

# COUNCIL MONITOR

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## HUMAN RIGHTS COUNCIL, RESUMED 6<sup>TH</sup> SESSION DAILY UPDATE, 11 DECEMBER 2007

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### Overview

The Human Rights Council (the Council) started its second day of the resumed 6<sup>th</sup> session with the backlog of 10 December 2007. Because of the unexpectedly vivid interest of States to use their speaking time during the celebratory event starting the commemorative year for the 60<sup>th</sup> anniversary of the *Universal Declaration of Human Rights* (UDHR), the Council had lost half a day on 10 December 2007. While it met continuously from 9 am to 6 p.m. on this day it was not able to make up the lost time.

Thus, it first heard the report by the Open-ended Working Group on an optional protocol to the *International Covenant on Economic, Social and Cultural Rights* (the Working Group) on its fourth session. The ensuing related debate focused both on the optional protocol, and on efforts at rectifying the legal status of the Committee on Economic, Social and Cultural Rights (the Committee).<sup>1</sup> There seemed to be no significant progress during this debate, and no concrete further action was announced.

The High Commissioner for Human Rights (the High Commissioner), Ms Louise Arbour, gave the Council an update on her activities since last September, and focused on her visits to Sri Lanka, Afghanistan, and Brazil and also drew attention to the human rights situations in Pakistan, Somalia, and the Sudan. The

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<sup>1</sup> Oral statements made at the Council can be downloaded from the OHCHR extranet. This can be accessed on <http://portal.ohchr.org> (requires username and password. Fill out the form on [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive the user name and password). Mr Philippe Texier, the Chairperson of the Committee on Economic, Social and Cultural Rights held his presentation on 10 December 2007. Check the ISHR *Daily Update* for a summary (available at [www.ishr.ch](http://www.ishr.ch)).

afternoon segment following the High Commissioner's statement saw the Council divided on a number of substantive and procedural issues. While in the former case the situations in Pakistan and Sri Lanka dominated the statements, it was the *Code of Conduct for special procedures mandate holders* (the Code of Conduct) and the modalities of the universal periodic review (UPR) with respect to the latter. The issue of the relationship of the Office of the High Commissioner for Human Rights (OHCHR) with the Council and the setting up of OHCHR field presences also generated heated debate during the course of the afternoon.

The Council also received the final report of the Experts Group on Darfur. It was presented by Ms Sima Samar, the Special Rapporteur on the Sudan and chair of the Experts Group. The discussion on the report was broadly divided between two groups of States. One group focused on welcoming the efforts by the Sudan to cooperate with the Experts Group and to improve the human rights and humanitarian situation in Darfur. Another group of States, while welcoming the cooperation by the Government, believed that too little had been done to implement the majority of the Experts Group's recommendations and that in relation to many of the recommendations no measures had been taken at all. These States also emphasised that the situation on the ground had not improved.

Just before the end of the day's session the Council considered the report of the Special Rapporteur on Myanmar on his visit to the country in follow-up to the 5<sup>th</sup> special session. He underlined that while he had not undertaken a full-fledged fact-finding mission, he believed that the Government forces had used excessive, disproportionate, and lethal force against civilians during its crackdown on the peaceful demonstrations in September and October 2007. The permanent representative of Myanmar accused the Special Rapporteur of having produced an inaccurate report that lacked 'objectivity and impartiality' and of violating Myanmar's sovereignty.

Throughout the day, informal consultations on various draft resolutions were held. During the day, President Costea extended the deadline for the submission of drafts to 4 p.m. while allowing exceptions in particular cases. At the time of writing 13 drafts have been tabled.<sup>2</sup>

#### Working Group on an optional protocol to the ICESCR

Under Item 3, the Council considered the report of the Open-ended Working Group on an optional protocol to the *International Covenant on Economic, Social and Cultural Rights* (the Working Group) on its fourth session, which took place in Geneva from 16 to 27 July 2007.<sup>3</sup> Ms Catarina de Albuquerque, the Chairperson-Rapporteur of the Working Group, gave an overview of the report.

The report is a detailed description of the comments made on each article of the draft optional protocol during the session of the Working Group.<sup>4</sup> In her oral presentation, Ms Albuquerque mentioned that she had held meetings with some regional groups and that Egypt, with the support of the OHCHR, would convene a meeting for African States to be held in Cairo in 2008. She expressed her hope that the Working Group could achieve significant progress in its next session on 4-8 February 2008.

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<sup>2</sup> Go to <http://portal.ohchr.org/portal/page/portal/HRCExtranet/6thSession/DraftResolutions> to access them. Requires username and password (see fn. 1).

<sup>3</sup> A/HRC/6/8, 30 August 2007. The optional protocol will give the Committee on Economic, Social and Cultural Rights the competence to receive communications.

<sup>4</sup> The draft optional protocol prepared by the Chairperson-Rapporteur is contained in document A/HRC/6/WG.4/2.

## Related debate

All States that commented on the report of the Working Group were supportive of the report, thanked Ms Albuquerque for her work, and welcomed the substantial progress achieved during the 4<sup>th</sup> session of the Working Group.<sup>5</sup> Most States and non-governmental organisations (NGOs) also saw the optional protocol as an important step towards putting the protection of economic, social and cultural rights on the same level as civil and political rights. In particular, it is expected that the optional protocol will fill a gap in the enforcement of economic, social and cultural rights.<sup>6</sup> The access to remedies for victims of violations of economic, social and cultural rights was highlighted by a number of States.<sup>7</sup>

- The Juridical Commission for the Autodevelopment of First Andean People (CAPAJ) drew attention to the special needs of indigenous peoples in this regard. Italy proposed that remedies other than judicial ones should also be taken into account.
- Mexico stressed that given the progressive nature of many economic, social and cultural rights a mechanism to enforce them was even more necessary.
- Some States and observers were of the view that significant consultations on important parts of the optional protocol were still required.<sup>8</sup> Others were of the view that the draft was a good basis for negotiations,<sup>9</sup> or even 'in its final stages'.<sup>10</sup> Ms Albuquerque in her replies stated that she hopes to circulate a new draft shortly, which could then be the basis for consultations leading up to the next meeting in February 2008.
- Many States and observers clearly supported a 'comprehensive approach for the optional protocol'.<sup>11</sup> This would mean that all rights contained in the *International Covenant on Economic, Social and Cultural Rights* (the Covenant) would be covered by the protocol, and that States ratifying the protocol could not exclude certain rights from its scope. Brazil pointed out that any other approach would undermine the indivisibility of all human rights, and would be a step backwards compared to other treaty bodies. The International Coordinating Committee of National Human Rights Institutions<sup>12</sup> (ICC) explained how this could violate the principle of non-discrimination.<sup>13</sup>
- The opposite approach was advocated by the Russian Federation, which was of the view that States should be free to choose for which rights they were willing to accept the competence of the Committee.

