dialogue and cooperation and remove any 'non-negotiable issues' from its agenda. Liechtenstein advised that the GA plenary and Third Committee should limit their interaction with the Council to consideration of its annual report.
- *The Council's interaction with NGOs.* The Russian Federation suggested the Council needed a 'new relationship' with NGOs that was based on the principles of mutual responsibility and constructive dialogue. Brazil, Rumania and Switzerland commented that the participation of NGOs in the Council was 'standard practice' and one of its strengths. In a veiled criticism of the UN's practice of using of information provided by NGOs, Egypt warned against the use of 'unauthenticated or politicised information' in UN documents.
- *The significance of the UPR process.* Some States highlighted its strengths, such as civil society involvement and the existence of the trust fund to build capacity at the national level.¹⁵ Others called on the GA to end its practice of country resolutions and for the Council to abolish country specific procedures.¹⁶ Liechtenstein suggested that the UPR process should be more integrated into the work of the treaty bodies, as these were the principal mechanisms for reviewing each State's human rights record. This could be achieved by treaty bodies following up on the implementation of States' pledges and recommendations under the UPR process.
- *Positive observations.* Switzerland welcomed the Council's use of special sessions as a rapid response to human rights violations around the world, while Liechtenstein, Rumania and Iran welcomed special sessions on thematic issues. Iran also welcomed the new special procedures on economic, social and cultural rights, as well as the Council's practice of holding panel discussions on 'worthy topics'.

Key resolutions

In previous years, the Third Committee had considered only one resolution to facilitate the adoption of the Council's report. However, two very different resolutions were presented to the Third Committee this year:

- The first of these was sponsored by Portugal,¹⁷ who had been the lead advocate of the optional protocol during its development and adoption at the Council. The sole objective of its resolution was

¹⁵ Ghana, Mexico, New Zealand, Panama, Senegal.

¹⁶ DPRK, Egypt, Iran, Russian Federation,

¹⁷ A/C.3/63/L.47, available at <http://www.un.org/ga/third/63/propolist.shtml>

to ensure the GA's adoption of the protocol by consensus. The text made no reference to the Human Rights Council report or any other Council recommendations; and

- The second was sponsored by Cuba (on behalf of NAM) and Mauritius (on behalf of the African Group).¹⁸ It was intended to 'take note of the report of the Human Rights Council' and 'endorse' its recommendations, thereby conveying the GA's preparedness to fund the implementation of the recommendations. It did not specify which of the recommendations the GA was taking action on.

Portugal's resolution experienced a relatively smooth passage in the Third Committee. Although some States remained sceptical of the need for an Optional Protocol to the ICESCR, none was willing to block its adoption by consensus in either the Third Committee or the GA plenary. Significantly, adoption in the GA plenary was made possible on International Human Rights Day, which coincided with the 60th anniversary of the GA's adoption of the UDHR.¹⁹

In contrast, the Cuba/Mauritius resolution was subject to widespread criticism on both procedural and substantive grounds. Many States were caught off guard by its late introduction on 11 November, with some in the African Group allegedly not having seen the text, and many States perplexed by its intended purpose. Part of the problem was the poor construction of the text, which 'considered the recommendations' in the Council's report and 'endorsed' them. This was problematic for three reasons:

- the text did not specify which of the many recommendations contained in the report the GA proposed to take action on;
- several States were concerned that the text implied that the Third Committee was taking action on the report as a whole, thereby overturning the decision of the General Committee that it limit itself to consideration of the recommendations; and
- the text appeared to be in competition with Portugal's resolution on the protocol, given that both sought to take action on one or more of the Council's recommendations to the GA. The Rules of Procedure of the GA (which apply in the Third Committee) provide that it is not possible to take action on a proposal twice in the same session.²⁰

When it introduced the text, Cuba indicated it was open to alternative language. However, despite the fact that two revised texts were subsequently issued,²¹ these initial flaws in drafting were not corrected. Costa Rica joined as a co-sponsor of the resolution when it was introduced into the Committee.

