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REPORT ON THE REVIEW OF SPECIAL PROCEDURES

Background.....	5
Nomination and appointment	7
Review, rationalisation and harmonisation	10
Regulating the work of special procedures.....	15
Working methods	20
Cooperation by and with governments	23
Relationship with the Human Rights Council.....	25
Relation with other human rights mechanisms and actors.....	29
Support from the OHCHR and funding.....	33
Conclusion	33
Next steps.....	35

Overview

General Assembly *Resolution 60/251*, which created the Human Rights Council (the Council) provided that the Council would “assume ... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures...” The Council was, under the same Resolution, authorised to “review and, where necessary, improve and rationalize all mandates” with the requirement that this review be completed within one year of the Council holding its first session (by June 2007).¹ The Council adopted a Decision at its first session to establish an inter-sessional open-ended Working Group to “formulate concrete recommendations on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities in order to maintain a system of special procedures, expert advice and a complaint procedure”.²

¹ Para 7. For an overview of the main issues around the review of special procedures, see M. Abraham, *A New Chapter for Human Rights: A Handbook on Issues of Transition from the Commission of Human Rights to the Human Rights Council*, (ISHR and the Friedrich Ebert Stiftung, 2006), pp. 32 - 50 available at www.ishr.ch/handbook (download or browse Chapter 3).

² Council *Decision 2006/104*.

The Working Group on review of mechanisms and mandates (the Working Group) held its first set of meetings from 13 – 24 November 2006. The Working Group discussed the review of special procedures over nine half-day meetings in this period. The President of the Council appointed Ambassador Thomas Husak, the Permanent Representative of the Czech Republic, to act as the Facilitator for the discussions. The Working Group is open to participation by members of the Council, other States and observers and non-governmental organisations (NGOs) and national human rights institutions (NHRIs) with the required accreditation. The level of participation by States in the discussions on the review of special procedures was quite good, especially in comparison to discussions on the two other segments. Only a small number of NGOs made statements at the Working Group.

Ambassador Husak circulated a list of nine topics to facilitate the discussions at the Working Group. The list was reduced to eight topics because of the initial comments received from States and over the course of the nine meetings, various sub-topics were added or modified.³ The topics identified by the Facilitator covered a range of issues ranging from the method of selection and appointment; criteria for review and rationalisation of mandates; working methods of special procedures; cooperation by and with governments; relationship with the Council; and relationship with other human rights mechanisms and actors.

Though a number of proposals and comments were put forward, a broad division emerged in the views of States and NGOs. Some States and NGOs, in their comments across this range of topics, highlighted the importance of the system of special procedures and the need to preserve its essential features while focusing on ways to improve its functioning. For these States, the defining and strongest feature of the special procedures system was its independence. Many of these States put forward proposals to address the main issues that were impairing the functioning of special procedures, in particular on the lack of cooperation and follow-up by States.

Other States however articulated an agenda to define and control the working methods of special procedures. Many of these States wanted a greater say in the appointment of special procedures by changing the current system of appointment to one of direct elections of mandate holders by the Council. Some of these States appeared to equate special procedures with States and argued that obligations had been imposed in a one-sided manner on States and not on special procedures. Many of these States suggested setting up a relationship of greater supervision and ‘accountability’ of special procedures. They proposed that the Manual of operation of special procedures, which outlines their working methods, be developed by the Working Group and/or Council and that a code of conduct be set up to regulate their behaviour and functioning.

This report summarises the main proposals and areas of discussion and the positions taken by States, NGOs and representatives of special procedures on these proposals and issues. Very briefly, the main debates on each of the issues revolved around:

1. **Selection and appointment of mandate holders:** The major debate revolved around the relative merits of election of special procedure mandate holders directly by the Council versus the current system of appointment by the President of the Council. The African Group and a number of members of the Council⁴ argued in favour of modifying the current system of appointment to direct elections by the Council.
2. **Review, rationalisation and harmonisation of mandates:** A number of States expressed the view that there had been a proliferation of mandates leading to unnecessary duplication and that special procedure mandates must therefore be rationalised by the termination or merger of some mandates.⁵ Other States argued that overlaps were necessary because of the inter-related nature of human rights and many of them

³ Background documents such as the list of topics circulated by the Ambassador Husak, timetable for the Working Group sessions, submissions made by States and NGOs, oral statements made during the Working Group and in the informal consultations that preceded the Working Group meetings are available on the OHCHR extranet (fill out the form on the page to receive user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

⁴ Algeria, on behalf of the African Group, Pakistan, Bangladesh, China, Cuba, Egypt, Indonesia, Iran, Malaysia, the Philippines, Saudi Arabia, Singapore, and Tunisia.

⁵ Algeria (on behalf of the African Group), Brazil, Colombia, India, Iran, Pakistan, the Philippines, the USA.

thought it was more important to address the gaps in the system.⁶ Some States also asked that the Working Group to begin reviewing mandates individually even though no criteria had as yet been developed to carry out the review.⁷ No State identified any specific mandate that should be terminated or merged in their statements. Country mandates also came under attack with many States arguing that the system of country mandates should be ended, that country situations should only be addressed through the Universal Periodic Review (UPR) mechanism and for much stricter criteria for the creation of country mandates.⁸

3. **Regulating the work of special procedures:** Some States proposed that the revised draft Manual of special procedures, which outlines the working methods of special procedures, should be developed by or with the involvement of the Working Group and/or Council.⁹ Many of these States also called for a code of conduct that special procedures had to abide by which would cover criteria for admissibility of communications, guidelines for interaction with the media, country visits etc.¹⁰ Other States however thought it was most appropriate for the special procedures themselves to define their working methods in order to preserve their independence and expressed their opposition to the Working Group reviewing the draft Manual or to a code of conduct for special procedures.¹¹
4. **Working methods:** The need for a standardised format for communications, for mandate holders to check their sources of information carefully and to channel communications through the diplomatic mission in Geneva was raised by some States.¹² Some other States however focused on the need to improve submission of timely responses by States to communication and to ensure the protection of people who communicated with special procedures.¹³ A few States also discussed the importance of terms of reference for country visits, which they stressed should not be subject to negotiation¹⁴ though others took a contrary view on this issue.¹⁵
5. **Cooperation by and with governments:** Many States took up the issue of standing invitations to special procedures, with some States and NGOs arguing that all members of the Council should extend standing invitations and this should also be part of the criterion for candidature for the Council.¹⁶ A few States suggested that information about States' cooperation with special procedures should be made publicly available on the Office of the High Commissioner for Human Rights' (OHCHR) website and that the Council should develop procedures to deal with non-cooperation.¹⁷ As with other issues, some States focused on cooperation by special procedures with States asking that the performance of special procedures be reviewed and also that the special procedures move away from a naming and shaming culture.¹⁸
6. **Relationship with the Council:** Some States suggested that as the Council is meeting more frequently than the Commission, special procedures should be able to report more frequently to the Council.¹⁹ A few States and NGOs suggested that special procedures should be able to brief the Council on urgent matters

⁶ Finland (on behalf of the EU), Argentina, Belgium, Chile, Mexico, Norway, Peru, Switzerland, and the UK.

⁷ Cuba, Egypt and India.

⁸ Algeria (on behalf of the African Group), Bangladesh, Belarus, China, Cuba, India, Iran, the Democratic People's Republic of Korea, and the Indian Movement Tupac Amaru (an NGO).

⁹ Algeria (on behalf of the African Group), China, the Philippines, Bangladesh, Venezuela, Sri Lanka, Iran, Singapore, Pakistan, Egypt, and India.

¹⁰ Algeria (on behalf of the African Group), China, Colombia, Egypt, Indonesia, the Philippines, Singapore, Sri Lanka, Venezuela, and United States of America.

¹¹ Canada, Norway, Slovenia, and Switzerland.

¹² Algeria (on behalf of the African Group).

¹³ Finland (on behalf of the EU), Belgium, Canada, Chile, the Netherlands, and Switzerland.

¹⁴ Norway.

¹⁵ China and Iran.

¹⁶ Canada, Norway, Slovenia and ISHR.

¹⁷ Canada, Finland (on behalf of the EU), the Netherlands, Slovenia and New Zealand.

¹⁸ Algeria (on behalf of the African Group) and the Philippines.

¹⁹ Finland (on behalf of the EU), Belgium, Iran, Norway, Switzerland, and the USA.

and act as an early warning mechanism to trigger action on human rights emergencies.²⁰ Proposals were put forward to reviewing follow-up on the recommendations of special procedures by States.²¹ Other States focused on standardising reports by special procedures and argued that the regularity of access to the Council would be dependent on the agenda of the Council and subject to its approval.²² A few States again emphasised the need for a relationship of direct accountability.

7. **Relationship with other human rights mechanisms and actors:** Some States and NGOs suggested that the reports and recommendations of special procedures should be used for the UPR and this could also be a way of improving follow-up.²³ Some also suggested that special procedures be able to interact more closely with the UPR by making presentations and submitting additional information.²⁴ A few States and a representative of the special procedures suggested that special procedures interact more closely with the complaint procedure.²⁵ Other States however felt that there should be no direct contact between the special procedures, UPR and complaint procedure and it was up to the OHCHR to disseminate information produced by one source to the other.²⁶ Some States also emphasised the importance of the NGO interaction and contributions to the work of special procedures and the need to ensure the safety of NGOs who communicated with or met with special procedures.²⁷
8. **Support from OHCHR and funding:** A few States highlighted the need for the OHCHR to make qualified, full-time personnel, from different regional groups, available to support the special procedures. Some also emphasised the need for equal support to be given to mandate holders working on economic, social and cultural rights.²⁸ The issue of funding was also taken up with calls for greater transparency for special procedures to be funded from OHCHR's regular budget.²⁹

The Working Group did not make any decisions in its first set of meetings. What we saw were opening moves that are not necessarily indicative of final outcomes, as these initial positions will be further discussed and negotiated. Many of these opening moves have set out a 'negative reform agenda' that aims at limiting the independence and working methods of special procedures though some States have articulated a 'positive reform agenda' which tries to address the challenges and limitations faced by special procedures. It appeared from the initial discussions at the Working Group that the negative reform agenda has more support at the moment because these positions were often articulated on behalf of an entire regional group and with the support of members of the Council from other regions. It should be noted that not all members of the Council have expressed their views at the Working Group and the fact that statements are made on behalf of all members of a regional groups does not necessarily mean that all those States will vote or support the process at the final decision-making stage. However, the degree of actual support for some of the more negative proposals that have been put forward was tested when Algeria (on behalf of the African Group), at the resumed session of the Council, tabled a resolution asking the Working Group to review the Manual of special procedures and to draft a code of conduct. The Resolution,³⁰ which was put to vote was supported by all members of the Council belonging to the African Group, almost all Asian States, and surprisingly also by Brazil and Ecuador. This broad spectrum of support (30 members of the Council) raises concerns that the negative reform agenda does enjoy considerable support at the moment. It also calls for action from all stakeholders for advocacy and lobbying to counter this agenda and to push instead for proposals to strengthen the system of special procedures.

²⁰ Canada, Amnesty International and the UK.

²¹ Canada, Chile, Finland (on behalf of the EU), New Zealand, Switzerland

²² Algeria, China, Pakistan, and the Philippines.

²³ Argentina, Brazil, Canada, Chile, Finland (on behalf of the EU), Japan, Mexico, Switzerland, the USA, Amnesty International and Action Canada for Population and Development.

²⁴ Canada and Chile.

²⁵ Canada, Amnesty International and Mr Vitit Muntarbhorn.

²⁶ Algeria (on behalf of the African Group).

²⁷ Notably Canada and Norway.

²⁸ Algeria (on behalf of the African Group) and Bangladesh.

²⁹ Bangladesh and Switzerland.

³⁰ Council *Resolution 2/1*.

The next session of the Working Group runs from 5 – 16 February 2007. The Facilitator has prepared a non-paper to assist the discussions but there is no clear agenda yet for the discussions. There is a concern that States may insist on beginning an individual review of each special procedure mandate, even though criteria for the review have not yet been developed. If this occurs, NGO monitoring and advocacy will be extremely crucial both in Geneva and at national capitals.

Background

The former Commission on Human Rights (the Commission) set up various procedures and mechanisms that examine, monitor, and publicly report on human rights situations in specific countries or on specific human rights and issues. These procedures are all together referred to as the ‘special procedures’ of the Commission and there are currently 41 special procedures.³¹ Special procedures are at the very core of the UN human rights system. They represent one of the principal achievements of the Commission and are among the “most innovative, responsive and flexible tools of the human rights machinery”.³²

General Assembly *Resolution 60/251*, which created the Human Rights Council (the Council) provided that the Council would “assume ... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures...” The special procedures are therefore carried over to the Council, and the Resolution requires that the Council continue to maintain a system of special procedures. The Council was, under the same resolution, authorised to “review and, where necessary, improve and rationalize all mandates” with the requirement that this review be completed within one year of the Council holding its first session (by June 2007).³³

At its first session the Council adopted a decision³⁴ to establish an inter-sessional open-ended Working Group to “formulate concrete recommendations on the issue of reviewing and, where necessary, improving and rationalizing all mandates, mechanisms, functions and responsibilities in order to maintain a system of special procedures, expert advice and a complaint procedure”. The Working Group on the review of mechanisms and mandates (the Working Group) has therefore been authorised to review and make recommendations about all the mechanisms and mandates of the former Commission on Human Rights, including the special procedures, the Sub-Commission on the Promotion and Protection of Human Rights, and the 1503 procedure. The Decision also authorises the Working Group to meet for 20 days.

In the lead-up to the establishment of this Working Group, the Council held informal consultations to compile proposals and relevant information and experiences, and to facilitate open-ended discussions negotiations to begin within the Working Group. Three facilitators were appointed for discussions on the special procedures (Ambassador Thomas Husak, the Permanent Representative of the Czech Republic), Sub-Commission/system of expert advice (Ambassador Mousa Burayzat, the Permanent Representative of Jordan) and the 1503 procedure/complaint procedure (Ambassador Blaise Godet, the Ambassador of Switzerland).

