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DAILY UPDATE HUMAN RIGHTS COUNCIL, 7TH SESSION 28 MARCH 2008

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Overview

The Human Rights Council (the Council) continued its consideration of draft resolutions and decisions.

It adopted the following decisions **by consensus**:

- Human rights and access to safe drinking water and sanitation.
- Human rights and climate change.
- Elimination of violence against women (mandate of the Special Rapporteur).
- Prevention of genocide.
- International Convention for the Protection of All Persons from Enforced Disappearances.
- Human rights and extreme poverty.
- Missing persons.
- Rights of the child.
- Situation of human rights in Myanmar.
- Mandate of the Special Rapporteur on the situation of human rights in Myanmar.
- Mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.
- Assistance to Somalia in the field of human rights.

The following decisions were adopted **by vote**:

- Mandate of 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-determination.

- Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (including two amendments).
- Human rights in the occupied Syrian Golan.
- From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance.

The most contentious resolution adopted by the Council was draft resolution A/HRC/7/L.24 and in particular an amendment thereto. The draft renews the mandate of the Special Rapporteur on the right to freedom of opinion and expression. Before the consideration of the draft proposal and the amendment, the Council's meeting was suspended, only to be resumed at 6 p.m. when the entire session should have been closed.

The amendment to the draft mandates the Special Rapporteur, in addition to its 'traditional' functions, to report on any instances of 'abuse of the right to freedom of expression that constitutes an act of racial or religious discrimination'. Many States opposed this amendment, arguing that it would unduly change the focus of the Special Rapporteur from the promotion and protection of the right to freedom of expression to a regulation of that right, and that the amendment alters the fine balance between freedom of expression and other human rights found in several international human rights instruments. Despite these substantial concerns, the amendment was adopted by a vote. It was the first time that the Council had to vote on an amendment to a resolution.

Once that amendment was adopted against the will of the original co-sponsors of the draft, almost all of the co-sponsors withdrew their co-sponsorship. Cuba then proposed an additional oral amendment that had not been discussed during the negotiation of the resolution. The amendment took the resolution farther from the intention of the co-sponsors, in that it stresses the importance of 'all media to deliver information (...) in a fair and impartial manner'. Ironically, Cuba noted that if its amendment were adopted it would become a co-sponsor of the resolution.

Only a series of procedural rulings by President Costea allowed the Cuban amendment to be introduced and voted upon. Both the amendment and the doubly amended draft resolution were subsequently adopted by a vote. It was the first time that the Council (or the Commission on Human Rights) adopted the mandate of the Special Rapporteur on freedom of expression by a vote, and cast a shadow on the Council's credibility as the UN's main human rights body.

Since the Council was unable to hear general comments by observers and adopt the report of the session, it will resume its work on 1 April for half a day.

Decisions and conclusions adopted by the Council

Decisions adopted by consensus

Human rights and access to safe drinking water and sanitation

Germany and Spain introduced the draft resolution.¹ Germany stated that access to water and sanitation is one of most basic needs of people and that more than 1 billion people do not have access to water and more than 2.5 million do not have access to sanitation. It underlined that the Council could play an important role and

¹ A/HRC/7/L.16.

that having access to safe drinking water and sanitation is part of human dignity. Access to safe drinking water and sanitation therefore contains an important human rights element. Germany recalled a recent study² by the Office of the High Commissioner for Human Rights (OHCHR) on the issue, which had recommended further work to clarify the content of relevant human rights obligations and to identify best practices for the realisation of access to safe drinking water. Germany expressed its hope that the Council could continue to draw attention to this issue.

Germany explained that the draft resolution would establish an Independent Expert to carry out this work. It noted that while several special procedures, in particular the Special Rapporteur on the right to food and the Special Rapporteur on the right to housing as a component of the right to an adequate standard of living, had made valuable contributions to the understanding of the issue and raised awareness, these efforts had been insufficient in light of the magnitude of the issue. It explained that the Independent Expert should further clarify the content of safe drinking water and sanitation. Spain, in its introductory statement, noted that the creation of the mandate of an Independent Expert is the best way of approaching a complex issue. It thanked delegations, and in particular the co-sponsors, for their support during the negotiations. It particularly highlighted the remarkable contributions from NGOs. It hoped that the resolution could be adopted by consensus.

In explanation of vote before the vote, the Russian Federation noted that it had expressed concerns during the consultations on the draft resolution regarding the lack of direct relationship with the Council's agenda. It stated that a new mandate on 'such artificial themes' would complicate the work of the Council. However, it noted that it would undermine consensus. Canada thanked Germany and Spain for their flexibility. It stated that the 'debate is still open as to whether there is a human right to water and sanitation'. It asserted that it was pleased to join consensus. Canada explained that it understands the term 'access to safe drinking water and sanitation' as defined in the OHCHR study, and that the resolution does not create a 'right to water' under international human rights law. Finally, Canada stated that the creation of the Independent Expert would respond to the need for specific, dedicated, and sustained attention to these issues. Nigeria expressed concern that several elements that have been introduced into the resolution are not clearly defined. In particular, it expressed concern at operative paragraph two, which established the mandate of the Independent Expert. Nigeria noted the focus on creating obligations without any technical assistance and support to meet these obligations and realise these rights.

Despite these concerns, the resolution was then adopted without a vote.

Mexico, in an explanation of vote after the vote, hoped that the consultations to be held by the Independent Expert would be as broad as possible. It also hoped that the work of the Independent Expert would be based on existing human rights instrument.

