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HUMAN RIGHTS COUNCIL WORKING GROUP ON REVIEW OF MECHANISMS AND MANDATES, 2ND SESSION, 5-16 FEBRUARY 2007

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Overview

This report is part of ISHR's Council Monitor series. It should be read in conjunction with earlier reports on the issue of the review of mandates, in particular our comprehensive discussion of the first meeting of the Working Group in November 2006.¹ The Working Group on the review of mechanisms and mandates held its second series of meetings from 5 to 16 February 2007 at the Palais des Nations in Geneva. This report focuses on the segment on the review of special procedures, which is facilitated by Ambassador Tomas Husak, the Permanent Representative of the Czech Republic.²

The Facilitator presented a new revised version of his non-paper, which was criticised by a number of States for its confusing structure, and for repetitions it contained. After having gone through the non-paper, the Working Group turned to a discussion of the 'matrix',³ a process that was expected to lead to a discussion of

¹ Available on our website at http://www.ishr.ch/hrm/council/wg/wg_reports/wg_review_sps.pdf.

² The "Working Group 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" is divided in three segments, each treated in separate meetings of the Working Group with separate Facilitators: the review of special procedures mandates, the future complaint procedure and a third segment on expert advice.

³ The 'matrix' is a document entitled "Basic Information on Special Procedures" (document symbol OHCHR/SPB/IMT), 23 November 2006. It was prepared by the secretariat and contains information on all thematic mandates. States intend to use this

the individual mandates. However, apart from a long debate on country specific mandates (in general and related to the mandates on Cuba and Belarus in particular), as well as a general discussion of the matrix, little progress was made, as there was no detailed discussion of individual mandates. As in the first meeting in November, the debate made it clear that the distance between delegations is still considerable. There was still no agreement on the following key issues:

- How should the selection process of mandate holders be designed?
- In what form and to what extent should the Human Rights Council (the Council) regulate the work of special procedures?
- What would be the purpose and content of a code of conduct for special procedures?
- How will the Working Group conduct the review of individual mandates?

Again, some States and non-governmental organisations (NGOs) 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 delegations, the defining and strongest feature of the special procedures system is its independence; they put forward proposals to address the main issues that were impairing the functioning of special procedures, in particular the lack of cooperation and follow-up by States.

However, the ‘negative reform agenda’ put forward by some States already observed in the November meeting was still supported by many. It essentially aims at defining and controlling the working methods of special procedures and impairing their effectiveness and independence. 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 establishing a relationship of greater supervision and ‘accountability’ of special procedures. Since the last session of the Working Group, the proponents of a restrictive code of conduct took initiatives at the Council to further consolidate their positions. During the resumed second session of the Council in November, States had adopted a resolution mandating the Working Group to draft a code of conduct.⁴

This report does not provide a chronological narrative of the discussions nor does it strictly adhere to the list of topics. Instead it is organised around the main themes that emerged from the discussions. It tries to describe the main proposals and areas of discussion, as well as present and compile State positions on these proposals and issues.

Background

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 rationalise all mandates” with the requirement that this review be completed within one year of the Council holding its first session (by June 2007).⁵ The Council adopted a Decision at its first session to establish an inter-sessional open-ended Working

document as a basis for the review of individual mandates. It can be accessed on the OHCHR website which is available at: www.ohchr.org/english/bodies/hrcouncil/form.htm (fill out the form on the page to receive the user name and password).

⁴ A/HRC/2/L.2/Rev.1, 16 November 2006, adopted 27 November 2006.

⁵ Paragraph 6 of General Assembly resolution 60/251. The full-text of this resolution can be viewed on the OHCHR website which is available at: <http://www.ohchr.org/english/bodies/hrcouncil/>. 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 International Service for Human Rights*

Group to “formulate concrete recommendations on the issue of reviewing and, where necessary, improving and rationalising all mandates, mechanisms, functions and responsibilities in order to maintain a system of special procedures, expert advice and a complaint procedure”.⁶ The Working Group on review of mechanisms and mandates (the Working Group) met from 13 to 24 November 2006⁷ and again from 5 to 16 February 2007. The President of the Council appointed Ambassador Tomas 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.

Summary of the November meetings

In its first set of meetings last November, the Working Group did not make any decisions. Instead States made opening moves that were not necessarily indicative of final outcomes, as these initial positions will be further discussed and negotiated. Many of these opening moves set out a ‘negative reform agenda’ that aimed at limiting the independence and working methods of special procedures, though some States had articulated a ‘positive reform agenda’, which tried 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 had more support because these positions were often articulated on behalf of an entire regional group and with the support from other regions.

In the November meetings of the Working Group, the main debate evolved around the following issues:

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 Council argued in favour of modifying the current system of appointment to direct elections by the Council. The member States of the European Union (EU) advocated for appointment by the High Commissioner.
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. Other States argued that overlaps were necessary because of the inter-related nature of human rights and many of them thought it was more important to address the gaps in the system. Some States also asked that the Working Group begin reviewing mandates individually even though no criteria had as yet been developed to carry out the review.
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.⁸ 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 and so on.
4. **Working methods:** Some States raised the need for a standardised format for communications, for mandate holders to select their sources of information carefully, to verify the information received and to channel communications through the diplomatic mission in Geneva. Others, however, focused on the need to

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).

⁶ Council Decision 2006/104. The full-text of this decision is available on the OHCHR extranet at <http://www.ohchr.org/english/bodies/hrcouncil/form.htm> (fill out the form on the page to receive the user name and password).

⁷ For more information on the first set of meetings of the Working Group see the comprehensive ISHR report available at http://www.ishr.ch/hrm/council/WGrevmand/WG_Review_SPs.pdf.

⁸ The “Manual of the United Nations Human Rights Special Procedures” is available at <http://ohchr.org/english/bodies/chr/special/manual.htm>. The deadline for comments by all stakeholders has been extended until 18 June 2007. Comments can be submitted to spmanual@ohchr.org.

improve the submission of timely responses by States to communication and to ensure the protection of people who communicated with special procedures.

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 that this should also be part of the criteria for candidature for membership of the Council. 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.

6. **Relationship with the Council:** Some States suggested that as the Council is meeting more frequently than the Commission on Human Rights (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. Other States focused on standardising reports by special procedures and argued that the regularity of their access to the Council would be dependent on the agenda of the Council and subject to its approval.

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 universal periodic review (UPR) and that this could also be a way of improving follow-up. Some also suggested that special procedures should be able to interact more closely with the UPR by making presentations and submitting additional information. Some suggested that special procedures interact more closely with the complaint procedure. Other States however felt that there should be no direct contact between the special procedures, UPR and complaint procedure.

