

NEW YORK MONITOR

International Service for Human Rights



Human Rights Monitor Series

NEW YORK UPDATE GENERAL ASSEMBLY, 62ND SESSION, CIVIL & POLITICAL RIGHTS, SEPTEMBER- DECEMBER 2007

OVERVIEW	2
PROTECTING HUMAN RIGHTS & FUNDAMENTAL FREEDOMS WHILE COUNTERING TERRORISM...4	
Presentation of the Special Rapporteur	4
<i>Resolution on the protection of human rights while countering terrorism</i>	6
TORTURE AND OTHER CRUEL INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	8
Presentation of the Special Rapporteur	8
<i>Resolution on torture</i>	9
EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS.....	11
Presentation of the Special Rapporteur	11
DEATH PENALTY	13
<i>Resolution on the moratorium on the use of the death penalty</i>	13
INDEPENDENCE OF JUDGES AND LAWYERS	14
Presentation of the Special Rapporteur on the independence of judges and lawyers	15
FREEDOM OF RELIGION AND BELIEF	16
Presentation by the Special Rapporteur	16
<i>Resolution on the elimination of intolerance and discrimination based on religion or belief</i>	18
<i>Resolution on combating defamation of religion</i>	19
ADDITIONAL RESOLUTIONS	20
BACKGROUND	21

Overview

The Third Committee considered eleven reports and seven resolutions relating to civil and political rights under agenda items Item 70 (a) (b) and (c).¹ In the following thematic areas, the Committee heard from the mandate holder and author of the report and engaged in an interactive dialogue with them:

- human rights and countering terrorism
- torture
- extrajudicial, summary or arbitrary executions
- the independence of judges and lawyers
- freedom of religion and belief.

Five resolutions were adopted by consensus on the following thematic issues: protection of human rights and countering terrorism;² torture;³ administration of justice;⁴ international covenants on human rights;⁵ and freedom of religion or belief.⁶ Two were adopted by vote, namely the death penalty resolution⁷ and defamation of religion.⁸

One of the most positive and, for many, surprising outcomes of this year was the successful adoption of a historic resolution on the moratorium of the use of the death penalty.

Although two resolutions mentioning the death penalty were adopted in the seventies, the international community refused to act on the issue when it was back on the agenda nearly eight years ago. Many States, as well as international non-governmental organisations (NGOs), were concerned that the 2007 draft would not fare any better than that 1999 one, which was ultimately scuttled by wrecking amendments. Indications of a tense and confrontational atmosphere between the Non-Aligned Movement (NAM) and West/North at the start of the Third Committee session did not allay these fears.

Victory, though, was achieved. Several factors are likely responsible, including that the text was co-authored by a group that included representation across all the regions. The make-up of the key group of sponsors was critical since many detractors tried to delegitimize the resolution by calling it an European Union (EU)/Western initiative. When the text came under pressure in the Third Committee, the alliance maintained cohesion, withstanding a string of cleverly-worded amendments that were designed to undermine the text's fundamental purpose or sought to introduce issues unrelated to the death penalty. Another element contributing to the successful outcome may have been that many States had already undertaken extensive national debates on the subject. Their delegates therefore brought an informed national opinion to the table, which often did not correspond with the bloc-oriented regional views that usually shape voting patterns in the Third Committee. Additional support came from international and national NGOs, who lobbied extensively

¹ Item 70: Promotion and protection of human rights (a) Implementation of human rights instruments (b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms and (c) Human rights situations and reports of special rapporteurs and representatives

² A/C.3/62/L.47. Available at <http://www.un.org/ga/third/62/propolist.shtml>

³ A/C.3/62/L.26. Available at <http://www.un.org/ga/third/62/propolist.shtml>

⁴ A/C.3/62/L.45. Available at <http://www.un.org/ga/third/62/propolist.shtml>

⁵ A/C.3/62/L.25. Available at <http://www.un.org/ga/third/62/propolist.shtml>

⁶ A/C.3/62/L.42. Available at <http://www.un.org/ga/third/62/propolist.shtml>

⁷ A/C.3/62/L.29. Available at <http://www.un.org/ga/third/62/propolist.shtml>. The resolution was adopted with 99 in favour, 52 against, and 33 abstaining. In the GA, five additional States voted in favour, with a final tally of 104 votes in favour, 54 votes against, and 29 abstentions.

⁸ A/C.3/62/L.35. Available at <http://www.un.org/ga/third/62/propolist.shtml>. In the Third Committee, 95 States voted in favour of the resolution, 52 against, 30 abstained. In the GA, the vote was 108:51:25.

throughout the process, and the co-sponsoring States, many of whom carried out major diplomatic efforts worldwide to convince countries to support the resolution.

In many ways, the success on the death penalty resolution overshadowed outcomes on other civil and political rights issues during this session. However several important issues were brought to the attention of Member States, in particular by the special procedures, both in terms of thematic issues and country situations.

During the presentations of their reports and the interactive dialogues that followed, the Special Rapporteurs updated the Committee on recent country missions they had undertaken. The international protection of internally displaced peoples (IDPs), asylum-seekers and refugees was a key theme for the Special Rapporteur on freedom of religion and belief, as well as the Special Representative on protecting human rights while countering terrorism, who estimated refugees to be one of the biggest adversely effected populations by the war on terror. The latter also brought attention to the work of the UN Counter-Terrorism Implementation Task Force, which offers a key framework through which to mainstream human rights into counter-terrorism efforts. The Special Rapporteur on the independence of judges and lawyers discussed, among other issues, access to justice, and the protection of rights during states of emergency. The Special Rapporteur on torture focussed on the role of forensic medical expertise in combating impunity for torture, and avoiding the deprivation of liberty as a means of preventing torture.

Resolutions integrated some of the recommendations made by the special procedures. The annual resolution on torture and other forms of cruel, inhuman or degrading treatment or punishment contained new language on the prosecution or extradition of those alleged to have committed acts of torture, a follow up to one of the recommendations of the Special Rapporteur in his report to the Human Rights Council (HRC). This resolution also incorporated new language to ensure that perpetrators have no future involvement in the interrogation or treatment of any detained persons.⁹ The resolution on the protection of human rights while countering terrorism also integrated issues brought up by the Special Rapporteur in his report and oral presentation to the Third Committee, including new references to the use of diplomatic assurances, on State obligations in regard to the return and transfer of individuals suspected of terrorist activities, and border controls. The text also included a new perambulatory paragraph on the danger of torture in situations of deprivation of liberty, a theme of the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. A key issue in the report of the Special Rapporteur on freedom of religion and belief, namely the right of atheists and non-theists to refrain from affiliating themselves with any religion or belief, and the importance that such persons are not discriminated against, was referenced in the text on the elimination of all forms of religious intolerance, but not as strongly as the co-sponsors would have liked.

Information before the Committee

Reports submitted for consideration to the Third Committee under Item 70 (a) (b) and (c) include:

Terrorism

- Report of the Secretary-General on protecting human rights and fundamental freedoms while countering terrorism¹⁰
- Note by the Secretary-General transmitting the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism¹¹

Torture

- Report of the Committee against Torture (Supplement No. 44)¹²

⁹ OP8, A/C.3/62/L.26. Available at <http://www.un.org/ga/third/62/propslist.shtml>

¹⁰ A/62/298, available at <http://www.un.org/ga/third/62/docslist.shtml>

¹¹ A/62/263, available at <http://www.un.org/ga/third/62/docslist.shtml>

¹² A/62/44, available at <http://www.un.org/ga/third/62/docslist.shtml>

- Report of the Secretary-General on the status of the UN Voluntary Trust Fund on Contemporary Forms of Slavery¹³
- Report of the Secretary-General on the UN Voluntary Fund for Victims of Torture¹⁴
- Note by the Secretary-General transmitting the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment¹⁵
- Report of the Secretary-General on the status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁶

Extrajudicial, summary or arbitrary executions

- Note by the Secretary-General transmitting the interim report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions¹⁷

Independence of judges

- Note by the Secretary-General transmitting the report of the Special Rapporteur on the independence of judges and lawyers¹⁸