Human rights and climate change

The Maldives introduced the draft resolution.³ It expressed its gratitude to the eleven co-sponsors for their help and advice and stated that the great number of co-sponsors from all regional groups showed the international commitment to address the challenge of climate change. It highlighted that the issue of climate change was of existential importance to the Maldives and to many other countries all over the world. It regretted that the impact of climate change on human rights had thus far been neglected in the global discourse. Furthermore, it considered the Council to be vital in finding a solution to the issue, as a forum in

² In its *Decision 2/104*, the Council requested the OHCHR to conduct the study. The study is contained in A/HRC/6/3, 16 August 2007 'Report of the United Nations High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instrument'. For more information please see <http://www2.ohchr.org/english/issues/water/index.htm>

³ A/HRC/7/L.21/Rev.1

which the effects of climate change on human rights should be discussed. It suggested conducting a study under the auspices of the OHCHR to be presented at the 10th session of the Council on the relationship between climate change and human rights. The Maldives further welcomed the UN Conference on Climate Change (UNCCC) framework conference in Bangkok later in 2008.

Several countries took the floor to support the draft resolution, which was considered both ‘urgent’ and ‘timely’.⁴ Pakistan and Bangladesh welcomed the draft proposal as it accommodated the concerns of many countries in the world, especially those situated in high-risk areas.⁵ Bangladesh noted that the rights to life, clean water and shelter were all affected and called for ‘a global response to this global problem’. Pakistan hoped that the first operative paragraph would reflect the impact of climate change on the right to development. Similarly, Egypt (on behalf of the African Group) attested that the impact of climate change on Africa, in particular desertification, was devastating for countries’ development. It regretted the lack of implementation of all previous environmental agreements and emphasised that the provision of technical and financial support to vulnerable States would prove real commitment. Egypt further promised that the African Group would contribute its views to an OHCHR study.

Sri Lanka highlighted that it was particularly important to include climate change as a human rights issue, as the 60th anniversary of the *Universal Declaration on Human Rights* (UDHR) was currently being celebrated. It added that this would ‘enable vulnerable communities to enjoy dignity and justice’. Japan hoped that the recently launched ‘Cool Earth Partnership’ would establish a framework for greater responsibility,⁶ and expressed its commitment to work against global warming as a host country to this year’s G8 Summit.

Two States presented a different view on the draft proposal. The Russian Federation fully recognised the importance of the issue and also the international community’s responsibilities in combating global warming. However, considering that the UN system already had specialised forums on climate change,⁷ the Russian Federation felt that it would be ‘counterproductive’ to discuss climate change in the Council. Also, it doubted that OHCHR had the expertise to conduct the proposed study. Nigeria agreed that ‘the issue of climate change cannot be overstated.’ However, Nigeria said it could not support the draft resolution because there was no reference in the text to technical and financial assistance to developing countries for its implementation.

The resolution was adopted without a vote.

Elimination of violence against women (mandate of the Special Rapporteur)

Canada, as the main sponsor introduced the draft entitled ‘elimination of violence against women’. It pointed out that the draft resolution is procedural in nature and focuses on the renewal of the mandate of the Special Rapporteur on violence against women, its causes and consequences for another three years.⁸ It said that it had held four informal consultations, and thanked all participants including NGOs for their support. Canada introduced a minor oral revision to the preambular part of the resolution.⁹

The Russian Federation expressed concern about the way the negotiations on the draft were conducted, and regretted that Canada had not led the negotiations in a transparent manner. It also expressed its dismay at the

⁴ Bangladesh, Egypt (on behalf of the African Group), Japan, Pakistan, Sri Lanka.

⁵ Supported by Japan, Egypt (on behalf of the African Group).

⁶ See http://www.weforum.org/en/media/Latest%20Press%20Releases/PR_26jan_Japan for more information.

⁷ Such as UN Conference on Climate Change (UNCCC), the Kyoto Protocol and the Second Committee of the General Assembly.

⁸ A/HRC/7/L.22/Rev.1, 27 March 2008.

⁹ At the end of the 7th preambular paragraph, ‘forced’ was replaced by ‘commercial’ to read ‘commercial sexual exploitation’.

general tendency of the Council that all delegations focus only on their favourite issues, claiming that such an approach would create a hierarchy among rights and undermine the universality of all human rights.

Pakistan (on behalf of the OIC members of the Council) thanked Canada for the constructive spirit of the negotiations. It said that it would have preferred to 'broaden and streamline' the draft resolution. In particular, it hope that the Special Rapporteur would focus on the impact of poverty on violence against women and the role of the family to prevent violence against women.

The draft was adopted by consensus.

Prevention of genocide

Armenia introduced the resolution¹⁰ by noting that this was a symbolic moment to present the initiative as the international community is celebrating the 60th anniversaries of the *Universal Declaration of Human Right* (UDHR) and the *Convention on the Prevention and Punishment of the Crime of Genocide*.¹¹ It noted that it was pleased with the creation of the Special Representative of the Secretary-General on genocide. It underlined that the resolution focused on early warning and prevention of genocide and that it was the first time the Council would focus on the issue. It underlined that the UN human rights system has a clear and distinct role in early warning. It explained that the resolution aims at building bridges between the Special Representative of the Secretary-General and the entire UN system. It further explained that the resolution proposed the holding of a seminar to develop preventive strategies. Armenia made a minor amendment to the third preambular paragraph and hoped that the resolution could be adopted by consensus.

In general comments before the vote, Azerbaijan stated that it fully supported the important resolution as one of the main co-sponsors. It welcomed the growing awareness on the issue. It noted that at times States have insufficient capacity to prevent genocide and underlined that the international community should assist. It further emphasised that the international community should keep 'dangerous situations' and those that could escalate under constant attention. It finally stated that it looked forward to participate actively in the seminar that would be convened as a result of the resolution. The Russian Federation stated that prevention of genocide is a crosscutting problem, involving human rights, humanitarian issues and threats to peace and security.

The resolution was adopted without a vote.