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. The issue of funding was also taken up with calls for greater transparency and for special procedures to be funded from OHCHR's regular budget.

Topics for discussion and structure of the report

For the second session of the Working Group, the Facilitator presented a revised non-paper.⁹ The January version of the Facilitator's non-paper has a similar structure to the non-paper used for the November meeting of the Working Group. It is still made up of the following eight topics:

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.

Under each of these sub-headings the non-paper lists "elements of convergence" and "elements for further discussion" as well as the "Facilitator's proposals". The document tries to consolidate State positions with a view to moving towards a negotiating text at the next Working Group in April. Some States expressed their dissatisfaction with both how the non-paper was structured, as well as the lack of a clear structure during the debate. Germany on behalf of the European Union (EU) said that some issues were spread over the entire

⁹ The facilitator's non-paper is available on the OHCHR extranet (see fn 6).

document, rather than clearly bundled together.¹⁰ They criticised the fact that the Facilitator let States discuss a number of the sub-headings in his non-paper, which lead to rather long, unfocused statements, rather than to constructive proposals to find agreement on the key issues.

Australia suggested that the next version of the non-paper should more closely resemble a “negotiation document”. Canada proposed that a programme of work could be established before each meeting, which would allow for more structured discussion.

This report 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 describes the main proposals and areas of discussion and it presents and compiles State positions on these proposals and issues.

Mandate of the Working Group

General Assembly *Resolution 60/251* requires that the review of mandates be completed “within one year after the holding of its first session.”¹¹ Canada said that in their view this would mean before 30 June 2007, since the Council had held its first session from 19 to 30 June 2006. Cuba on the other hand was of the view that the task needed to be completed by 18 June 2007, since that would be one year after the first day of the Council in 2006.¹² In the informal consultations held during the 4th session of the Council, a number of States expressed concern that the Working Group would not be able to finish discussing all points in the Facilitator’s non-paper, and that it should focus on key areas such as the process of selection of mandate holders and the review of country specific mandates. Other elements could be excluded from the non-paper at the current time, including the issue of coordination between special procedures,¹³ balanced representation of NGOs¹⁴ and the relationship between special procedures mandate holders and the OHCHR.¹⁵ However, a number of States emphasised that the review of individual mandates must be concluded within the one-year-deadline.

During the informal consultations, Ambassador Husak took the view that it was up to States to determine which issues should be eliminated from the non-paper to be treated at a later stage, and which should be retained. He also underlined that he was open to new suggestions. He acknowledged the need to reduce the number of issues but pointed out that he could not do this if delegations remained divided.

Participants

The Working Group is open to members of the Council, other States and observers, NGOs with Economic and Social Council (ECOSOC) accreditation, and national human rights institutions (NHRIs) with accreditation. The level of participation in the discussions on the review of special procedures was relatively high, especially in comparison to discussions on the two other segments on expert advice and the complaint procedure. 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

¹⁰ They mentioned for example the various references to the UPR.

¹¹ Operative paragraph 5e. of General Assembly resolution 60/251 which is available on the OHCHR website at: <http://www.ohchr.org/english/bodies/hrcouncil/>.

¹² States have conflicting interpretations of the term “after the holding of its first session”. The Canadian interpretation assumes that the institution-building year started after the last day of its first session, and that the period from 19 to 30 June 2006 was outside that timeframe. The Cuban interpretation on the other hand assumes that the institution-building year started with the first day of the first session of the Council, and thus includes the first session.

¹³ Cuba.

¹⁴ Argentina.

¹⁵ United Kingdom.

Coordination Committee of special procedures and three other special procedure mandate holders participated in the discussions.¹⁶

Selection and appointment of mandate holders

As in the first session of the Working Group, States are still split between those favouring the current approach of appointing mandate holders, either by the President of the Council,¹⁷ or by the High Commissioner for Human Rights (the High Commissioner)¹⁸ and those States speaking in favour of direct elections by the Council.¹⁹ However, on both sides there were signs that some States are starting to move towards achieving a common understanding. In contrast to the previous session of the Working Group there seemed to be at least a willingness to negotiate on both sides – for the first time in this Working Group States were actually exchanging arguments rather than only reiterating their positions already known to all participants.

Criteria for mandate holders

The Facilitator's draft non-paper included criteria for the selection of mandate holders, based on those put forward in the November meetings of the Working Group. The criteria listed were expertise or qualification in the field of the mandate, independence, impartiality, personal integrity, objectivity, and equitable geographic representation. Malaysia supported these proposed criteria. Pakistan, on behalf of the Organization of the Islamic Conference, (OIC) stressed the importance of including geographical representation in these criteria, and indicated the OIC's desire for greater representation of developing States among special procedures. Both Pakistan (on behalf of the OIC) and Norway stressed that the criteria must include gender balance among the mandate holders. The Islamic Republic of Iran (Iran) requested that cultural sensitivities needed to be reflected more in the Facilitators' non-paper, stressing that they had raised this issue at the last meeting of the Working Group. The Russian Federation (Russia) suggested that the equal representation of all legal systems must be added to the list of criteria in the non-paper.²⁰ Algeria (on behalf of the African Group) highlighted the importance of maintaining regional balance among mandate holders. Belgium argued that it was difficult to maintain this if mandate holders were to be elected, because they serve as individual mandate holders (and not as part of a collegial body like the treaty bodies).²¹ Algeria replied that the criteria of regional balance should be assured over the whole group of all special procedures mandate holders.

States favouring elections

Many States reiterated their support for a system of direct elections. Many of these States referred to the use of elections in the treaty body system as justification for their positions.²² As in previous Working Group meetings and Council plenary sessions, Algeria (on behalf of the African Group) was particularly vocal in its support for an election process to select mandate holders.

¹⁶ Ms Leila Zerrougui, Chairperson-Rapporteur of the Working Group on arbitrary detention; Mr Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and Ms Yakin Ertürk, Special Rapporteur on violence against women, its causes and consequences.

¹⁷ Argentina, Switzerland.

¹⁸ Australia, Israel, Canada, Germany on behalf of the European Union, Japan, United States of America (USA).

¹⁹ Algeria on behalf of the African Group, Azerbaijan, Bangladesh, China, Colombia, Cuba, Democratic People's Republic of Korea (DPRK), Islamic Republic of Iran (Iran), Malaysia, Morocco, Pakistan on behalf of the OIC, Philippines, Saudi Arabia on behalf of the Arab Group, South Africa, Tunisia.