The vote²²

The Committee did not take action on the Cuba/Mauritius resolution until its last scheduled meeting on 25 November 2008. At this time Cuba orally amended the text in a manner that further complicated the situation. Rather than 'endorsing' the recommendations, Cuba advised that the GA would only 'acknowledge' them. Although Cuba explained that this language was the outcome of negotiations and reflected the collective will to 'validate' the work of the Council, the Secretary of the Committee promptly pointed out that it did not reflect sufficient support from the GA for the Council's recommendations. As a result, the Secretary was required to withdraw the budget document that would have funded the implementation of the

¹⁸ A/C.3/63/L.57; available at <http://www.un.org/ga/third/63/propolist.shtml>

¹⁹ For more information about the adoption of the Optional Protocol, refer to the chapter entitled 'Major developments in international human rights law' in ISHR's *Human Rights Monitor 2008*, forthcoming on ISHR's website, www.ishr.ch

²⁰ Rule 123 of the GA's Rules of Procedure.

²¹ A/C.3/63/L.57/Rev.1 (subsequently withdrawn) and A/C.3/63/L.57*.

²² The UN press release covering the vote on the resolution (A/C.3/63/L.57*) is available at <http://www.un.org/News/Press/docs/2008/gashc3942.doc.htm>

recommendations.²³ At this point the Russian Federation joined the list of co-sponsors and Israel called for a vote on the resolution, reiterating its criticisms of the Council.

The resolution was adopted with 117 States in favour, five against (Australia, Canada, Israel, Palau, US), and 55 abstentions. Although the Council's report was also subject to a vote last year in the Third Committee, the outcome was quite different as very few States abstained (167:7:2). The explanations of vote this year helped to clarify why more States decided to abstain from the vote:

- *Those abstaining from the vote* (France (on behalf of the EU), Costa Rica, Liechtenstein, Mexico, New Zealand, Norway, Switzerland, Uruguay) objected to the text on procedural and substantive grounds as outlined above. They stressed that they remained staunch supporters of the Council and did not want their vote to reflect negatively on it. They hoped the Council's annual report could be adopted by consensus in future. In addition, the EU was critical of Cuba's lack of consultation on the amendment and the inability of the Committee to debate the matter in sufficient detail on its final day. The UK was hopeful that the Council's recommendations could be implemented from within existing resources;
- Those voting against the resolution (Israel and the US) reiterated their criticisms of the Council; and
- Those in favour of the resolution (Cuba, DPRK, Nigeria, Sudan, Zimbabwe) explained that they supported NAM's initiative. Nigeria (currently holding the Presidency of the Council) regretted the withdrawal of the budget document which 'undid' the creation of the Office of the President of the Council.

The vote on the resolution in the GA plenary did not differ significantly from that in the Committee (121:7:58). The Marshall Islands and Micronesia joined with those who had voted no in the Committee. Last year in the GA plenary the same seven States voted against the resolution on the Council's report, and Nauru was the only State to abstain; all others voted in favour (150:7:1).

Programme 19²⁴

In an effort to conclude the Committee's work on Programme 19 in a more timely manner than previous years, the Third Committee Chairperson brought forward consideration of this agenda item to its first meeting. He then appointed a representative from Morocco and Switzerland as the facilitators to assist the Committee to work through the text in informal negotiations. This appeared to meet with widespread approval from the Committee, with the exception of Cuba, which expressed 'disappointment' that the Chair and Vice-Chair were not facilitating the process as they had done in the past. The Chairperson assured Cuba that he would be closely following the work of the facilitators.

Cuba went on to elaborate a number of principles that it believed should guide the Committee's consideration of Programme 19. Several of these foreshadowed the main areas of disagreement that would arise in the informal negotiations. For example, Cuba required that:

- the right to development be central in negotiations;
- the Committee support efforts to combat racism and xenophobia, including the Durban Review Conference; and
- the work of treaty bodies and special procedures be guided by the Council and States parties.

The following week, a lunchtime briefing was organised by the facilitators to explain the background to Programme 19 and clarify the Committee's role in considering the text (see Annexure on Programme 19). The briefing was well attended by Third Committee delegates, however it was evident from their questions that

²³ The PBI was contained in A/C.3/63/L.77, available at <http://www.un.org/ga/third/63/propolist.shtml>

²⁴ Programme 19 – Human rights proposed strategic framework for the period 2010-2011 (A/63/6 (Prog. 19)).

few had prior experience in dealing with this complex agenda item and benefited from the explanations provided. The facilitators also outlined their intention to hold two informal negotiations each week to work through the document, with a view to reaching consensus in three to four weeks. They invited all Third Committee delegates to put forward amendments. Delegates were also advised that staff from OHCHR would attend the negotiations to answer any questions and support the work of the Committee.