International Convention for the Protection of All Persons from Enforced Disappearances

France introduced the daft resolution¹² stating that the resolution simply encourages the international community to sign and ratify the *International Convention for the protection of All Persons from Enforced Disappearances* (the Convention). It stated that the Convention needs 20 signatories to enter into force, which would then allow the Committee on the Protection of All Persons from Enforced Disappearances to start its work. France announced that it has created a 'group of friends' of the Convention, which includes NGOs and families of the disappeared and works on promoting the Convention to encourage its soonest possible implementation. France stated that it is fully aware of the domestic obstacles that may delay the ratification of the Convention but underlined the importance of the Convention and stated that it hoped the resolution would be adopted by consensus.

¹⁰ A/HRC/7/L.26.

¹¹ General Assembly *Resolution 260 A (III)*, 9 December 1948.

¹² A/HRC/7/L.31/Rev.1.

The resolution was adopted without a vote.

Human rights and extreme poverty

France, on behalf of the co-sponsors of the draft resolution, introduced the draft entitled ‘human rights and extreme poverty’. It explained that combating extreme poverty would remain a high priority for the international community.¹³ With the draft resolution, the Council takes note of the draft guiding principles on extreme poverty and human rights prepared by the former Sub-Commission on the Promotion and Protection of Human Rights.¹⁴ The draft resolution further mandates the OHCHR to consult with all stakeholders by organising a three-day seminar on the draft guiding principles. OHCHR is asked to report back to the Council in 2009.

The resolution was adopted by consensus.

Missing persons

Azerbaijan introduced the resolution.¹⁵ It explained that it was a traditional initiative that it had put forward since the former Commission of Human Rights and that the UN system had first addressed the issue in 2002. It further stated that the resolution focused on the promotion and protection of the rights of persons that had become missing persons as a result of armed conflict. It welcomed the conference organised by the International Committee of the Red Cross (ICRC) last year, which had addressed the question of missing persons. It stated that the Council, as the main UN human rights body, was entitled to coordinate and mainstream human rights in the UN system and that it should take a clear stance on this important issue. Finally, it explained that the draft resolution was mainly based on agreed language from previous. It noted that the resolution suggests the holding of a panel discussion at the Council’s 9th session in accordance with the Council’s new working methods. The panel discussion would end with a summary of the discussion by the High Commissioner. The Human Rights Council Advisory Committee would also be requested to undertake a study of best practices in this area. Azerbaijan made several oral revisions to the resolution and expressed its hope that the draft, as revised, could enjoy the consensus of the Council.

The resolution was adopted without a vote

Rights of the child

Uruguay introduced the draft resolution on behalf of the Group of Latin American and Caribbean States and the European Union (EU).¹⁶ It expressed gratitude to the EU, to other co-sponsors from all regional groups, to representatives from civil society and NGOs for their cooperation and input during the negotiation phase. It Noting that this was the first time this resolution was considered by the Council, Uruguay stressed that it was essential to consolidate the efforts of the Council to protect the rights of the child. This should include attention to the rights of the Child in the context of the universal periodic review (UPR) and in the work of the special procedures. Uruguay noted that the resolution was broad and comprehensive taking as its starting point the *Convention on the Rights of the Child* and its Optional Protocols, and former Commission on Human Rights’ resolutions. The resolution allows for thematic analysis that will enable the Council to go into greater depth on issues and best practices. Uruguay made numerous oral revisions to the text.

¹³ A/HRC/7/L.32/Rev.1, 27 March 2008.

¹⁴ See Sub-Commission *Resolution 2006/9*.

¹⁵ A/HRC/7/L.33.

¹⁶ A/HRC/7/L.34.

Several States¹⁷ took the floor. They praised Uruguay for the manner in which it had conducted the consultations but criticised the length of the resolution. Egypt and Bangladesh said that its length meant that it was very difficult for those who were not co-sponsors to read the resolution and this therefore limited their ability to contribute to and improve the resolution.

Switzerland regretted the missed opportunity for a new focus to help clarify the roles of the General Assembly and the Council, as the Council dealt with this issue for the first time in a substantive way. It added that the text was too long and repetitive and except for a few minor points offered nothing new. Switzerland therefore declined to sponsor the resolution. It expressed the hope that in the future the Council would adopt more targeted resolutions.

The resolution was adopted without a vote.

Situation of human rights in Myanmar

Slovenia (on behalf of the EU) introduced the draft resolution.¹⁸ It expressed deep concern at the situation in Burma/Myanmar and noted that the draft resolution addressed the deteriorating situation as well as follow-up to the special session held on Burma/Myanmar.¹⁹ It expressed concern about restrictions on freedom of movement, assembly, and association, on the widespread practice of torture, forced labour, child soldiers, sexual violence, and ill-treatment of detainees. It further noted the shut down of monasteries and surveillance of monks, which it saw as violations of freedom of religion and belief and of freedom of assembly. It was also concerned at large-scale land confiscation and its negative ecological, political, and cultural impact as well as continuing violence in ethnic areas. Slovenia (on behalf of the EU) explained that the draft resolution called on the Government to allow the Special Representative on the situation of human rights in Myanmar to visit.

Several States made general comments before the vote. Many States underlined positive developments that had taken place in the country, in particular the planned referendum to approve the new Constitution and general elections scheduled for 2009.²⁰

China stated that the international community should take note of these developments and encourage continued progress. It emphasised that the Council should take a balanced approach and create a positive atmosphere. In that context, China regretted that some of the formulations in the resolution did not reflect in a balanced manner the efforts made and the challenges faced by the Government. It further underlined the need for dialogue and cooperation for finding an appropriate solution to the situation.

The Philippines also noted that the language in the resolution could be more positive and balanced to reflect the positive steps taken. It alleged that the draft resolution prejudged the visit of the Special Adviser of the Secretary-General Mr Ibrahim Gambari. It underlined that following the engagement by Mr Gambari and the Special Representative there had been ‘tangible outcomes’.²¹ It stated that the Council should encourage the efforts made by the Government in a more constructive and less condemnatory manner. The Philippines argued that the Council should take a more ‘long-term approach’ to the situation and seek to engage the Government in a sustainable constructive dialogue.