²⁰ Supported by Iran.

²¹ Argentina.

²² Algeria on behalf of the Africa Group, Malaysia.

In response to concerns raised about the preservation of the independence of mandate holders under an election system, the Algerian Ambassador listed several quasi-judicial bodies of noted legitimacy, whose members are elected by States. States opposed to elections had argued on earlier occasions that in many countries the executive appoints judges, which guarantees the separation of powers necessary in a democratic system.²³ Endorsing the analogy of special procedures to judges put forward by Chile, the Algerian Ambassador referred to the UN treaty bodies, the International Court of Justice, the International Criminal Court, the two International Criminal Tribunals (for the Former Yugoslavia and Rwanda), the European, Inter-American and African Courts of Human Rights. He explained that members of these bodies were also elected, without undermining the ‘checks and balances’ deemed so important by some States with regard to judges in their domestic jurisdictions.

Portugal questioned Algeria’s comparison of the special procedures system with judicial bodies, pointing out that special procedures did not have a quasi-judicial mandate but were a source of expertise for the political body. Along the same lines, Canada pointed out that the functions of special procedures often involved criticising the behaviour of States – a task that might be difficult to fulfil if special procedures mandate holders are dependent on election/re-election by the very States they criticise. Argentina admitted that the judges of the Inter-American Court of Human Rights (IACtHR) were indeed elected. Argentina argued, however, that these judges could be elected and still safeguard their independence because they work full-time for the IACtHR and are paid. In contrast, the part-time and non-remunerated special procedures mandate holders could see their independence undermined in a system of direct election. Canada argued that while elections are a part of democratic practices, some branches of democratic governments, such as judiciaries, are often appointed. They believed this reflected an equally strong democratic principle, namely a check against the majoritarian power of the elected branches of government.

The Algerian Ambassador responded to these concerns by pointing out that many mandate holders of other, non-judicial international and regional organisations, such as the Committee of Experts of the International Labour Organisation (ILO), the Inter-American Commission on Human Rights and the African Commission on Human and Peoples’ Rights were also elected.

Responding to Algeria’s reference to the elections of treaty bodies, Canada explained that all States party to the particular treaty elect the members of its treaty body, while the proposed system of election of special procedures by the Council would exclude non-member States of the Council from voting, even though the mandates of most special procedures are universal. Following this logic, Canada argued that if elections were to be chosen, special procedures would have to be elected by the General Assembly. Because the special procedures’ mandates are universal, only elections by the whole membership of the UN could fulfil the criterion of being representative of all States affected by the work of special procedures.

Cuba was vociferous in its support for elections, questioning why certain ‘democratic’ States were opposed to the use of elections. They pointed to the legitimacy and independence of the Secretary General and the High Commissioner who are elected by States, as a way to further their case for elections. In a similar vein, Russia accused the EU proposal of appointment by the High Commissioner as being identical to the system of ‘election’ for members of the Politburo in the former Soviet Union.

Appointment

Two versions of appointment as a method of selection were advocated. Some proposed that it be a continuation of the current practice, in which the President of the Council appoints the mandate holders.²⁴ As a variation of the appointment model, Germany (speaking on behalf of the EU) reiterated the European

²³ In particular, Chile at the November meeting of the Working Group.

²⁴ Amnesty International, Argentina, Chile, Japan, Mexico, Norway, Republic of Korea, Romania, Russian Federation (Russia), Slovenia, Switzerland.

Union's support for the appointment of special procedures mandate holders by the High Commissioner.²⁵ They would like the High Commissioner as the most independent entity to appoint special procedures mandate holders. Apart from these differences as to who should be in charge of appointing mandate holders, the arguments made in support of the general principle of appointment were the same.

The German delegation still felt that an appointment process would best serve the goals of the Council, as it would ensure independence, expertise and effectiveness. Their proposal sets out a process in three stages; after an initial phase of intensive pre-screening of possible candidates (to be proposed by all stakeholders) a roster would be created, from which the High Commissioner would then appoint a candidate, based on the specific requirements of the respective mandate. Germany outlined the merits of this system, stressing it would ensure the independence and impartiality of mandate holders as they would not be chosen by the "same group on whose human rights record they are supposed to report". Germany indicated the preservation of the democratic principle of 'checks and balances' in this system.

The Ambassador of the United Kingdom elaborated on this by stating that all delegations' main concern was the independence and quality of the mandate holders. While he understood the concerns about transparency raised in connection with the appointment model, he felt that the appointment of candidates would better guarantee independence and quality of mandate holders than elections. He went on to say that there was broad consensus that all delegates wished to avoid politicisation in the Council, but was concerned that elections might lead to just that. He detailed that experiences in other UN bodies had shown how elections can quickly lead to divisions that take on a political dimension, especially when such elections concern one individual position as in the case of most special procedures. As for the quality of mandate holders, the United Kingdom expressed its view that often elections do not lead to the most suitable candidate being appointed.

Amnesty International said that the appointment process had functioned well for over 40 year. While there might be a need for modifying it to address legitimate and well-founded concerns about a lack of transparency, the appointment process should be the basis for discussion. In particular, a thorough process of pre-screening would serve to address these concerns. In addition, Argentina suggested consultations with various stakeholders in the lead-up to the appointment as a measure that would further improve transparency.

Hybrid model

During the discussions in the November meeting of the Working Group, some proposals for mixed systems of selection had been made. The original 'hybrid model' had been presented by Brazil. Under this 'mixed' or 'hybrid' proposal the President of the Council, in consultation with regional groups, would nominate five or six candidates for each mandate from a roster developed by the OHCHR. The Council would then elect the mandate holder from this list. At this session of the Working Group, Brazil continued to champion its 'hybrid' model. They argued that this method would reduce politicisation, as the individuals on the roster would not be political appointees. At the end of the November meeting and in his January non-paper, the Facilitator suggested a compromise based on the Brazilian proposal: appointment of mandate holders by the President or High Commissioner, after the screening by an advisory panel, and conditional upon the 'approval' of the Council. This proposal resting on the (possibly tacit) endorsement of the President's choice through the Council would leave States the leeway to call for elections of individual mandate holders if they so desired.