The Working Group held its first round of meetings from 13 – 24 November. The review of special procedures was discussed over nine half-day meetings in this period.³⁵

³¹ For more information on the special procedures visit www.ohchr.org/english/bodies/chr/special/index.htm. For a factsheet on each special procedure mandate and a summary of their most recent reports see www.ishr.ch/hrm/council/SPs/specialprocedures.htm.

³² Amnesty International, *United Nations Special Procedures: Building on a Cornerstone of Human Rights Protection*, (Amnesty International, 2005), p. 5.

³³ For an overview of the main issues around the review of special procedures, see M. Abraham, *A New Chapter for Human Rights: A Handbook on Issues of Transition from the Commission of Human Rights to the Human Rights Council*, (ISHR and the Friedrich Ebert Stiftung, 2006), pp. 32 – 50 available at www.ishr.ch/handbook (download or browse Chapter 3).

³⁴ Council *Decision 2006/104*.

³⁵ The Working Group discussed the review of special procedures all day on the 13 and 14 November, in the afternoon on 16, 17 and 18 November and in the morning on 22 and 24 November 2007.

Topics for discussion and structure of the report

Ambassador Husak had circulated a list of nine topics, each with numerous sub-points, to be discussed by the Working Group.³⁶ He suggested that the Working Group spend half a day discussing each topic but stated that the sub-points he had identified were not exhaustive. Some States took the view that they should be able to raise any topics that they wished to and should not be constrained to those listed by the Facilitator.³⁷ Cuba asked for the Working Group to discuss the ninth topic of 'review, rationalisation and harmonization of mandates – general criteria' first because it was their view that the review of individual mandates was the most urgent task before the Working Group. The Facilitator explained that he would include all issues raised during the debate in his progress report at the end of the session. Some States welcomed the framework provided by Ambassador Husak³⁸ and stated that broad support had been given to this paper during prior consultations.³⁹ The Facilitator modified the list based on Cuba's request⁴⁰ to only eight topics of discussion and over the course of the Working Group's meetings, various new sub-topics were identified or existing sub-topics modified based on input from States. The following eight broad topics were discussed over nine meetings of the Working Group:

1. Selection and appointment of mandate-holders;
2. Review, rationalisation and harmonisation of mandates: general criteria;
3. Achieving coherence and proper coordination between the mandates;
4. Relationship with the Human Rights Council;
5. Cooperation by and with governments;
6. Relation between the mandate-holders and with the other human rights mechanisms;
7. Organisation and logistics - support to the special procedures by the OHCHR;
8. Other issues relating to working methods.

Though the topics were divided up across the nine meetings, there was considerable overlap in the discussions with various States bringing up the same or related issues across the topics. This report therefore does not provide a chronological narrative of the discussions or strictly adhere to the list of topics but is instead organised around the main themes that emerged from the discussions in all the meetings. It tries to describe the main proposals and areas of discussion and present and compile State positions on these proposals and issues. While every effort has been taken to compile the positions of States as comprehensively as possible, these may not be exhaustive. For a summary of the discussions organised by the list of topics, please see the *Summary of Discussions Prepared by the Secretariat*.⁴¹ This report is instead divided up into the following sections:

1. Nomination and appointment: including methods of selection and appointment and criteria for selection;
2. Review, rationalisation and harmonisation: including review of individual mandates; gaps and overlaps; balance between economic, social and cultural rights and civil and political rights; criteria for new mandates and periodic review of mandates; country-specific mandates; and standardisation of titles;
3. Regulating the work of special procedures: including revised Manual of special procedures; code of conduct; and developments at the resumed second session of the Council (this sub-sections focuses on the adoption of a resolution on the code of conduct and Manual at the second session of the Council, a few days after the Working Group's meeting concluded);

³⁶ Background documents such as the list of topics circulated by the Ambassador Husak, timetable for the Working Group sessions, submissions made by States and NGOs, oral statements made during the Working Group and in the informal consultations that preceded the Working Group meetings are available on the OHCHR extranet (fill out the form on the page to receive user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

³⁷ Algeria, on behalf of the African Group.

³⁸ Switzerland, Norway and United Kingdom.

³⁹ Norway.

⁴⁰ He circulated a revised list of topics with only eight topics of discussion, as it merged topics two and nine into the general heading of 'review, rationalization and harmonization of mandates – general criteria'.

⁴¹ A/HRC/3/CRP. 2, (30 November 2006).

4. Working methods: including urgent appeals and communications; sources of information; country visits/missions; interaction with the media; and coordination and cooperation between special procedures;
5. Cooperation by and with governments: including standing invitations; follow-up to recommendations; and evaluation of cooperation and responses to non-cooperation;
6. Relationship with the Human Rights Council: including format, structure and timeliness of reports; frequency of consideration of reports; interactive dialogues; regular access to the Council and updates; follow-up to recommendations; and guiding role of the Council;
7. Relationship with other human rights mechanisms and actors: including the Universal Periodic Review mechanism; future complaint procedure; expert advisory body; treaty bodies; UN country teams; interaction with NGOs; and other bodies;
8. Support from OHCHR and funding.

Participants

The Working Group is open to members of the Council, other States and observers, NGOs who have Economic and Social Council (ECOSOC) status, and national human rights institutions (NHRIs) who have accreditation. The level of participation in the discussions on the review of special procedures was quite good, especially in comparison to discussions on the two other segments. A number of Council members participated in the Working Group as well as other States and observers. Though some NGOs participated in the meetings, only a small number of NGOs made statements at the Working Group. No representatives of NHRIs spoke at the Working Group.

Representatives of the Coordination Committee of Special Procedures and three other special procedure mandate holders participated in discussions at the Working Group.⁴²

Nomination and appointment

The main issues discussed under this topic were the method of selection and appointment of mandate holders, criteria for selection and the question of term-limits. The major debate revolved around the relative merits of election of special procedure mandate holders directly by the Council versus the current system of appointment by the President of the Council. States that spoke in favour of elections⁴³ described this as an issue of democracy and also that it was essential for guaranteeing the credibility of mandate holders. Other States spoke out against elections and in favour of appointment, arguing that elections would not guarantee independence and expertise.⁴⁴ Some States and NGOs also argued for more transparency in relation to the qualifications of candidates⁴⁵ and asked for a better screening procedure to ensure that candidates met the criteria for each mandate.⁴⁶

Methods of selection and appointment

Several States suggested the mandate holders should be nominated by regional groups and elected by the members of the Council.⁴⁷ Some highlighted that this method of appointment was successfully used for treaty

⁴² Mr Vitit Muntarbhorn, the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea and Chairperson of the Coordination Committee; Ms Leila Zerrougui, Chairperson of the Working Group on Arbitrary Detention and member of the Coordination Committee; Mr Santiago Corcuera, the Chairperson of the Working Group on Enforced Disappearances; Mr Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Mr Louis Joinet, the Independent Expert on the situation of human rights in Haiti.

⁴³ Algeria, on behalf of the African Group, Pakistan, Bangladesh, China, Cuba, Egypt, Indonesia, Iran, Malaysia, the Philippines, Saudi Arabia, Singapore, and Tunisia.

⁴⁴ Australia, Canada, Chile, Finland, on behalf of the European Union (EU), Mexico, Norway, Republic of Korea, Slovenia, Switzerland and United Kingdom. The Russian Federation also expressed its preference for the current system of appointment.

⁴⁵ Republic of Korea.

⁴⁶ Chile, Norway and Amnesty International.

⁴⁷ Algeria (on behalf of the African Group), Pakistan, Bangladesh, China, Cuba, Egypt, Indonesia, Iran, Malaysia, the Philippines, Saudi Arabia, Singapore, and Tunisia.

bodies⁴⁸ while others stated that this would reflect democratic values and would also result in greater credibility for mandate holders.⁴⁹ Amnesty International disagreed that elections were the best method for selection of mandate holders and stated that it was not clear how elections would ensure the most appropriate expert for each mandate and at the same time a regional, legal and gender balance. They stated that the treaty body model of election was not appropriate⁵⁰ as it applied to bodies of between ten and 23 persons who were collectively responsible for the mandate of the Committee while in the case of special procedures, there was usually one person responsible for each mandate. Switzerland pointed to the Committee on Migrant Workers as an example of a body for which elections did not guarantee independence, as 50% of the members are representatives of States. Human Right Watch also pointed out that a fair percentage of experts who were elected to treaty bodies had direct links to governments. Chile drew an analogy between special procedures and prosecutors and judges, who were not elected because election was not the best method to guarantee expertise and independence.

Several other States⁵¹ and Amnesty International suggested continuing the present procedure of appointment by the President of the Council in consultation with the bureau and regional groups. Many of these States suggested that the President should select candidates from a roster of suitable candidates to be established by the OHCHR, which would have to be regularly updated. States, NGOs and, in Norway's view, even individuals could suggest potential candidates for the roster. Chile, Norway and Amnesty International supported the High Commissioner for Human Rights' (the High Commissioner) proposal of setting up an advisory panel, made up representatives from States, OHCHR and NGOs, which would develop standardised profiles for each mandate, outlining the requirements of the post in detail and assessing potential candidates against these criteria. The Republic of Korea suggested that a curriculum vitae of potential candidates should be made available on the Internet. Japan highlighted the need for greater consultation with States in the appointment procedure. Singapore also stressed the need for this, if it was not possible to agree to adopt election as the method of selection

Finland, on behalf of the European Union (EU), Norway and the United Kingdom took the view that the best way to ensure independence and expertise would be for the High Commissioner for Human Rights to appoint mandate holders. Brazil suggested a mixed procedure where the President of the Council after consultation with regional groups should nominate five or six candidates for each position from the roster, followed by elections by the Council.

Ambassador Husak pointed out that there was a general agreement on improving criteria for selection and retaining independence. He stated that there was also convergence of views on term limits and on the need for an advisory panel to review candidates. He stated that the main area of divergence amongst States was on election versus appointment as the method of selection of mandate holders. Algeria challenged the conclusion that there was convergence of views on the need for an advisory panel to review candidates and suggested keeping this as an area where views were diverging. The Facilitator revisited this topic in the last meeting of the Working Group and suggested a compromise based on the Brazilian proposal: appointment of mandate holders by the President or High Commissioner, after the screening by the advisory panel, and conditional upon the 'approval' of the Council, leaving the Council the leeway to call for elections if they so desired.

While various States welcomed the Facilitator's attempt to encourage a compromise, most of them did not agree with his proposal and reiterated the positions that they had previously taken on appointment or elections.⁵²

⁴⁸ Singapore.

⁴⁹ Algeria, on behalf of the African Group.

⁵⁰ This view was supported by Switzerland.

⁵¹ Australia, Canada, Chile, Mexico, Republic of Korea, Russian Federation, Slovenia and Switzerland.

⁵² Algeria, Bangladesh, Cuba, Iran made statements reiterating their support for elections. Argentina, Belgium, Canada, Finland (on behalf of the EU), the USA stressed their support for appointments as a better system. Poland suggested appointment based on nominations by the High Commissioner for Human Rights from a roster of experts.

Pakistan recognised the importance of the question but thought that the Facilitators 'hybrid model' would further confuse the situation, rather than clarify it. China stressed that the regional groups should be allowed to propose candidates for the election, and not only the advisory panel. Belgium also stated that it did not see the 'hybrid model' as a compromise. They stressed that arguments about democracy were not appropriate because the aim was not to set up a representative system like a Parliament, which reflected different ideas but an individual who was selected for their competence.⁵³ Chile stated that they preferred the current system of appointment but it could be improved further. They thought one interesting idea they had come across was to hold hearing for candidates, to determine the calibre of the candidate and assess if she/he has a personal vision of the mandate.⁵⁴ The Russian Federation stated that there was an imbalance in the system, with a large number of experts belonging to Western countries that needed to be addressed.⁵⁵

Brazil defended the hybrid approach, by pointing out that such an approach could satisfy the technical criteria of the 'appointment camp' while providing greater transparency.

India stressed its support for elections as the best way to ensure the direct accountability of mandate holders to the Council. They however expressed a willingness to look at the Facilitator's proposal of nomination by the President on the basis of recommendations of an advisory panel composed of representative of member States of the Council. They also wanted more discussion on how such an advisory panel would be constituted and what would be the process of screening, short listing, and final selection. A representative of the OHCHR said that the Secretariat had been asked after the Commission on Human Rights' reform of 2000 to establish a roster of experts. They did not however have a mandate to screen candidates and merely compiled the list. He pointed to an innovation by the Indonesian Ambassador who interviewed candidates for special procedure mandates when he was the Chairperson of the Commission from 2005 – 2006. He stressed the importance of having a pool of high level candidates identified thorough screening in a professional manner. In his view, this would take the pressure off the appointment or election divide. Norway highlighted that the divide might appear deeper than it was, but at the same time it was oversimplified. There was a problem of quality of the roster but these problems did not reflect an east-west or north-south divide. They thought that certain issues needed to be addressed, regardless of which method of selection was chosen at the end.

Mr Joinet, the Independent Expert on the situation of human rights in Haiti, stated that in his view competence was even more important than independence. He proposed an 'Evaluation Committee', chaired by the High Commissioner, comprised of former special procedures, academics, NGO representatives and not more than one third of the Committee should be made up of States. This committee would identify a list of three candidates who had at least two languages and sufficient experience and knowledge. Any expert for any mandate would be selected from such a list. Switzerland asked Mr Joinet to clarify what the exact mandate and terms of reference of the committee would be. Egypt expressed concern about the idea of NGO representatives on such a pre-screening mechanism. They were also worried that if the High Commissioner appointed mandates she would also have the authority to discuss mandate holders and they thought that it was important that the special rapporteurs be responsible to member States.⁵⁶

Mr Joinet responded that the aim was to improve the system. There must be broad terms of reference for these experts, basic knowledge of UN system, basic knowledge of human rights, and at least two languages. In relation to the dismissal of mandate holders, he stated that the only way to dismiss a special rapporteur is to end their mandate or wait until it ends as any other procedure could undermine their independence.