¹⁷ Egypt, Switzerland and Bangladesh

¹⁸ A/HRC/7/L.36.

¹⁹ The 5th special session of the Council was held on 2 October 2007. Please see ISHRs report on the session, available at www.ishr.ch.

²⁰ China, Philippines, Malaysia, Sri Lanka, Bangladesh, Japan, Indonesia, India, Myanmar, Cuba, Russian Federation.

²¹ Supported by Pakistan.

Pakistan recalled the Special Rapporteur's recommendation that a 'constructive and continuous dialogue will contribute to the improvement of the human rights situation.' It stated that the resolution was too intrusive and 'leaning towards political rather than human rights aspects'.²² Pakistan underlined that the Council should not propose any steps that could disturb the ethnic fabric of Burma/Myanmar. It should instead encourage Burma/Myanmar to improve the promotion and protection of human rights, and expressed the hope that the Government of Myanmar would continue to take steps to stabilise the country and respect the human rights of its people.

Sri Lanka associated itself with the statements by China, the Philippines and Pakistan. It called attention to a 'far more balanced and fair manner of dealing with the situation' by referring to a resolution adopted by the governing body of the International Labour Organisation the previous week. Sri Lanka recalled that the Council had responded by holding a special session in October 2007 when the situation had been dramatic and urgent. It went on to argue that the situation has improved, and that the draft lacked a 'sense of proportion' since this improvement was not reflected.

Malaysia expressed concerns at the draft resolution. It stated that the views of Myanmar's neighbours should be given due consideration²³ and claimed that the comments from members of the Association of East Asian Nations (ASEAN) had not been taken on board. It underlined the need for continued engagement by the international community and stated that a 'more constructive and forward looking resolution' would be more helpful than one that is prescriptive.

Cuba stated that it supported the Council's attention to the situation and even the holding of the special session. It noted that Myanmar had clearly signalled its readiness to engage in dialogue and cooperation. In Cuba's view, however, the resolution was still a reflection of the biased approach that had led to the demise of the former Commission. Similar comments were made by the Russian Federation. It stated that the resolution was an example of a one sided approach to human rights. The Russian Federation regretted that the main sponsors had been inflexible from the beginning, and were not constructive in their approach. It noted that the focus should be on assisting the Government in efforts to reform and promote and protect human rights.

Bangladesh stressed that the international community should take advantage of positive developments to constructively engage with Myanmar. At the same time, it argued that the Government should continue its cooperation with the UN. Bangladesh underlined that dialogue and cooperation are the best ways of promoting and protecting human rights and noted that the resolution was not fully in line with such an approach.

Indonesia appreciated the efforts made by the Government towards reform. It noted that the Special Rapporteur had not been able to conduct a visit to Burma/Myanmar in follow up to the resolution of the special session. Indonesia stated that the resolution would send a strong message if it were adopted by consensus. It called on the Government to 'heed the calls of the international community' and to demonstrate the political will to promote and protect human rights by continuing 'a transparent dialogue and continued cooperation with the Council' and by forging ahead with democratisation and national reconciliation.

Japan noted that despite some progress in Burma/Myanmar, concerns remained. It particularly highlighted the lack of full participation of all relevant parties in the process of reform.

Myanmar, as a concerned State, said that the resolution 'completely disregarded' the political progress in Myanmar. It argued that the resolution was 'lopsided and highly intrusive' and amounted 'to dictating the Government in matters which fall within the domestic jurisdiction'. It argued that it had been put under

²² Supported by Sri Lanka, Cuba.

²³ Supported by Sri Lanka.

pressure by ‘influential and powerful countries’ that were using human rights issues as a tool to interfere in its internal affairs. It argued that this would ‘set a dangerous precedent for all developed countries’. It finally ‘totally and categorically’ rejected the content of the resolution and disassociated itself from it. In conclusion, Myanmar thanked its ‘friends’ for their balanced and principled positions to support Myanmar.

In an explanation of vote before the vote, India stated that the Council’s consideration of the situation in Myanmar should be undertaken in a manner to support the continuing dialogue with Mr Gambari. It underlined that all initiatives should be forward-looking, non-condemnatory, and seek to engage the Government in a non-intrusive and constructive manner. It stated that the resolution was condemnatory, unhelpful and would undermine the Secretary-General’s initiative on Myanmar. It noted that despite these concerns it would join the consensus and hoped that a more constructive approach could be found in the future.

The resolution was adopted without a vote.

Mandate of the Special Rapporteur on the situation of human rights in Myanmar

Slovenia (on behalf of the EU members of the Council) introduced the draft resolution entitled ‘mandate of the Special Rapporteur on the situation of human rights in Myanmar’.²⁴ The draft is a short, procedural resolution renewing the mandate of the Special Rapporteur for one year. Slovenia pointed out that the draft aimed at strengthening the promotion and protection of human rights in Burma/Myanmar. It recalled that the special session on Burma/Myanmar in October 2007 had led to a consensus resolution, but had not yet yielded tangible impact in Burma/Myanmar. Regarding the current situation in Burma/Myanmar, Slovenia highlighted that a credible referendum could not take place without freedom of assembly and with 2000 political prisoners. The Council has a crucial role to play in supporting Burma/Myanmar’s transition to democracy. It expressed its hope that the draft would be adopted by consensus.

Myanmar, as a concerned country, said the continuation of country-specific mandates ran counter to the principle of universality, upon which the Council was founded. The adoption of two resolutions on the same country at one session, Myanmar said, showed the ‘politicisation’ of the Council. It claimed that the ‘people of Myanmar know best’ how to improve their conditions and should be able to shape their future without interference. It highlighted that political pressure would not serve the country in any way. However, Myanmar also pledged that ‘cooperation with the UN remains a cornerstone of [its] foreign policy’ and that it would ‘continue to cooperate with the Council as long as national sovereignty is not infringed upon’.

The draft resolution was adopted by consensus.