The Working Group was presented with a third version of the hybrid model by Japan, based on the Facilitator's hybrid. It differs from the latter in that if the Council rejects the choice of the President, there will be no recourse to elections of individual mandate holders. Instead, the President would initiate renewed consultations, and come up with a new list of appointees, which could then be accepted or rejected by the Council. ISHR supported the merits of this model as a good compromise. Switzerland, who had previously favoured the appointment of mandate holders by the President, showed its willingness to seek a compromise on the issue of the selection and appointment of mandate holders. Several States that had formally favoured

²⁵ Supported by Australia, Canada, Israel, Poland, Portugal, United Kingdom, USA.

direct elections by the Council also voiced their general support for a hybrid model as a way towards compromise.²⁶ Canada, a firm supporter of the appointment process, requested details on how the hybrid model would work in practice.

Malaysia proposed a two-step approach whereby States would submit nominees for pre-screening by the President and member States. Then the Council would elect the individual. Colombia presented a similar model, but they also included the participation of civil society in the pre-screening process. Bangladesh also indicated their broad support for a hybrid model, though they did not enter into specifics. Russia supported Brazil's hybrid model. Iran suggested that elections take place, after consultation with all stakeholders. India said that they could agree on a hybrid model, but only if it culminated in elections. While in the November session of the Working Group both the appointment and election camps stood firm, the January session witnessed a certain relaxation of these entrenched positions. On both sides, individual States soften their positions by showing their willingness to study the hybrid proposals.

Pre-screening and roster

The issue of a roster of suitable candidates from which mandate holders could be either elected or appointed has a potential to build the basis for compromise. Although the idea of a roster from which candidates could be taken was presented on several previous occasions, its relevance as a possible key to compromise has become apparent only during this session of the Working Group. The proposals by the EU and Canada outlined above rely heavily on an intensive stage of pre-screening. Brazil also highlighted the need to regularly update the roster, while Canada underlined the importance of making the roster publicly available. The United Kingdom explained how a roster open to all suitable candidates, with clear criteria and a clear method of pre-screening would increase the transparency of the whole selection process. Germany on behalf of the EU expressed their view that a roster would be most suitable to assure equitable geographic and gender balance. A number of States now seemed to accommodate the idea of a pre-screening stage. Iran agreed that the President could be asked to draw up a list of candidates, on the basis of which the Council would then select mandate holders.

On the other hand, some States remain opposed entirely to the idea of a roster.²⁷ Algeria (on behalf of the African Group) stated that they would expect the names of mandate holders to be proposed only by States. They noted their disapproval of any kind of roster system, as in their view rosters lead to an absence of rotation. Pakistan (on behalf of the OIC) expressed its view that a roster did not guarantee the diversity needed.

Term Limits

The Facilitator's non-paper lists the agreement to set term limits for mandate holders as an element of convergence, which was discussed at length in the November session of the Working Group. Norway agreed that terms should be limited to two terms. However, they were careful to point out that they do not agree on the fact that reappointments should only be possible after a pause; rather they wish to see mandate holders immediately eligible for a different mandate.

Review, rationalisation and harmonisation

²⁶ Bangladesh, Cuba, Iran, Malaysia, Russia.

²⁷ Algeria (on behalf of the African Group), Cuba, Pakistan (on behalf of the OIC).

While the Working Group on earlier occasions discussed a wide range of issues, including general principles/criteria to guide the review process, unification of terminology, evaluation of gaps and views on the need for and priority areas for country and thematic mandates, most States this time centred their interventions on aspects of the individual review of mandates. After an extensive discussion in the first 4 meetings (6 and 7 February) of the issues of country mandates and whether to start a review of individual mandates, the Facilitator asked States to discuss the ‘matrix’²⁸ and as a result indirectly opened a discussion of individual mandates. However, even though a number of States had called for the opportunity to review individual mandates one by one, there was virtually no substantial discussion on any individual mandates.

Switzerland highlighted that the aim should be a restructuring of the current system, to move away from the current ad-hoc nature. They suggested paying particular attention to the proposals and advice of the Coordination Committee of special procedures in this regard. The representative from the Coordination Committee present at the Working Group, Ms Leila Zerrougui, asked States to be careful when conducting the review and keep the views of ‘insiders’ (meaning the special procedures mandate holders) in mind when trying to merge mandates. She stressed that persons who have actually held a particular mandate would know its exact scope and be able to pinpoint gaps. They can identify where overlap is necessary, and where it should be avoided.

Review of individual mandates and the matrix

Many States were keen to begin a review of individual mandates, with a view to rationalising and harmonising some mandates.²⁹ Cuba felt that many mandates were ‘corrupt’ and it wanted to make sure that these mandates were not being used to attack specific countries. Cuba stated that it would reserve its position on all other issues discussed in the Working Group, until mandates were reviewed on a case-by-case basis. Saudi Arabia (on behalf of the Arab Group) supported the “streamlining and rationalisation” of mandates where common ground could be established. China justified the review and rationalisation of mandates by arguing that some mandate holders had not conducted their work impartially. They did not specify which mandate holders or mandates they were referring to. Switzerland on the other hand noted that there was no point in reviewing the mandates one by one, but that the Working Group should adopt a holistic approach.³⁰ Australia proposed a ‘pragmatic approach’ by reviewing the system first and then move to the individual review.³¹

Most States believed that the Working Group should use the matrix to identify gaps and overlaps in the system.³² At the end of the February session, the Working Group started a general debate on the matrix, a process that could eventually lead to a review of individual mandates. Most delegations welcomed the matrix as a useful document to get an overview of the structure of the existing system of special procedures, the work done by the former Commission and the results achieved.³³ However, Cuba noted that the matrix lacked accuracy, and that they therefore did not wish to give it too much importance. Russia stated that they had prepared a similar document, but had added information on the political context in which the mandates were created. They noted that this would be useful to see the political content of the mandates and get a clear picture of the motives behind the creation of the special procedures.

²⁸ The ‘matrix’ is a document entitled “*Basic Information on Special Procedures*” from 23 November 2006, prepared by the secretariat, which contains information on all thematic mandates. States intend to use that document as a basis for the review of individual mandates. The can be viewed on the OHCHR extranet, available at: <http://www.ohchr.org/english/bodies/hrcouncil/form.htm> (fill out the form on the page to receive the user name and password).

²⁹ China, Colombia, Cuba, India, Islamic Republic of Iran, Philippines, Russia, Saudi Arabia.

³⁰ Philippines.

³¹ Bangladesh.

³² Brazil, India Argentina and Philippines. While not referring directly to the use of the ‘matrix’, Cuba and Colombia also called for the review of mandates one-by-one.

³³ Cuba, India, Iran, Russia.