Criteria for selection

Most of the States who addressed this issue highlighted the need for independence, impartiality and expertise. Some highlighted the need for independence from all pressure groups. A number of States asked that in

⁵³ This was supported by Argentina.

⁵⁴ This was also supported by Mr Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

⁵⁵ This was supported by Cuba.

⁵⁶ This was supported by Algeria.

addition to equitable geographical representation and representation of different legal systems, mandate holder should also represent different cultures,⁵⁷ religions,⁵⁸ and there should be a gender balance.⁵⁹ Amnesty International suggested that the proposed advisory panel could also seek to broaden the list of candidates to ensure more gender balance and the widest possible geographical representation. Cuba called for rotation of mandates between the different regional groups⁶⁰ and said that the Special Rapporteur on Torture had always been selected from one regional group.

Most States and NGOs that addressed the issue of term limits agreed that terms should be for three years with the possibility of renewal for an additional term.⁶¹ Mr Joinet, the Independent Expert on the situation of human rights in Haiti, suggested that the minimum term of a mandate holder should be six years as the mandate holder often took one or two years to reach their full level of effectiveness. Malaysia, the Russian Federation and the United Kingdom stated that no individual should hold more than one mandate within the UN human rights system at a time. Ambassador Husak asked for a clarification on this issue in a later meeting of the Working Group. He requested States to clarify what would be included within the scope of this restriction. The Russian Federation stated that experts should only hold one mandate in the three main mechanisms (expert advisory body, treaty bodies, special procedures). Canada additionally suggested mandate holders should also not hold any mandates created by the General Assembly at the same time.

Review, rationalisation and harmonisation

A wide range of issues were discussed under this heading, including general principles/criteria to guide the review process, priority areas of mandates, unification of terminology, evaluation of gaps and views on the need for and priority areas for country and thematic mandates. At the core of the debate however lay differences in views about the need for country mandates and also on how to address overlaps, and what some viewed as proliferation of mandates. There were fundamental differences in views about what the review process should focus on. Some States emphasised the need for the review process to preserve the independence of special procedures, strengthen their functioning and provide for increased levels of human rights protection.⁶² Others however saw the priority areas in the discussion of the review of mandates as being addressing the ‘proliferation’ of mandates, rationalisation of mandates to avoid duplication and selectivity, and ensuring greater ‘accountability’ of mandate holders towards the Council.⁶³ Some States also pressed for or indicated their willingness for the Working Group to begin the review of individual mandates.⁶⁴

Review of Individual Mandates

Cuba stated, in the very first meeting of the Working Group, that the review of individual mandates was the most urgent task before the Working Group. India also stated that, in their view, there was no alternative to reviewing mandates individually, one by one, taking also into account the broader picture. In the context of the discussion of identifying overlaps and gaps, Egypt also stated that this would be part of reviewing individual mandates and they were happy to start with that.

Gaps and overlaps

⁵⁷ Bangladesh, Cuba, Japan, Malaysia, Pakistan, Russian Federation, and Iran.

⁵⁸ Cuba and Iran.

⁵⁹ Amnesty International, Argentina, Ecuador, Malaysia, Norway, Russian Federation, Switzerland and United Kingdom.

⁶⁰ This was supported by Ecuador and the Indian Movement Tupac Amaru.

⁶¹ Bangladesh, Brazil, Chile, Ecuador, Indonesia, Mexico, Pakistan, Republic of Korea, Saudi Arabia, Switzerland, United Kingdom and United States of America.

⁶² Finland (on behalf of the EU), Argentina, Belgium, Chile, Mexico, Norway, Peru, Switzerland, and the UK.

⁶³ Algeria (on behalf of the African Group), Colombia, India, Iran, Pakistan, and The Philippines.

⁶⁴ Cuba, Egypt and India.

India stated that the proliferation of mandates had necessitated the review process. They thought that unnecessary duplication must be avoided by the termination or merger of some mandates. Algeria (on behalf of the African Group) stated that all special procedures should be rationalised, by avoiding or eliminating overlaps and duplication between the different mandates whenever it was possible and necessary. Pakistan suggested clustering thematic mandates. This was supported by Algeria who thought clustering would allow the mandates to address the same issues but with more manpower, and by the Philippines. In this and subsequent discussions however no State identified any specific mandate that should be terminated or merged. Algeria (on behalf of the African Group) did however list a number of mandates that the African Group was particularly attached to.⁶⁵

Colombia thought that there was duplication in the work of special procedures⁶⁶ and questioned whether there was a need for a rapporteur on an issue that was already being examined by a treaty body or a working group. They also questioned whether it was desirable to have multiple special procedures taking up the situation in a particular country, creating an unnecessary burden for the State concerned and the system. They thought that at the moment it was difficult to analyse what themes could be added or deleted because a background document was needed to facilitate this analysis. Mexico distributed a table that they prepared to the members of the Working Group, which analyses the coverage of every right enshrined in the *Universal Declaration of Human Rights* (UDHR) by the system of special procedures. This table was intended to allow identification of gaps and overlaps, and was welcomed by a number of States.⁶⁷

Several other States also emphasised the need for the OHCHR to prepare a matrix analysing the gaps and overlaps between the existing special procedures to aid the discussions in the Working Group. OHCHR prepared a matrix in response to this request, which was distributed on 23 November 2006.⁶⁸

The United States of America (the USA) stated that merging some mandates could be an ideal way to rationalise the system, as the merged mandates would be stronger and have more resources at their disposal. Brazil suggested that merging of mandates in working groups could be a way to rationalise some mandates⁶⁹ and also that they were not opposed to defining a set of criteria for rationalisation and reform of mandates, if this was properly conducted in a balanced manner with a view of the whole human rights system.

Finland (on behalf of the EU) viewed overlaps between mandates as unavoidable because of the inter-related nature of human rights.⁷⁰ Belgium pointed out that overlaps between special procedures and treaty bodies were necessary because the treaty body system did not have universal coverage and that special procedures had a different mandate and role. Norway also took the view that the overlaps between treaty bodies and special procedures are in fact complementarities e.g. between the Special Rapporteur on Torture and the Committee Against Torture. Ms Leila Zerrougui, a member of the Coordination Committee of Special Procedures and Chairperson of the Working Group on Arbitrary Detention, stated that the main contribution of the special procedures was that victims had access to an international mechanism that could act swiftly and enter into a direct dialogue with the concerned governments. She also stated that the every special procedure mechanism had a role to play and any re-grouping or merging of mandates should be done on a case-by-case basis and in consultations with the mandate holders. Switzerland stated that they were not clear how the clustering system would work.

Belgium was concerned that as mandate holders were not working in a full-time capacity, clustering thematic issues could overburden them. Algeria responded to Belgium to say that the mission of special procedures could not be a spare time job or a side occupation. If one special rapporteur was not enough, there could be a

⁶⁵ Those related to poverty, racism and racial discrimination, food, the right to development, education, international solidarity, occupied Palestinian territories, and religion intolerance.

⁶⁶ This was supported by Malaysia. Canada also thought that duplication in the work of special procedures should be reduced where possible while ensuring adequate specificity and capacity to address all necessary human rights issues.

⁶⁷ Pakistan and The Philippines.

⁶⁸ *Basic Information on Special Procedures*, OHCHR/SPB/IMT, 23 November 2006.

⁶⁹ This was also supported by Iran.

⁷⁰ This was supported by Argentina, Mexico, Norway and Peru. Switzerland took the view that it was better to have overlaps rather than many gaps.

smaller number of mandates but with a team of people performing the job.⁷¹ Finland (on behalf of the EU) stated that while some re-grouping may be needed, it was important not to merge the mandates too much as this would result in a loss of specificity that was needed for the protection of human rights. They suggested abandoning the model of working groups, which they thought could be retained outside the system of special procedures.

The United Kingdom mentioned that they were ready to listen to ideas to remove duplication within the system but thought it was crucial not to lose the specificities, which certain mandates provided and without which there would be additional gaps in the UN human rights framework. Mr Santiago Corcuera, the Chairperson of the Working Group on Enforced Disappearances, also told that Working Group that he viewed duplication between human rights mechanisms was inevitable and could be beneficial. In his view, it was the gaps within the system that deserved more attention. Ms Zerrougui also emphasised that the review process should be used to close existing protection gaps.

Norway highlighted that the views of the special procedures must be taken into account while identifying gaps within the system of special procedures. Argentina also thought that the identification of gaps was an ongoing exercise and should be based on the recommendations of the special procedures themselves.⁷² Malaysia disagreed with this view and thought that the identification of gaps was the responsibility of the Council not only of the special procedures. Brazil also thought that the review process should be used to address both overlaps and gaps. Canada suggested some criteria for the review of each mandate including in relation to assessing gaps.⁷³

Action Canada for Population and Development stressed that protection gaps occur when thematic issues are not covered by any special procedure mandate, some examples of these gaps were human rights of prisoners, access to water, human rights violations based on sexual orientation etc. It hoped that the Council would address these gaps. Amnesty International stated that the aim of the review should be to develop a comprehensive and coherent system of special procedures that can better support the Council in fulfilling its mandate. The review should result in identifications of gaps as well as overlaps and the process by which to fill the gaps. Special procedures should participate in the review as they are well placed to identify the limits of their mandates and coverage. It suggested reviewing mandates on the basis of rights covered in the universal human rights instruments, especially the *Universal Declaration of Human Rights* and also focusing on the enjoyment of rights by all persons, including individuals and groups. In its view there were gaps in a number of important areas at present, e.g. freedom of association and the right to work. Human Rights Watch suggested identifying gaps through continuing monitoring of the human rights situations by existing mechanisms.

Balance between Economic, Social and Cultural Rights and Civil and Political Rights

Several delegations emphasised the need for better balance between civil and political rights and economic, social and cultural rights, including the right to development in the system of special procedures.⁷⁴ In response to Ambassador Husak's comment that at the moment there were eight special procedures dealing with economic, social and cultural rights and eight with civil and political rights, Malaysia pointed out that they viewed country mandates as being essentially civil and political rights mandates. Belgium viewed the issue of the distinction between the two categories of rights as largely an academic and artificial one because of the crosscutting nature of various issues such as discrimination. Norway also highlighted that they considered all human rights as equal and interdependent and were unsure as to what was to be balanced; was the right to food to be balanced against the right to be free of torture?

⁷¹ While none of the delegations that suggested clustering thematic mandates clearly explained how the system would work, Algeria by this statement appeared to be supporting a working group type format for thematically grouped mandates.

⁷² This was supported by Chile.

⁷³ The criteria suggested by Canada were: is the mandate too narrow? Could it be expanded to more comprehensively address a human right? Are there human rights in the Universal Declaration for Human Rights that are not covered by existing mandates that should be?

⁷⁴ Algeria (on behalf of the African Group), Colombia, Ecuador, India, Iran, Malaysia, Pakistan, Peru, Senegal and South Africa.

The International Federation of University Women also took the view that the focus on human rights violations in country-specific situations was primarily on civil and political rights and had overlooked implications on economic, social and cultural rights, a gender perspective, and violations based on racial discrimination, self-determination and the right to development. They called for a holistic approach while establishing criteria in determining country-specific mandates to ensure the indivisibility, interdependence and interrelated nature of human rights.

Criteria for new mandates and periodic review of mandates

India suggested that the Council should develop criteria for the establishment of new mandates⁷⁵ to maintain the harmonisation that would be achieved as a result of the review process. Brazil also stated that States' autonomy to create new mandates could create proliferation and duplication. They suggested two alternatives to address this situation: defining a clear set of guidelines for the creation of new mandates; and the possibility of a periodic review of mandates.⁷⁶ They took the view that the future expert advisory body could be in charge of providing expertise and advice on this issue to help the Council make decisions on a more solid basis. Venezuela also called for a standardised process for the creation of new mandates. Canada thought the issue of criteria was a difficult one but suggested that to avoid proliferation, proposals for creation of new mandates should meet the high threshold of demonstrating the need for a mandate. They suggested that proposals for a new thematic mandate should be preceded by and based on a report by the Secretary-General analysing the human rights issue and assessing whether a new mandate was needed. They also suggested criteria for the establishment of country-specific mandates⁷⁷ and stated that the complaint procedure should be able to recommend the establishment of a situation-specific mandate.

Norway stated that no strict criteria should be established for setting up new mandates. If any criteria were developed, they should be indicative, flexible and guiding. In their view, it had always been and must still be up to States to decide at any given moment, if they deemed necessary, useful and relevant to establish a new mandate on any given country situation or thematic issue. They also pointed out that a regular review of mandates had always taken place at the Commission on Human Rights when mandates came up for renewal. They stated that many of the reasons why the mandates we had today were created would continue to be relevant for many years, whether they related to racism, right to food, torture or human rights defenders. Finland (on behalf of the EU) disagreed that criteria should be developed for establishment of new mandates but said that the coherence of the system should be kept in mind while establishing new mandates. Argentina felt that rather than criteria, the focus should be on circumstances and facts demonstrating the need for a mandate. Many States agreed that the coherence of a 'system' of special procedures needed to be kept in mind when instituting new mandates.⁷⁸ Human Rights Watch stated that it would be wary of identifying definitions that were too constraining as the Council needed to develop a system that could be flexible and reactive.