Canada, in general comment after the voting process on Item 4²⁵ was concluded, expressed concern about the continued violations committed by the ‘Burmese regime’ against its people, including widespread arbitrary detention. It expressed general support for special procedures mandates, and stressed the vital role played by the Special Rapporteur on the situation of human rights in Myanmar.

²⁴ A/HRC/7/L.37, 25 March 2008.

²⁵ Item 4 deals with ‘human rights situations that require the Council’s attention’.

Mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Egypt introduced the resolution on behalf of the African Group.²⁶ It noted that despite efforts and a number of positive developments, the situation of racism worldwide was worsening. It argued that racism continues to be among the main sources of violations of human rights. It further stated that when targeting and affecting entire communities, racism amounts to gross and systematic violations of human rights. Egypt also recalled the dire situation of victims of ‘historic crimes’. It argued that the need to renew the mandate of the Special Rapporteur was self-evident.

Egypt stated that the issue of racism needed to continue to be monitored and that a focus should be placed on the ‘most potent and dangerous’ contemporary forms of racism as well as ‘their emerging forms’. It further noted that the possible means to counter the obstacles to the fulfilment of the mandate should be explored. Egypt explained that the draft resolution aimed at strengthening the mandate of the Special Rapporteur and achieving the necessary level of ‘substantive and functional specificity’. It also claimed that the resolution was ‘firmly grounded in international human rights law’.

Egypt said that it was ‘natural and understandable’ that compromises were necessary and that it was pleased with the broad understanding that had been reached on ‘one of more vital mandates’ of the Council. Egypt made a number of oral revisions to the text and stated that it looked forward to consensus and that this would be a very positive sign since the Council was about to continue its preparation for the Durban review conference.

In general comments before the vote, Slovenia (on behalf of the EU) stated that it continues to be committed to the fight against racism, racial discrimination, xenophobia and related intolerance. It explained that this commitment was reflected in national policies and actions. The EU also has its own strategy at regional level to combat racism. It noted in particular the EU directives on racial equality and employment equality. It stated that it remained supportive of the renewal of the mandate and was prepared to join the consensus. It expressed appreciation for the constructive engagement of the African Group and its willingness to find formulations that could be broadly accepted.

However, Slovenia (on behalf of the EU) remained concerned at a number of elements that may restrict the mandate holder’s autonomy in dealing with the issues that he or she considered most pertinent. It also expressed concern at possible duplication with other mandates. Slovenia (on behalf of the EU) expressed its disappointment that multiple and aggravated forms of discrimination were not directly reflected in the terms of reference for the mandate holder. Finally, it stated that the mandate must focus on contemporary forms of racism and that any focus on religion should only take place in the perspective of multiple and aggravated discrimination. It was also concerned about the language on incitement to hatred in the draft resolution.

Pakistan (on behalf of the OIC) stated that it attaches great importance to the mandate and shares concerns expressed by the Special Rapporteur about re-emergence of racism in many countries, including Islamophobia. It stated that associating specific communities with violence and terrorism must be condemned clearly. It asserted that the re-printing of offensive caricatures and screening of a hate documentary were signs of racism. Pakistan argued that racism poses new challenges to peace, stability and harmony of many societies. It was therefore necessary for the Council to play an effective role in eradicating racism and the resolution was an appropriate response to the challenges of new and merging threats / associated with racism.

²⁶ A/HRC/7/L.18.

India stated that it had always been at the forefront of combating racism and that it supported the renewal of the mandate. However, it regretted that the mandate was defined in a narrow and selective manner, thereby establishing a hierarchy between various forms of racial and religious discrimination.²⁷ It noted that such a definition would be counterproductive to efforts to combat racism.

Switzerland also attached great importance to the renewal of the mandate. It stated that the resolution was not perfect but welcomed that it could be accepted by all. It noted that the Special Rapporteur should not investigate or report on statements inciting hatred as this falls to national judicial bodies.

The resolution was adopted without a vote.

Assistance to Somalia in the field of human rights

Egypt (on behalf of African Group) introduced the resolution.²⁸ It recalled that the African heads of States and governments had adopted a comprehensive declaration reinforcing their ‘holistic approach’ to improving the situation. It explained that it was in this same spirit that the African Group was presenting the initiative for assistance to Somalia in the field of human rights. Egypt urged all parties in Somalia to refrain from all acts of violence and respect their obligation under international human rights and humanitarian law. It explained that the resolution underlines that development and humanitarian assistance are essential to alleviate poverty and to promote a more peaceful, equitable and democratic society.

The resolution therefore calls on the international community to provide all assistance required to contribute to the reconstruction of institutions and to ensure unhindered access and security for humanitarian organisations and personnel. It further proposes to renew the mandate of the Independent Expert for one year. Egypt recalled that the renewal is in line with the expressed wish of the Somali Government. Finally, the draft resolution also requests OHCHR to strengthen its presence in Somalia. Egypt then made several oral revisions to the draft resolution and hoped that the resolution would enjoy the support of all the members of the Council.

In general comments before the vote, Canada underlined that the Independent Expert plays a vital role in focusing the attention on the situation in Somalia and advising on how the international community could best assist. It noted its concern with language in the operative paragraph regarding the role of the international community in ensuring all necessary steps for providing humanitarian assistance. It underlined its understanding that the State and non-state actors that are parties to the conflict have the primary responsibility for the safety and security of humanitarian organisations and personnel. It reminded all parties to the conflict of their obligations in this regard. Finally, Canada called on all relevant actors to cooperate with the Independent Expert.

Somalia, as a concerned country, ‘kindly urged its brotherly African countries’ to fulfil their pledges by deploying the remaining peacekeepers. It also called on all States to support a comprehensive UN peace-keeping force. It further appealed to the international community and relevant organisations to provide immediate relief supplies to the population in light of the severe drought in the country. It made an urgent appeal to Governments to provide the necessary assistance, including clean water, basic health care and basic development infrastructure. It welcomed the draft resolution and thanked the co-sponsors.