Freedom of religion

- The interim report of the Special Rapporteur on freedom of religion and belief, entitled *Elimination of all forms of religious intolerance*¹⁹
- Report of the Secretary-General on combating defamation of religions²⁰

Protecting human rights and fundamental freedoms while countering terrorism

Presentation of the Special Rapporteur on protecting human rights and fundamental freedoms while countering terrorism²¹

On 29 October 2007, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Mr. Martin Scheinin, presented his report to the Third Committee of the General Assembly at its 62nd session.²² In his oral presentation, he gave an overview of his written report, which focuses on challenges to refugee law and the principles and standards of international protection posed by counter-terrorism measures. The Special Rapporteur was pleased with improved cooperation by Member States -- having had three successful missions to South Africa²³, the United States of America (USA)²⁴, as well as Israel and the Occupied Palestinian Territories²⁵, and said he was looking

¹³ A/62/180, available at <http://www.un.org/ga/third/62/doclist.shtml>

¹⁴ A/62/189, available at <http://www.un.org/ga/third/62/doclist.shtml>

¹⁵ A/62/221, available at <http://www.un.org/ga/third/62/doclist.shtml>

¹⁶ A/62/273, available at <http://www.un.org/ga/third/62/doclist.shtml>

¹⁷ A/62/265. Available at <http://www.un.org/ga/third/62/doclist.shtml>

¹⁸ A/62/207. Available at <http://www.un.org/ga/third/62/doclist.shtml>

¹⁹ See A/62/280. Available at <http://www.un.org/ga/third/62/doclist.shtml>

²⁰ See A/62/288. Available at <http://www.un.org/ga/third/62/doclist.shtml>

²¹ The mandate of the Special Rapporteur was established by the Commission on Human Rights by *Resolution 2005/80* (21 April 2005). For more information on this mandate and others please see ISHR's fact sheets available at <http://ishr.ch/>

²² A/62/263. Available at <http://www.ohchr.org/english/bodies/GA/62documents.htm> For other reports by the Special Rapporteur, visit <http://www.ohchr.org/english/issues/terrorism/rappporteur/srchr.htm>

²³ 16 to 26 April 2007.

²⁴ 16 to 25 May 2007.

²⁵ 3 to 10 July 2007.

forward to visits to the Philippines and Spain in early 2008. The Government of the Philippines, however, has advised that, ironically, its preparations for the Universal Periodic Review (UPR)²⁶ may prevent the visit.

The Special Rapporteur drew specific attention to his concern about pre-entry interception, non-refoulement, repatriation and resettlement, and global responsibility for international protection of refugees. The Special Rapporteur recommended that States work with the UN High Commissioner for Refugees (UNHCR) to institute clear guidelines and practices in all border-control operations in order to bring pre-entry interception in line with international law. He specifically called for “scrupulous application of exclusion clauses,”²⁷ and urged States to grant detainees the right to judicial review of their detention within 48 hours. On the principle of non-refoulement, the Special Rapporteur flagged the use of diplomatic assurances as particularly worrisome. The use of diplomatic assurances²⁸ is one factor in releasing a detainee, but should never absolve the returning State of the burden of assessing “real risk” potentially faced by the returning detainee, and does not generally work in practice. Further on the issues of release, repatriation, and resettlement of detainees and global responsibility, the Special Rapporteur called for the closure of Guantanamo Bay detention centre in Cuba²⁹ and an active role for the UNHCR in this process. He also called upon all States to be prepared to receive detainees in cases where no criminal charges are initiated. The Special Rapporteur recommended State cooperation with intergovernmental organizations, and increased coordination between such bodies on related challenges.

Interactive dialogue

Eight delegates³⁰ participated in the ensuing interactive dialogue. Portugal asked about concrete measures the Special Rapporteur could recommend in balancing addressing security concerns and upholding human rights and refugee law. The Special Rapporteur replied that professionalism -- meaning familiarity with international agreements, procedures, and situations abroad -- was the basic concrete step. Finland requested some advice on best practices while countering terrorism in regard to protection of human rights. The Special Rapporteur said States’ policies are always a mix of positive and negative elements. Referencing his country visits, he cited South Africa’s cumulative definition of terrorism,³¹ which incorporates intention, act, and aims, and the parliament’s control over the terrorist list, as positive, but noted that the list of crimes classified as acts of terrorism was overly broad. The USA has good elements such as community outreach and the rejection of profiling by the Department of Homeland Security, rehabilitation for the victims of terrorism, and a free judiciary and media. Israel’s use of “unlawful combatant” is to be emulated, as those labelled as such in that country are granted judicial review. Conversely, a person labelled an “unlawful combatant” in the USA does not enjoy related legal recourses and safeguards.³²

Portugal also asked the Special Rapporteur to inform the Committee more about the relationship between his mandate and other UN (UN) bodies (an issue that the Special Rapporteur details in his latest report). The Special Rapporteur highlighted the work of the UN Counter-Terrorism Implementation Task Force,³³ which

²⁶ For more information see <http://www2.ohchr.org/english/bodies/hrcouncil/upr/index.htm>

²⁷ Article 1 (F) of the 1951 *Convention relating to the Status of Refugees*, available at http://www.unhcr.ch/html/menu3/b/o_c_ref.htm

²⁸ For information on diplomatic assurances see <http://hrw.org/backgrounder/eca/ecaqna1106/>

²⁹ The Special Rapporteur regretted that during his visit to the USA, he was not guaranteed unmonitored access to detainees, which the Standard Terms of Reference for Fact Finding Missions by Special Rapporteurs and Representatives outlines. In the ensuing interactive dialogue, the USA noted that the Special Rapporteur had been offered the same level of access to detainees that all other international observers enjoy. Since the visit, the Special Rapporteur has been invited to observe proceedings before military commissions at Guantanamo Bay.

³⁰ Portugal, Switzerland, Iran, Israel, Finland, Indonesia, South Africa, and the United States of America (USA).

³¹ There is no definition of terrorism agreed by the UN.

³² International humanitarian law does not contain this term. For more information on the definition the USA uses, see <http://writ.news.findlaw.com/dorf/20020123.html>

³³ For more information see: <http://www.un.org/terrorism/cttaskforce.html> and http://www.un.org/terrorism/pdfs/CT_factsheet_may2007x.pdf

involves approximately 30 agencies, including the Office of the High Commissioner for Human Rights (OHCHR), and which offers a key framework through which to mainstream human rights into counter-terrorism efforts. Switzerland emphasized the rights of detainees at Guantanamo Bay, and asked for the Special Rapporteur's opinion on the military commissions established by the USA to try these detainees. The Special Rapporteur, in response, confirmed that access to a court and the ability of detainees to challenge their detention was primary regardless of armed conflict, and said that while military commissions such as the ones set up by the USA are legal, they result in so many problems that they should be avoided.

Iran, qualifying the "war on terrorism" as a "war of terror on Muslims," expressed concern about the rights of minorities. The Special Rapporteur reiterated that he focussed his report on refugees because he deemed them the biggest adversely effected populations, but allowed that minorities would be a close second.

South Africa, Israel, and the USA all thanked the Special Rapporteur for his visits and his constructive recommendations, which they assured were under careful consideration or, in some instances, in the process of being implemented. They all looked forward to engaging more when the reports will be released and on the agenda at the December 2007 Human Rights Council meeting. The USA also addressed the situation of the detention facility in Guantanamo Bay, and remarked that the Government was looking forward to the day when it will be closed. The USA also expressed appreciation for the Special Rapporteur's call to other States to receive detainees and stressed that the USA is working to ensure that its military commissions are transparent, and in conformity with international law, including common article three of the Geneva Conventions.³⁴

The Special Rapporteur added that a more in-depth discussion of his most recent country visits would take place at the next meeting of the Human Rights Council.