Process of individual review

To facilitate the review of individual mandates, and taking up a point raised earlier by Ms Zerrougui, India proposed to hold an interactive dialogue with mandate holders during the 4th session of the Council in order to decide whether the existing special procedures, and in particular the thematic mandates, continued to be relevant or needed to be modified. Each interactive dialogue would have two parts. The first part would be the regular presentation of the annual report by the mandate holder. A second part of the dialogue with to each mandate holder would be set aside for a discussion on the exact scope of the mandate, and the integration of that mandate in the system of special procedures as perceived by the mandate holder. This second part would allow for an evaluation of each mandate with the input of the ‘insider’ – as suggested by Ms Zerrougui. Most States supported the proposal by India.³⁴ Senegal supported the Indian proposal, but stressed the need for a comprehensive approach, leading to a system that covers each right without leaving any substantive gaps. Algeria took a slightly different stance; while supporting the general principle of an “exchange of views” with mandate holders, they said that the discussion should be done during the general debate. They justified this by saying that everyone could participate in the debate, whereas in their opinion only States could take part in the interactive dialogue. During the 29 interactive dialogues with special procedures in the 4th session of the Council there was no systematic reference made to this proposal, although some special procedures mandate holders commented on the review.

The Philippines suggested a ‘systematic approach’ that would entail grouping mandates together in order to facilitate the review.³⁵ They proposed three to four groups; namely on ‘civil and political rights’, ‘economic, social and cultural rights’ (food, health, adequate housing), as well as ‘special group rights’ (minorities, indigenous, etc). Algeria went beyond the original procedural suggestion by the Philippines, and proposed that a permanent clustering of mandates would allow the mandate holders to add a collegial aspect to their work. Belgium cautioned against this idea by saying that the mandates could not be seen in an isolated fashion, but must be seen in the context of the interdependence and indivisibility of human rights. Even though the increase in joint communications sent by special procedures showed a high degree of collaboration, they pointed out that mandates are not static and must always be able to adapt. In their view, a clustering of mandates would not be as flexible as individual ones. They also urged the Working Group to keep in mind that the workload for special procedures mandate holders could easily get out of bound if a clustering approach was chosen.

Colombia suggested a more long-term review of mandates, suggesting a periodic review at a fixed interval.³⁶ Canada suggested an annual review of mandates. Without voicing opposition to any existing thematic mandate, Iran requested that the existing mandates should be subject to continuous evaluation with a view to their rationalisation, merging, and discontinuation where appropriate and necessary. Argentina noted that traditional thematic mandates should not continue to be the subject of detailed review.

Criteria for the review

Even though many States called for an individual review, no criteria for this have yet been established. A number of delegations stressed that the task of reviewing individual mandates should be done on the basis of general criteria, which would allow to take into account the need to preserve an effective system of special procedures, and aim at improving the protection of human rights.³⁷ Argentina suggested two stages for defining the criteria for the individual review. The first step would focus on the principal categories of human rights, while the second step would make sure that all vulnerable groups, including human rights defenders, children, women, indigenous people and migrants, are covered. An additional step would look at gaps in its

³⁴ Belgium, Germany on behalf of the EU, Iran, Japan, Mexico, Norway, Philippines, Russia, as well as Martin Scheinin, the Special Rapporteur on the promotion and protection of human rights while countering terrorism.

³⁵ Russia.

³⁶ China also called for a periodic review of mandates.

³⁷ Amnesty International, Argentina, Canada, ISHR, Mexico, Senegal.

human rights protection. ISHR cautioned against attempts by the Working Group to start the review of individual mandates without laying down objective criteria for it, as this could result in a chaotic situation. ISHR stressed that the lack of a mechanism to identify gaps in human rights protection or emerging issues was a cause of concern, and called on the Working Group to develop such a mechanism. India opposed the idea of establishing criteria for the review, and argued that it would be sufficient if the Working Group could agree on a number of broad principles.³⁸

Gaps and overlaps

Switzerland noted that protection gaps needed to be filled, so that the system would cover the whole range of human rights. Norway stated that the identification of gaps is an ongoing process. It proposed options to address the gaps in a number of ways, including by creating new mandates, by calling on existing mandate holders to include attention to specific cross-cutting themes or to specific vulnerable groups in their work, by expanding the scope of existing mandates, or by joint actions undertaken by mandate holders at their own initiative. With regard to the creation of new mandates, Canada asked for a high threshold to be applied. A number of States identified a protection gap in the area of cultural rights.³⁹ Russia pointed out that the creation of a mandate dealing with cultural rights should not overlap with the work of the United Nations Educational, Scientific and Cultural Organization (UNESCO). Argentina identified effective access to the justice system as a gap. Cuba proposed discussing how to fill such gaps in the future. In the context of gaps, calls for preserving the balance of all categories of human rights were also made.⁴⁰

Switzerland proposed that the Coordination Committee should be tasked to prevent duplication of mandates, detect overlapping mandates and report its findings to the Council. Belgium stressed that one of the goals of the Working Group was a more integrated system of special procedures. To achieve this goal, the role of the Coordination Committee in improving cooperation and coordination was essential. Canada stressed that duplication and overlap should be reduced where possible and necessary. Overlap could be assessed on the basis of whether the mandate closely relates to or is a sub-set of another mandate that is more general. Cuba stated that overlaps represented a waste of resources, but did not elaborate on how to remove overlaps, without creating new gaps.

Individual review of thematic mandates

The Facilitator's January non-paper included a list of thematic mandates, which he believed had been agreed upon by the Working Group to be retained. In the November session of the Working Group, Algeria had given a list of mandates that the African Group was particularly attached to, namely those related to poverty, racism and racial discrimination, food, the right to development, education, international solidarity, occupied Palestinian territories, and religious intolerance. The January version of the Facilitator's non-paper listed some of these elements, but omitted others, thereby stirring up Algeria's renewed emphasis on those left out by the Facilitator; they recommended the re-inclusion of mandates focused on international solidarity and the occupied Palestinian territories (OPT). Germany (on behalf of the EU) expressed its dissatisfaction with the Facilitator's list, indicating that there were several issues of concern, which were not included. They did not elaborate on which issues they were referring to, but agreed with Algeria that the list was not exhaustive. Norway opposed the idea of using a listing of specific mandates, preferring a more open formulation.

Cuba stated that the existing thematic mandates needed to be simplified. While they generally supported the continuity of thematic mandates, they suggested using individual mandate holders rather than the current working groups for the mandates on enforced disappearances, arbitrary detention and mercenaries.