A number of more specific points on the content of the optional protocol were raised:

- Egypt (on behalf of the African Group)<sup>14</sup> stressed that international cooperation and assistance should be given due attention in the protocol.<sup>14</sup> The Republic of Korea mentioned that the full realisation of economic, social and cultural rights and development should go hand in hand. Thailand said that the Committee, when receiving and dealing with communications, should keep the level of development of the State concerned under consideration.<sup>15</sup>

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<sup>5</sup> Egypt (on behalf of the African Group), Cuba, Ukraine, Brazil, Italy, Republic of Korea, Pakistan, Azerbaijan, Mexico, Belgium, Algeria, Venezuela, Spain, Chile, Morocco.

<sup>6</sup> Cuba, Argentina, Ukraine, Italy, Mexico.

<sup>7</sup> Ukraine, Italy.

<sup>8</sup> Pakistan, Bangladesh.

<sup>9</sup> International Commission of Jurists (ICJ).

<sup>10</sup> Spain.

<sup>11</sup> Brazil, Italy, Venezuela, International Coordinating Committee of National Human Rights Institutions (on behalf of the national institutions of Germany, France, Denmark and Morocco), Centre on Housing Rights and Evictions (on behalf of the NGO Coalition on an optional protocol, FIAN, Amnesty International), ICJ.

<sup>12</sup> On behalf of the national institutions of Germany, France, Denmark, and Morocco.

<sup>13</sup> If some rights are excluded from being subject to the complaint procedure, groups for which these excluded rights are particularly relevant would be deprived of a remedy.

<sup>14</sup> Pakistan, Morocco.

<sup>15</sup> Venezuela made similar comments.

- Belgium asked Ms Albuquerque what role civil society could take under the optional protocol. She responded that the current draft allows individuals and groups of individuals, as well as their representatives, to submit communications.
- Belgium referred to Article 8 of the draft optional protocol, expressing concern that introducing the criterion of 'reasonableness' would lead to a reinterpretation of the Covenant.<sup>16</sup> Ms Albuquerque pointed out that the Committee had expressed its views in this regard, saying that it was already applying the criterion in its work. Accordingly, there was no need to reflect it in the draft. She added that this was one of the points for discussion still open.
- A representative of the International Labour Organization (ILO) noted that following an agreement between the United Nations (UN) and the ILO, the latter is in charge of dealing with complaints related to trade union rights. Should the optional protocol contain the possibility of collective complaints, this arrangement should be recalled.
- Italy expressed reservations regarding the inquiry procedure foreseen by the draft optional protocol, saying that this would be beyond the scope of the optional protocol, and run counter to the system-wide attempts at rationalising human rights mechanisms.
- The Centre Europe–Tiers Monde (CETIM) in a joint statement<sup>17</sup> demanded that the right to self-determination be retained within the scope of the optional protocol.
- The Centre on Housing Rights and Evictions (COHRE) in a joint statement<sup>18</sup> suggested that the optional protocol should enable the Committee to decide on interim measures when handling communications.

## Rectification of the legal status of the Committee on Economic, Social and Cultural Rights – Continued

### Related debate

Within the same segment, the Council heard comments by States and observers, including NGOs and national human rights institutions (NHRIs) on the rectification of the legal status of the Committee on Economic, Social and Cultural Rights. Mr Philippe Texier, the Chairperson of the Committee, had addressed the Council on the previous day.<sup>19</sup> He had not been able to attend the session on 11 December 2007, but President Costea promised to transmit comments and concerns raised during the related debate.

Many States welcomed the idea of rectifying the status of the Committee in principle.<sup>20</sup> South Africa, who had taken the initiative to rectify the status of the Committee, gave detailed explanations of the reasons for its initiative.<sup>21</sup> In its view, only by putting the Committee on Economic, Social and Cultural Rights on the same footing as the other treaty bodies could the principle that all human rights are universal, indivisible, interdependent and interrelated<sup>22</sup> be secured. South Africa suggested appointing two experts who could

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<sup>16</sup> The relevant passage dealing with the consideration of the merits of a communication by the Committee reads: “When examining communications under the present Protocol concerning article 2, paragraph 1 of the Covenant, the Committee will assess the reasonableness of the steps taken by the State Party, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means.”

<sup>17</sup> Ligue internationale pour les droits et la libération des peuples (LIDLIP), Women’s International League for Peace and Freedom (WILPF), Mouvemente contre le racisme et pour l’amitié entre les peuples (MRAP).

<sup>18</sup> On behalf of the NGO Coalition on an optional protocol, FIAN, Amnesty International.

<sup>19</sup> See ISHR’s *Daily Update* of 10 December 2007, available at [www.ishr.ch](http://www.ishr.ch).

<sup>20</sup> Portugal (on behalf of the EU), South Africa, Cuba, Egypt (on its own behalf), Pakistan, India, Bangladesh, Mexico, Belgium.

<sup>21</sup> See Human Rights Council *Resolution 4/7* of 30 April 2007.

<sup>22</sup> As defined at the World Conference on Human Rights held in Vienna in 1993.

prepare additional options for how to carry out the rectification.<sup>23</sup> Cuba supported the proposal by South Africa, adding that putting the Committee on Economic, Social and Cultural Rights an equal footing with the Human Rights Committee was essential.

Portugal, on behalf of the European Union (EU), highlighted that a rectification would indeed prevent the erroneous assumption that the Committee on Economic, Social and Cultural Rights has an inferior status to other committees.<sup>24</sup> In the view of many States, rectifying the status was also necessary to underline the indivisibility and universality of all human rights.<sup>25</sup> It would also have the benefit of making the mode of election more logical.<sup>26</sup> Regarding this possibly new process of selecting Committee members, Cuba cautioned that the clear equitable geographic distribution currently found among Committee members should be retained.<sup>27</sup>

Despite its principled support for the rectification of the status of the Committee, Portugal (on behalf of the EU) pointed out that no real impact of the 'lower' status on the functioning of the Committee was perceptible so far. The Republic of Korea suggested that only if clarity on the actual problems faced by the Committee due to its different status was provided could the rectification be usefully tackled. India was not opposed to the rectification in principle, but cautioned that the process to do so would be "very cumbersome."

Other States went further, and rejected the idea of rectification in general. A number of concerns were mentioned. Switzerland suggested that the need for rectification should be reconsidered, since no value would be added to the work of the Committee by such a move.<sup>28</sup> It added that neither had the legitimacy of the Committee been contested, nor had the efficiency of its work been affected in the past by its different status.<sup>29</sup> Switzerland was also of the view that the rectification was particularly unwelcome at the time of the elaboration of an optional protocol. Belgium stressed that the exercise of rectification should not in any way undermine or damage the work currently undertaken by the Committee.<sup>30</sup> Switzerland was also concerned about the possible damage to the content of the Covenant if it was opened for amendment.