Resolution on the protection of human rights and fundamental freedoms while countering terrorism³⁵

The Resolution

- Deeply deplores the occurrence of violations of human rights and fundamental freedoms in the context of the fight against terrorism;³⁶
- Reaffirms that States must abide by their international legal obligations while combating terrorism;³⁷
- Deplores the suffering of victims of terrorism;³⁸
- Calls upon States to fully respect non-refoulement obligations;³⁹
- Notes and requests the cooperation between the various UN bodies tasked with issues related to countering terrorism; and calls upon States to continue to implement the UN Global Counter-Terrorism Strategy,⁴⁰
- Requests Governments to cooperate fully with the Special Rapporteur.⁴¹

Mexico, introducing the annual resolution on the protection of human rights while countering terrorism, acknowledged that terrorism is a serious problem for States' security, and reaffirmed the need to respect

³⁴ Common Article 3 of the *Geneva Convention* delineates the minimum standards and protections by which States must abide in armed conflict. Full text is available at <http://www.icrc.org/ihl.nsf/WebART/375-590006>

³⁵ A/C.3/62/L.47. Available at <http://www.un.org/ga/third/62/propslist.shtml>

³⁶ Preambular paragraph (PP) 5, Ibid.

³⁷ Including PP2, PP4, operative paragraph (OP) 3, Ibid.

³⁸ OP2, Ibid.

³⁹ OP6, OP7, Ibid.

⁴⁰ OP15, OP16, OP17, OP18, Ibid.

⁴¹ OP19, Ibid.

human rights and fundamental freedoms. With a view toward better addressing violations of human rights while countering terrorism, this year's resolution identifies practices that cause particular concern, specifically regarding torture. In this vein, new paragraphs this year include a reference to the use of diplomatic assurances,⁴² returning and transferring of individuals suspected of terrorist activities⁴³, and border controls.⁴⁴ These were all highlighted by the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism in his report and oral presentation to the Third Committee. Also included is a new perambulatory paragraph on the danger of torture in situations of deprivation of liberty, a theme of the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.⁴⁵ New paragraphs acknowledging *the International Convention for the Protection of All Persons from Enforced Disappearance*;⁴⁶ emphasising the definition of torture in article 1 of the Convention against Torture;⁴⁷ calling upon States to implement the Counter-Terrorism Strategy and requesting the cooperation with the related task force⁴⁸ were also added this year. The resolution also calls upon States to give serious consideration to responding favourably to country visit requests by the Special Rapporteur.

During informal consultations, the United States of America (USA), supported by Canada and Australia, dropped its repeated request to insert a footnote into operative paragraph seven (which calls upon states to refrain from returning persons in manners "contrary to their obligations under international law, in particular human rights law, international humanitarian law and international refugee law,") that would specify the Convention against Torture. The European Union (EU) and others objected because they viewed this as an attempt to narrow the obligations referenced, and maintained that customary international law must also be included. The USA, however, succeeded in keeping out the originally proposed reference to cruel, inhuman or degrading treatment or punishment in this paragraph. It also, along with Malaysia, took issue with the EU's proposed language on the Special Rapporteur,⁴⁹ which requested governments to "respond favourably and rapidly to requests by the Special Rapporteur to visit their countries." This phrase did not make it into the final text with such strength. In the operative paragraph on victims of terrorism, Colombia felt it was important to have language on addressing victims' needs in addition to deploring their suffering, the agreed language from last year.⁵⁰

⁴² PP8, Ibid.

⁴³ OP7, Ibid.

⁴⁴ OP8, Ibid.

⁴⁵ See the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, A/62/221. Available at <http://www.ohchr.org/english/bodies/GA/62documents.htm>

⁴⁶ OP13, A/C.3/62/L.47. Available at <http://www.un.org/ga/third/62/propslist.shtml>. The *International Convention for the Protection of All Persons from Enforced Disappearance* is available at <http://www2.ohchr.org/english/law/disappearance-convention.htm>. It was adopted by the Third Committee during its 61st session in resolution GA A/C.3/61/L.17, available at <http://www.un.org/ga/61/third/proposalslist.shtml>

⁴⁷ PP14, A/C.3/62/L.47. Available at <http://www.un.org/ga/third/62/propslist.shtml>. "Article 1 (1) For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions; (2) This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application." Article 1, Convention Against Torture. Available at <http://www.ohchr.org/english/law/cat.htm>

⁴⁸ OP15 and OP16, A/C.3/62/L.47. Available at <http://www.un.org/ga/third/62/propslist.shtml>. For more information on the Counter Terrorism Strategy and the Counter Terrorism implementation task force see <http://www.un.org/terrorism/strategy-counter-terrorism.html> and <http://www.un.org/terrorism/cttaskforce.html>

⁴⁹ OP18, A/C.3/62/L.47. Available at <http://www.un.org/ga/third/62/propslist.shtml>

⁵⁰ During informal consultations, Canada and the USA felt this added language brought in issues that added no value to the resolution, and further were already addressed in the plan of action and resolution 60/288 on The UN Global Counter-Terrorism Strategy, available at <http://www.un.org/Depts/dhl/resguide/r60.htm>. The addition was significantly weakened from Colombia's originally proposed "...stresses the need to provide them protection and assistance" to "stresses the need to consider providing them with assistance on a voluntary basis" (OP2).

The resolution was **adopted by consensus** in both the Third Committee and the General Assembly plenary.

Looking forward

The review of the Special Rapporteur's mandate, set forth in Resolution 2005/80 of the Commission on Human Rights, took place in the second part of the Council's 6th session, from 10 to 14 December 2007 in Geneva.⁵¹ The mandate was extended. This year's resolution on the protection of human rights and fundamental freedoms while countering terrorism requests the Secretary-General to submit a report on its implementation to the Human Rights Council and to the General Assembly at its sixty-third session, when it will also consider the report of the Special Rapporteur.⁵²

Torture and other cruel Inhuman or degrading treatment or punishment

Presentation of the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment⁵³

On 29 October 2007, Mr. Manfred Nowak, the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment, presented his report to the Third Committee.⁵⁴ Like in his written report, he focussed on the role of forensic medical expertise in combating impunity for torture and avoiding the deprivation of liberty as a means of preventing torture. He further discussed these themes in relation to his visits to Paraguay, Nigeria, Togo, and Sri Lanka, which he undertook in 2007.⁵⁵

The Special Rapporteur discussed the indispensable role medical forensics plays in credible fact-finding, which has long been an obstacle in holding perpetrators accountable. He notes that victims are often caught between the legal requirements to produce evidence, and their practical ability to do so. Forensics, he recommended, could fill this gap. In terms of preventing torture, States should avoid the deprivation of liberty when possible. Deprivation of liberty, particularly in circumstances of over-crowding and lack of resources, often leads to instances of torture and other cruel, inhuman or degrading treatment or punishment. Indeed, extreme poor conditions can themselves amount to cruel, inhuman or degrading treatment. In each country he visited, the Special Rapporteur found this to be the case. He recommended the need for comprehensive reform of criminal justice systems so that deprivation of liberty is avoided at all stages of the criminal justice process. This could include dealing with minor cases altogether outside the system and finding alternatives to pre-trial detention and sentences that require custodial measures.⁵⁶ He called upon the international community, including regional bodies and the international donor community, to support States in their efforts to combat torture.

⁵¹ See ISHR's complete list of mandate renewals: http://www.ishr.ch/hrm/council/sps/tt_review.pdf

⁵² OP21 and OP22, A/C.3/62/L.47. Available at <http://www.un.org/ga/third/62/propslist.shtml>

⁵³ The Commission established the mandate for the Special Rapporteur on torture and other cruel inhuman and degrading treatment in 1985 in *Resolution* 1985/33. The Special Rapporteur has occupied this post since 2004. For more information on his mandate, see <http://www.ohchr.org/english/issues/torture/rapporteur/>

⁵⁴ A/62/221. Available at <http://www.ohchr.org/english/bodies/GA/62documents.htm>

⁵⁵ These missions were undertaken after the submission of the Special Rapporteur's last report to the Human Rights Council at its fourth session in 2007. The Special Rapporteur's final reports on these visits will be presented at the Human Rights Council in March 2008. This oral presentation was the first occasion he made public his findings on Sri Lanka. Copies of Mr. Nowak's other reports are available at <http://www.ohchr.org/english/issues/terrorism/rapporteur/srchr.htm>

⁵⁶ These could include any number of recommendations delineated in several recent publications of the UN Office on Drug and Crime Prevention, available at <http://www.unodc.org/unodc/en/publications/publications.html>; and the UN Minimum Rules for Non-custodial Measures (the Tokyo Rules) available at <http://www.ohchr.org/english/law/tokyorules.htm>

The Special Rapporteur expressed appreciation to all the States he visited for their cooperation. In Paraguay, the Special Rapporteur was concerned about the use of torture and other cruel inhuman or degrading treatment or punishment in police custody and the related impunity.⁵⁷ While he was there, he participated in a seminar with the government, international, and national nongovernmental organisations (NGOs) which he found very productive.⁵⁸ In Nigeria, the Special Rapporteur was concerned about the severe over-crowding of detention facilities, where the majority of detainees are awaiting trial.⁵⁹ In Togo, the Special Rapporteur found evidence of similar ill treatment in prison facilities, particularly of children, and a complete disregard for accountability.⁶⁰ While many factors are complicit in this, the absence of prohibition from torture in Togolese law is the major component. Sri Lanka,⁶¹ on the other hand, where the Special Rapporteur focused on the ordinary context of criminal justice as well as on counter-terrorism measures, has mechanisms in place to combat torture, and the Special Rapporteur urged the Government to uphold and implement them.