³⁸ These "broad principles" would provide an equal emphasis on all human rights, avoiding unnecessary duplication, unifying terminology, terminating of those mandates that have outlived their utility, and filling-in substantive gaps. This point was supported by Bangladesh.

³⁹ Cuba, Pakistan, Philippines, Russia, Senegal.

⁴⁰ Belgium, Pakistan, Russia.

Country mandates

As expected, country mandates were severely challenged by some States.⁴¹ Belarus mounted the first direct attack on the specific country mandate dealing with the human rights situation in Belarus, and called for its abolition.⁴² In previous meetings, some States had referred to county mandates in general as illegitimate, without singling out any particular mandate. More generally, they called on the Working Group to make concrete proposals at the end of its current session on how to address country mandates. Belarus argued that country mandates had been the cause of the former Commission's failure, because they had led to the politicisation of that body. Belarus argued that technical assistance be maintained only for States who seek that support. They stressed that the UPR mechanism and the complaint procedure are sufficient to monitor specific country situations. Russia backed the opposition to country mandates, showing particular grievance towards those that were established by vote and without the approval of the State concerned. They said that country mandates were incompatible with the cooperative spirit of the new Council. Cuba and the Democratic Peoples Republic of Korea (DPRK) again called for the abolition of the system of county mandates in general, without referring to the mandates on their countries.

Malaysia and China voiced their concern with the current system of country mandates, and argued that if it were to be retained, State consent was mandatory for the establishment of such mandates. India argued that the UPR mechanism, the complaint procedure, as well as special sessions, are sufficient tools to address country situations.⁴³ Sri Lanka reiterated that they expect special procedures mandate holders to underline and encourage positive steps in their country reports, rather than just criticise the government. Choosing a different line of argument, Algeria (on behalf of the African Group) complained that mentioning the UPR in the non-paper would prejudice the outcome of the separate Working Group tasked to establish the UPR.⁴⁴ ISHR noted that States could not declare the UPR as a substitute for country specific mandates, and simultaneously argue that the UPR should not be specifically mentioned in this context. Unless the modalities of the UPR are worked out, and are certain to be effective, it is unclear to what extent the UPR could replace country mandates. It is also difficult to define the necessary coordination between the UPR and the system of special procedures, before knowing what form the UPR will take.⁴⁵

Despite this opposition, many States still supported the maintenance of country mandates.⁴⁶ Brazil argued in favour of country mandates, stressing that the UPR mechanism was inadequate to address urgent situation due to its periodicity. Similarly, the calling of special sessions could not substitute for country mandates, since not every situation would merit a special session.⁴⁷ However, Brazil did stress the need to set clear criteria for establishing country mandates. These criteria, in Brazil's view, would be based on a negative human rights record in a particular country, reported by several existing human rights mechanisms (including the complaint mechanism, treaty bodies and special procedures). They stressed that such an assessment should be holistic, and proposed it could be carried out by the expert assigned to coordinate the UPR for the concerned country. Germany (on behalf of the EU) stressed the importance of maintaining country mandates, stating that it was desirable to gain the consent of the State in question when establishing such mandates. However, the consent of the concerned State should not limit the Council, in using complementary tools such as country mandates, the complaint procedure and the UPR.⁴⁸ Norway pointed out that while consensus in the establishment of

⁴¹ Belarus, Cuba, DPRK, Iran.

⁴² The country mandate on Belarus was adopted under resolution 2004/14 of the Commission on Human Rights in 2004. More information on this mandate can be found on the OHCHR website available at: <http://www.ohchr.org/english/bodies/chr/special/countries.htm>.

⁴³ Supported by Bangladesh.

⁴⁴ Philippines also thought this discussion to be prejudging the outcome of the UPR Working Group.

⁴⁵ On the broader issue of coordination of special procedures with the UPR see below, on page 19.

⁴⁶ Australia, Canada, Germany (on behalf of the EU), ISHR, Peru, Poland, Republic of Korea, Switzerland, USA.

⁴⁷ Brazil, Switzerland.

⁴⁸ Supported by Norway.

country mandates was desirable, simple majority should suffice to create a new country mandate. In strong defence of country mandates, Japan argued that they are a valuable mechanism to ensure the transparency of non-cooperative States' human rights records. Similarly Amnesty International argued that it was the lack of country specific mandates responding to many urgent situations, which led to the collapse of the former Commission.⁴⁹

A number of States referred to the mandate on the OPT, stressing that it had to be treated differently from country mandates.⁵⁰ They underlined that the mandate was “until the end of the Israeli occupation” of the territory. ISHR drew the Working Group’s attention to the fact that the mandate on the OPT was a country specific mandate but enjoyed widespread acceptance. In ISHR’s view, the case of the mandate on the OPT also showed that requiring consensus for establishing country mandates was not always practical, since Israel was bound to object to the creation of that particular mandate, and that therefore less than consensus had to suffice for the creation of country mandates.

Balance of rights

There was broad support for the idea of balancing thematic mandates dealing with economic, social and cultural rights (ESCR) on the one hand, and civil and political rights (CPR) on the other.⁵¹ Colombia and Tunisia also mentioned a balance of these rights with the right to development. Belgium argued that any such classification of the thematic mandates into specific rights-based areas was “too simplistic and politicised”. They added that the thematic mandates were already divided equally, with eight mandates allotted to ESCR, eight to CPR, and twelve being mixed mandates. Norway reminded the Working Group that *Resolution 60/251* does not call for a balance, but rather recognises the importance of ensuring universality, objectivity and non-selectivity. Amnesty International made a similar point, suggesting that a so-called balance of rights would lead to a “false and artificial dichotomy”. ISHR agreed with Norway and Belgium about the unhelpful nature of distinguishing ESCR and CPR, since the focus should not be on abstract notions of rights, but on the experiences of victims.

Unification of terminology

At the November session of the Working Group, most States had supported standardising the titles of special procedures, which currently vary special rapporteurs, special representatives of the Secretary-General, personal representatives and independent experts, based on the title given to the specific mandate holder in the resolution that created the mandate.⁵² Iran restated that for reasons of consistency and clarity, a unified title should be used. While the Facilitator’s non-paper listed the unification of titles as an element of convergence, Norway still opposed the unification of terminology and titles of mandates. They felt that limiting the possible titles for mandate holders would curtail the Council’s ability to tailor each mandate according to the specific issues it needs to address.

Regulating the work of special procedures

During the resumed 2nd session of the Council, the African Group tabled a resolution, which mandated the Working Group on the review of mechanisms and mandates to draft a code of conduct to “regulate the work

⁴⁹ Supported by Norway.