Some remarks were made in relation to the link between the Working Group on an optional protocol to establish a communications procedure (see above) and the rectification of the status of the Committee. Thailand cautioned that the rectification of the status should not hamper or harm the work undertaken in the Working Group. CAPAJ, an NGO representing indigenous groups, stressed that while the optional protocol currently elaborated in the Working Group promised real improvements for the promotion and protection of human rights, in particular those of indigenous peoples, the rectification of the status of the Committee could be considered at a later stage.

### **Comment on ways to rectify the status of the Committee**

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<sup>23</sup> Council *Resolution 4/7* also asks the OHCHR to compile the views of stakeholders on how a rectification could be achieved. A report containing these views, as well as an opinion of the UN Office of Legal Affairs, was submitted to the 6<sup>th</sup> session of the Council and is contained in document A/HRC/6/21. Egypt regretted that the compilation was not formally presented to the Council, even though it is an official document of the 6<sup>th</sup> session.

<sup>24</sup> Supported by South Africa, Cuba, Bangladesh.

<sup>25</sup> South Africa, Mexico.

<sup>26</sup> Currently, the Committee is elected by the Economic and Social Council (ECOSOC), because ECOSOC *Resolution 1985/17* of 28 May 1985 established the Committee. Since the Committee is tasked to receive reports by States on their implementation of the Covenant, it would be more logical that States party to the Covenant elect the members of the Committee.

<sup>27</sup> Supported by the Russian Federation,

<sup>28</sup> Republic of Korea.

<sup>29</sup> Portugal (on behalf of the EU), India.

<sup>30</sup> Supported by India.

Portugal (on behalf of the EU) was of the view that the responsibility for the rectification was with the State parties to the Covenant. More specifically, this would require the calling of a conference of States party to the Covenant, according to the amendment procedure provided for by the Covenant itself.<sup>31</sup> Most States supported this view.<sup>32</sup> The Russian Federation saw the adoption of an additional optional protocol to rectify the status as an alternative, while Egypt clearly rejected this approach. Pakistan agreed that the rectification should be done in the context of meetings of State parties, but stressed that it should not be linked to a wider review of the treaty body system.<sup>33</sup> Egypt was of the view the Council should only mobilise the political will of States to rectify the status, and then States party should take over and elaborate the actual amendment.

Mexico suggested that the amendment to rectify the status of the Committee should be based on language used in the other covenants.

## Update on activities of the High Commissioner

### Statement of the High Commissioner

The High Commissioner, Ms Louise Arbour, presented an update on activities undertaken by her Office since last September, and largely focused on her visits to Sri Lanka, Afghanistan, and Brazil, as well as the human rights situations in Pakistan, Somalia, and the Sudan.

Regarding **Sri Lanka**, the High Commissioner drew particular attention to the loss of credibility and independence of the National Human Rights Commission of Sri Lanka and the failure of the President-appointed Commission of Inquiry to adequately investigate abuses. In this context, Ms Arbour noted that Sri Lanka would benefit from the presence of the OHCHR in the country with a broad mandate to offer technical assistance and public reporting. However, despite negotiations between the OHCHR and the Government of Sri Lanka, no agreement has yet been reached on a model for the OHCHR presence in the country.

Concerning her visit to **Afghanistan**, the High Commissioner praised the work of the Afghan Human Rights Commission and civil society. However, she remained concerned about the slow advancement of women's rights and the transitional justice agenda in the country. The High Commissioner also highlighted the grave security situation in Afghanistan, in particular the high rate of civilian casualties. Finally, Ms Arbour expressed her concern about the reactivation of the death penalty in the country and called on the Government to reconsider this decision.

Regarding **Pakistan**, the High Commissioner welcomed the release of detainees, in particular that of the Special Rapporteur on freedom of religion or belief, Ms Asma Jahangir, and the fact that the Special Representative of the Secretary-General on human rights defenders, Ms Hina Jilani, was able to return freely to Pakistan. She also welcomed President Musharraf's stated commitment to lifting the state of emergency and holding free elections in 2008. However, Ms Arbour expressed her concern about 'the long-term injury' inflicted on the judiciary in Pakistan as a result of the emergency rule.

The High Commissioner also discussed her visit to **Brazil**, where she commended the Government's efforts to address the situation of indigenous peoples and its social programmes for poor families. However, Ms

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<sup>31</sup> See Article 29 of the ICESCR.

<sup>32</sup> Pakistan, Mexico, Egypt, Russian Federation, Bangladesh. This was also the view expressed by the majority of States who submitted information to the OHCHR for its compilation, see fn. 23.

<sup>33</sup> This was supported by Egypt. Proposals to this effect had been made by some States in the compilation provided by the OHCHR, see fn. 23.

Arbour remained concerned about urban violence, police operations, and interrogation methods, as well as conditions of detention in the country.

In addition, Ms Arbour highlighted the deterioration of the situation of human rights in **Somalia** and the grave violations of human rights and humanitarian law taking place in the **Sudan**. Concerning the latter, the High Commissioner called on the Government and the international community to ensure the protection of civilians and commended the Special Rapporteur on the Sudan and the Experts Group on Darfur for their work.

Concerning positive developments, the High Commissioner welcomed the adoption of the *ASEAN Charter* and the organisation's commitment to develop a **regional human rights body**.<sup>34</sup> She informed of the cross-regional agreement on the General Assembly resolution to support a moratorium on the application of the **death penalty**.<sup>35</sup> She also reported that the OHCHR would shortly open a **regional office for West Africa** in Senegal. Finally, the High Commissioner welcomed the General Assembly's endorsement of the **institution-building package** and expressed her commitment to assist the Council in the UPR process. Ms Arbour finished her statement by asking all States to cooperate with the system of **special procedures**.

### **Responses to the Statement of the High Commissioner**

After the statement of the High Commissioner, President Costea took the floor to draw the attention of the Council to the terrorist attacks that had occurred in the morning in Algiers, Algeria, and which had resulted in more than 40 casualties, and which had occurred next to the UN headquarters in the city. The President was joined by almost all other speakers in extending his sympathies to the permanent representative of Algeria and to the victims and their families.<sup>36</sup> Ms Arbour also offered her condolences to the Algerian delegation.

Algeria criticised the High Commissioner for addressing only certain countries as deserving of the Council's attention, and asked why Iraq and Palestine were not addressed in her statement. The High Commissioner later replied that her update was to address recent activities and other concerns, which may not be adequately covered elsewhere in the United Nations system. She added that quarterly reports were issued on Iraq by the United Nations Assistance Mission for Iraq (UNAMI) and that these were available through the website of the OHCHR.