The resolution was adopted without a vote.

²⁷ India was referring to paragraph 2c that reads ‘the Scourges of anti-Semitism, Christianophobia, Islamophobia in various parts of the world and racist and violent movements based on racism and discriminatory ideas directed at Arab, Muslim, Christian, Jewish persons and others.’

²⁸ A/HRC/7/L.19.

Japan, in an explanation of vote after the vote, stated that while it supported the resolution, the UN's resources were not inexhaustible. It underlined that if a resolution involves budgetary implications, member States should have sufficient time before a decision is taken to consider them.

Decisions adopted by vote

Mandate of the Working Group on the use of mercenaries

Cuba as the main sponsor introduced the draft resolution entitled 'mandate of 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-determination'. It explained that the draft resolution aims at renewing the mandate of the Working Group for three years.²⁹ The Working Group will be mandated to 'elaborate and present concrete proposals on possible complementary and new standards aimed at filling existing gaps' in particular with regard to the right of peoples to self-determination. The draft resolution allows the Working Group to hold three annual sessions of five days each, which is one session more than the previous mandate of the Working Group included.

Slovenia (on behalf of the EU), in an explanation of vote before the vote, reiterated its well-known position. While expressing concern about the use of mercenaries in general, Slovenia (on behalf of the EU) said the problem of mercenaries was not a 'human rights problem', and accordingly could be better dealt with by other bodies than the Council.

Sri Lanka, in an explanation of vote before the vote, said that it supported the draft.

The draft resolution was adopted by a vote of 31 in favour, 11 against and 2 abstentions.³⁰

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

The Council's consideration of the last draft resolution of the 7th session led to quite some suspense. President Costea explained that in addition to the draft resolution A/HRC/7/L.24, an amendment to the draft had been tabled. Prior to considering the draft text on the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Council suspended its meeting until 6 p.m. The Council should have closed the 7th session by that time, but President Costea had negotiated with the conference services additional time of 30 minutes to finish action on the last draft of the day and the amendment thereto.

Canada as the main sponsor of the draft resolution entitled 'mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression' introduced the text. It stressed that the right to freedom of opinion and expression is 'at the core of human individuality and dignity, interdependent with all human rights and the foundation of any democratic society'. Canada expressed its concern that new challenges to the exercise of this right have emerged and that violations continue to occur with worrying frequency. The draft resolution, Canada explained, was a short procedural resolution aimed at renewing the mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and was 'streamlined in the context of the review, rationalisation and improvement' of all special procedures mandates.

²⁹ A/HRC/7/L.7/Rev.1, 26 March 2008.

³⁰ Switzerland and Ukraine abstained; Bosnia and Herzegovina, Canada, Germany, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, United Kingdom voted against. Gabon was not present in the room.

Canada had held five informal consultations on the draft, and numerous bilateral consultations. It thanked all that ‘engaged constructively to renew and improve this mandate’, including in the last minute negotiations.

Pakistan (on behalf of the OIC) introduced the amendment to the resolution.³¹ It claimed that it ‘attached great importance to the right to freedom of opinion and expression’ but reminded that every right carries a responsibility with it and should not be abused. It said that the reprinting of insulting caricatures, the use of coloured sheep in political messages and the production of documentaries insulting Islam constituted such abuses, and should not be accepted. Accordingly, the amendment mandates the Special Rapporteur to ‘report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination’.³² Pakistan said the amendment would make the mandate more balanced and more responsive to those new trends.

President Costea explained that the Council would first vote on the amendment, and then on the draft resolution (with or without the amendment, depending on the outcome of the first vote). It seemed that the voting on both the amendment and the draft itself were intended to be part of the same voting procedure – a point that would have important procedural implications.

A number of States explained their vote on the amendment. Most of them argued against the proposed amendment, saying it would shift the focus of the mandate to the limitations to the right to freedom of expression rather than on the protection of that right.³³ Canada, while agreeing that religious and racial discrimination are concerns for the Council and for special procedures, clearly rejected the amendment. It stressed that religious and racial discrimination should fall within the mandates of the respective special procedures, rather than within the mandate of the Special Rapporteur on the right to freedom of opinion and expression. Canada argued that adding those areas to the mandate of the Special Rapporteur would lead to duplication, which should be avoided through the review of mandates. Further, Canada said that the mandate of the Special Rapporteur on freedom of expression was intended to protect the right to freedom of expression, while the amendment would ‘turn the mandate on its head’ by asking the Special Rapporteur to ‘police’ freedom of expression. Finally, Canada pointed out that the draft resolution already acknowledges the permissible limitations of the right to freedom of expression, and that the renewal of mandates should not be used to renegotiate international human rights standards.

Slovenia (on behalf of the EU) agreed that the limitations to freedom of expression are well established in international law. Brazil, in addition, criticised that the amendment narrowly conceives the limits to freedom of expression. By focusing on restrictions to freedom of expression based on racial or religious discrimination only, it omits other dimensions of the limitations already established by the *International Covenant on Civil and Political Rights* (ICCPR).

Sri Lanka supported the amendment, saying it did so ‘not because it belongs to the Islamic world or the African continent’, but because it ‘rounds off’ the mandate of the Special Rapporteur.

Canada called for a vote on the amendment, and said it would also call for a vote on the draft resolution if the amendment were to be adopted.

³¹ A/HRC/7/L.39, 25 March 2008. It was submitted by Egypt (on behalf of the Group of African States), Pakistan (on behalf of the Organisation of the Islamic Conference) and Palestine (on behalf of the Group of Arab States).

³² The amendment adds the following paragraph to the draft resolution: [The tasks of the Special Rapporteur will be] ‘To report on instances in which the abuse of the right of freedom of expression constitutes an act of racial or religious discrimination, taking into account articles 19 (3) and 20 of the International Covenant on Civil and Political Rights, and general comment No. 15 of the Committee on the Elimination of All Forms of Racial Discrimination, which stipulates that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the freedom of opinion and expression’.