Country-specific mandates

Cuba stated that the system of country mandates had no future and they wanted it to be terminated.⁷⁹ Several States also took the view that country situations should be addressed only through the Universal Periodic Review (UPR) mechanism and special sessions of the Council.⁸⁰ Several of these States expressed the opinion that country mandates had led to double standards, selectivity, and politicisation of the work of the Council's predecessor; the Commission on Human Rights. The Democratic Peoples Republic of Korea stated that

⁷⁵ Egypt agreed with the need for general criteria for the establishment of new mandates.

⁷⁶ This was supported by Colombia, Malaysia and The Philippines.

⁷⁷ These criteria included the request of the State in question; the need for a specific mechanism for dialogue and enhanced international cooperation or an independent report or for international engagement because of the situation, lack of effective alternatives or failure to cooperate.

⁷⁸ Finland (on behalf of the EU), Norway and Mexico.

⁷⁹ This was supported by Algeria (on behalf of the African Group), Belarus, China, Iran, the Democratic People's Republic of Korea, and the Indian Movement Tupac Amaru (an NGO).

⁸⁰ Bangladesh, China and India.

country-specific mandates represented a naming and shaming culture that denied dialogue and cooperation. China suggested that if the Council wished to establish country mandates, criteria needed to be established for this; that there were gross and systematic violations of human rights in the country and that the resolutions were co-sponsored by one-third of the members of the Council and adopted by a two-thirds majority of the Council. This was supported by Cuba, who suggested an additional requirement that the State concerned should consent to the resolution setting up a country mandate. Indonesia stated that country-specific mandates should only be created after all other mechanisms have been exhausted. The Philippines suggested that if country-specific mandates were to be retained, they should be established only by consensus. They also questioned whether country mandates had led to any changes on the ground. Iran expressed its concern that the system of country mandates could undermine the UPR mechanism. Egypt stated that with reference to the Facilitator's list of topics,⁸¹ they were not satisfied with the use of the words 'serious violations' for country mandates but would prefer to restrict this to 'gross and systematic violations'. South Africa followed up on this comment to suggest changing the criteria to 'grave and massive' violations. Belarus suggested that General Assembly set out a framework for the Council to consider human rights on the basis of international cooperation and therefore country resolutions and mandates must be used only for genocide, ethnic cleansing and crimes against humanity. Both Egypt and South Africa disagreed with the inclusion of the principle of responsibility to protect.⁸²

Argentina, Australia, Brazil, Belgium, Canada, Chile, Côte d'Ivoire, Estonia, France, Japan, Ireland, Israel, the Netherlands, Norway, Peru, Romania, Slovakia, Slovenia, the UK and the US supported the retention of country mandates. Chile highlighted that based on their experience, they thought that country mandates had made valuable contributions in specific situations. Chile stated that their country was indebted to country mandates who had helped them overcome a dark period in their history. Romania also emphasised the contribution of country mandates to improving the situation in their country. They stated that country-specific resolutions had often led to an improvement in the situation on the ground but this depended partly on the on the readiness of decision makers to follow up on the recommendations of the relevant special procedures and to agree to work in cooperation with civil society to improve the situation. Belgium argued that though some resolutions creating country mandates had been put to vote most country mandates had been set up by consensus in the past.⁸³ They took the view that the important aspect of the Council's work was the protection of victims and this could not wait in all situations for a UPR process, which may only occur every four to five years.⁸⁴ They also stated that special sessions were inter-governmental meetings, which could not substitute for a monitoring presence on the ground.⁸⁵ This was supported by Canada and Amnesty International, which stated that special sessions could not replace regular and ongoing fact-finding by a special procedure.

The USA stated that country mandates had a special role to play, allowing the Council to view and address complex situations when normal measures had not worked. Norway stressed that whatever views States had on the existing country mandates, the Council could not rule out the possibility of having country mandates in the future, at any given time and in any situation. Slovakia suggested retaining the notion of the 'responsibility to protect' that had been identified in the Facilitator's paper in relation to country mandates and also stressed that special procedures should be an early warning mechanism. Switzerland disagreed with the suggested criteria proposed by China and supported by Cuba that country-specific resolutions should co-sponsored by one-third of the members of the Council and adopted by a two-thirds majority of the Council as they stated that this was only required for the suspension of a member of the Council⁸⁶ and not for all country

⁸¹ The facilitator had listed as a sub-point: What are the situations that merit attention at the country level (serious, gross and systematic violations – responsibility to protect)?

⁸² The responsibility to protect is a new international principle reaffirming the primary responsibility of States to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. It also establishes a collective responsibility on the international community to take action, including through use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters six and seven of the UN *Charter*, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity when the State in question is failing its responsibility. This principle was recognised in the 2005 *World Summit Outcome Document* (General Assembly *Resolution 60/1*) in paragraphs 138 and 139.

⁸³ This view was also expressed by the UK.

⁸⁴ Brazil, France and Australia agreed that the UPR mechanism would not be a good alternative to a country-specific mandate.

⁸⁵ Brazil also disagreed with the argument that special sessions could substitute for country-specific mandates.

⁸⁶ Para 8 of General Assembly *Resolution 60/251*.

resolutions. Brazil suggested that to overcome selectivity but still retain country-specific mandates which were needed to address violations of human rights, more stringent criteria could be implemented for the approval of country resolutions be implemented and there should be a record of violations of human rights, emanating from the conclusions of various human rights mechanism such as the UPR, complaint procedure, treaty bodies and special procedures. Indonesia stated that country mandates should only be set up after all other mechanisms have been exhausted.

Amnesty International stated that though there had been a lot of talk about the former Commission being discredited by country mandates; it was not discredited as much by the establishment of country mandates but more by its failure to establish such mandates when faced with egregious violations. It also recalled that the first special procedure mandates were country-specific and that the Council needed to retain this tool to remain responsive to grave and serious human rights violations.

Standardisation of titles

Most States supported standardising the titles of special procedures⁸⁷, which currently vary from special rapporteurs, special representatives of the Secretary-General, personal representatives to independent experts, based on the title given to the specific mandate in the resolution that created the mandate.⁸⁸ Belgium and Switzerland suggested retaining the title of Special Representative of the Secretary-General in addition to another unified title (Switzerland suggested special rapporteur). Belgium stated that the title of the special representative was a denomination or element of the wider UN system which they did not think should be abolished. The UK suggested retaining the current system of appointment of the special representative by the Secretary-General because of the crosscutting nature of issues addressed by the special representatives, which are dealt by various human rights fora. Norway stated that it would consider the proposals to limit the existing titles to two (special representative and special rapporteur) but thought it was important that it was important to retain flexibility as on some occasions it had been useful to appoint independent experts to study an issue for a year before the creation of a monitoring mandate.

China queried if there was any difference between the legal status of the mandate holders because of the varying titles and if they all received the same level of support from the OHCHR. The Secretary of the Council replied that all mandate holders enjoyed the same legal status, irrespective of their titles. China then stated that all the titles, along with the different processes of selection and appointment should be standardised.

Regulating the work of special procedures

In their discussions on a number of topics identified by the Facilitator, States focused on various issues related to the standardisation and coordination of working methods, the revised Manual of special procedure, and regulations governing the work of special procedures. At the core of the debate lay differences in views on whether it was appropriate for the special procedures to themselves define their working methods or whether the Council should do so and if there was a need for a framework of greater accountability for special procedures. Some States took the view that it was most appropriate for the special procedures themselves to define their working methods in order to preserve their independence.⁸⁹ Many States viewed recent initiatives put forward by the special procedures, such as the establishment of a Coordination Committee and revision of the manual of special procedures, as extremely positive and felt that these initiatives had begun to address issues of standardisation of working methods and increased cooperation and the Coordination Committee

⁸⁷ Algeria (on behalf of the African Group), Belgium, Bangladesh, Canada, India, Indonesia, Iran, Slovakia, Switzerland, the UK, and the USA.

⁸⁸ Representatives of the Secretary-General and some independent experts are selected by the Secretary-General based on recommendations by the UN High Commissioner for Human Rights. Two independent experts; the Personal Representative on Cuba and the Independent Expert on Minorities are appointed by the High Commissioner for Human Rights.

⁸⁹ Canada, Norway, Slovenia, and Switzerland.

offered the best forum for further action in this regard.⁹⁰ Most of these States were therefore opposed to the Working Group or the Council considering or modifying the revised Manual of special procedures.

Other States however took the view that special procedures should have a common set of guidelines to ensure that they utilised more systematic and less ad hoc approaches to their work. Many of these States however thought that it was insufficient or inappropriate for the special procedures themselves to revise or draft their own manual of operations.⁹¹ They thought that this was a task that should be undertaken by or with greater involvement of the Working Group and/or the Council.⁹² Many of these States also called for a code of conduct that special procedures had to abide by.⁹³

Revised Manual of special procedures

Special procedures have developed a Manual, which aims to provide guidance to the special procedure mandate-holders and covers a range of issues related to their work. The Manual also seeks to facilitate a better understanding by all stakeholders of the work of special procedures. The Manual was originally adopted in 1999, at the 6th Annual Meeting of Special Procedures.⁹⁴ It has since then been revised and the draft revised Manual (the draft Manual) has been circulated and been made publicly available for comments from governments, civil society organisations, independent experts and all other stake holders.⁹⁵ The draft Manual covers the role and functions of special procedures (including independence, privileges and immunities); methods of work (including sources of information, communications, country visits, reporting, interaction with governments, and relations with non-State actors); follow up and interaction with other international and regional human rights mechanisms (including follow up to communications, country visits, and thematic studies); coordination and cooperation (including the Coordination Committee, joint communication, annual meetings, and cooperation with partners).

Algeria (on behalf of the African Group) requested an extension of the deadline of 21 December 2006, for comments, set by the Coordination Committee.⁹⁶ In line with their request, the Coordination Committee extended the deadline to 10 April 2007.

Several States took the view that it was not appropriate for the special procedures to develop their own manual of operations. They proposed alternatives that asked for greater involvement by the Council and the Working Group in the process, ranging from approval by the Council of the final document⁹⁷ to the (further) elaboration of the Manual by the Council⁹⁸ or the Working Group.⁹⁹ Singapore, for instance, noted that while the circulation of the draft revised Manual by the Coordination Committee was a good initiative, the question was whether the Coordination Committee should be working in isolation from the Working Group. In their view, since mandates are created by the Council it only stood to reason that the content of any manual or code of conduct should be subject to approval by the Council. They thought this would help address the credibility deficit and improve the level of cooperation between special procedures and States.

⁹⁰ Canada, Chile, France, Norway, Slovenia, Switzerland, and United Kingdom.

⁹¹ Algeria (on behalf of the African Group), China, Singapore, Pakistan, and Egypt.

⁹² Algeria (on behalf of the African Group), China, the Philippines, Bangladesh, Venezuela, Sri Lanka, Iran, Singapore, Pakistan, Egypt, and India.

⁹³ Algeria (on behalf of the African Group), China, Colombia, Egypt, Indonesia, the Philippines, Singapore, Sri Lanka, Venezuela, and United States of America.

⁹⁴ See *Manual of the United Nations Special Procedures*, available in English, French and Spanish at www.ohchr.org/english/bodies/chr/special/manual.htm.

⁹⁵ The deadline for comments has been extended to **10 April 2007** and any comments can be sent to spmanual@ohchr.org. Comments will be made available at www.ohchr.org/english/bodies/chr/special/manual.htm.

⁹⁶ Algeria was concerned that the process of revising the Manual should not pre-judge the outcome of the Working Group. Singapore also stated that the revised Manual should not be finalised before the review was concluded.

⁹⁷ the Philippines, Bangladesh, Venezuela, Sri Lanka, and Iran.

⁹⁸ China and Sri Lanka.

⁹⁹ Singapore, Pakistan, Egypt, and India.

China suggested that the Manual should be developed and adopted by the Council. They thought that instead of undermining the functioning of the special procedures, this would lead to a clearer relationship between the special procedures and the Council. While they welcomed the opportunity given to States to comment on the draft revised manual prepared by the special procedures, they were concerned about who would decide which comments were addressed or not. China thought there should be an open and collective discussion, using the draft revised manual as a basis, on a number of key issues including the code of conduct, terms of reference, country visits, admissibility criteria for communications, the working methods of special procedures, and guidelines for media interaction. They also emphasised the need for the Council to review the performance of mandate holders drawing attention to the fact that while members of the Council could be suspended for committing gross and systematic human rights violations, there was no such provision for misbehaviour by mandate holders.

Bangladesh suggested that the Manual should provide clear-cut rules for avoiding selectivity and discrimination and a standardised process to address allegations of human rights violations.¹⁰⁰ Special procedures should also be provided with a manual of duties and responsibilities. They supported the suggestion that the Council examine and, if needed, revise the Manual prepared by the special procedures. Bangladesh stated that the independence of special procedures had to be accompanied by accountability and that the Council could not take responsibility for the protection and promotion of human rights without having a say in the functioning of its subsidiary mechanisms. Pakistan stated that the Manual should be developed by governments and not by the Coordination Committee. They asked for the Manual to be discussed by the Working Group and approved by the Council. Algeria said that since the special procedures Manual would treat not only the internal working methods, but also the relationship of mandate holders with States and the Council, government input from the beginning was essential.

Egypt questioned if delegations were aware of any legislative, judicial or executive positions within their own governments or regional organisations that did not have statutes or rules that applied to its functioning. They thought that the Manual was a useful tool but it was difficult to conceive of mandate holders coming up with their own Manual. In their view, States had established the system of special procedures and now had to complete that process by defining the rules governing the special procedures. They viewed this as a normal progression as the system had developed in an ad hoc manner. Sri Lanka suggested that the Manual of special procedures should include a code of conduct and criteria for admissibility for allegations of human rights violations. Indonesia expressed its concern about the lenient way the draft Manual deals with special procedures' interaction with the media.