### **Sri Lanka**

The situation of human rights in Sri Lanka was addressed by many speakers during the afternoon session,<sup>37</sup> with several drawing particular attention to issues such as the abduction of civilians, including humanitarian workers, detentions, enforced disappearances, violations against journalists and human rights defenders, the recruitment of child soldiers, the lack of adequate investigation into abuses, torture, extrajudicial executions, and other forms of violence occurring in the country.<sup>38</sup> Many countries also welcomed the broad access to Sri Lanka that was granted to the High Commissioner on her visit to the country.<sup>39</sup>

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<sup>34</sup> Malaysia, the Philippines and the Republic of Korea briefly touched upon the adoption of the *ASEAN Charter* and the potential establishment of a regional human rights body in their statements that followed.

<sup>35</sup> A/C.3/62/L.29.

<sup>36</sup> Sri Lanka, Pakistan, on behalf of the Organization of the Islamic Conference (OIC), Cuba, on behalf of the Non-Aligned Movement (NAM), Egypt (on behalf of the African Group), Canada, China, India, Malaysia, Republic of Korea, Netherlands, Switzerland, Indonesia, Japan, Norway, New Zealand, United States of America (USA), Morocco, Sweden, Amnesty International.

<sup>37</sup> Portugal, on behalf of the European Union (EU) and other States, Canada, India, Philippines, Netherlands, France, Switzerland, Indonesia, Japan, New Zealand, USA, Sweden.

<sup>38</sup> Portugal (on behalf of the EU and other States), Canada, France, Sweden, USA, Amnesty International, International Commission of Jurists, Human Rights Watch.

<sup>39</sup> Portugal (on behalf of the EU and other States), Philippines.

The Ambassador of Sri Lanka expressed concern at the recent attacks on civilian targets in Sri Lanka by armed terrorist groups. He stated that the Government of Sri Lanka was determined to 'root out terrorism', and was willing to engage with international mechanisms to do so. However, he followed this by saying that agreement had yet to be reached with the OHCHR regarding the establishment of a field presence in the country, and that the two parties were currently engaged in discussions of 'different models' of how this could occur. He noted the upcoming visit of the Representative of the Secretary-General on internally displaced persons, Mr Walter Kälin, and the agreement 'in principle' to a visit by the Working Group on enforced or involuntary disappearances. While pledging its cooperation, Sri Lanka also aggressively defended its pride in its national institutions, and stated that its negotiations with the OHCHR and other international bodies would always be informed by its determination that its national institutions and processes should be 'supplemented and supported' by international assistance, but 'never supplanted or substituted by the non-national'.

Many speakers had criticised the lack of independence and effectiveness of the national human rights commission of Sri Lanka.<sup>40</sup> New Zealand in particular called for national institutions to conform with the *Paris Principles*, and expressed its concern at the failure of the Sri Lankan Commission to investigate abuses in the country. Amnesty International drew attention to the action of the International Coordinating Committee of National Human Rights Institutions (ICC-NHRI), which had downgraded the Sri Lankan Commission to 'not independent'.

One of the main issues of contention was the setting up of an OHCHR field presence in Sri Lanka that would have a broad mandate to monitor and publicly report on the situation of human rights in the country. Many countries strongly supported the need for an OHCHR field presence in view of the precarious human rights situation in the country.<sup>41</sup> Other countries were against this idea<sup>42</sup> as they were of the view that OHCHR field presences should be established with the consent of the concerned country and taking into account its national context. Other countries stated that they hoped for a successful outcome of the negotiations between the OHCHR and the Government of Sri Lanka on this issue.<sup>43</sup> Switzerland asked pointed questions to the High Commissioner regarding what the main differences of opinion were between the Government of Sri Lanka and herself regarding the proposed field presence, and also what principles and minimal criteria of her mandate would 'condition the future commitment' of the OHCHR in the country.

The issue of the resignation of the International Independent Group of Eminent Persons (IIGEP) resulted in tense exchanges between Sri Lanka and the Netherlands.<sup>44</sup> The Netherlands stated that it was unfortunate that the IIGEP had resigned as it was the last available source of credible and public reporting on the situation of human rights in the country, thus increasing the need for a stronger OHCHR field presence to fill this gap. In its right of reply, Sri Lanka stated that the Netherlands had 'mistakenly' thought that the IIGEP had 'resigned'.

### ***Afghanistan***

States highlighted the deteriorating situation of human rights in Afghanistan, with particular reference to attacks on civilians, the treatment of detainees in Afghan prisons, and the breakdown of the rule of law.<sup>45</sup>

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<sup>40</sup> New Zealand, Amnesty International, International NGO Forum on Indonesian Development (joint statement with FORUM-ASIA).

<sup>41</sup> Canada, Republic of Korea, Netherlands, France, USA.

<sup>42</sup> China, Philippines.

<sup>43</sup> India, Indonesia, Japan.

<sup>44</sup> In September 2006, the IIGEP was invited by President Rajapakse to act as observers to the commission of inquiry which was set up in order to investigate specific cases of human rights violations in the country.

<sup>45</sup> Norway.

Afghanistan took the floor as a concerned country to state that it welcomed the visit of the High Commissioner, who had had the opportunity to meet with members of the Supreme Court, dignitaries and representatives of civil society, among others. It stated that the Government was ‘determined and willing to respect human rights standards’, and had taken many steps to address the situation of women in Afghanistan. He also stated that 2007 had been ‘a difficult year’ for the Government in terms of meeting its challenges, and that poverty, discrimination, impunity, the lack of maturity of some of Afghanistan’s institutions, insecurity, and attacks on civilian targets such as schools and clinics had hampered its efforts to meet its challenges. He ended by saying that Afghanistan needed the humanitarian and technical support of the international community.

Many States commented on the visit to Afghanistan.<sup>46</sup> Portugal (on behalf of EU and several other countries) strongly deplored the high rate of civilian attacks in the country, and stated that all parties, including the Taliban, were bound by the *Geneva Conventions*, which prohibit such attacks. It also called for Afghanistan to abolish the death penalty and stated that it hoped that the reorganisation of the judicial system would lead to the end of impunity and to the protection of human rights. It then expressed its appreciation of the role of Afghan civil society in highlighting violations in the country. Canada agreed with the assessment of the High Commissioner that more attention should be given to the status of Afghan women. India reiterated its commitment to stabilising, rebuilding, and assisting in the development of Afghanistan, and welcomed its membership into SAARC (South Asian Association for Regional Cooperation). Japan expressed its intention to support the consolidation of democracy in this country. Norway highlighted the important role of the National Human Rights Commission of Afghanistan and called upon the Government of Afghanistan as well as donors to strongly support its work.

### ***Brazil***

Brazil briefly took the floor to thank the High Commissioner for her visit and pledged its commitment to strengthen its relationship with the OHCHR. It commended the ‘fruitful, frank and constructive dialogue’ that the High Commissioner had had with all stakeholders during her visit.