Although the informal negotiations amongst States were closed and NGOs were requested not to attend, those involved in the process indicated that negotiations generally had a positive atmosphere and more States took part than in 2006. However, as the process unfolded, there was mounting concern that achieving a consensus outcome would be very difficult and could come at the expense of the integrity of OHCHR's draft. The major sticking points proved to be references to the Durban Declaration and Programme of Action (DDPA) and the degree of Council oversight over the work of OHCHR, particularly its field work.

Only about a dozen States remained actively engaged throughout the negotiations.²⁵ This was due in part to the pressing work load of the Third Committee, the frequency and length of the negotiations on Programme 19 (which intensified as the Committee's deadline approached), as well as agreements about burden-sharing amongst regional groups. Broadly speaking, the States participating in the informal negotiations fell into three camps with the following approaches:

- African Group and Cuba proposed numerous amendments to the text that were designed to increase the Council's authority to determine aspects of OHCHR's programme planning and 'micro-manage' its work. These included the following proposals, all of which were ultimately rejected by the facilitators on the basis that they were inconsistent with OHCHR's existing legislative mandate and/or had budgetary implications:
 - a) Inclusion of an 'expected accomplishment' that an outside independent party would undertake a cost-benefit analysis of OHCHR's existing field offices and make recommendations about their future operation. OHCHR would be invited to comment on the recommendations, which would then be considered by the Council (African Group);
 - b) Deletion of the 'strategy' that OHCHR provide enhanced support to the Council's complaint procedure regarding gross human rights violations, which was the only reference in Programme 19 to the complaint procedure (Cuba);
 - c) A new 'strategy' requiring that follow up to the findings and recommendations of special procedures first be approved by the Council (Cuba); and
 - d) Deletion of the 'expected accomplishment' that OHCHR enhance cooperation with 'stakeholders at all levels' (Cuba).
- Western European and Others Group (including the US) sought to counter the Cuban and African proposals and maintain or strengthen the text proposed by OHCHR, thereby preserving the independence of the High Commissioner and her Office. Within WEOG, the US and Israel also operated as a distinct sub-group, strongly objecting to any reference to follow up work on the DDPA. Further, a number of the US amendments proved controversial and were rejected by the facilitators on the grounds they attempted to alter OHCHR's mandate by putting its work on the promotion and protection of human rights on an equal footing with work to promote 'the rule of law and democracy'; and
- Latin American States occupied the middle ground and advocated effectively for OHCHR's continued involvement in field work and technical cooperation, given their own positive experiences in this respect.

Informal negotiations continued up to the deadline set by the Chairperson of the Third Committee in an effort to reach consensus on the text. Ultimately the document submitted by the facilitators was similar to the original text drafted by OHCHR due to the facilitators' decision to revert to the language proposed in 2006 if

²⁵ Among the States engaged in the process to varying degrees were: Australia, Brazil, Canada, Chile, Cuba, Egypt, Israel, Mexico, New Zealand, Norway, Pakistan, Russian Federation, South Africa, UK, US, Uruguay.

compromise language could not be found. In this vein, the facilitators hoped the practice of adopting Programme 19 by consensus in the Third Committee would be maintained.

The vote²⁶

The Third Committee did not return to its formal consideration of Programme 19 until 26 November –its final meeting of the session. When the Chairperson introduced the draft decision to approve the final text of Programme 19,²⁷ he acknowledged that it did not 'fully meet every delegation's expectations', but represented the best possible outcome under the circumstances. He appealed to the Committee to approve the text to ensure that OHCHR was provided with a programme of work that would benefit the lives of many people around the world.

In response, Israel advised that it was unable to accept the text, given its requirement that OHCHR undertake follow up work on the DDPA. It pointed out that this reference had not been in the original draft from OHCHR, or the previous strategic management plan, and was therefore unnecessary for OHCHR to fulfil its mandate. Nonetheless, Israel hoped the Committee would be able to send a clear message of support to OHCHR.

The Chairperson regretted Israel's position and explained that he had no alternative but to withdraw the draft decision. At this point Mauritius (on behalf of the African Group) intervened to resubmit the draft decision as its own, and appealed to all States to co-sponsor it.