⁵⁰ Morocco, Pakistan (on behalf of the OIC), Saudi Arabia (on behalf of the Arab League), Tunisia.

⁵¹ Argentina, China, Colombia, Malaysia, Tunisia.

⁵² Algeria (on behalf of the African Group), Belgium, Bangladesh, Canada, India, Indonesia, Iran, Slovakia, Switzerland, United Kingdom, USA. 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.

of special procedures". On 27 November 2006 the Council adopted the resolution with a vote of 30 States in favour.⁵³ When proposing this resolution, Algeria (on behalf of the African Group) argued that a code of conduct would enhance predictability and transparency of the special procedures and contribute to mutual trust.⁵⁴ Algeria stated that the African Group would release a draft code of conduct shortly.⁵⁵ Many States reiterated their support for a code of conduct,⁵⁶ arguing that it would ensure accountability, transparency and professionalism in the work of mandate holders. Colombia noted that similar codes of conduct exist in most countries for the judiciary, suggesting that this attempt at regulating the special procedures was not a new practice. Cuba was concerned that many mandate holders enjoy a great deal of power and prestige. China added that some special procedures abuse their mandates, and alluded to cases where special procedures mandate holders have used 'abusive' language with States. It felt that a code of conduct was a good way to ensure that the mandate holders are held accountable. India stated that establishing a code of conduct would not be inconsistent with the strengthening of the special procedures mechanisms, but would help a great deal in improving transparency.

Argentina stressed that the drafting of a code of conduct should in no way jeopardise the impence of special procedures by placing restrictions on their work.⁵⁷ Germany (on behalf of the EU) stated that in light of the already existing documents, in particular the Manual of Special Procedures (the Manual),⁵⁸ they did not see any added value in an additional document. They criticised that the decision of the Council to mandate the Working Group with drafting a code of conduct had not been taken by consensus. Cuba used the opportunity to accuse Germany of casting doubt on a decision by the Council, which would amount to the non-cooperation that was so often referred to in the Working Group.

Germany stressed that the work of the special procedures should be a matter of self-regulation. They said that the special procedures should continue elaborating their own Manual through the Coordination Committee. Switzerland, the Republic of Korea and Australia supported the use of the Manual, and underlined it was more useful than a code of conduct. Cuba, Bangladesh and Pakistan (on behalf of the OIC) emphatically stated that the Manual could not be used as a substitute for a code of conduct. In this context, Bangladesh as well as Russia stressed that the Coordination Committee had no legal standing in their view.

Yakin Ertürk, the Special Rapporteur on Violence against Women, said she was "rather offended" when she had listened to the discussions about the code of conduct. In her view, the system of special procedures was

⁵³ A/HRC/2/L.2/Rev.1, 16 November 2006. Oral statements made during the Council sessions are available at the OHCHR extranet, which can be accessed at <http://www.ohchr.org/english/bodies/hrcouncil/form.htm> (fill out the form on the page to receive the user name and password). The States voting in favour were Algeria, Azerbaijan, Bahrain, Bangladesh, Brazil, Cameroon, China, Cuba, Djibouti, Ecuador, Gabon, Ghana, India, Indonesia, Japan, Jordan, Malaysia, Mali, Mauritius, Morocco, Nigeria, Pakistan, Philippines, Russia, Saudi Arabia, Senegal, South Africa, Sri Lanka, Tunisia, Zambia. There were 2 abstentions (Argentina, Uruguay) and 15 votes against (Canada, Finland, France, Germany, Guatemala, Mexico, Netherlands, Peru, Poland, Republic of Korea, Romania, Switzerland, Ukraine, United Kingdom).

⁵⁴ For further information refer to the ISHR Council Monitor from the 2nd resumed session of the Council, 27 November 2006, available at: <http://www.ishr.ch/hrm/council/updates/dailyupdates.htm>.

⁵⁵ Algeria presented a draft on 13 March 2007.

⁵⁶ Brazil, China, Colombia, India, Indonesia, Japan, Pakistan (on behalf of the OIC), Philippines, Russia, Saudi Arabia (on behalf of the Arab Group), Tunisia, USA.

⁵⁷ Supported by Brazil.

⁵⁸ 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. It has since then been revised and the draft revised Manual has been circulated and been made publicly available for comments from governments, civil society organisations, independent experts and all other stake holders. It 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).

created to assist States in their task of protecting human rights – she was surprised at the apparent lack of confidence in the integrity of mandate holders as well as the special procedures system in general.

Human Rights Watch put forward an interesting suggestion, proposing that the Working Group seek advice from professional associations as to the formulation of their codes of conduct. The International Federation for Human Rights (FIDH) stated that there should be more attention paid to the behaviour of governments. They felt that the tactics of intimidation and unwillingness to cooperate with mandate holders far outweighed the instances of doubtful behaviour of mandate holders.

The Facilitator's January non-paper contained several references to accountability, whether by mandate holders, by States, or both. It listed for example the need for “improving the accountability of Governments and of mandate holders” as an element of convergence under the heading of review and rationalisation of mandates, under the sections dealing with a code of conduct as well as under the heading of cooperation by and with governments. Some States tried to use the occasion to divert attention to the accountability of governments, by raising the issue of accountability under the discussion around the code of conduct. Other States, however, made it clear that they are conscious of their own accountability. Rather than referring to accountability in connection with the code of conduct, they raised the issue under the heading of “cooperation by and with governments”.

Relationship of special procedures with the media

A number of States called on the Working Group to set clear guidelines for special procedures mandate holders' media interaction.⁵⁹ Although they did not articulate any particular guidelines, it can be assumed that such restrictions would be quite severe.⁶⁰ Sri Lanka proposed that governments should be ‘consulted’ before special procedures share information with the media. Colombia also spoke about the need for clear guidelines for media interaction, stressing the need to safeguard transparency in the special procedures' relationship with the media. In this context, Norway was concerned that the non-paper did not focus enough on victims and human rights defenders. They said that media interaction was essential for raising awareness; the Working Group should not hinder interaction of special procedures with the media, but on the contrary use mass media more pro-actively. Leila Zerrougui, the Chair of the Working Group on Arbitrary Detention, said that her Working Group always sends the preliminary conclusions of a country visit to the government before holding a press conference.

Standardisation of working methods

A number of States expressed their wish to create a common format for communications, since this would make it easier for them to respond. Pakistan underlined the need to standardise working methods. Sri Lanka spoke in favour of standardising letters of allegations and urgent appeals. Amnesty International questioned this suggestion, arguing that different mandates required different approaches to their work, and that the proposed measures would limit mandate holders inappropriately.