Several other States however welcomed the draft Manual prepared by the special procedures, which they viewed as a very comprehensive document and the opportunity to submit comments.¹⁰¹ Many of these States emphasised that in order to maintain the independence and effectiveness of the special procedures, the manual should be developed by the special procedures themselves and not by the Council or the Working Group. Slovenia emphasised that while they would be commenting on the draft Manual, they thought that the final decision of accepting comments remained the prerogative of the special procedures. Switzerland said that the Council should not 'interfere' in the extensive process that special procedures had engaged in to develop the draft Manual.

Canada welcomed the work of special procedures themselves towards the standardisation and coordination of working methods.¹⁰² They noted in this regard, the annual meeting of special procedures, the establishment of the Coordination Committee and the revised manual prepared by the special procedures. Canada also requested an extension of the deadline to submit comments till February 2007. They however emphasised that the Manual was the work of the special procedures, with the support of the OHCHR and not of States and was independent of the review of mandates. They stated that while the special procedures are set up by the States, it was essential for their credibility and effectiveness that the States respect their independence in their work. Canada pointed out that the value of the special procedures was their ability to freely express their views,

¹⁰⁰ See also the discussion on urgent appeals and other communications below at p. 19.

¹⁰¹ Canada, Chile, Finland (on behalf of the EU), France, Norway, Slovenia, Switzerland, and United Kingdom.

¹⁰² This was supported by Finland (on behalf of the EU).

conclusions and recommendations without fear of control, censorship or sanction by States. They reminded the Council that it was free to act or not on the recommendations of special procedures, as these were not binding, but that the special procedures must be free to make such recommendations. Canada stressed that for these reasons they did not favour an intergovernmental review of the Manual, or the establishment of a code of conduct or other means of limiting the independence of special procedures.

Finland (on behalf of the EU) stated that while cooperation and coordination among mandate holders was essential, the modalities of this cooperation and coordination were best decided by the mandate holders themselves, under the guidance of the Coordination Committee and in line with their Manual. Norway also stated the special procedures were best placed to look critically and constructively at their own working methods and were best placed to identify practical steps to enhance their own effectiveness and encourage better cooperation with States. Argentina affirmed the need for a clear framework for special procedures, but said that they need enough leeway and autonomy. Ms Leila Zerrougui, representing the Coordination Committee, declared the Committee's openness for comments and said to consider an extension of the deadline for State input.¹⁰³ She asked that States put their trust in the special procedures until they have finished revising the Manual. Once they had the final document before them, States could then assess whether they considered the suggested working methods as satisfactory and decide how to proceed. The Algerian Ambassador reacted to Ms Zerrougui stating that if the Manual dealt only with the internal working methods of special procedures, this could have been possible but since it also dealt with the interaction between mandate holders and governments, this could not be developed without discussions with governments. He emphasised that there was also an issue relating to the accountability of mandate holders to States. He thought it was the Council's responsibility to set ethical standards and ensure conformity with those standards.

India suggested a mechanism of 'peer review' for the mandate holders, but it did not develop the idea further. The United Kingdom placed more importance on responsible action by the individual mandate holders, however, the delegation welcomed the idea of 'accountability to peers' and said that this could help to preserve independence and integrity of the system as a whole.

Human Rights Watch welcomed some of the references to victims in the discussions. It suggested that one stakeholder was missing from the process and that it may be useful to get the perspectives of victims' on what currently works in the system. It recommended that the Working Group endorse the process of reviewing the draft Manual that had been developed by the special procedures and leave the detailed development of the Manual to the special procedures themselves.

Code of conduct

Algeria (on behalf of the African Group) stated that in order to enhance the authority of mandate holders in the discharge of their functions, the African Group was of the opinion that special procedures should be guided by a code of conduct which would articulate the Council's performance and evaluation criteria of mandate holders. A number of other States also supported the establishment of a code of conduct for special procedures, with some suggesting that this be included in the Manual.¹⁰⁴ Venezuela said that such a code would allow the Council to regulate matters relating to the rights and duties of special procedures. Singapore suggested that the code of conduct should include guidelines on interaction with the media, and require mandate holders to provide concerned States with an advance copy of their reports so that the State's response could be incorporated into the final report. The Philippines drew attention to the Asian Group non-paper that had been circulated in 2005, noting that it had suggested updating the manual of operations, including a code of conduct for special procedures, better criteria for admissibility of allegations of human rights violations, and allowing States time to respond to reports on country visits before they are made public.¹⁰⁵

¹⁰³ OHCHR circulate a *note verbale* on 26 November 2006 informing all stakeholders that the Coordination Committee had decided to extend the deadline for comments until 10 April 2007.

¹⁰⁴ China, Colombia, Egypt, Indonesia, the Philippines, Singapore, Sri Lanka, Venezuela, and United States of America.

¹⁰⁵ Sri Lanka also referred to the useful recommendations contained in the Asian Group non-paper.

The Algerian Ambassador claimed that a code of conduct was an essential step on the quest of elevating the special procedures to the “conscience of the world”. Only through the code of conduct would they gain the moral authority needed to fulfil that role. Once special procedures have been granted moral authority by the Council, the Council as the “supreme decision making body in terms of human rights” can act on their recommendations without having to discuss their credibility first.

Several other States expressed concerns about the code of conduct as a means of regulating the conduct of special procedures and/or stated that they were not in favour of such a code.¹⁰⁶ Slovenia pointed out that the *Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission* (the Regulations),¹⁰⁷ adopted by the General Assembly in 2002, contain regulations on the status, conduct and accountability of special procedures which were sufficient for this purpose. Indonesia replied that the Regulations had no mention of accountability of the mandate holders. Egypt also reacted to Slovenia’s statement noting that though they would like the Regulations to be included, to the best of their knowledge the Regulations had never been recognised as applicable to the special procedure mandate holders. Ms Leila Zerrougui confirmed Slovenia’s statement and said that the special procedures did not operate in a legal void and were governed by the Regulations. Human Rights Watch also pointed out that the International Court of Justice had affirmed in their Advisory Opinion in 1999 that the *Convention on Privileges and Immunities of the United Nations*, 1946 applied to the special procedures. It also stated that though many professional associations have codes of conduct, these are usually self-drafted. It recommended that the Working Group examine such examples to see how they were developed.

Mr Louis Joinet, the Independent Expert on the human rights situation in Haiti, stated that if there was a code of conduct it would need to include two chapters; one for special procedures and another for States. Argentina emphasised that they shared Mr Joinet’s concerns about a code of conduct. They stated that from their national experience, they had found special procedures’ findings and recommendations to be accurate. While initially States may react negatively to the special procedures, overtime they would recognise their achievements. They thought that the main issue was not a code of conduct but reticence and a lack of coordination on the part of States.¹⁰⁸

Developments at the second session of the Council

Algeria, on behalf of the African Group, presented a draft resolution on the Intergovernmental Working Group on the Review of Mandates at the resumed 2nd session of the Human Rights Council on 27 November 2006.¹⁰⁹ Despite the ongoing nature of discussions on this issue at the Working Group which had only completed its first set of meeting barely three days ago, the draft resolution¹¹⁰ suggested a modification of the mandate of the Working Group by asking it to review the revised draft Manual and to draft a code of conduct to regulate the work of special procedures. The draft resolution requested the Coordinating Committee of the special procedures to extend the deadline for submission of comments on the revised draft manual until the closure of the 4th session (6 April 2007) even though the Chairperson of the Coordination Committee had already indicated to the Working Group that they would try to accommodate the Algerian Ambassador’s request. Algeria in their statement to the Council stated that the draft resolution did not prejudge the outcome of the Working Group on the Review of Mandates and that the resolution would provide an ethical standard that will be developed by dialogue and cooperation with all stakeholders. Pakistan (on behalf of the OIC), Cuba and China also spoke out in favour of the initiative.

Finland (on behalf of the EU), Mexico and Canada spoke out against the draft resolution at the Council. Finland stated that the Council in the first session had already defined the parameters of the review of

¹⁰⁶ Canada, Chile, Norway, Slovenia, and Switzerland.

¹⁰⁷ ST/SGB/2002/9, 18 June 2002.

¹⁰⁸ Canada stated that it agreed with Argentina’s statement on the code of ethics.

¹⁰⁹ A/HRC/2/L.2/Rev.1. Oral statements made during the Council sessions are available at the OHCHR extranet, which can be accessed at www.ohchr.org/english/bodies/hrcouncil/form.htm (fill out the form on the page to receive the user name and password).

¹¹⁰ A/HRC/2/L.2/Rev.1

mandates and entrusted this task to the Working Group, which was a separate inter-sessional process. Canada added that the Working Group mandate was reached by consensus and that the resolution was trying to re-open discussion on this issue without seeking consensus, which is not in line with the cooperative consensus-based approach that the Council should take to its vital institution-building tasks.

Uruguay stated that it was not opposed to discussing a code of conduct for the special procedures as long as the discussion aimed at strengthening the mechanisms and improving the quality of outcomes. They however said they would abstain in the vote on the draft resolution.

The Resolution¹¹¹ was adopted with 30 votes in favour,¹¹² 15 against¹¹³, and two abstentions (Argentina and Uruguay).¹¹⁴ After the vote, Ecuador and Brazil explained the reasons for their votes to the Council. Ecuador stated that the resolution did not affect the independence of the mandate holders, while Brazil added that a manual for the special procedures would help set transparent guidelines and that a code of conduct would contribute to better relations between States and mandate holders.

Working methods

A wide range of issues related to the working methods of special procedures were raised during discussions at the Working Group under a range of headings. Discussions on the code of conduct and draft Manual also touched upon various aspects of working methods but beyond a reference to the fact that the code of conduct should cover criteria for admissibility of allegations as well as interaction with the media and an opportunity for States to respond to reports on visits before they were made public, States did not expand on these proposals. The broader discussions were also largely focused on specific concerns that were voiced in relation to aspects of working methods such as the procedure and format of urgent appeals, terms of reference for country visits, some concerns in relation to sources of information, and a broad discussion in relation to coordination and cooperation between special procedures.

Urgent appeals and other communications

As mentioned earlier in the discussion about the code of conduct and Manual of special procedures, some States asked for the inclusion of criteria for admissibility of allegations of human rights violations.

Algeria (on behalf of the African Group) stated that mandate holders must coordinate their activities in order to prevent duplication and overlapping while submitting communications. They also thought that complaints examined by the special should not be examined by the mechanisms of other UN human rights bodies. They emphasised that letters forwarding allegations of human rights violations must be signed personally by mandate holders. They also stressed that all communications, including urgent appeals, should be addressed only to the concerned country's permanent mission to the United Nations in Geneva. Algeria also requested discussion on what could be included under the concept on 'urgent' as they felt that urgency should not be used as a way of disregarding normal diplomatic practices concerning channels of communications. They thought that special procedures should not interfere in internal political processes unless specifically mandated to do so and should also not insist on getting a reply on the content of a draft law before the law had been adopted. Algeria stated that mandate holders should also exercise flexibility while fixing deadlines for replies by States.

¹¹¹ Council Resolution 2/1.

¹¹² Algeria, Azerbaijan, Bahrain, Bangladesh, Brazil, Cameroon, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, India, Indonesia, Japan, Jordan, Malaysia, Mali, Mauritius, Morocco, Nigeria, Pakistan, the Philippines, Russian Federation, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, and Zambia.

¹¹³ Canada, Czech Republic, Finland, France, Germany, Guatemala, Mexico, Netherlands, Peru, Poland, Republic of Korea, Romania, Switzerland, Ukraine and United Kingdom.

¹¹⁴ The full voting record is available at the OHCHR extranet, which can be accessed at www.ohchr.org/english/bodies/hrcouncil/form.htm (fill out the form on the page to receive the user name and password).

Bangladesh felt that the manual of operations for the special procedures should provide a standardised procedure for mandate holders to address allegations of human rights violations. They suggested that special procedures should use standardised communications as much as possible and also that adequate time be allowed to States to respond to allegations. Brazil stated that proposals to harmonise rules for presentation of allegations by special procedures had their support, provided that these rules preserved the independence of the mandate holders.

Canada stated that while communications should be submitted through previously agreed channels where possible, special procedures should be able to appeal directly to State authorities when there was a delay that could lead to risk of irreparable harm.¹¹⁵ They also thought that there was a need to improve submission of timely responses by States to communication and urgent appeals by the special procedures. Canada also stressed the need for States to ensure that there was no intimidation, monitoring, or harassment of people who communicated with special procedures and that these individuals were guaranteed their rights to privacy and protection from any harm. Finland (on behalf of the EU) suggested that mandate holders should be encouraged to communicate to the Council whether timely and substantial responses were being received from governments and also that this information be made available on the OHCHR website. Chile asked that special procedures leave ample time for States to react to requests for information in individual cases, if the urgent nature of the situation does not demand otherwise. Belgium added that a high percentage of allegation letters and requests for information do not even lead to a confirmation of receipt¹¹⁶ and that special procedures should flag such cases. Some feel that at least interim information should be provided.¹¹⁷

Mr Vitit Muntarbhorn, the Chairperson of the Coordination Committee of Special Procedures, stated that special procedures would welcome increased responses to communications. He said that calls for standardisation of working methods would be taken into account. The standard practice was to request responses within 30 days in the case of urgent appeals and within 60 days in the case of letters of allegation.

ISHR pointed out that diplomatic courtesies could be satisfied without undermining the effectiveness of special procedures and the urgency of their work. In its view, if diplomatic courtesy required that special procedures send letters to the diplomatic mission in Geneva, it equally required the mission to inform the special procedure within 24 hours if the letter had been forwarded to the capital and which section of the government it was forwarded to.