Interactive dialogue

Paraguay, Nigeria, and Sri Lanka all thanked the Special Rapporteur for his visits and constructive recommendations, especially on engagement with international donors. While all three outlined measures taken since his visits to act upon his recommendations,⁶² Nigeria and Sri Lanka also disputed the Special Rapporteur's claims of the "widespread" practice of torture. The Special Rapporteur, in turn, asked Nigeria to send him information about police brutality for inclusion in his report to the Human Rights Council, and thanked Sri Lanka for the news of the appointment of a task force. South Africa said it would welcome a visit from the Special Rapporteur, and asked for his views on rendition⁶³ to countries who carry out torture and the death penalty. The Special Rapporteur agreed that rendition must be met with criminal prosecution. Iraq also highlighted an invitation it had extended. Several countries welcomed international assistance for developing their forensic expertise. The EU offered its assistance to the Special Rapporteur in addressing the lack of replies to requests for visits by the Special Rapporteur and of follow-up visits. China rejected claims made by the Special Rapporteur that there was a lack of prosecution in that country, and encouraged objectiveness. In closing, he noted that he was in dialogue with Zimbabwe and Uzbekistan about possible invitations to visit.

Resolution on torture and other cruel, inhuman or degrading treatment or punishment⁶⁴

The Resolution

- Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment;⁶⁵
- *Emphasises* the importance of States ensuring proper follow-up to the recommendations and conclusions of relevant treaty bodies and mechanisms, including the Special Rapporteur;⁶⁶
- *Calls* upon States parties to fulfil their obligations under the Convention Against Torture;⁶⁷
- *Stresses* that national legal systems must ensure that victims of torture obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation,⁶⁸

⁵⁷ The Special Rapporteur visited Paraguay from 22 to 29 November 2007.

⁵⁸ The Association pour la Prévention de la Torture helped to convene this. See <http://www.apr.ch/> for more info.

⁵⁹ The Special Rapporteur visited Abuja, Lagos, Port Harcourt, and Kaduna from 4 to 10 March 2007.

⁶⁰ The Special Rapporteur undertook a visit to Togo from 11 to 17 April 2007.

⁶¹ The Special Rapporteur visited Sri Lanka from 1 to 8 October 2007.

⁶² Paraguay cited improvements in police procedures and a new administration in the Ministry of Justice which has ordered construction of new places of detention and more guards; Nigeria is committed to ongoing police reform; and Sri Lanka has appointed a task force to consider the Special Rapporteur's recommendation.

⁶³ For more information on rendition, please see <http://www.hrw.org/campaigns/torture/renditions.htm>

⁶⁴ A/C.3/62/L.26, Available at <http://www.un.org/ga/third/62/propslist.shtml>

- *Reminds* States that secret detention can lead to torture and other forms of cruel, inhuman or degrading treatment or punishment;⁶⁹
- *Recognises* the global need for international assistance to victims of torture and appeals to States to contribute to the UN Fund for Victims of Torture and to the Voluntary Fund established by the Optional Protocol.⁷⁰

As in previous years, **Denmark** convened this year's annual resolution on torture and other forms of cruel, inhuman or degrading treatment or punishment.⁷¹ Its additions fall into three main themes: streamlining language, strengthening calls to action, and incorporating "torture and other cruel, inhuman and degrading treatment and punishment" where it did not exist before. Specifically, new language recalls: the importance of abiding strictly by, and properly interpreting, the definition of torture in article 1 on the *Convention Against Torture* (CAT) without prejudice to any international instrument or national legislation;⁷² welcomes the establishment of national mechanisms pursuant to the Optional Protocol to CAT⁷³ and the adoption of the *International Convention for the Protection of All Persons from Enforced Disappearance*;⁷⁴ calls upon States parties to CAT to fulfill their obligations to submit for prosecution or extradite those alleged to have committed acts of torture;⁷⁵ encourages all States to ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty,⁷⁶ and considers acts of torture in relation to armed conflict.⁷⁷

During the consultation process, the USA, which originally rejected the inclusion of "cruel, inhuman or degrading treatment or punishment" on the grounds that it was too vague and lacked a definition as clear as that of torture, accepted it. On other additions that drew resistance in the beginning, (such as "prosecuted" in OP5⁷⁸ and all of OP8⁷⁹), States broadly agreed on the new concepts, but took issue with the specific language proposed due to lack of clarity or potential misinterpretation. Another interesting development, in light of its alleged crackdowns on NGOs, was the request by Russia to use "civil society" in place of "non-governmental organizations,"⁸⁰ the agreed language from last year. The compromise language that was reached is "civil

⁶⁵ OP1, *ibid.*

⁶⁶ OP3, *ibid.*

⁶⁷ OP8, *ibid.* CAT is available at <http://www.ohchr.org/english/law/cat.htm>

⁶⁸ OP13, *ibid.*

⁶⁹ OP15, *ibid.*

⁷⁰ OP27, *ibid.*

⁷¹ This resolution builds on General Assembly *Resolution 61/153* available at <http://www.un.org/Depts/dhl/resguide/r61.htm>.

⁷² PP4 and PP5, *ibid.* Article 1, *Convention Against Torture*. Available at <http://www.ohchr.org/english/law/cat.htm>

⁷³ PP7, A/C.3/62/L.26. OPCAT, entered into force on 22 June 2006.

⁷⁴ General Assembly *Resolution 61/177*. Available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

⁷⁵ OP7, *ibid.*, was inserted by the sponsors pursuant to the recommendation of the Special Rapporteur in his report to the HRC, see A/HRC/4/33 para 47 available at <http://www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm>; and his report to the General Assembly, see A/62/221 para 2 available at <http://www2.ohchr.org/english/bodies/GA/62documents.htm>

⁷⁶ OP8, A/C.3/62/L.26, Available at <http://www.un.org/ga/third/62/proplist.shtml> is new language.

⁷⁷ OP9, *ibid.*

⁷⁸ OP5 "Stresses that all allegations of torture or other cruel inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate, or perpetrate acts of torture must be held responsible, brought to justice [compromise text from originally proposed "prosecuted"], and severely punished, including the officials in charge of the place of detention where the prohibited act of torture is found to have been committed" A/C.3/62/L.26, Available at <http://www.un.org/ga/third/62/proplist.shtml>.

⁷⁹ OP8 "Encourages all States to ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty," *Ibid.*

⁸⁰ PP8, OP26, and OP31, *ibid.*

society organizations, including non-governmental organizations.”⁸¹ The strength of language regarding the Special Rapporteur in operative paragraph 25⁸² was repeatedly debated, with Russia, Australia, South Africa, Colombia, and the USA successfully pushing for weaker language, arguing that the Human Rights Council special procedure review process was too new and it was important to see what happens before offering further endorsement.

The resolution was **adopted by consensus** by the Third Committee and the plenary of the General Assembly.

Looking forward

At its 63rd session, the General Assembly will consider Secretary-General’s report on the operations of the UN Voluntary Fund for Victims of Torture and the Voluntary Fund established by the Optional Protocol, which he will also submit to the Human Rights Council. It will also consider the report of the Committee against Torture and the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment at that time.