### ***The Sudan***

Many countries referred to the situation in the Sudan<sup>47</sup> and some expressed their serious concern at the ‘gross and systematic violations of human rights’ in the country, with issues such as abductions, sexual violence, absence of the rule of law, and widespread impunity at the forefront.<sup>48</sup> France stated the human rights situation would be examined in detail when the issue of the mandates of the Special Rapporteur on the Sudan and the Experts Group on Darfur came up.

The Sudan responded to the High Commissioner stating that while the situation was improving, it was still of great concern. In particular, the Sudan referred to the armed groupings which undermined the efforts of the Government and which lead to a situation that was conducive to the violation of human rights. The Sudan called upon international actors ‘with clout’ to send a message to the armed groups to sign the peace agreement. The Sudan also mentioned the kidnapping of children in the Sudan and Chad by a non-State actor, Zoe’s Ark, which was also raised later by Egypt (on behalf of the African Group). France stated that humanitarian NGOs should not be negatively affected by this incident.

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<sup>46</sup> Portugal (on behalf of the EU, Croatia, Macedonia, Bosnia, Herzegovina, Serbia, Montenegro, Albania, Moldova, Armenia), Canada, India, Japan, Norway.

<sup>47</sup> Portugal (on behalf of the EU and other States), Egypt (on behalf of the African Group), Canada, France, USA.

<sup>48</sup> Portugal (on behalf of the EU and other States).

### **Pakistan**

States and especially NGOs expressed their serious concern regarding the situation in Pakistan since the imposition of the emergency rule, and drew attention to the detention of civilians, the absence of the rule of law and an independent judiciary, and control over the legal profession and the media.<sup>49</sup> The USA emphasised its concern for free and fair elections. The Asian Legal Resource Center (ALRC) delivered a strong statement saying that it was shocking that as a member of the Consultative Group for selecting special procedures mandate holders, Pakistan had placed one of the special procedures, Ms Asma Jahangir, under house arrest, and threatened another, Ms. Hina Jilani, with arrest. Many NGOs called for the restoration of an independent judiciary, the removal of censorship of the print and electronic media, and the full restoration of all fundamental rights.<sup>50</sup>

Pakistan took the floor in its national capacity stating that it appreciated the High Commissioner's positive comments regarding the release of detainees, the proposed elections, and the lifting of the emergency in Pakistan, but that it disagreed with her concern that the emergency would cause long-term injury to the judiciary and civil society. Pakistan stated it was in the process of returning to full democratic rule with elections to be held in 2008, and that it was committed to upholding the rule of law and maintaining the independence of the judiciary. It went on to state that the 'vibrancy of civil society remains undiminished' and that this included the media.

### **Iraq**

Iraq expressed its intention to sign the *Convention Against Torture*, the *Convention on the Rights of Persons with Disabilities* and the *Convention for the Protection of All Persons from Enforced Disappearance* and also informed the Council that the Special Rapporteur on torture would be visiting the country in 2008. Iraq also stated its intention to establish an independent human rights commission in accordance with the *Paris Principles* in 2008.

### **Death penalty**

Gabon took the floor to respond to the High Commissioner's praise for its recent abolition of the death penalty. It stated that it was pleased to join the ranks of the 'UN family' of countries who had abolished the death penalty. The United States of America, on the other hand, noted that the General Assembly resolution on a moratorium on the death penalty did not have 'broad cross-regional support' as stated by the High Commissioner, and that the discussions in this regard had in fact been 'acrimonious'.

### **Other issues**

Many States raised issues regarding the work of the OHCHR and its relationship with the Council. Several States welcomed the opening of the new regional office for West Africa in Dakar, Senegal.<sup>51</sup> However, the question of OHCHR field presences was very much marred by the disagreement with Sri Lanka regarding the 'model' of an office in that country. Egypt's remark revealed the now well-established fault lines of this debate, when it stated, on behalf of the African Group, that the OHCHR should have more field presences in 'developed countries' instead of only 'developing countries'.<sup>52</sup> Many countries called for the consent of the

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<sup>49</sup> Portugal (on behalf of the EU and other States), FIDH, Amnesty International, Interfaith International, International Commission of Jurists, Asian Legal Resource Center, Human Rights Watch.

<sup>50</sup> FIDH, Interfaith International, International Commission of Jurists, Asian Legal Resource Center, Human Rights Watch.

<sup>51</sup> Portugal (on behalf of the EU and other States), Egypt (on behalf of the African Group), Republic of Korea, Senegal, USA.

<sup>52</sup> Supported by Algeria.

concerned country when setting up a field office,<sup>53</sup> with China going further and suggesting that OHCHR technical assistance should be given upon requests from States on a voluntary basis.

While many States were strongly supportive of the work of the OHCHR,<sup>54</sup> others used this opportunity to attempt to undermine its independence and effectiveness. Several countries argued for the Council to have more ‘oversight’ over the work of the OHCHR.<sup>55</sup> Pakistan, on behalf of the Organization of the Islamic Conference (OIC), was particularly vociferous in stating that the relationship between the High Commissioner and the Council had ‘long-term implications and that the existing ‘legal, financial and administrative issues’ involved did not offer much space for change. It argued that the Council was ‘more assertive’ than its predecessor, the Commission on Human Rights, and that it should have a say in two key areas, namely budgetary oversight and the establishment of OHCHR field presences. The latter was supported by Algeria calling for the approval of the Council before setting up field offices. China added that the OHCHR should not ‘stretch itself’ to set up a regional office, given its financial constraints, and also called for better geographical distribution among OHCHR staff.

The Strategic Management Plan of the OHCHR for 2008-2009 was also mentioned by some States.<sup>56</sup> Egypt, on behalf of the African Group, called for comments from member States to be reflected in the plan.

Several countries hailed the safe passage of the **institution-building package** of the Council in the Third Committee of the General Assembly.<sup>57</sup> Many States also commented on specific aspects of the continued institution-building process.

Many speakers commented on the UPR,<sup>58</sup> and some welcomed the support given by the OHCHR for this process.<sup>59</sup> Pakistan (on behalf of the OIC) sought clarity on the format and modalities of the review, and specifically on the role of the troika of rapporteurs, the conduct of the review, and its outcome.<sup>60</sup> It called on the President to hold consultations on this issue, in the absence of which ‘coalitions would start working in numerous kitchens’. France cautioned that the UPR process should be carried out in a ‘serious and stringent manner for credibility’s sake’. The Ambassador of Morocco, stated that the UPR was the ‘jewel in the crown’ of the Council and that Morocco was involved in two initiatives – a parallel event at the Council to examine best practices in drafting national reports,<sup>61</sup> and a seminar in February 2008 to initiate countries on the UPR process prior to the first cycle.

Pakistan (on behalf of the OIC) also drew attention to the review, rationalisation and improvement of mandates of the special procedures. Pakistan (on behalf of the OIC) stated that the President’s promise of devoting the December session of the Council to the review of special procedures had resulted in few valuable consultations, but that the Council was still at a ‘starting point’ on this issue. It asserted that decisions on the process of review of mandates would have to be taken soon. Cuba, on behalf of the Non-Aligned Movement (NAM), also called for the establishment of a common framework for the review process.