Sources of information

Algeria (on behalf of the African Group) stressed the responsibility of special procedure mandate holders to check all the information received from all stakeholders and stated that the sources must be credible, reliable and independent. They considered it unacceptable for mandate holders to repeat word for word in their communication to a State the text of a previous 'challenge' by an international NGO. They thought that mandate holders should be independent from all stakeholders including pressure groups, political parties, NGOs, the OHCHR, and governments. The Netherlands argued that they believed that mandate holders' judgement should be trusted in selection of sources of information and that this issue was also dealt with adequately under paragraph 23 of the Manual. They pointed out that States had the opportunity to provide mandate holders with relevant facts and figures both during visits and in responses to communications, if they were of the opinion that any information received by the special procedures was incorrect. The Philippines suggested that a future code of conduct for special procedures should also regulate criteria for sources of information

Bangladesh also emphasised the need for information to be reliable and objective and suggested that the credibility of the information should be checked through several sources.¹¹⁸ Belgium was of the opinion that

¹¹⁵ This was supported by Switzerland.

¹¹⁶ A figure of around 50% was mentioned.

¹¹⁷ United States

¹¹⁸ the Philippines, Indonesia, Switzerland, the USA, and Belgium also asked that sources be credible and reliable and that the information be verified before being sent to States. There seemed, however, to be a difference in view regarding the level of verification that is required.

the Quick Response Desk set up by the OHCHR reflected progress in the verification of information for urgent appeals. The Netherlands suggested that the protection of sources of information, whether individual or groups, was an issue that should be addressed by the Working Group.

Country visits/missions

Norway expressed the view that the terms of reference for country visits should not be subject to negotiation. The essential minimum standards for country visits should, in their opinion, be freedom of movement within the territory of any country visited; access to all relevant information and sources of information; freedom to contact government officials, NGOs, national institutions, lawyers, and academic institutions; private interviews with all persons, including those in detention; and assurances that persons in contact with special procedures are not subject to any adverse treatment on account of that contact. This was also underlined by Ms Leila Zerrougui who said that clear terms of reference, applicable to all States, would help prevent double standards. She reminded the State representatives that the terms of reference were not made up by the special procedures, but were decided by States themselves in the former Commission on Human Rights.¹¹⁹

China stated that terms of reference should be elaborated by States. This would help to prevent ‘unrealistic requirements’ which were depicted as high obstacles for States leading to country visits being cancelled when States could not adhere to these terms. Iran stressed that terms of reference for visits by special procedures should be standardised and subject to the approval by the Council.

Finland (on behalf of the EU) suggested that if no reply to requests for visits or no concrete schedule for the visit was agreed upon within a reasonable period of time (e.g. 12 months), special procedures could consider issuing reports on a country situation without visiting the country¹²⁰ but after informing the concerned State. Finland also suggested that a compilation of principles or best practices¹²¹ for government cooperation may be considered focusing on full, free and timely access for mandate holders in accordance with the standard terms of reference and to ensure protection of persons who have cooperated with special procedures. Canada proposed that a list of visit requests and responses received from States should be publicised and submitted to the Council at each of its sessions. They also stressed that States should facilitate free access to rights-holders, victims, human rights defenders, NGOs and civil society.

Slovenia stated that special procedures should inform concerned countries before they publish reports and especially before issuing media releases.

Human Rights Watch replied that considering the empirical evidence that 200 country visits had been carried out between 1990 – 2000, it appeared that the terms of reference did not create too high a burden for the States that had agreed to their visits.

Interaction with the media

Algeria (on behalf of the African Group) stated primacy must be given to the dialogue with the State concerned and the Council, on which they thought it was incumbent to decide on the appropriateness of calling on the media. They also stated that while a group of countries were advocating for an unlimited right of access of special procedures to the media, they believed that the media involvement was not necessarily the most productive channel for enhancing human rights practices and that they considered that the Council should have a role in this area. Canada, on the other hand, took the view that special procedures should be encouraged to make better use of the media as a tool to raise awareness about human rights issues. Finland (on behalf of the EU) also stated that mandate holders should have free and regular contacts with the media to effectively fulfil their mandate.

¹¹⁹ *Terms of Reference for Fact-Finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights*, Appendix V, E/CN.4/1998/45, (20 November 1997).

¹²⁰ This was supported by Canada.

¹²¹ Algeria (on behalf of the African Group) also supported the suggestion that special procedures should report on best practices.

Coordination and cooperation between special procedures

Finland (on behalf of the EU) acknowledged the important role the special procedures' Coordination Committee plays in the process of improving cooperation among mandate holders as well as coherence in the system as a whole.¹²² They said that the OHCHR and the Coordination Committee should continue to refine the working methods of the special procedures, and drew attention again to the draft Manual as a valuable tool in that regard. They pointed to the helpfulness of joint fact-finding missions in the process of preparing reports.¹²³ Chile also welcomed joint reports and suggested that the annual meeting of special procedures could help identify topics for joint reports. Mexico pointed out that coordination among special procedures must be better structured, and underlined the special role the OHCHR has in this respect.

Bangladesh welcomed the creation of the Coordination Committee¹²⁴ but was concerned that it should not add another layer of bureaucracy or become another special procedure mechanism. In their view, it should just serve as a working committee to help ensure cohesion and harmonisation.

Cooperation by and with governments

Session six of the working group was dedicated to the issue of cooperation by and with governments. Virtually all speakers underlined the need to improve cooperation between governments and special procedures but some States chose to focus on cooperation by special procedures with governments rather than cooperation by governments with special procedures. Other States however took up systemic issues of a lack of cooperation by governments with special procedures. They proposed that States, particularly members of the Council, issue standing invitations to special procedures and also discussed the issue of follow-up to recommendations of special procedures. Some States suggested that instances of non-cooperation be publicised and also that mechanisms be developed to address failures to cooperate with special procedures.

Cooperation by special procedures with governments

Many States were anxious to point out that cooperation should be a two-way street, which called for a 'mutually supportive' relationship.¹²⁵ The Russian Federation pointed out that any cooperation by States was conditional upon the observance by the special procedures of both their mandate and the national legislation. Algeria (on behalf of the African Group) expressed their concern at what they described as the 'lack of balance' that characterised a number of Western countries' statements assessing cooperation between special procedures and States. They thought that the onus of obligations was being placed exclusively on States and felt that there was clear bias towards 'angelising' special procedures and 'demonising' Council members and other States. The Philippines stated that in the current system, governments who choose to cooperate with special procedures are sometimes those that which end up being most criticised. They wanted to examine how to improve incentives for States to cooperate more openly with special procedures. They thought this could be achieved by special procedures playing a role in capacity building and technical assistance, improving opportunities and channels of dialogue, and moving away from a confrontation and sometimes accusatory approach in the work of certain special procedures to a more cooperative one. Sri Lanka also highlighted the need for 'constructive cooperation', which they thought should be informed by an appreciation of the historical and cultural diversities and specific challenges that might exist in each country. They also agreed with the Algerian Ambassador that the special procedures should adopt the new approach of the Council; which is the principle of cooperation and genuine dialogue.

¹²² This was supported by Mexico, Slovenia, and the UK.

¹²³ This was supported by Norway and Mexico.

¹²⁴ This was supported by Algeria (on behalf of the African Group, Pakistan, and the UK).

¹²⁵ Algeria, Bangladesh, India, Iran, Netherlands, the Philippines.

Standing invitations

Many States expressed their view that all States, but in particular members of the Council, should issue standing invitations to special procedures. Combined with accepting visits, this was the first step towards cooperation.¹²⁶ Canada suggested that in addition to issuing standing invitations, all States, especially members of the Council, should accept visits by special procedures in accordance with the terms of reference for fact-finding missions by special procedures.¹²⁷ A number of speakers also expressed their wish that standing invitations be a criterion for the candidature for the Council and be included in the voluntary pledges submitted by candidate States.¹²⁸ The International Service for Human Rights emphasised that there was an obligation on members of the Council, who are required under General Assembly *Resolution 60/251* to uphold the highest standards of human rights, to cooperate fully with the special procedures. In their view, election to the Council carried with it a presumption of a standing invitation to all special procedures and Council members could through their assumption of a standing invitation upon election set the standard for all other States.

Other States expressed the view that standing invitations were in themselves not a proof of cooperation.¹²⁹ China emphasised that invitations should be voluntary and the right of States to choose to or not to invite special procedures should be respected. They pointed out that not all special procedures are recognised by all States and some mandates were clearly rejected by States when they were created. Many countries that had not extended standing invitations had nonetheless exercised constructive cooperation with special procedures.

Mr Vitit Muntarbhorn, the Chairperson of the Coordination Committee of Special Procedures, stated that governments were encouraged to be open to accepting requests for country visits and follow up. While standing invitations were encouraged, even individual ad hoc invitations were most welcome.

Follow-up to recommendations

Follow-up to the recommendations of special procedures was identified as a key area of cooperation by many States. Canada suggested that in order to improve follow-up and to promote implementation of the conclusions of the special procedures, States should be required to submit responses to recommendations made by special procedures following their visits. They suggested that such responses, as well as any failure to respond, should be made available to the Council on a regular basis. They also suggested that the Universal Periodic Review mechanism could play a useful role in promoting follow up to recommendations of special procedures. Norway suggested that States submit information on the consideration given to the recommendations of special procedures, steps taken to implement them, and any constraints that may prevent their implementation.¹³⁰ Switzerland stressed that States' had an obligation flowing from the UN *Charter* to implement the recommendations of special procedures. Mr Vitit Muntarbhorn, the Chairperson of the Coordination Committee of Special Procedures, called for interaction between the Council and special procedures to be enhanced and for more sustained dialogue and action to implement special procedures' recommendations.

Evaluation of cooperation and responses to non-cooperation

Canada suggested that information regarding the work of special procedures, including visit requests and responses, reports on country visits, urgent appeals, communications and responses received from governments should be made available on the website of the OHCHR, broken down both by mandate and country. They also proposed that cooperation by States with special procedures should be part of the assessment of candidates for membership of the Council. Finland (on behalf of the EU) welcomed an update

¹²⁶ Canada, Norway, and Slovenia.

¹²⁷ This was supported by Finland (on behalf of the EU), and the UK.

¹²⁸ Argentina, Canada, Norway, and Finland (on behalf of the EU).

¹²⁹ China, Iran, and Russian Federation.

¹³⁰ Argentina, Japan, and New Zealand also thought that States should provide information on follow-up.

by the High Commissioner at each session of the Council on cooperation by governments with special procedures.¹³¹ This update could be based on statistical data compiled from OHCHR regarding outstanding visit requests, responses to urgent appeals and request for information among other things. They also suggested that this information be made available on the OHCHR website.¹³² Finland emphasised that non-cooperation must not lead to a lack of scrutiny of the country concerned. It should instead suggest concerns about the possibility of a serious human rights situation in the country concerned. The Council and the Working Group, in their opinion, needed to adopt a firm and systematic approach to dealing with instances of non-cooperation especially by members of the Council.

Norway stated that a serious weakness of the special procedures system derived from the failure of States to cooperate with mandate holders. They thought that one of the challenges for the Council will be to devise a procedure for handling States' failure to cooperate with special procedures. They suggested that mandate holders should be encouraged to mention incidents of non-cooperation in their reports and also that the Council establish a procedure where specific cases of non-cooperation are automatically taken up by the Council, not only through the UPR but regularly in plenary sessions. Norway also emphasised that the degree of cooperation or lack of cooperation by governments with the special procedures should constitute an important basis of the UPR. Japan stated that if a country continued to reject any cooperation with a country mandate holder, some kind of measure should be considered, such as adopting a Council decision calling for cooperation.

Argentina stated that over time, special rapporteurs seem to be proven right and their recommendations are useful for the country concerned. Argentina thinks that the reticence on the part of States to accept this fact is the main problem.

Algeria (on behalf of the African Group) stated that it was important to give concerned States and the Council the possibility of expressing their views on the performance of mandate holders as mandate holders expressed their views on the performance of Governments in a spirit of reciprocity and transparency. Bangladesh stated that non-cooperation by a State should be viewed by the Council, taking account of the prevailing circumstances and specificity of the particular country. They thought it was important that special procedures encourage implementation of human rights by States rather than name and shame States. They were therefore opposed to the idea of putting any information on the website, which would allow for 'finger-pointing' at countries. Cuba reacted to the proposals of the Council reviewing the level of cooperation by saying that cooperation cannot be imposed. They said that there was only a moral obligation to cooperate; cooperation could not resemble a tribunal but should be based on two-way interaction.

Relationship with the Human Rights Council

Some States suggested that as the Council is meeting more frequently than the Commission, special procedures should be able to report more frequently to the Council. A few States and NGOs suggested that special procedures should be able to brief the Council on urgent matters and act as an early warning mechanism to trigger action on human rights emergencies. Proposals were put forward to reviewing follow-up to the recommendations of special procedures by States. Other States focused on standardising reports by special procedures and argued that the regularity of access to the Council would be dependent on the agenda of the Council and subject to its approval. A few States again emphasised the need for a relationship of direct accountability.

Format, structure and timeliness of reports to the Council

¹³¹ This was supported by New Zealand.

¹³² This was supported by the Netherlands, and Slovenia. Japan also stated that evaluation of a government's cooperation should be done appropriately and posted on the OHCHR's website.

Some States called for clear and unified structure and format of the reports by special procedures.¹³³ Algeria (on behalf of the African Group) stated that the format of the reports should be standardised, as this would facilitate their assessment by the Council and allow for a more comparative analysis of the relative progress in human rights. The Philippines suggested that the reports should fully take account of the views of concerned countries. Bangladesh demanded that reports be concise and that recommendations should be made in a practical and constructive manner.

Other States welcomed the idea of a more structured formatting and some harmonisation, but felt that this structure should not bind the special procedures in the content of their reports.¹³⁴ Chile said that sometimes the specificities of a given mandate also required flexibility in the format and structure of the report. New Zealand welcomed the special procedures' effort at exchanging their views on the issue, but felt no need to proscribe a particular format. Canada, while encouraging the standardisation of the reports, asked States to be flexible on the format. In the same vein, the USA saw a considerable advantage of a standardised format, mainly because this would facilitate the States' work in considering special procedures reports.