Extrajudicial, summary or arbitrary
executions

Presentation of the Special Rapporteur on extrajudicial, summary or arbitrary executions⁸³

This year, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Professor Philip Alston, marked the 25th anniversary of his mandate, the first thematic special rapporteurship, by reviewing his mandate and addressing three themes that reflect new challenges of the mandate, all of which are discussed in detail in his report to the Third Committee.⁸⁴ They include assisting in the protection of refugees and internally displaced persons, confronting innovations in counter-terrorism tactics that are problematic in human rights terms, and holding armed groups and other non-State actors to account for human rights abuses.

In his oral presentation, the Special Rapporteur spoke briefly of his evolving mandate, and focused the rest of his time on situations in Iran, the Philippines, and Sri Lanka. Regarding his mandate, the Special Rapporteur emphasized the need for mandates to respond to the new and changing demands of States, new forms of violations, public demands for effective responses, and the development of new techniques in the human rights regime. He also rebuked the perception that Special Rapporteurs are predominately from Western states, while their mandates send them to predominately developing states. In fact, Mr Alston is the first person from a Western country to assume the special rapporteurship on extrajudicial, summary or arbitrary executions. He also addressed his efforts to increase his effectiveness, including streamlining and publishing communications with States and issuing follow-up reports. Nonetheless, the Special Rapporteur lamented the challenge of engaging productively with Governments. Ninety percent of those approached for a visit have

⁸¹ OP26 A/C.3/62/L.26, *ibid*.

⁸² The final version of OP 25 reads: “Calls upon all States to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to fully and expeditiously respond to and follow up his urgent appeals, to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries as well as with respect to the follow-up to his recommendations;

⁸³ The mandate for the Special Rapporteur on extrajudicial killings and arbitrary executions was first established in Economic and Social Council *Resolution* 1982/35. Prof. Alston has held this post since 2004. For more information, see <http://www.ohchr.org/english/issues/executions/>

⁸⁴ A/62/265, available at <http://www.ohchr.org/english/bodies/GA/62documents.htm>

failed to cooperate.⁸⁵ He added that the fact that neither the General Assembly nor the Human Rights Council had responded to this lack of accountability made a mockery of the mandate.

Regarding Iran, the Special Rapporteur focused on the execution of juveniles and the application of the death penalty for crimes that, by measures employed in international law, are not “most serious”.⁸⁶ He called upon the General Assembly to respond to these violations. In regard to the report on the Philippines, which has not yet been made public, the Special Rapporteur mentioned a number of initiatives the Government has undertaken to deal with extrajudicial killings since his visit, but noted ongoing concern for such killings by the Armed Forces and the impunity they enjoy. The Special Rapporteur specifically mentioned a missing activist, Jonas Burgos, who he felt might have been killed. Lastly, the Special Rapporteur recalled the warning he gave at the 61st session of the General Assembly of an impending crisis in Sri Lanka. He again strongly recommended the creation of an international human rights monitoring presence, from the UN, and urged the General Assembly and Human Rights Council to act accordingly.

Interactive dialogue

Eleven countries took the floor to respond to the Special Rapporteur’s presentation.⁸⁷ The Philippines, represented by the Executive Secretary of the Philippines, the second highest-ranking government official,⁸⁸ thanked the Special Rapporteur for his visit and ongoing constructive interaction. He then outlined the measures the Philippines has taken in response to human rights violations and maintained that “rogue elements in uniform and members of insurgency groups” are to blame, and there is no State policy condoning extrajudicial killing.

Iran explained that capital punishment is legal, an effective way to pursue the right to life, and an issue for national justice systems. Singapore also accused the Special Rapporteur of exceeding his mandate by concerning himself with the death penalty, which is of particular sensitivity this year due to the introduction of a resolution on that topic.

In response to the Special Rapporteur’s strong expression of regret about unanswered requests for country visits, Indonesia, China, and Kenya stated there was a need for countries to balance the visits of various special procedures and the timing of other national and international obligations. The Special Rapporteur, in turn, acknowledged this, but explained that the international community must prioritize and particularly acute situations of extrajudicial, summary or arbitrary executions in a timely manner. The Philippines, Iran, and Sri Lanka looked forward to discussing his report in further detail at the Human Rights Council. China, Indonesia, and the USA voiced their support for the Special Rapporteur and the special procedures system, and looked forward to future engagement.

Russia and Venezuela asked the Special Rapporteur about non-state actors and extrajudicial, summary or arbitrary executions, a focus of his written report. The Special Rapporteur noted that the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination⁸⁹ addressed this phenomenon in more detail, but that the key responsibility lies with the State in which the mercenaries are active, though the State from which the mercenaries originate must also

⁸⁵ China, Russia, Bangladesh, India, Indonesia, Pakistan, Saudi Arabia, Myanmar, El Salvador, Kenya, Thailand, Uzbekistan, and Venezuela were singled out by the Special Rapporteur.

⁸⁶ Article 6 of the *International Covenant of Civil and Political Rights* requires that the death penalty only be imposed “for the most serious crimes”. Since the beginning of 2007, 173 individuals have been executed for the crimes of adultery, unlawful sexual relations, homosexuality, rape, insulting religious sanctions laws, acts against national security, and abduction, which are not considered “most serious.”

⁸⁷ Philippines, Iran, Portugal, Venezuela, Russia, USA, Indonesia, Sri Lanka, China, Singapore, and Kenya.

⁸⁸ Hon. Eduardo R. Ermita is also a Cabinet Minister, the Chief Administration Official in the Office of the President, and the Chairman of the Presidential Human Rights Committee.

⁸⁹ For more information see <http://www.ohchr.org/english/issues/mercenaries/index.htm>.

ensure respect for human rights standards. He was clear that State responsibility must not be evaded by the employment of non-state actors.

Death penalty

Resolution on the moratorium on the use of the death penalty⁹⁰

The Resolution

- *Considers* that the use of the death penalty undermines human dignity and that a moratorium on its use contributes to the advancement of human rights;⁹¹
- *Expresses* its deep concern about the continued application of the death penalty;⁹²
Calls upon States which still maintain capital punishment to establish a moratorium on executions with a view to abolishing the death penalty;⁹³
- *Requests* the Secretary-General to report to the General Assembly in 2008 on the implementation of the resolution;⁹⁴
- *Calls upon* States to continue consideration of the matter at the General Assembly's 63rd session.⁹⁵

The Third Committee adopted a historic resolution on the moratorium of the use of the death penalty at its 62nd Session.⁹⁶ 130 out of 192 countries have already abolished the death penalty in law or practice, and in 2006 only 25 countries actually carried out the death penalty.

Although numerous informal consultation on the draft resolution, which focused on a moratorium instead of the abolition in hopes of wider acceptance, preceded the debate in the Third Committee, States spent the vast majority of two days in mid November discussing the draft resolution, and 18 related amendments (L.68 - L.81, and four tabled orally on the floor).⁹⁷ All the amendments, which sought to introduce issues unrelated to the death penalty or to undermine the text's fundamental purpose, were defeated.

Opposition to the text came mostly from members of the Organization of the Islamic Conference (OIC), the League of Arab States, China, and a few of the Caribbean and Asian countries. African countries were split on the issue. Opposing States made comments that the death penalty is a question for national criminal justice systems and should not be considered under international human rights law; there is a need to consider the right to life comprehensively (i.e. prohibit abortion); the hidden objective of the resolution was abolition rather than a moratorium, and this will be the objective of next year's resolution on this theme; and that the co-sponsors were imposing their values on other States.

⁹⁰ A/C.3/62/L.29 Available at <http://www.un.org/ga/third/62/propolist.shtml>

⁹¹ PP6, A/C.3/62/L.29 Available at <http://www.un.org/ga/third/62/propolist.shtml>

⁹² OP1, Ibid.

⁹³ OP2, Ibid.

⁹⁴ OP3, Ibid.

⁹⁵ OP5, Ibid.