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<sup>53</sup> China, Philippines.

<sup>54</sup> Portugal (on behalf of the EU and other States), Canada, Republic of Korea, Netherlands, France, Indonesia, Norway, New Zealand.

<sup>55</sup> Pakistan (on behalf of the OIC).

<sup>56</sup> Egypt (on behalf of the African Group), Philippines, Norway.

<sup>57</sup> Cuba (on behalf of NAM), India, Malaysia, Indonesia, New Zealand, Morocco.

<sup>58</sup> China, Canada, Pakistan (on behalf of the OIC), Philippines.

<sup>59</sup> New Zealand.

<sup>60</sup> Supported by Malaysia.

<sup>61</sup> This event took place on Monday 10 December 2007. For a short summary, please see the *Daily Update* of 10 December 2007.

Another issue that was raised was the *Code of Conduct for special procedures mandate holders*.<sup>62</sup> Cuba (on behalf of NAM) stated that the Code of Conduct was a ‘multilateral and negotiated document’ as it had been approved by the Third Committee of the General Assembly and would soon be approved by the General Assembly plenary, but that they had noted the lack of enthusiasm for this document. It stressed that the purpose of the document was not to improve the *Manual for special procedures* and that it expected nothing less than ‘full compliance’ with the Code of Conduct. Furthermore, the OHCHR website lacked any mention of the Code of Conduct, but only had the *Manual for special procedures* available. This also caused some agitation for Algeria, asking that the Code of Conduct be made available on the site immediately and that the Manual be revised to conform with the Code of Conduct. Cuba also expressed its disagreement with the practices of mandate holders sharing information on their visits to a country with the UN before doing so with the concerned country. It claimed that the independence of certain mandate holders had been ‘compromised’ because they had publicised urgent appeals while these were still under consideration by the concerned State.

## Report of the Experts Group on Darfur

### **Presentation by Ms Sima Samar, Chair of the Experts Group on Darfur**

The President gave the floor to Ms Sima Samar, Special Rapporteur on the Sudan and chair of the United Nations Experts Group on Darfur<sup>63</sup> (the Experts Group) to present the final report.<sup>64</sup> The Experts Group had been tasked with ensuring effective follow-up of pre-existing resolutions and recommendations on Darfur and presented a first report of 13 June 2007.<sup>65</sup> That initial report identified priority areas for the implementation of short- and medium-term recommendations. An interim report had been submitted in September 2007.<sup>66</sup> The Experts Group believed that the Government should be given sufficient time to implement the recommendations and that more time was required for the Experts Group to consider the impact on the ground. Since September the Experts Group had invited the Government to submit further information, which in turn had requested to meet with the Experts Group to discuss the status of implementation of the recommendations. They subsequently met in Geneva on 15 November 2007.

Ms Samar expressed satisfaction with the degree of cooperation from the Government. The collaboration between the Experts Group, the Government, and several other partners had been based on methods of work adopted earlier on. It involved identifying obstacles to implementation, prioritising short- and long-term recommendations, and working in a transparent manner. She emphasised that actual improvement in the situation on the ground was the true measure of the degree of implementation.

The Experts Group had concluded in their report that the process of cooperative engagement with the Government had worked well in procedural terms but that so far, few recommendations had actually had a

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<sup>62</sup> Egypt (on behalf of the African Group), Malaysia, Indonesia, Algeria. The text of the Code of Conduct can be found in Council Resolution 5/2.

<sup>63</sup> The Experts Group was mandated by Human Rights Council Resolution OM/1/3. It is presided by the Special Rapporteur on the situation of human rights in the Sudan and composed of the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on the situation of human rights defenders, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on torture, and the Special Rapporteur on violence against women, its causes and consequences.

<sup>64</sup> The report is contained in document number A/HRC/6/19. A summary of the report is available on the ISHR website [www.ishr.ch/reports\\_in\\_short](http://www.ishr.ch/reports_in_short).

<sup>65</sup> The report is contained in A/HRC/5/6.

<sup>66</sup> The report is contained in A/HRC/6/7.

measurable impact. She noted that although steps had been taken, many short-term recommendations, as well as ones that did not require lengthy administrative processes or additional resources had not been implemented. This continued to negatively impact the most vulnerable groups such as women and children. She also expressed concern that several recommendations had not been addressed at all and that, with few exceptions, efforts had not led to an improvement in the human rights situation in Darfur. She stressed that the Government of Sudan bears the primary responsibility of promoting, protecting, and fulfilling human rights in the country. She asked that the Council take serious note of the situation, and urged the Sudan to implement fully the remaining recommendations without delay.

Finally, Ms Samar called upon the Council to continue the process of review in accordance with the indicators and timeframes developed by the Experts Group for assessing implementation of the recommendations. She noted that the Experts Group had suggested the renewal of the mandate to allow it to analyse results and impacts of the recommendations by 20 June 2008.

### Interactive dialogue

Many States commented on the report by the Experts Group. These comments broadly fell into two categories. One group of States focused on the efforts by the Sudan to cooperate with the Experts Group and to improve the human rights and humanitarian situation in Darfur.<sup>67</sup> Many of these States regretted that insufficient emphasis was placed on the efforts made by the Sudan in this regard and that the Government had not received adequate support and assistance from the international community.<sup>68</sup>

Another group of States, while welcoming the cooperation by the Sudan, believed that too little had been done to implement the majority of the Experts Group's recommendations and that in relation to many of the recommendations no measures had been taken at all.<sup>69</sup> These States also emphasised that the situation on the ground had not improved despite steps taken by the Government, which remained responsible for protecting the human rights of its people.

Many States welcomed the report of the Experts Group<sup>70</sup> and commented positively on the innovative nature of the mechanism and its potential to improve the situation in Darfur.<sup>71</sup> The United Kingdom (UK) stated that the experiment had been a success.

Many States also welcomed the cooperation extended by the Government to the Experts Group and the open and constructive dialogue that had taken place, including with high-level officials.<sup>72</sup> Pakistan (on behalf of the OIC) asserted that the process of constructive engagement had worked 'increasingly well'. However, Zambia regretted that the cooperation extended to the Experts Group had only been 'procedural'. The Sudan stated that the cooperation was not just of a formal nature and that the Government had provided the Experts Group with all necessary information. The UK emphasised that any results of the work of the Experts Group were dependent on the willingness of the Government to cooperate and required a clear commitment to implement the recommendations.<sup>73</sup>

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<sup>67</sup> Pakistan (on behalf of the OIC), Egypt (on behalf of the African group), China, Indonesia, Malaysia, Algeria, the Sudan.