Norway suggested that reports be made available as soft copy as soon as possible. Switzerland demanded that they at least be available before the Council starts its work. Others stressed that the reports needed to be submitted to the concerned government before being made public, in order for it to comment on them; many States agreed that concerned countries should have time to respond to reports.¹³⁵

Frequency of consideration of reports

Some States proposed that as the Council meets more frequently than the former Commission, the consideration of special procedures' reports could be divided up among its three sessions. In their view, this would allow for better preparation in the consideration of all reports.¹³⁶ Norway asked that reports be presented at the session of the Council immediately following the completion of the report. China stated that reports should be presented once a year. The Philippines thought the reports should be considered based on the agenda of the Council.

ISHR introduced a distinction between the annual report by special procedures on the one hand, and reports of country visits on the other. It suggested a timely response is needed to reports on country visits and that such reports should be considered in the session following a country visit. Many States welcomed these points raised by the ISHR.¹³⁷ However, they feel that the consideration of mission reports must take account of the workload of each session of the Council and allow ample time for concerned countries to comment on the report. India pointed out that the proposed solution would lead to the Council treating every issue covered by special procedures in each session.¹³⁸ The advantage of dividing up the reports on several sessions per year would precisely be to allow for better preparation for the consideration of reports, an advantage which would be forfeited if all issues were considered at all sessions.

While sharing the concerns raised by India, the UK suggested that the Coordinating Committee in collaboration with the OHCHR should find a practical way to balance the workload of each session, but bear in mind the urgency of some reports. The UK also thought that by allowing reports to be considered more frequently and quickly, the early warning function of special procedures would be enhanced.

¹³³ Algeria, China, Pakistan, and the Philippines.

¹³⁴ Chile, Canada, New Zealand, and the USA.

¹³⁵ China, New Zealand, the Philippines, Algeria (on behalf of the African Group), and Slovenia.

¹³⁶ Finland (on behalf of the EU), Belgium, Iran, Norway, Switzerland, and the USA.

¹³⁷ China, India, and the UK.

¹³⁸ Since mission reports by a particular mandate holder naturally are concerned with his or her particular issue.

Interactive dialogue, cluster approach

The practice of interactive dialogues with the special procedures initiated at the second session of the Council received widespread support.¹³⁹ There were a number of suggestions how to use and develop that practice in the future. Finland (on behalf of the EU) welcomed the structure of the interactive dialogue, in particular the participation by all stakeholders, including NGOs.¹⁴⁰ They and Slovenia suggested that concerned States should focus on ensuring follow-up to the recommendations made by the special procedures.¹⁴¹ The Philippines highlighted that adequate time was needed for a substantive interactive dialogue.

New Zealand pointed out that the interactive dialogue mode was well suited to provide guidance to the special procedures. They considered the time for each mandate holder (usually one hour) as sufficient, but suggested that the clustering should be abandoned. Brazil thought that the references to the cluster approach were inappropriate because they would define the agenda of the Council, which had not yet been discussed at length.

Canada welcomed the interactive dialogue, and suggested in addition the creation of ‘panel discussions’. Such discussions would be held in plenary and include relevant special procedures, representatives from the OHCHR, specialised agencies of the UN as well as NGOs. They could serve to examine progress made, and permit dialogue by a UN wide approach with the aim of mainstreaming human rights into the UN’s activities. The panel discussions would be summarised by the chair, which would allow for follow-up.

ISHR also welcomed the interactive dialogues of the second session as some of the most constructive dialogues in the history of the Council and the former Commission. ISHR welcomed the amount of time allotted to the consideration of the special procedures reports, and in particular the flexibility provided in the timetable to extend the sessions with the mandate holders if necessary. ISHR said that the clustering of three special procedures mandate holders in one three-hour segment was successful and allowed for an in-depth discussion of individual reports. Amnesty International, while welcoming the interactive dialogue, asked that more time be allocated for the dialogues.

Regular access to the Council and written and oral updates

Chile said that special procedures should be encouraged to orally update their reports during their presentations, given that States have ample time to consider the main reports beforehand.¹⁴² The Philippines demanded that oral updates should be distributed in advance, as this would improve the quality of the interactive dialogue. Egypt agreed with this view and stated that the predictability of the interactive dialogue was crucial for good preparation.

The Philippines said that the regularity of the access by special procedures to the Council would depend on its agenda. In their view, special procedures should only be allowed to meet the Council on its approval. Brazil also stated that participation of special procedures or other mechanisms should always be upon request to the President and after approval of the Council members. They felt this restriction was necessary because of the delicate issues that many mandates, and in particular those dealing with country situations, were concerned with.

¹³⁹ Argentina, Brazil, Canada, Chile, China, Egypt, Finland, India, ISHR, New Zealand, Norway, the Philippines, Republic of Korea, Slovenia, Switzerland, the UK, Amnesty International,

¹⁴⁰ A point also stressed by Norway.

¹⁴¹ See also above on follow-up.

¹⁴² Also raised by China,

Canada proposed that special procedures should be able to brief the Council on urgent matters and situations to enable the Council to prevent human rights violations and respond in a timely manner to human rights emergencies.¹⁴³ Mr Vitit Muntarbhorn, the Chairperson of the Coordination Committee of Special Procedures, suggested more frequent contact between the Council and special procedures, e.g. by giving special procedures the opportunity to act as early warning mechanisms and trigger debate on specific issues or by inviting special procedures to discussions on emerging issues or special sessions. India suggested that the Council should seek information from special procedures when needed.

Follow-up to recommendations

A number of proposals were put forward for improving follow-up to recommendations of special procedures. Chile suggested that recommendations should be concrete and realistic, acknowledge budget constraints and specify avenues for technical assistance and involvement of other UN bodies. They also suggested that recommendations should be directly submitted to the parliament of the concerned State. New Zealand pointed out that the inclusion of more concrete recommendations by mandate holders in their reports allowed the Council to follow-up more efficiently. Canada stressed the need for devising a mechanism specifically for follow-up. In particular, they suggested the creation of an additional Item on the Council's agenda dedicated to reviewing follow-up measures.

Switzerland suggested that the role of the Coordinating Committee in improving follow-up should be borne in mind. Algeria (on behalf of the African Group) however argued that the draft Manual ruled out such an involvement in the substance of individual mandate holders' responsibilities. The United Kingdom said that enhanced interactive dialogue could be conducive to more efficient follow-up.¹⁴⁴ It proposed that States could be asked to present a summary of the measures they had taken to implement within a reasonable time frame the recommendations by the special procedures.

Mr Doudou Diène, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, stated that most of the special procedures were frustrated because the reports on country visits were not really discussed by the Council. He thought it was important for the Council to consider a meeting during which the special procedures would report on the visits they had carried out and governments would be asked to provide reports and comments at those meetings. Another alternative could be for the special procedures to provide in their reports information on follow-up to their country visits.

The Philippines suggested that the follow-up to special procedures' recommendations could be addressed through the UPR. Reacting to this, the NGO representative from Action Canada for Population and Development said that this would not be enough, since even under ideal circumstances the UPR would only take place every few years and therefore be unsuitable for effective follow-up. Rather he proposed several options, one of which was the creation of a new special procedure specifically to ensure follow-up to recommendations by the other special procedures.¹⁴⁵

Related to the question of follow-up, Amnesty International drew the Working Group's attention to the role of special procedures as mechanisms for early warning in cases of a deteriorating human rights situation. It stated that the Council must be alert to warnings and act on information that is brought to its attention by the special procedures. In addition, it suggested that special procedures should be entitled to initiate action on behalf of the Council, in conjunction with the High Commissioner for Human Rights.

¹⁴³ This was supported by Amnesty International.

¹⁴⁴ The idea of using the segments with interactive dialogue with special procedures as follow-up was also voiced by Slovenia.

¹⁴⁵ The other options would require each special procedure to undertake inquiries into the follow-up of its own recommendations, or the Coordinating Committee performing the same role. However, Action Canada for Population and Development thinks that this would – after a few years of recommendations – overburden the special procedures or the Coordinating Committee with their own follow-up.

Guiding role of the Council

Almost all States acknowledged the need for some guidance by the Council. Most States saw this role discharged through its resolutions, in particular those creating the mandates.¹⁴⁶ Restricting the guiding role to this level would allow mandate holders – once appointed – to carry out their tasks with a certain level of independence. Some States expressed concern that too much guidance could undermine the independent work of the special procedures.¹⁴⁷

New Zealand pointed out that the interactive dialogue with special procedures experienced at the second session of the Council is well suited to provide guidance to the mandate holders in their work.¹⁴⁸

Algeria stated that the Council should be the “highest moral authority and pro-active promoter of human rights” and added that however pro-active the Council’s policies would be, it would never stand in the way of the integrity and objectivity of the mandate holders. Therefore, Algeria asked for the establishment of a relationship of direct accountability of the mandate holders to the Council.¹⁴⁹ Earlier in the session, Algeria had also emphasised that the autonomy of special procedures could not be an end in itself but a means of achieving the required objectivity. In their view, the autonomy of mandate holders did not dispense them of a duty of accountability to the Council.

To affirm the guiding role of the Council, the Philippines suggested the setting up of a mechanism for periodic review of mandates as well as of the performance of the mandate holders. Bangladesh pointed out that the Council should have the responsibility to oversee and if necessary terminate mandates. China also asked for some measure of supervision.

Relation with other human rights mechanisms and actors

The discussion mainly focused on the relationship between special procedures and the other mechanisms of the Council, in particular the UPR and complaint procedure. There was also some discussion on the relationship between the special procedures, treaty bodies, UN country teams and other bodies such as the Security Council. Some States and NGOs suggested that the reports and recommendations of special procedures should be used for the UPR and this could also be a way of improving follow-up. Some also suggested that special procedures be able to interact more closely with the UPR by making presentations and submitting additional information. A few States and a representative of the special procedures suggested that special procedures interact more closely with the complaint procedures. Other States however felt that there should be no direct contact between the special procedures, UPR and the complaint procedure and it was up to the OHCHR to disseminate information produced by one source to the other. Some States also emphasised the importance of the NGO interaction and contributions to the work of special procedures and the need to ensure the safety of NGOs who communicated with or met with special procedures.

¹⁴⁶ Finland (on behalf of the European Union), Slovenia, Chile, and New Zealand.

¹⁴⁷ New Zealand and Republic of Korea.

¹⁴⁸ At the second session this became clear in the dialogue with the mandate holders. One of the clearest examples was the report by John Ruggie, the Special Representative of the Secretary General on 25 and 25 December 2006. See also the ISHR Daily Updates of the Council Monitor, available at <http://www.ishr.ch/hrm/council/updates/dailyupdates.htm>.

¹⁴⁹ This is also the view of Bangladesh and India.

Relationship with the Universal Periodic Review mechanism

Argentina suggested that the work of special procedures could be one of the sources for the preparation of country files for the UPR.¹⁵⁰ They also pointed out that this would improve the follow-up to recommendations of special procedures. Canada proposed that special procedures should be able to make presentations and additional submissions to the UPR when they believed this was necessary or useful.¹⁵¹ They also thought that the level of cooperation by States with the special procedures should be assessed as part of the UPR.

Brazil pointed out that the UPR and the special procedures should be mutually reinforcing. This would imply that the UPR would not only build on the work done by special procedures, but would also be a way of assuring follow-up to their recommendations. The Philippines agreed that follow-up to recommendations of special procedures could be discussed in the UPR.¹⁵² Norway also welcomed the opportunity of the UPR following up on both country-specific and thematic recommendations by special procedures. Cuba thought that this should be restricted to thematic special procedures. Mexico said that more information on all countries was required for the UPR. Therefore the help of special procedures and especially visits to all countries could be useful.

Azerbaijan thought that the UPR should be in a position to benefit from the findings of all the mechanisms of the Council, including the special procedures, and the treaty bodies. They however felt that it was too early to address the role of special procedures within the UPR process as these issues still had to be clarified along with other elements within the Working Group on the UPR.¹⁵³ Algeria (on behalf of the African Group) emphasised that they did not believe there should be direct interaction between the special procedures and other mechanisms of the Council. They thought instead that it was the OHCHR's job to make available reports of one mechanism to another.¹⁵⁴

Mr Vitit Muntarbhorn, the Chairperson of the Coordination Committee of Special Procedures, stated that access of special procedures to the UPR would be welcomed, through both substantive involvement (the use of the findings and recommendations of special procedures) and participation in the process. Ambassador Husak asked States and the present representatives of the special procedures to consider if the UPR could call upon the special procedures in cases of gross and systematic violations of human rights in a given country. Mr Doudou Diène, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance thought this should be provided for. Action Canada for Population and Development suggested that the recommendations of special procedures should be the bases of review under the UPR.

Relationship with the future complaint procedure

Canada suggested that relevant information from the special procedures should be made available to the complaints procedure and that special procedures should be a follow up mechanism for complaints on issues falling within their mandates. Mexico said that urgent appeals represented a value-added with regards to the complaint procedure. Amnesty International underscored that information from the work of special procedures should be channelled to the complaint procedure. Mr Vitit Muntarbhorn, the Chairperson of the Coordination Committee of Special Procedures, suggested that the Council should enhance the effectiveness of its complaints procedure and make it more interactive and accessible by associating special procedures, e.g. in reporting on country situations.

¹⁵⁰ This was supported by Brazil, Canada, Chile, Finland (on behalf of the EU), Japan, Mexico, Switzerland, the USA, and Amnesty International.

¹⁵¹ This was supported by Chile.

¹⁵² This was supported by Argentina, Canada, and Norway.

¹⁵³ This was supported by China.

¹⁵⁴ Bangladesh also suggested that OHCHR can disseminate relevant information among the UPR, special procedures and complaint procedure to avoid duplication.