⁹⁶The General Assembly adopted two resolutions on capital punishment in the seventies. In those texts, the Assembly indicated that it was "desirable" that all States abolish the death penalty. General Assembly Resolutions 2857 (XXVI) of 20 December 1971 and 32/61 of 8 December 1977. In 1999, a resolution on the death penalty was withdrawn before it was put to a vote, mainly because of wrecking amendments. For more information on the history of the death penalty at the UN see <http://web.amnesty.org/pages/deathpenalty-index-eng>

⁹⁷ To access these proposals, see <http://www.un.org/ga/third/62/propolist.shtml>

The amendments were brought and defended primarily by Egypt, Barbados, the Bahamas, Singapore, Botswana, and Antigua and Barbuda. The rough average of votes on the amendments broke down as 67 in favour, 83 against, and 17 abstaining.⁹⁸ Those States proposing the amendments argued they were designed to address weaknesses and imbalances in the resolution by inserting references to the principle of non-intervention (Article 2(7) of the UN Charter) to maintain national sovereignty and territorial integrity; the perceived imposition of Western values and the need for respect for (cultural) diversity; the provision for the death penalty in the *International Covenant on Civil and Political Rights* (Art. 6(2) with proper legal safeguards (i.e. the death penalty is not illegal under international law and there is no international consensus); and the inconclusiveness of the deterrent value of the death penalty. The amendments tabled orally also brought the discussion into a heated right to life debate.

Many delegations also referred to the text as an EU initiative, which non-EU co-sponsors repeatedly corrected, pointing out its “cross-regional” roots (it involved ten co-authors from five regions: Albania, Angola, Brazil, Croatia, Gabon, Mexico, New Zealand, the Philippines, Portugal (for the EU), and Timor L’Este). Prior to the vote to adopt the resolution, Lebanon warned that if the vote was successful it would trigger future resolutions on the right to life, which would pose even greater challenges to the Committee than this resolution. Following the defeat of all the amendments and before the vote on the resolution as a whole, Singapore (which had been a leader of the group challenging the resolution) called for a paragraph-by-paragraph vote of the text. This led to allegations from those opposed to the resolution that the defeat of Singapore’s motion would be tantamount to a denial of freedom of expression. However the motion was also ultimately defeated, allowing the resolution to proceed to a vote.

The vote

The resolution, as tabled, was adopted with 99 in favor, 52 against, and 33 abstaining. The abstaining delegations which took the floor to explain their vote mostly stated that even if there has been a de facto moratorium in their countries, they were unable to vote in favour of something contrary to their domestic law or, in their view, not prohibited under international law.

In the General Assembly, five additional States voted in favour, with a final tally of 104 votes in favor, 54 votes against, and 29 abstentions. Ten States took the floor to explain their votes, reiterating their concerns and positions voiced in the Third Committee.⁹⁹

Looking forward

In regard to the death penalty, several States made statements in the Third Committee and the plenary of the General Assembly that they would not abide by the resolution, and elsewhere threatened to try to derail any more attempts to global action on the issue. In particular, members of the Organisation of Islamic Conference (OIC) have indicated that in the future they plan to table resolutions on the right to life, which would likely polarize the Third Committee. The mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions will be reviewed during the main session of the Human Rights Council in March 2008.¹⁰⁰

Independence of judges and lawyers

⁹⁸ For voting breakdown on each amendment please see <http://www.un.org/ga/third/62/votingsheets.shtml>

⁹⁹ Antigua and Barbuda, Barbados, Singapore, Mexico, Nigeria, Egypt, Malaysia, China, Bangladesh, Syria.

¹⁰⁰ See ISHR’s complete list of mandate renewals: http://www.ishr.ch/hrm/council/sps/tt_review.pdf

Presentation of the Special Rapporteur on the independence of judges and lawyers¹⁰¹

On October 25 2007, the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, presented his annual report¹⁰² to the General Assembly's Third Committee. The main subjects covered by the Special Rapporteur's oral statement were access to justice; conditions influencing the administration of justice and the independence of judges, prosecutors, and lawyers, such as threats, acts of aggression, arbitrary detention, assassinations, and corruption; and the protection of rights during states of emergency. He also addressed issues of international justice, such as the International Criminal Court (ICC), the Iraqi Supreme Criminal Tribunal, and the Extraordinary Chambers in Cambodia. The Special Rapporteur further discussed his recent missions to the Maldives¹⁰³ and the Democratic Republic of the Congo (DRC).¹⁰⁴ The Special Rapporteur expressed his pleasure at the progress being made in regard to the ICC, and specifically referred to the Agreement on the Privileges and Immunities of the ICC and agreement on the legal basis of the cooperation of the ICC with the UN. He also highlighted the recent ratification of the Rome Statute by Chad and Montenegro. Regarding the Iraqi Supreme Criminal Tribunal, the Special Rapporteur was still dismayed at the lack of compliance of the Tribunal with international human rights standards, e.g. it provides only limited jurisdiction, and does not rule out confessions obtained via torture or arbitrary detention. Lastly, the tribunal does not protect against self-incrimination. The tribunal in Cambodia unanimously adopted their internal rules during a plenary session this summer.

Interactive dialogue

Sixteen delegates participated in the interactive dialogue that followed the Special Rapporteur's presentation of his report with most expressing their support for his mandate and detailing their own efforts to strengthen their respective judicial systems and make them more independent. Mexico, Costa Rica and Chile addressed domestic issues regarding access to justice. The Special Rapporteur did not individually respond to their concerns but mentioned that only a limited number of the population have access to justice in most countries and highlighted the importance of a guaranteed right to a defense for all.

Portugal, on behalf of the European Union (EU), asked the Special Rapporteur how the international community and the UN could best tackle the widespread corruption of the judiciary. The EU was also concerned with the need for states to bring their domestic legislation in line with international norms. Further, the EU, Uruguay and Argentina wanted more information on the Special Rapporteur's upcoming seminar on basic principles during states of emergency. The Special Rapporteur responded by stating that Latin America has many states of emergencies in its history, and during these crises governments sometimes erode safeguards in the name of the emergency. It is essential that basic principles be developed in order to protect the citizenry.

¹⁰¹ The mandate of the Special Rapporteur on the independence of judges and lawyers was created in by Commission on Human Rights Resolution 1994/41. Mr. Leandro Despouy has held the mandate since August 2003. For more information on his mandate, see <http://www.ohchr.org/english/issues/judiciary/index.htm>.

¹⁰² A/62/207. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N07/451/70/PDF/N0745170.pdf>.

¹⁰³ The Special Rapporteur visited the Maldives from 25 February to 1 March 2007. His report, A/HRC/4/25/Add.2, available at http://ap.ohchr.org/documents/dpage_e.aspx?m=87, was considered at the Fifth session of the Human Rights Council.

¹⁰⁴ The Special Rapporteur visited the Democratic Republic of the Congo (DRC) from 15 to 21 April 2007. His report, A/HRC/4/25/Add.3, available at http://ap.ohchr.org/documents/dpage_e.aspx?m=87, was considered at the Fifth session of the Human Rights Council.

The Sudan criticised the report's argument for government cooperation with the ICC. The Sudan argued that there is no jurisdiction for the ICC as regards to the trials relating to Sudan: they have the necessary means to deal with their own crimes, and the delegate claims three domestic tribunals have been formed.

Lastly, Libya asked whether there were any international criteria that determine the transparency of a judicial system. Additionally, Libya asked when he could expect to hear reports from the Special Rapporteur that are free of selectivity and polarization. The Special Rapporteur did not specifically respond to these questions.

Looking forward

The Special Rapporteur has plans to visit the Russian Federation in May 2008 and Guatemala sometime next year; and he expects to receive a positive response to a request to visit Fiji as well. Further, he plans to address more fully issues surrounding access to justice in his next report to the Human Rights Council.

Freedom of religion and belief

Presentation by the Special Rapporteur on freedom of religion or belief¹⁰⁵

On 26 October 2007, Ms. Asma Jahangir, the Special Rapporteur on freedom of religion or belief, summarized the key points and recommendations of her report.¹⁰⁶ The Special Rapporteur highlighted the vulnerability of certain groups, including internally displaced persons (IDPs), asylum-seekers, and refugees, and noted in particular the difficult situations they often find themselves in following forced displacement from their homes or countries. She also underscored the right of atheists and non-theists to refrain from affiliating themselves with any religion or belief, and stressed that such persons should not be discriminated against. To better protect these at-risk groups, the Special Rapporteur urged Member States not to pass legislation outlawing the defamation of religion.