<sup>68</sup> Pakistan (on behalf of the OIC), Egypt (on behalf of the African group), China, Malaysia, Algeria.

<sup>69</sup> Portugal (on behalf of the EU and others), Canada, Netherlands, Republic of Korea, Japan, Switzerland, France, United Kingdom (UK), Norway, New Zealand, Iceland, Australia, USA, Belgium, Sweden.

<sup>70</sup> Portugal (on behalf of the EU and others), Zambia, Canada, Japan, Norway, Australia.

<sup>71</sup> Portugal (on behalf of the EU), UK, Netherlands.

<sup>72</sup> Portugal (on behalf of the EU), Pakistan (on behalf of the OIC), China, Japan, Indonesia, Malaysia, Switzerland.

<sup>73</sup> Supported by Norway.

The Sudan noted that the situation in Darfur was improving as a result of the peace agreement and the efforts to ensure stability. It highlighted that more than 400,000 displaced persons had returned to Darfur. Egypt (on behalf of the African Group) endorsed this analysis of the situation and stated that there had been a 'marked improvement to the situation in Darfur'. China noted 'some improvements' to the situation.<sup>74</sup> It argued that the assessment of the situation should take account of the fact that the Sudan had long been suffering from poverty and war. The Republic of Korea stated that the situation remained 'as alarming as ever'. The UK stated that the magnitude of the on-going crisis should not be underestimated. Other delegations stated that the situation had worsened.<sup>75</sup>

Many delegations expressed serious concern at the violations that continue to take place in Darfur. They highlighted the continued prevalence of violence against civilians, in particular women and children, new displacements of persons, the situation of human rights defenders, torture, widespread impunity, and attacks on humanitarian workers. Many speakers also expressed concern at the lack of Government cooperation with the International Criminal Court in relation to two individuals that had been indicted by the Court and called on the Government to cooperate with the Court.<sup>76</sup>

Ms Hina Jilani, Special Representative of the Secretary-General on human rights defenders, commented that the human rights situation of women is still very serious, underlining that the implementation of the recommendations was still a task to be completed. In relation to human rights defenders she said there was no evidence or information of any concrete measures to protect them and facilitate their work. She expressed concern about their ability to monitor and report on human rights violations and also highlighted particular restrictions on freedom of association.

Indonesia asked the Experts Group if it considered that the strategies and policies adopted by the Government would be sufficient to meet future challenges. Mr Manfred Nowak, the Special Rapporteur on torture, replied referring to paragraph 61 of the report that concludes that constructive cooperation is an important starting point but that much more needs to be done. He underlined that the Council must decide who will carry out this task.

Several States called attention to the incident of the kidnapping of a group of children from the Sudan and Chad by Zoe's Ark and questioned why the Experts Group had not pronounced itself on this deplorable case.<sup>77</sup> Mr Manfred Nowak replied to these comments stating that the mandate of the Experts Group did not touch on this issue. Mr Philip Alston, the Special Rapporteur on extra-judicial, summary and arbitrary executions, deplored the incident and noted that he believed that the local authorities were dealing with the case.

China argued that there was a need for patience and continued humanitarian support in relation to the situation in Darfur.<sup>78</sup> Pakistan (on behalf of the OIC) also noted that immediate results in Darfur could not be expected and that the Government should receive concrete support from the international community.<sup>79</sup> New Zealand stressed that more urgent action should be taken to address the situation.<sup>80</sup> Malaysia stated that resources and technical assistance should be provided to the Government. The Netherlands argued that real progress was possible in the next six months and that it should be achieved. Egypt (on behalf of the African Group) claimed that the international community had failed to provide the necessary assistance to the

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<sup>74</sup> Supported by Indonesia.

<sup>75</sup> Switzerland, Sweden.

<sup>76</sup> Portugal (on behalf of the EU), Canada, the Netherlands, UK, Belgium, Human Rights Watch.

<sup>77</sup> Egypt (on behalf of the African Group), Malaysia, the Sudan, Algeria.

<sup>78</sup> Supported by Malaysia.

<sup>79</sup> Supported by Egypt (on behalf of the African Group), China, Malaysia.

<sup>80</sup> Supported by Australia.

Government.<sup>81</sup> Switzerland announced that it would provide 640,000 US dollars in support to the Sudan through a project developed by the OHCHR.

Many delegations called on the Government to implement fully all of the recommendations in the report without delay.<sup>82</sup> Some States also made concrete recommendations for action by the Government to address the situation. Portugal (on behalf of the EU) called on all parties to the conflict to end violence against civilians. It also urged the Government to address impunity by investigating all allegations of human rights violations.

Commenting on the next steps in follow-up to *Resolution OM/1/3*, the Sudan argued that it was time for a new stage of 'positive collaboration' and a recognition of the efforts by the Government to protect human rights. Many delegations supported the continuation of the work of the Experts Group until June 2008 when the medium-term recommendations are to be assessed.<sup>83</sup> Zambia also supported the recommendation by the Experts Group for it to continue to review the recommendations and their implementation, unless the task was entrusted to the Special Rapporteur on the Sudan.<sup>84</sup> Australia and Sweden stated that the continuation of the work of the Experts Group was critical to the credibility of the Council. Several States expressed their hope that a decision to extend the mandate of the Experts Group could be taken by consensus.<sup>85</sup> Portugal (on behalf of the EU) also stated that the Experts Group should be allowed to visit Darfur.<sup>86</sup>

On the other hand, Pakistan (on behalf of the OIC) argued that there should not be two international mechanisms for the same situation indirectly referring also to the mandate of the Special Rapporteur on the Sudan. It stated that this issue should be resolved in the dialogue between the African Group and the EU and others on the extension of both mandates.<sup>87</sup> Egypt (on behalf of the African Group) noted that it was 'high time' for the Council to streamline the mandates on the Sudan. Amnesty International commented that the Experts Group and the Special Rapporteur on the Sudan had complementary mandates and that they should both be maintained. Mr Philip Alston stated that it would be a mistake to assume that the two mandates could be interchanged as only the Special Rapporteur could undertake fact-finding missions. Algeria suggested that the Council should respect the decision it had taken to request the final report from the Experts Group at this session. It noted that the Special Rapporteur on the Sudan had a broad mandate until September 2008.

In her concluding comments, Ms Sima Samar stated that the Experts Group acknowledged the cooperation of the Government but that she insisted that it is its primary responsibility to protect human rights. The President of the Council closed the discussion by inviting all delegations to consider the information received in a constructive manner.

## The report of the Special Rapporteur on Myanmar

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<sup>81</sup> Supported by Algeria.

<sup>82</sup> Portugal (on behalf of the EU), Zambia, Japan, New Zealand, Iceland, Australia, USA, Amnesty International, International Commission of Jurists, Human Rights Watch.