Algeria (on behalf of the African Group) stated that though the final outcomes of the complaint procedure could be made available to the special procedures, no information should be shared during the proceedings as this would undermine the confidentiality of the procedure. Argentina proposed that there should be a mechanism to assure that all mechanisms affiliated with the Council have knowledge of general trends with regards to human rights violations, without revealing the details of confidential cases. A number of States highlighted the value they attached to the confidential nature of the complaints procedure.¹⁵⁵

The Philippines asked for non-duplication between the complaint procedure and special procedures as they claimed to have received request for information about the same cases from special procedure and the 1503 procedure.

Expert advisory body

Brazil suggested that a strengthened Coordination Committee and the future expert advisory body should be the two major promoters of the interaction between special procedures and other mechanisms such as the UPR, complaint procedure, treaty bodies and NGOs. The future expert advisory body would deal with analysis, study and research while they saw the special procedures as carrying out a monitoring and implementation role.

Relationship with treaty bodies

Canada suggested that special procedures could ask for ‘advisory opinions’ from treaty bodies on questions of application of a particular treaty. Slovenia underlined its support for the annual meetings between the Chairpersons of the treaty bodies and special procedure mandate holders. Cuba reserved its position on the cooperation between special procedures and treaty bodies because it considered the former to be politicised whereas the latter is free from such influence. Bangladesh said that treaty bodies must disseminate relevant information in order to avoid duplication. Algeria was against a formal link, but thought a mutually reinforcing process could be the sharing of information, to be assured through the OHCHR.

UN country teams

Norway pointed out that the draft Manual provided that UN field offices should be consulted to the extent possible in the preparation of communications concerning their areas of responsibility. They should also receive copies of any relevant communications that had been sent. Bangladesh saw cooperation with UN country teams as a crucial issue as they could help prepare country profiles, providing special procedures with reliable information and with ‘minor’ preparation for the visit. This would in Bangladesh’s opinion also have the benefit of avoiding overdependence on NGOs, who could sometimes be politically motivated.

Interaction with NGOs

Some States highlighted the need to protect NGOs and others who communicated with special procedures or met with them during their visits to countries.¹⁵⁶ Canada also highlighted the need to preserve and strengthen certain essential features of the functioning of special procedures such as dialogue and cooperation with civil society.¹⁵⁷ Norway pointed out that civil society and NGOs provide invaluable support in all aspects of the work of special procedures, including providing information and analysis, help disseminating their findings and assisting in follow up activities.¹⁵⁸ Azerbaijan stated that NGO and civil society interaction with the special procedures should be retained. Representatives of the special procedures themselves who participated

¹⁵⁵ Pakistan, Algeria, Norway, the USA.

¹⁵⁶ Notably Canada and Norway. See the discussion on sources of information under Working Methods above at pp. 19 – 24.

¹⁵⁷ This was supported by Chile, Finland (on behalf of the EU), and Norway.

¹⁵⁸ This was supported by Ecuador.

in the Working Group's sessions also highlighted the importance of information provided by NGOs and cooperation with NGOs for their work.¹⁵⁹

New Zealand also stressed the need for NGOs to participate in the interactive dialogue with special procedures. Amnesty International said it was looking forward to broader NGO participation in the proceedings of the Council, as well as concrete measures to achieve this.¹⁶⁰ Norway and Finland (on behalf of the EU) welcomed the participation of NGOs in the Working Group's proceedings as they viewed this as essential.

Algeria (on behalf of the African Group) and China however felt that it was predominantly northern NGOs who were participating; they supported measures to increase the participation of southern NGOs. The Philippines also pointed out that they supported cooperation with NGOs, but felt that regional NGOs and NHRIs should also be included. Mr Joinet pointed out that NGO participation was dependant on the respective NGOs in the South being authorised to exist and work freely in their countries. If NGOs could not work freely in their country of origins, it was virtually impossible for them to engage with the UN system. He also pointed out that in some States NGOs were not allowed to exist or were only created by States and that this was an issue that should be addressed. The UK endorsed the calls to have greater participation from NGOs from developing countries and stated that this would enrich the experience of States. Amnesty International emphasised that while it would welcome concrete measures to facilitate greater participation by NGOs from Africa, Asia, and Latin America and the Caribbean in the Council, it was important not to undercut NGO contributions to the Council by unfounded allegations of Western bias. It stated that many NGOs are located in the northern hemisphere for practical reasons, such as being closer to the fora in which they work but that several of these organisations have regional offices, national chapters or affiliates in the 'south'.

Amnesty International stressed the need for governments to facilitate the access of special procedures to NGOs and vice versa. It thought that one way of doing this would be to invite special procedures to visit under conditions that allowed them free access and opportunities to meet local NGOs, free of risk of reprisal against the NGOs. It was also important to create space in the Council for the participation of local NGOs even if they did not have ECOSOC accreditation.

Other bodies

Canada suggested that the reports of special procedures should be made available to other UN bodies, which deal with human rights issues, particularly the Third Committee of the General Assembly and the Security Council. The special procedures should also be able to brief the Security Council when it considers issues relevant to their mandates. Canada also suggested that special procedures continue to work with regional organisations.¹⁶¹ Bangladesh felt that special procedures should increase their cooperation with NHRIs and parliamentary commissions as they could be in a good position to help with the implementation of recommendations.

Mr Vitit Muntarbhorn, the Chairperson of the Coordination Committee of Special Procedures stated that there was a need to ensure full integration of special procedures into the UN human rights system. He also thought that the work of special procedures should be mainstreamed into the wider UN system, including through enhanced contact with the General Assembly, the Security Council, the Peacebuilding Commission and other relevant bodies.

¹⁵⁹ Mr Louis Joinet, the Independent Expert on the situation of human rights in Haiti, and Mr Santiago Corcuera, the Chairperson of the Working Group on Enforced Disappearances.

¹⁶⁰ This was supported by the Republic of Korea.

¹⁶¹ This was supported by Norway. Bangladesh also thought that special procedures could exchange views with inter-governmental regional organisations.

Support from the OHCHR and funding

Switzerland stated that as the OHCHR's budget had been doubled they felt it should now be possible for the whole system of special procedures to be funded by the OHCHR's budget without the requirement for States to make voluntary contributions. They also emphasised that it was important for OHCHR to make qualified personnel available to support the special procedures. Algeria (on behalf of African Group) felt that it was important that there was balanced geographical distribution amongst staff members who support the special procedures and also equal support to mandates on economic, social and cultural rights and the right to development. Algeria also supported the suggestion that there be greater transparency in sources of funds.¹⁶² They agreed with Switzerland that the regular budget should to the greatest extent by the source of funding for special procedures. Brazil supported the idea of greater transparency in the sources of funding for the special procedures and suggested that OHCHR publish an annual report with such information, specifying the amount of contributions and the country from which it was received, on its website.

Bangladesh called for guidelines on the relationship between special procedures and OHCHR. They also thought it was important that mandate holders be supported by professionally trained and qualified staff with long-term contracts coming from different regional groups, cultural and legal backgrounds.¹⁶³ They stated that OHCHR should ensure that allegations of human rights violations are processed in accordance with clearly laid down procedure. They also called for regular interaction between the special procedures branch of the OHCHR and the intergovernmental system.

Canada expressed appreciation for the Quick Response Desk and other measures taken by the OHCHR in support of special procedures. Slovenia stated that it anticipated that the doubling of the OHCHR's budget would benefit the special procedures branch and enable it to continue with administrative improvements.

Ms Sousa Raadi, the Chief of the Special Procedures Branch at OHCHR, told the Working Group that while the requests for more support for special procedures had been well noted, she would like to draw attention to the fact that that had already been an increase over the years in the support provided by the office to the special procedures. She also stated that they were trying to provide a higher level of support, and had set up a management team to address this issue as well as the need for longer-term personnel. She also wanted to inform the Working Group, as there had been some references to the need for guidelines on the relationship between special procedures and the OHCHR, that guiding procedures already existed.

Conclusion

The Working Group did not make any decisions in its first set of meetings. What we saw were opening moves that are not necessarily indicative of final outcomes, as these initial proposals will be discussed and negotiated further in the next few months. Many of these opening moves have set out a 'negative reform agenda' that aims at limiting the independence and working methods of special procedures. A lot of the proposals that have been put forward are quite alarming and are also disappointing. The current process of institution-building that the Council is engaged in represents an opportunity to improve systems for protection of human rights. The fact that process is instead, at the moment, focused on limiting the strongest mechanisms of the former Commission on Human Rights calls into question how far States are willing to realise the promise of reform or even the terms set out by the General Assembly.

Some States have articulated a 'positive reform agenda', which tries to address the challenges and limitations faced by special procedures. These proposals address the structural and other weaknesses that impair the work of special procedures: in particular the lack of cooperation and follow up by States. In the final analysis, the

¹⁶² This was supported by Bangladesh.

¹⁶³ This was supported by Brazil.

Working Group will be judged on how far it is willing to act concretely to address these issues and strengthen the system of special procedures.

It appeared from the initial discussions at the Working Group that the negative reform agenda has more support at the present time; these positions were often articulated on behalf of an entire regional group and with the support of members of the Council from other regions. It should however be noted that not all members of the Council have expressed their views at the Working Group. The fact that statements were made on behalf of all members of regional groups also does not necessarily mean that all those States will vote for or support the process at the final decision-making stage. However, the degree of actual support for some of the more negative proposals was tested when Algeria (on behalf of the African Group) tabled a Resolution at the resumed second session asking the Working Group to review the Manual of special procedures and to draft a code of conduct. The Resolution, which was put to vote was supported by all members of the Council belonging to the African Group, almost all Asian States, and surprisingly also by Brazil and Ecuador. This broad spectrum of support (30 members of the Council) does raise serious concerns about the level of support that the negative reform agenda currently enjoys. Both Brazil and Ecuador justified their vote by arguing that the Resolution would not affect the independence of the mandate holders and would contribute to better relations between States and mandate holders. However, in the context in which the code of conduct has been proposed, it is unclear how it can not affect the independence of special procedures.

Many of the proposals that have been put forward would effectively cripple the system of special procedures, if they are adopted. Though the current system of appointment has its weaknesses, elections of mandate holders may allow the majority of Council members who do not fully support the independence of special procedure to elect less competent people who may be more reluctant to undertake critical and independent analysis of the actions of States. The system is also under threat from the attempts to curtail the working methods of special procedures and weaken all aspects of the system that currently benefit human rights defenders and victims: the ability to take up communications, to undertake country visits freely, and to publicise persistent or serious violations with the help of the media. The calls for a code of conduct for special procedures are not new and date back to 2005 when the Asian Group submitted a non-paper, which also suggested such a code.¹⁶⁴ The fact that these proposals have surfaced despite largely positive discussions and exchanges on this issue at the ‘Seminar on Enhancing and Strengthening Special Procedures’¹⁶⁵ that was held at the request of the Asian Group in 2005 is also disturbing. Stakeholders can still use this opportunity to insist that such a code cover the conduct of States in addition to special procedures. The current focus of the proposed code of conduct has however only been on special procedures.

There is also a concern that States may insist on beginning an individual review of each special procedure mandate, even though criteria for the review have not yet been developed. If this occurs, NGO monitoring and advocacy will be extremely crucial. The current country-specific special procedure mandates and the system of appointing special procedures to monitor the situation in countries is also under severe attack as there are calls that these be reviewed and terminated first.

So far, there has been limited NGO participation in the Working Group because it is difficult for nationally based NGOs to participate in the process because of lack of resources and information. Advocacy by NGOs and other stakeholders will be essential in the coming months, both at national capitals and in Geneva, to ensure that the system of special procedures is strengthened, not weakened by the review process. A group of

¹⁶⁴ Initial discussion paper on “Enhancing the effectiveness of the special mechanisms of the commission on human rights” prepared by the Asian Group, Seminar on Enhancing and Strengthening Special Procedures, 12-13 October 2005, available at: http://portal.ohchr.org/portal/page?_pageid=1674,1&_dad=portal&_schema=PORTAL. The Asian Group proposal for instance suggests criteria for admissibility of communications such as the exhaustion of domestic remedies. It also suggested limits on the ability of special procedures to carry out country missions by co-ordinating with the receiving States on itinerary, activities, interviews and adoption of guidelines for interaction with the media.

¹⁶⁵ Documents that were submitted for the Seminar are available at http://portal.ohchr.org/portal/page?_pageid=1674,1&_dad=portal&_schema=PORTAL.

NGOs have prepared a joint statement identifying criteria for the review of special procedures.¹⁶⁶ Any NGO can join this statement and it is hoped that this will only be the beginning of networking and information sharing to strengthen advocacy for the special procedures.

Next steps

The next session of the Working Group runs from 5 – 16 February 2007. The Facilitator presented his preliminary conclusions at the third session of the Council and received a number of comments on the conclusions he had tentatively put forward.¹⁶⁷ He has now at the request of members, prepared a non-paper to assist the discussions. The review of special procedures will be discussed all day on 6 and 7 February, in the morning of 13 February and the afternoon of 15 February 2007. There is as yet no clear agenda for the discussions that will occur in the 2nd set of meetings of the Working Group.

The Working Group is also scheduled to meet for its last set of meetings between 16 – 27 April 2007. Under the terms of General Assembly Resolution 60/251, the Council has to complete the review of special procedures by June 2007.

Updated & Revised: 6 February 2007

¹⁶⁶ The joint statement is available at www.ishr.ch/hrm/council/WGrevmand/JointNGOContributionSPsReview.pdf. Other NGOs that agree with this criteria are invited to sign on to the statement, which will be submitted to the Working Group. If you wish to sign on, please send the name of your organisation, mentioning whether you have ECOSOC status, to reform@ishr-sidh.ch

¹⁶⁷ For a detailed summary of the discussion on the Facilitator's preliminary conclusions see ISHR, *Council Monitor Daily Update*, 5 December 2006, available at http://www.ishr.ch/hrm/council/updates/5_December_06.pdf.

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