The Special Rapporteur also highlighted some statistics that reflect the lack of engagement by some governments with her mandate. She noted that the average rate of reply to urgent appeals sent out is about 63.6 percent.¹⁰⁷ In addition, some twenty States had not replied to any communications for over twenty years.

Interactive Dialogue

A number of Member States engaged in an earnest and intense dialogue with the Special Rapporteur following her presentation. Portugal, the Russian Federation, the USA, and Canada asked the Special Rapporteur to identify potential obstacles that national governments face when implementing her recommendations. In response, the Special Rapporteur cited the attempts of some governments to restrict rights in one area that resulted in restricting them in another. For example, she said that banning the defamation of religion would also result in a restriction of the closely related freedom of expression. Further, she expressed a clear distinction between protecting the right to openly engage in a dialogue about religious freedom and, ensuring that legitimate human rights violations are prosecuted.

¹⁰⁵ Ms. Asma Jahangir is the Special Rapporteur on freedom of religion or belief. Her mandate was created by the Commission for Human Rights (CHR) resolution 1986/20 and extended for three years per CHR resolution 2004/36. More information about her work is available at: <http://www2.ohchr.org/english/issues/religion/index.htm>

¹⁰⁶ See A/62/280: *Elimination of all forms of religious intolerance*; <http://www.un.org/ga/third/62/docslist.shtml>

¹⁰⁷ Out of 1,100 urgent appeals sent to 130 countries.

Canada, Egypt, and the USA probed the Special Rapporteur about her definition of religious defamation, and how she sees the issue in relation to her mandate. The Special Rapporteur said that any form of agitation that incites religious violence, hostility, or discrimination is a violation of human rights that falls within her mandate. Citing a report she co-wrote with Mr. Doudou Diène, the Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance,¹⁰⁸ the Special Rapporteur said she believes that “defamation of religion” is a matter of legal terminology. She said that those who believe their religions are superior to others, or academics and intellectuals who engage in analysis and denounce a religion are within their rights, so long as violence is not a consequence. Only then could it be viewed as a human rights violation. She also highlighted the difference between engaging in disparaging a persons race, which is highly subjective, than denouncing a religion, which can be critiqued objectively. Therefore, the “defamation of religion” cannot be equated with the language of racial discrimination.

Canada also asked the Special Rapporteur to elaborate on the role of States during humanitarian crises regarding non-State actors that seek to convert indigenous communities. The Special Rapporteur responded that restrictions should come from the religious organization in question rather than from the government. She also stressed the importance of dialogue with communities, and cited some positive examples of good practice in Nigeria and Sri Lanka.

Canada and Chile asked for guidance on specific preventative measures governments can take to foster a more open dialogue within and across different religious bodies. The Special Rapporteur called upon governments to consider long-term issues given the proliferation of new faiths around the world. The international community must accept and give space and respect to these religions if it is to uphold the principle that people everywhere are entitled to the right to freedom of religion or belief.

With respect to the mention of its country in paragraph 45 in the report,¹⁰⁹ Myanmar rejected claims that some of its Rohingya citizens had been subjected to extrajudicial execution, vigorously asserting that these charges were tantamount to putting a wedge between it and Bangladesh. Vietnam asked for the Special Rapporteur’s report to be corrected with respect to paragraph 50 and its related footnote (number 22).¹¹⁰ She did not specifically respond to these requests.

The Holy See expressed their concern for vulnerable groups, in particular regarding women, refugees, children, minorities, and migrant workers and asked the Special Rapporteur to outline some best practices to best protect and promote the rights of these groups. The Special Rapporteur responded by citing the United Nations Educational, Scientific and Cultural Organization’s (UNESCO) development of quality educational programs which emphasise pluralism and diversity.¹¹¹

¹⁰⁸ See A/HRC/2/3: *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance*, http://ap.ohchr.org/documents/dPage_e.aspx?m=86

¹⁰⁹ See Paragraph 45, A/62/280: <http://www.un.org/ga/third/62/docslst.shtml>

¹¹⁰ Ms. Jahangir’s report states that communication was sent to the Vietnamese government but does not summarize the exchange of letters that took place between Vietnamese officials and the office of the Special Rapporteur, although her report does include footnotes reflecting her office’s correspondence with other Member States. Viet Nam said that merely noting the exchange of letters that took place was ambiguous and could falsely give the impression there was no reply. See Paragraph 50, A/62/280: <http://www.un.org/ga/third/62/docslst.shtml>

¹¹¹ For more information regarding the United Nations Educational, Scientific and Cultural Organization’s (UNESCO) educational initiatives, see <http://www.unesco.org/education/uie/InternationalALW/>

Resolution on the elimination of all forms of intolerance and of discrimination based on religion or belief¹¹²

The Resolution:

- Condemns all forms of intolerance and discrimination based on religion or belief as well as violations of the freedom of thought, conscience, religion or belief.
- Emphasizes that the freedoms of expression and religion or belief are interconnected and that reducing the “threshold of acts” of one of these freedoms - as prohibited by article 20¹¹³ of the *International Covenant on Civil and Political Rights* (ICCPR) - will also likely limit the other.
- Stresses that the right to freedom of thought, conscience, and religion applies equally theistic, non-theistic, and atheistic beliefs, and that all believers and non-believers are entitled to the equal protection of the law.
- Emphasises that restriction on freedoms of religion are only allowed only if limitations are prescribed by law, and are necessary to protect public safety, order, or health.
- Recognizes with concern the ability of vulnerable populations, including refugees, asylum seekers, and IDPs to exercise their right to freedom of religion and belief
- Requests the Special Rapporteur to submit an interim report to the 63rd session of the General Assembly on the “question of the elimination of all forms of religious intolerance” under the same agenda item.

Convened by Portugal on behalf of the EU, this annual resolution promotes the implementation of 1981’s *Declaration of all forms of intolerance*¹¹⁴ and reaffirms that the freedom of expression is central to freedom of religion or belief. It also provides a strong call for States to comply with the Special Rapporteur’s recent call upon the international community to better protect the rights of persons everywhere whose beliefs are theistic, non-theistic, and atheistic in nature. While the draft is based on last year’s consensus text, it has been significantly shortened this year (from 21 pre-ambular paragraphs to six and from 23 operative paragraphs to 16)¹¹⁵ and some of the paragraphs have been re-focused. For example, in operative paragraph ten, which deals with emphasising the importance of a continued and strengthened dialogue among and within religions or beliefs to promote greater tolerance, respect and mutual understanding, the text adds a new phrase which targets women and youth.

Operative paragraph two, which focuses on protecting persons with theistic, non-theistic, and atheistic beliefs, was also new this year and responds to the concerns expressed by the Special Rapporteur in her report. Some Member States, including Egypt, Venezuela, Iran, and Barbados, considered that the terms were not relevant to the resolution. Egypt was particularly vocal about this, stating that inclusion of these terms was akin to separating out the different categories of people according to their political persuasion.. Member States in support of keeping the reference to theistic, non-theistic, and atheistic beliefs in operative paragraph 2 included Liechtenstein, the USA, Canada, and Sweden.

Also new to the resolution was operative paragraph eight, which emphasises the connection between freedom of expression and freedom of religion or belief, referencing article 20 of the *ICCPR*. This inclusion elicited strong responses from Pakistan and Iran (which wanted it deleted), and Egypt (which would accept the paragraph only if the phrase ‘populations under foreign occupation’ was added). The reference to the *ICCPR*

¹¹² See A/C.3/62/L.42: <http://www.un.org/ga/third/62/propolist.shtml>

¹¹³ Article 20 (2) prohibits by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence..

¹¹⁴ For the full Declaration’s text see <http://www.ohchr.org/english/law/religion.htm>

¹¹⁵ PPs 8-14, 16, 17, 20, and 21 as well as OPs 3, 4 (b) &(c), 8, 9 (a) – (c); 10 (a) & (c), 11, 13, 15, 16, 18, 19, were deleted from the text.

made the final text, and dissension among States on this issue did not prevent adoption of the text by consensus.