³³ Canada, Slovenia (on behalf of the EU), India, Brazil.

The amendment was adopted with 27 votes in favour, 17 against and three abstentions.³⁴

Following the adoption of the amendment, almost all co-sponsors of the draft resolutions regretted the adoption of the amendment for similar reasons as those outlined against the amendment. Almost all co-sponsors withdrew their co-sponsorship.³⁵ Some said they would abstain on the vote on the draft resolution itself, although they supported the mandate of the Special Rapporteur in principle.³⁶ Slovenia (on behalf of the EU) said the Council should be careful not to endorse limitations on freedom of expression beyond those already established by international law.

From that moment, events in the Council took a somewhat surprising turn, and some spectators were reminded of the turbulent times around the adoption of the institution-building text in June 2007. After most of the original co-sponsors of the draft resolution had withdrawn their co-sponsorship, Cuba in a surprising move announced that it would be happy to co-sponsor the draft, if it could introduce an oral amendment.³⁷ Canada objected with reference to Rule 120 of the Council's rules of procedure, arguing that all amendments had to be tabled 24 hours in advance.³⁸ President Costea, using the wide discretionary power conferred to him by Rule 120, accepted the Cuban amendment and invited explanations of vote before the vote on the oral amendment. The Council then immediately voted on the second, oral, amendment to the draft resolution. It was also accepted with 29 votes in favour, 15 against and three abstentions.³⁹

Faced with this obviously unexpected situation of a vote on a draft resolution that had been amended twice against the original co-sponsor's will, Slovenia (on behalf of the EU) raised a point of order, asking for a short suspension of the meeting.⁴⁰ Egypt, raising its own point of order, argued that Rule 128 prohibits any such suspension once voting has started.⁴¹ President Costea, under clear time pressure and not disguising his own confusion in relation to the procedure to follow, agreed with the Egyptian interpretation. He turned the request for suspension down, and asked members to vote on the doubly amended draft resolution. It was adopted with 32 votes in favour and 15 abstentions.⁴²

³⁴ Bosnia and Herzegovina, Brazil, Canada, France, Germany, Guatemala, India, Italy, Mexico, Netherlands, Peru, Romania, Slovenia, Switzerland, Ukraine, UK, Uruguay voted against. Bolivia, Japan and Republic of Korea abstained.

³⁵ India, Switzerland, Slovenia (on behalf of the EU and aligned States, Bolivia, United Kingdom (on behalf of Australia, New Zealand, US, Monaco and Andorra), Guatemala, Brazil.

³⁶ Switzerland, Slovenia (on behalf of the EU), Canada.

³⁷ The Cuban amendment added a line to preambular paragraph 10, so that it would read 'Recognizing the importance of all forms of the media, including the print media, radio, television and the Internet, in the exercise, promotion and protection of the right to freedom of opinion and expression, **and the importance for all forms of media to report and to deliver information in a fair and impartial manner**' (new text in bold). China supported the oral amendment.

³⁸ Rule 120: 'Proposals and amendments shall normally be submitted in writing to the Secretary-General, who shall circulate copies to the delegations. As a general rule, no proposal shall be discussed or put to the vote at any meeting of the committee unless copies of it have been circulated to all delegations not later than the day preceding the meeting. The Chairman may, however, permit the discussion and consideration of amendments, or of motions as to procedure, even though such amendments and motions have not been circulated or have only been circulated the same day.'

³⁹ Bosnia and Herzegovina, Canada, France, Germany, Italy, Japan, Mexico, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, UK, Uruguay voted against. Guatemala, Peru, and Philippines abstained.

⁴⁰ Rule 118 of the Council's rules of procedure (the Council applies the rules of procedure of the General Assembly) says that 'a representative may move the suspension or adjournment of a meeting. Such motions shall not be debated but shall immediately be put to a vote (...)'

⁴¹ Rule 128: 'After the Chairman has announced the beginning of voting, no representative shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. (...)'. Rule 128 does not clarify if the 'beginning of voting' designates the beginning of voting on individual amendments, or the entire voting process on a draft resolution and all its amendments. It is not clear if the voting had already begun at the moment when Cuba introduced its additional, substantive, amendment.

⁴² Bosnia and Herzegovina, Canada, France, Germany, Guatemala, Italy, Japan, Netherlands, Philippines, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine, and UK, abstained.

Human rights in the occupied Syrian Golan

Pakistan (on behalf of the OIC members of the Council) introduced the draft entitled ‘human rights in the occupied Syrian Golan’.⁴³ It pointed out that the operative part of the draft focuses on the dire situation of the people of the Golan suffering from Israeli occupation. It also calls on Israel to stop imposing citizenship and identity cards on Syrian citizens. The draft also aims at allowing the population of the occupied Syrian Golan to visit their families in Syria under the supervision of the International Committee of the Red Cross (ICRC). Finally, Pakistan (on behalf of the OIC) introduced an oral revision to the draft.⁴⁴

Israel, as a concerned country, explained that it came into possession of the Golan in 1967 after sustained military attacks on Israel emanating from that territory. It disputed the allegation that people were displaced in the process. Israel stressed that the people living in the Golan enjoy all civil, political and economic, social and cultural rights, and claimed that the people of Syria did not enjoy the same liberties. In addition, it said that the ICRC was already allowed to visit detainees in Israel.

Syria, as the second concerned country, said that despite the condemnations by various international bodies, Israel continued to occupy the Golan and violate the civil and political rights of the Syrians living there. It called on the Council to affirm that such violations could not go unpunished, and to urge Israel to respect its international commitments and international humanitarian law.

Slovenia (on behalf of the EU members of the Council) in an explanation of vote before the vote regretted that it could not support the draft. It claimed that the allegations in paragraphs five and six of the draft were not substantiated. For that reason, it called for a vote on the draft.