<sup>83</sup> Portugal (on behalf of the EU), Netherlands, Zambia, Italy, Republic of Korea, Switzerland, France, New Zealand, USA, Belgium, International Federation of Human Rights Leagues (FIDH), International Commission of Jurists.

<sup>84</sup> The recommendation is contained in the report of the Expert Group, A/HRC/6/19, paragraph 61.

<sup>85</sup> Portugal (on behalf of the EU), India, Japan, Malaysia, UK, Norway.

<sup>86</sup> Supported by the Republic of Korea, France, Australia.

<sup>87</sup> The Council will review the mandate of the Special Rapporteur on the Sudan on Thursday 13 December 2007.

Mr Paulo Sergio Pinheiro, Special Rapporteur on the situation of human rights in Myanmar, reported to the Council regarding his mission to Myanmar from 11 to 15 November 2007 in follow-up to Council *Resolution S-5/I* adopted at its 5<sup>th</sup> special session. Mr Pinheiro stated that he had held numerous high-level meetings with Ministers from the Government of Myanmar, as well as UN officials and various NGOs. While acknowledging a degree of cooperation from the Government, he expressed disappointment that he was not authorised to meet with Aung San Suu Kyi. Before elaborating on his findings, the Special Rapporteur emphasised that his visit was an initial step and should not be considered a full-fledged fact-finding mission.

Mr Pinheiro explicitly stated that Government security forces had used excessive, disproportionate, and lethal force against civilians during its crackdown on the peaceful demonstrations in September and October 2007. He provided detailed statistics on the number of arrests and affirmed that they were largely verified by the Minister of Home Affairs. However, he pointed out that the information he had received regarding the number of demonstrators still being held in detention differed greatly from the figure provided by the Government. Mr Pinheiro confirmed that, since his visit, an amnesty had been granted to 8,552 prisoners. However he asserted that this fact should be seen in the context of continuing arrests of political activists. He also cited reports detailing appalling detention conditions. The Special Rapporteur expressed particular concern at the level of violence against monks and attacks on monasteries.

Mr Pinheiro stated that he had found no significant signs that the Government was implementing the operative paragraphs of Council *Resolution S-5/I*. Suggesting that the ‘roadmap for democracy’ faces many obstacles, he urged the Government to repeal or amend laws that do not comply with international human rights standards. Finally, Mr Pinheiro asserted his commitment to maintaining a constructive dialogue with the Government and encouraged continued engagement with international and regional actors, as well as with the Secretary-General’s Special Envoy, Mr Ibrahim Gambari.

The Permanent Representative of the Union of Myanmar, Mr Maung Lwin, expressed disappointment with Mr Pinheiro’s report. Mr Maung Lwin strongly asserted that the report was inaccurate and lacked ‘objectivity and impartiality’. He specifically disputed some of the statistics provided by Mr Pinheiro and highlighted the ‘daunting challenges’ faced by the Government. Despite these setbacks, the Permanent Representative explained that Myanmar was now moving towards the third step on the ‘road map to democracy’. Far from being constructive, Mr Maung Lwin felt that the Special Rapporteur’s report was ‘intrusive and filled with unfounded, sweeping generalisations’. The Permanent Representative made it clear that Myanmar rejected what it saw as Mr Pinheiro’s baseless allegations. Ultimately, he accused Mr Pinheiro of attempting to violate Myanmar’s sovereignty and insisted that attempts to politicise the situation would be counter-productive.

The President then suspended the debate and announced that it would be resumed the following day.

## Informal consultations

### **Draft resolution on Burma/Myanmar**

Portugal (on behalf of the EU) convened informal consultations at a rather late hour on its draft resolution on the follow-up to the report on the situation of human rights in Myanmar<sup>88</sup>. The draft has been tabled formally, with ‘light’ cross-regional support.<sup>89</sup>

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<sup>88</sup> A/HRC/6/14.

<sup>89</sup> No African State has yet signed on. All other regional groups are represented by at least one State. The draft is available on the OHCHR extranet. See fn. 2 on how to access draft resolutions.

Portugal introduced the draft by recalling the consensual resolution passed at the 5<sup>th</sup> special session held on 2 October 2007.<sup>90</sup> According to Portugal, the Council should now react to Mr Pinheiro's report by a new consensual resolution.

In its view, the aim of the resolution should be to allow the Special Rapporteur to continue its task, and improve the situation on the ground. Therefore, the co-sponsors renounced on using condemnatory language. Instead the text again calls on the Government of Myanmar to refrain from human rights violations and to engage in a national dialogue. The text takes up a number of recommendations made by Mr Pinheiro in his report to the resumed 6<sup>th</sup> session, and 'strongly urges' the Government of Myanmar to implement them. The Government is also urged to cooperate with the Mr Pinheiro and other special procedures, in particular those pertaining to the protection of vulnerable groups. According to Portugal, this is intended to allow special procedures to look at the root causes of the human rights situation in Burma/Myanmar.

The draft also invites the Special Rapporteur to conduct a follow-up mission to 'assess with greater detail the human rights violations occurred and occurring as a result of the violent repression of peaceful demonstrations'. Finally, the draft asks the OHCHR to provide the Special Rapporteur with a 'support team' to accompany him on his visits.

In general, States agreed with the non-condemnatory approach taken.<sup>91</sup> However, a number of concerns and reservations were raised by India, China, and the Russian Federation. India insisted that the approach should be more forward-looking, and focus less on the events that have already happened. In particular, India was opposed to the listing of recommendations to be implemented by the Government of Myanmar, and would prefer a general reference to the recommendations of Special Rapporteur Pinheiro.<sup>92</sup> Regarding the 'support team', a few States asked for more clarification.<sup>93</sup> If this would mean permanently stationing international staff in Burma/Myanmar, India said, then the draft should be more frank about it.

Portugal proposed to tackle some of the concerns raised on a bilateral basis, rather than having further open-ended consultations.

## Other issues

Egypt announced that it had prepared a statement under Item 1 on behalf of the African Group to highlight a number of concerns in relation to procedural and organisational matters. Since Item 1 had not been considered at this session it requested that the Secretariat circulate a copy of the statement to all delegations. Egypt noted that it expected the agenda to be followed in the future.

At the end of the day the President announced that there were 33 speakers inscribed to take the floor on the report of the Special Rapporteur on Myanmar.

He also informed that 13 draft resolutions had been tabled before that day's deadline. Egypt requested that a list of the drafts be circulated at the earliest to allow delegations to table any formal amendments to these resolutions.

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<sup>90</sup> See ISHR's report on the special session, available at [www.ishr.ch](http://www.ishr.ch).

<sup>91</sup> Peru, International Working Group for Indigenous Affairs, Switzerland, India, Canada, Russian Federation, Norway, Australia, China, USA.

<sup>92</sup> Particularly recommendation xii asking for an international commission of enquiry was mentioned as 'controversial'.

<sup>93</sup> India, Russian Federation, China.

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