This year's resolution was **adopted by consensus** with very few States commenting upon the text. In explanation of its position, Syria expressed hope that future resolutions will include the phrase "refraining from identifying any religion with terrorism" especially within operative paragraphs nine (a) and (b). Pakistan (on behalf of the OIC) said it believed the freedom of thought carries with it special duties and responsibilities - including the respect for the rights and reputations of others - and therefore deems the right revocable.

Resolution on Combating Defamation of Religion¹¹⁶

The Resolution:

- Reaffirms that discrimination against human beings because of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the UN Charter.
- Believes that respect for cultural, ethnic, religious, and linguistic diversity is essential for peace, understanding and friendship among individuals, peoples, and nations of the world.
- Underlines the positive role of education in the promotion of cultural and religious tolerance and in the elimination of related discrimination.
- Alarmed at the continued negative impact on Islam, Muslim minorities, and communities in some non-Muslim countries since the attacks of 11 September 2001.
- Further expresses its deep concern that Islam is frequently and wrongly associated with human rights violations and terrorism.
- Requests the Secretary-General to submit a report on the implementation of the present resolution to the General Assembly at its 63rd session.

This annual resolution, sponsored by Pakistan, is very similar to last year's text, in particular in its singular focus on discrimination directed at Islam and Muslims worldwide.¹¹⁷

A couple of changes occurred, including in operative paragraph eight, where States deplore the use of all types of media to incite acts of violence, and discrimination against Islam or any other religion. The phrase "as well as targeting of religious symbols" was added to the end of the paragraph.

The vote

This year, 177 Member States participated in the vote requested by the USA. Ninety five States voted in its favour, 52 States voted against the text, and 30 States abstained.¹¹⁸ Both Singapore and Burkina Faso voiced their support of the resolution with the understanding that the text applies to all religions. Egypt expressed hope that the adoption of this resolution will help to put an end to extremism, which contributes to the ongoing discrimination of persons because of their race, religion, and/or language.

Explaining its opposition, the USA said the resolution failed to take into account more than one religion. Portugal (on behalf of the EU) recommended creating a new resolution that focuses on an inclusive, rights-based approach and is based upon article 20 of the *ICCPR*, which prohibits by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

¹¹⁶ A/C.3/62/L.35, available at <http://www.un.org/ga/third/62/propslist.shtml>

¹¹⁷ A/Res/61/164, available at <http://www.un.org/Depts/dhl/resguide/r61.htm>

¹¹⁸ Select Member States voting in favour of the resolution include Turkey, China, the Russian Federation. Select Member States voting in opposition include the USA, UK, Switzerland, San Marino, the EU, New Zealand, Republic of Korea, Israel, Iceland, Canada, Australia. Japan was amongst the 30 States which abstained from the vote.

Several States explained why they abstained from voting, including India which rejected the resolution's focus on a single religion, and Chile which worried it may add to the climate of intolerance or restrict the freedom to criticise. Japan cited its ongoing concerns that the resolution's text runs counter to article 4 of the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*.¹¹⁹ Columbia abstained because it believes the phrasing of operative paragraph ten runs counter to the ICCPR.¹²⁰

Looking forward

The mandate of the Special Rapporteur on the freedom of religion or belief was reviewed and extended during the second part of the sixth session of the Human Rights Council in December 2007.¹²¹

Additional resolutions

*Human rights in the administration of justice*¹²²

The Resolution

- *Invites* States to make use of technical assistance;¹²³
- *Invites* UN agencies to coordinate their related activities;¹²⁴
- *Invites* the Human Rights Council to continue considering human rights in the administration of justice;¹²⁵
- *Welcomes* increased attention paid to the issue of juvenile justice;¹²⁶
- *Encourages* the members of the Interagency Panel on Juvenile Justice to enhance its capacity;¹²⁷
- *Invites* special attention to the issue of women in prisons;¹²⁸
- *Decides* to continue consideration of the question of human rights and the administration of justice at the 64th session of the General Assembly.¹²⁹

This year's biennial resolution on human rights in the administration of justice, introduced by **Austria**, is much shorter and more streamlined than that of the 60th session.¹³⁰ Losing seven preambulatory paragraphs and 12 operative paragraphs, this year's resolution incorporates references to new developments on this topic, including to the March 2006 report of the Secretary-General on human rights in the administration of justice, including juvenile justice¹³¹ and the July 2007 Economic and Social Council resolution 2007/23.¹³² Paragraphs that were taken out include those with references to specific instruments, reports, bodies,

¹¹⁹ See http://www.unhchr.ch/html/menu3/b/d_minori.htm

¹²⁰ OP. 10: "Emphasizes that everyone has the right to freedom of expression, which should be exercised with responsibility and may therefore be subject to limitations as provided by law and necessary for respect of the rights or reputations of others, protection of national security or of public order, public health or morals and respect for religions and beliefs;

¹²¹ See ISHR's complete list of mandate renewals: http://www.ishr.ch/hrm/council/sps/tt_review.pdf

¹²² A/C.3/62/L.45, <http://www.un.org/ga/third/62/propslist.shtml>

¹²³ OP1, Ibid.

¹²⁴ OP2, Ibid.

¹²⁵ OP3, Ibid.

¹²⁶ OP4, Ibid. Juvenile justice was a main theme of the previous resolution on this topic, A/C.3/60/L.38, available at <http://www.un.org/ga/60/third/draftproplist.htm>

¹²⁷ OP5, Ibid.

¹²⁸ OP6, Ibid.

¹²⁹ OP7, Ibid.

¹³⁰ A/C.3/60/L.38, available at <http://www.un.org/ga/60/third/draftproplist.htm>

¹³¹ A/HRC/4/102, available at <http://domino.un.org/UNISPAL.NSF/9a798adbf322aff38525617b006d88d7/ec1ecbd574c3038b852572b200522a6e!OpenDocument>

¹³² E/2007/INF/2/Add.1 entitled "Supporting national efforts for child justice reform, in particular through technical assistance and improved UN system-wide coordination"

specialized agencies, and organizations (opting instead for “numerous international standards”), five full paragraphs relating to juvenile justice, and others relating to national development plans, and national capacity building.

The resolution was **adopted without a vote** in the Third Committee and the plenary of the General Assembly.

International covenants on human rights¹³³

Sweden convened a resolution on the International Covenants on Human Rights. Changes from last year’s text include strengthening the call to States to become parties to the International Covenants and their Optional Protocols,¹³⁴ and the inclusion of the mention of the “Office of the UN High Commissioner for Human Rights” and its much needed contribution of “staff resources and conference and other and other relevant support services” in working with the Human Rights Committee and the Committee on Economic, Social and Cultural rights.¹³⁵

In introducing the text for action, Sweden noted that civil and political rights and economic, social, and cultural rights are mutually reinforcing. The USA took the floor to reiterate its view that economic, social, and cultural rights are to be achieved with available resources, and are not judiciable or enforceable as are civil, political, and cultural rights.¹³⁶

The resolution was **adopted by consensus** by the Third Committee and by the General Assembly

BACKGROUND

The General Assembly is the main deliberative organ of the United Nations (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 realization 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.¹³⁷ 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 three main committees, submit draft resolutions to the General Assembly for final adoption.

¹³³ A/C.3/62/L.25, Available at <http://www.un.org/ga/third/62/propslist.shtml>.

¹³⁴ OP2, *ibid*.

¹³⁵ OP24, *ibid*.

¹³⁶ OP3, *ibid*, speaks of the equality and indivisibility of these two sets of rights.

¹³⁷ Information on the main committees of the General Assembly (GA) is available at <http://www.un.org/ga/maincommittees.shtml>

NEW YORK MONITOR STAFF

Michelle Evans, Representative to the UN, New York
Vanessa Jackson, Human Rights Officer, New York

Contributors

Susanna Emmet, Intern
Laurie Cohen, Intern
Niki Moss, Intern

ABOUT THE PUBLICATION

The New York Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments in the UN in New York.

SUBSCRIPTION

If you wish to receive New York Monitor reports by e-mail when they are published, please e-mail information@ishr.ch with 'New York Monitor' in the subject line. To see the New York Monitor reports online, please visit www.ishr.ch. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

COPYRIGHT AND DISTRIBUTION

Copyright © 2008 International Service for Human Rights

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on or any use of this publication. We are however happy to correct any errors you may come across so please notify information@ishr.ch.