Canada, in an explanation of vote before the vote, assured the Council that it recognises that the Golan heights are occupied by Israel, and that accordingly it also recognises that the Golan heights are not permanently Israeli territory. However, it felt that the draft resolution would not contribute to finding a peaceful solution to the problem.

The draft resolution was adopted by 32 votes in favour, 1 against and 14 abstentions.⁴⁵

From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance

Egypt, as the main sponsor, introduced the draft entitled ‘from rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance’ on behalf of the African Group.⁴⁶ It noted that there was still insufficient political will to effectively combat racism. Nevertheless, it pointed out, the draft recognises all positive developments, including the recent formal apology by the Australian Government to indigenous Australians. In addition, the draft resolution urges other Governments to issue similar apologies to all victims of ‘past and historic injustices’. Egypt introduced a large number of oral revisions to the text, which it described as a result of an effort to garner consensus.

Slovenia (on behalf of the EU members of the Council) stressed that the *Durban Declaration and Programme of Action* (the Durban Declaration) underlined that racism should be fought in all parts of the world, and it

⁴³ A/HRC/7/L.2, 27 March 2007.

⁴⁴ Paragraph 5 of the draft was amended. After ‘22 years’, the text is amended to read ‘22 years, and calls on Israel to treat them in conformity with international humanitarian law.’

⁴⁵ Canada voted against; Bosnia and Herzegovina, Cameroon, France, Germany, Guatemala, Italy, Japan, Netherlands, Republic of Korea, Romania, Slovenia, Switzerland, Ukraine and UK abstained.

⁴⁶ A/HRC/7/L.14, 20 March 2008.

expressed its readiness to fight the phenomena at national, regional and international levels. At the same time, it regretted that the resolution again focuses selectively on some parts of the *Durban Declaration*.⁴⁷ Further, Slovenia (on behalf of the EU members of the Council) cautioned that any overlap in the work of the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action and the Preparatory Committee for the Durban Review Conference would be detrimental. It also underlined that it consistently opposes attempt at defining the programme of work of the Intergovernmental Working Group. It called for a vote and said it would abstain.

The resolution was adopted by a vote with 34 votes in favour, zero against and 13 abstentions.⁴⁸

Brazil, in an explanation of vote after the vote, explained its vote in favour of the resolution. While it recognised that the text could be improved, it said that substantial positive changes were contained in the text. It stressed that the current time was a crucial moment in the implementation of the *Durban Declaration*, and it agreed with the need for more political will for progress in that regard. It concluded by expressing its hope that the resolution just adopted could positively contribute to that.

General comments on item 4

The President invited member States to make general comments after the adoption of the last resolution under Item 4. Pakistan made a general comment after the vote on the mandate of the Special Rapporteur on the situation of human rights in the **Democratic Peoples Republic of Korea (DPRK)**. It stated that it had consistently opposed country resolutions as counter productive. It asserted that the UPR must be used in universal manner. It stated that the mandate was dysfunctional and that the Council should consider discontinuing it.

Malaysia stated that it had also voted against the mandate on the DPRK. The Council should not take a selective and politicised approach through the adoption of country resolutions, as this was counter-productive. It recalled that this practice had discredited the former Commission. It stated that the UPR offers the opportunity of a fresh start and constituted another main reason that country resolutions should be discarded.

Egypt reiterated its principled position of opposing country mandates on States in commenting on the resolution renewing the mandate on the DPRK. It asserted that promotion and protection of human rights through cooperation and dialogue are the fundamental principles of the Council. It had therefore voted against the resolution.

Canada explained its vote after the vote on the resolution renewing the mandate of the Special Rapporteur on the situation of human rights in **Myanmar**. It stated that it was deeply concerned about continued widespread human rights violations in the country. Many remained in detention and were criminally charged for their views. It stated that it strongly supports the special procedures and country mandates as vital mechanism for the protection and promotion of human rights. It stated that the Special Rapporteur was essential to bring attention to continuing serious human rights violations and it was therefore satisfied with the renewal.

General comment under item 3

A number of States explained their vote on draft resolution A/HRC/7/L.15, entitled '**combating defamation of religions**' adopted on the previous day.⁴⁹ Brazil said it had abstained on the resolution, because the text

⁴⁷ The Council adopted a resolution with the exact same title and similar content at its 6th session.

⁴⁸ Bosnia-Herzegovina, Canada, Germany, France, Italy, Republic of Korea, Romania, Slovenia, Netherlands, Switzerland, Ukraine, United Kingdom and Japan abstained.

⁴⁹ See ISHR's *Daily Update* of 27 March 2008, available at www.ishr.ch.

had ‘conceptual difficulties’. It added that the right to freedom of religion or belief does not protect any particular religion, but rather the equal right of everyone to freely exercise his or her belief. Brazil felt that the existing framework of international law protects all human beings from incitement to hatred. Finally, it reaffirmed its commitment to the right to freedom of religion and to the promotion of intercultural dialogue to protect everyone from any kind of discrimination.

Nigeria explained its vote in favour of the resolution. It stressed that religious freedom in Nigeria was enshrined in the national constitution. It said it disapproves of any exercise of freedom of expression to defame any religious practice. Accordingly, it stressed that the freedoms contained in the UDHR must be enjoyed while respecting the rights of others. Nigeria concluded its statement by ‘stating the obvious’ and stressed ‘that there will never be peace on earth, unless we accept that there is only one god’.

Slovenia (on behalf of the EU) explained its negative vote on draft resolution A/HRC/7/L.12, renewing the mandate of the Independent Expert on human rights and **international solidarity**.⁵⁰ It reiterated its well-known position that it has ‘conceptual doubts’ that the concept of international solidarity can be translated into human rights language.

⁵⁰ See ISHR’s *Daily Update* of 27 March 2008, available at www.ishr.ch.

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