The US then sought to move an oral amendment to the text to remove the reference to 'follow-up to the DDPA' and replace it with 'follow-up to outcomes to all relevant UN conferences and summits'.²⁸ It argued this would broaden the context to include a range of other more significant UN conferences, rather than singling out one that was particularly controversial and had done little to address racism.

A procedural tussle then ensued as Egypt appealed to the Chairperson to reject the US amendment. It argued that the amendment did not comply with the requirement in the GA's Rules of Procedure that all amendments be submitted in writing 24 hours ahead of their introduction. The Chairperson explained that he had the authority to waive this rule, as he had on a number of occasions during the current session, and would do so on this occasion. Given Egypt's reading of the Rules of Procedure, the US then indicated that it would move that the draft decision on Programme 19 could not be considered by the Committee either. Egypt then called for a vote to overturn the Chair's ruling and prevent consideration of the US amendment, which was defeated (74:57:24).

The Chair then asked the Committee to vote on the oral amendment proposed by the US. Cuba and Mauritius (on behalf of the African Group) explained that they would vote against the late proposal as the text had already been negotiated in good faith. France (on behalf of the EU) also supported what it called 'the consensus text' but indicated it would abstain. The US' oral amendment was rejected (4:105:55).²⁹ The US then withdrew its motion to block consideration of the draft decision.

The Committee then turned to the draft decision, at which point Israel called for a recorded vote. Over 30 States then joined as co-sponsors³⁰ and the text was adopted by an overwhelming majority of States

²⁶ The UN press release covering the adoption of the decision in the C3 is available at <http://www.un.org/News/Press/docs/2008/gashc3943.doc.htm>

²⁷ A/C.3/63/L.79, available at <http://www.un.org/ga/third/63/propolist.shtml>

²⁸ Paragraph 19.11(d) of L.79.

²⁹ Only Australia, Canada, Israel and the US voted in favour of the oral amendment.

³⁰ Paragraph 8 of A/63/434 lists the co-sponsors, available at <http://www.un.org/ga/third/63/reports.shtml> These included France, the current President of the EU, and Belgium, which is to assume the EU Presidency in 2010.

(167:2:2).³¹ All of the States that delivered statements to explain their vote, including those that voted against the decision or abstained, emphasised their strong support for OHCHR. Similarly, all States were disappointed that OHCHR's strategic framework for the coming biennium was not able to be adopted by consensus, and those that voted against the decision clarified that they were voting against the DDPA, not the High Commissioner or her office. South Africa was the only State to broach other subjects, providing instructions to OHCHR about how it should support the Council and conduct itself at the country level. In closing the session of the Third Committee, the Chairperson reiterated his 'regret' that a vote had been necessary on Programme 19, and on a lighter note, observed that the Committee had lived up to its reputation for 'high drama' as well as its capacity for 'collegiality'.

In the GA, the draft decision on Program 19 was adopted on 18 December 2008 without incident and by a similar margin (175:3:2).³² The GA had not previously voted on this agenda item.

Looking forward

The stage is set for the next session of the Council in March 2009 to be a very challenging one for the High Commissioner, now that her so-called honeymoon period is said to be over. States from NAM, the OIC and the African Group look set to re-launch their efforts to strengthen the role of the Council at the expense of the independence of the High Commissioner and her office.

The future remains uncertain for the implementation of the Council's recommendations to follow up on its mission to Beit Hanoun, establish an Office of the President of the Council, and commit additional resources to cover the growing costs of the UPR process. Although the possibility remains that the GA 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 on all parts of the UN to meet expenses using 'existing resources' are likely to prompt greater budgetary prudence across the organisation.

The fact that this session of the GA coincided with the election of a new President of the United States raised the question in the minds of many as to whether the next Human Rights Council annual report to the GA would be met with a similar level of condemnation by the new Administration. There is however little doubt that the next session of the GA will face the now routine matter of how to allocate the Council's annual report. Questions about the relationship between the Third Committee, the GA plenary and the Council will also continue. And States are likely to elaborate further on what should be the focus of the review of the Council in 2011. Whether any clarity will be brought to these issues remains to be seen.

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.³³ The Third Committee (Social, Cultural, and Humanitarian) addresses most agenda items

³¹ The US and Israel voted against the decision, and Australia and Canada abstained.

³² The Marshall Islands joined with Israel and the US to vote against the adoption of the decision.

³³ 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

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.

Annexure – background to Programme 19

Programme 19 is one of the 27 programmes that make up the UN's strategic framework. This framework is the principal policy directive of the UN, which serves as the basis for programme planning, budgeting, monitoring and evaluation across the organisation for a period of two years. Since adopting 'results-based budgeting' in 2004, the GA has approved two strategic frameworks, the first in 2004 and the most recent in 2006. The UN has also retained its regular budgeting approach, meaning the two systems operate in parallel. In even calendar years the GA deals with the proposed strategic framework and in odd years it deal with the programme budget.

Programme 19 covers the UN's human rights programme, which has as its overarching objective 'to promote and protect the effective enjoyment by all of all human rights'. Programme 19 is led by the High Commissioner for Human Rights under the direction of the UN Secretary-General. OHCHR is the UN office responsible for drafting and implementing it. Programme 19 sets out OHCHR's programme of work, which is divided into four sub-programs that relate to key areas of work, such as: human rights mainstreaming, right to development, research and analysis, support for treaty bodies and the Council, and technical cooperation and field activities. In each of these areas of work, Programme 19 outlines the main 'accomplishments' expected of OHCHR, and a set of indicators to measure and evaluate the performance of OHCHR (not Member States).

The GA has developed a practice of allocating Programme 19 first to its Committee for Programme and Coordination (CPC), which considers the text and usually makes detailed amendments.³⁴ The Third Committee is then required to review the text and any amendments. It can accept, reject or amend the sub-programmes, and once it has agreed on the text, it adopts a procedural decision to forward the revised text to the GA plenary for approval. The task of the CPC, the Third Committee and the GA in considering the text is to ensure that the legislative mandates (as created by resolutions from the Council, the GA and ECOSOC) are appropriately translated into the strategic framework. It is *not* their task to create new mandates or make new proposals that have budgetary implications.

³⁴ The CPC is made up of 34 members and is the main subsidiary organ of the GA for planning, programming and coordination. One of its most important responsibilities is to review the UN's strategic framework. This year, the CPC considered Programme 19 and forwarded its draft conclusions and the amendments it proposed to the Third Committee in September (A/C.3/63/2). Ultimately the Third Committee facilitators decided not to work from this document as: the States proposing the amendments were not identified in the CPC report, the CPC did not have sufficient time to consider the amendments, and the limited membership of the CPC as compared to the Third Committee. Instead, the facilitators reverted to the original text (A/63/6 (Prog. 19)) as the basis for negotiations and invited all Third Committee members to submit amendments, including the re-submission of amendments proposed in the CPC, so long as the State identified itself.

Technical Annex

Reports

- Report of the Human Rights Council on its sixth, seventh and eighth sessions and its fifth, sixth and seventh special sessions (A/63/53)
- Report of the Human Rights Council ninth session (A/63/53/Add.1)
- Report of the Secretary-General on the proposed strategic framework for the period 2010-2011: Human rights (A/63/6 (Prog. 19))
- Report of the High Commissioner for Human Rights on the composition of the staff of the Office of the United Nations High Commissioner for the Human Rights (A/63/290*)

Key resolutions

Initial number of resolution / decision and final number	Main Sponsor	Title	Previous GA resolution or decision	Action
A/C.3/63/L.47 and GA/63/117	Portugal	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights	New initiative	Adopted by C3 18 Nov 2008 by consensus Adopted by GA 10 Dec 2008 by consensus
A/C.3/63/L.57 and A/C.3/63/L.57* and GA/63/160	Cuba (NAM) and Mauritius (African Group)	Report of the Human Rights Council	A/RES/62/219 ³⁵ annual	Adopted by C3 25 Nov 2008 vote: 117:5:55 Adopted by GA 18 Dec 2008 vote: 121:7:58
A/C.3/63/L.79 (decision) and GA/63/247	Initially C3 Chairperson then Mauritius (African Group)	Programme planning (Programme 19)	A/RES/61/235 ³⁶ biennial	Decision adopted by C3 26 Nov 2008 vote: 167:2:2 Adopted by GA 18 Dec 2008 vote: 175:3:2

³⁵ See ISHR's report on the Human Rights Council Report from the GA's 62nd session, available at http://www.ishr.ch/index.php?option=com_content&task=view&id=131&Itemid=192

³⁶ See ISHR's report on the GA's 61st session, available at http://www.ishr.ch/hrm/archive/GA/GA61/GA61_Contents.htm

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