Algeria (on behalf of the African Group) complained that some special procedures mandate holders had violated the *Vienna Convention on Diplomatic Relations* by addressing communications not to the permanent mission in Geneva, but directly to the branch of government concerned by the communication. Argentina stated that they did not understand these concerns, as individuals could not breach with the *Vienna Convention* by not using proper diplomatic channels. There was a long discussion about the use of ‘urgent appeals’ by special procedures. Algeria again argued that these communications should be relayed to the

⁵⁹ Pakistan (on behalf of the OIC), Philippines,

⁶⁰ In earlier discussions as well as in a discussion paper submitted by the Asian Group, the extent of these restrictions has become apparent. For more information see the OHCHR extranet, in particular the section on ‘Background documents’ under this Working Group. See footnote 3 for access details.

permanent missions before they are sent to capitals. China requested that the mandate holder personally sign all urgent appeals or letters of allegation.

Yakin Ertürk, Special Rapporteur on Violence against Women, clarified that mandate holders themselves send communications, through the relevant permanent mission. In contrast, urgent appeals were faxed to both the mission and the capital. As on previous occasions, ISHR pointed out that if permanent missions in Geneva would treat urgent appeals immediately, there would be less of a problem with using that channel for such communications.

Tunisia spoke on the need to ensure the reliability of information. Sri Lanka asked that, as a minimum, special procedures should check the facts before addressing letters of allegation to States. However, as pointed out by Leila Zerrougui, the Chair of the Working Group on Arbitrary Detention, the *raison-d'être* of such communications is precisely to let the government clarify the facts and obtain more information. Only once the government has replied, can the special procedures decide whether to turn the letter into an urgent appeal.

Relationship with the Council

A number of topics were discussed under this heading, including the issue of cooperation between States and mandate holders; the desirability of standing invitations; the practice of interactive dialogues with mandate holders; the status of recommendations of special procedures and measures to improve follow-up to those.

Cooperation between States and mandate holders

The issue of cooperation had already been discussed in the November meetings of the Working Group. Most States had underlined that they understood cooperation to be a two-way street, obliging both governments and special procedures mandate holders. There were, however, diverging opinions as to where the main focus of cooperation must lie. At the February session of the Working Group, this divide had not been bridged.

Brazil spoke of the need to foster better relations between States and mandate holders, which would promote better cooperation on both sides. Many States still placed the emphasis on cooperation by mandate holders rather than by governments.⁶¹ Algeria stated that it would be 'simplistic' to compare the accountability of mandate holders with the accountability of States. They indicated that States should not be asked to meet the same criteria of accountability as special procedures. With regard to cooperation by States, Algeria questioned what criteria would be used to 'measure' cooperation. Malaysia stressed that mandate holders should avoid confrontation in their relations with States. They supported more practical recommendations by special procedures to States, taking into account the specific circumstances of each State.

On the other hand, Canada called on the Working Group to make recommendations on improving cooperation of States with special procedures. Peru, Norway and ISHR emphasised the need to address the issue of non-cooperation by States. The Indian Council of South America questioned the Working Group, wanting to know what it would do about non-cooperation.

Standing Invitations

At the November meeting of the Working Group, many States expressed the 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. A number of speakers had also expressed their wish that standing invitations be a criterion for candidature to the Council and be included in the voluntary pledges submitted by candidate States. ISHR had emphasised in November that there was an obligation on

⁶¹ Algeria on behalf of the Africa Group, Malaysia.

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. Election to the Council carried with it a presumption of a standing invitation to all special procedures. Accordingly, Council members could through their assumption of a standing invitation upon election set the standard for all other States. However, the November session had also witnessed some opposition to the issue of standing invitations.

At the February session of the Working Group, some States questioned the utility of standing invitations. Noting its concern with some States' emphasis on standing invitations, Russia proposed that the Secretariat compile a study to gauge how often country visits take place based on a standing invitation rather than on an ad hoc invitation. The delegate indicated that more visits were probably conducted under the latter type of invitation, which in his view qualifies the need for standing invitations. The Philippines said that standing invitations should not be regarded as the only measure of cooperation. South Africa proposed that membership of the Council should have nothing to do with standing invitations – whether or not to issue standing invitations should be a sovereign decision by States. Opposing this view, the United Kingdom stated it was particularly important for members of the Council to issue standing invitations to mandate holders.⁶² One of the Facilitator's proposals (Paragraph 65) in the non-paper was that 'States that do cooperate should not be automatically subjected to greater scrutiny'. While the United Kingdom felt that this might be useful, they thought it more important to elaborate on what would happen with States that do not cooperate, as they often do not face any penalty. The International Federation for Human Rights (FIDH) suggested that such States should have their membership of the Council revoked immediately and should not be able to be re-elected.

Interactive dialogue

Possibly one of the most aggressive statements during the February meeting of the Working Group was made by Algeria (on behalf of the African Group). They recalled that NGO participation according to General Assembly *Resolution 60/251* was built on ECOSOC *Resolution 1996/31* as well as the established practices of the Commission on Human Rights. In the reading of the African Group, this would mean that "as far as the interactive dialogue is concerned, participation of NGOs cannot be accepted". They went on to say that the practice observed at the 2nd session of the Council had been "exceptionally tolerated" due to the absence of general debate.

In that light, it was encouraging to see other States support the practice of interactive dialogues. Argentina argued for adequate debate of special procedure reports during the Council, rather than merely a presentation of reports. They also advocated greater interaction between the Council and the Third Committee of the General Assembly. Canada pointed out that the interactive dialogue with special procedures mandate holders was a good way of ensuring their accountability to the Council. Germany (on behalf of the EU) generally supported the strengthening of relations between special procedures and the Council, suggesting more informal briefings or the presentation of reports at the Council's request by mandate holders on issues of particular concern.

Follow-up to recommendations of special procedures

Reacting to the Facilitator's non-paper, a number of States were keen to point out their interpretation that recommendations made by special procedures mandate holders could not be equated to decisions by the Council.⁶³ India suggested that recommendations had to be adopted by the Council in order to be taken into account in follow-up and its evaluation. Russia expressed its view that recommendations by special procedures are 'only' soft-law, and therefore not binding on States.

⁶² Supported by Argentina.

⁶³ Colombia, India, Pakistan (on behalf of the OIC), Russia. The Facilitator's non-paper for example listed as an element of convergence the importance to "strengthen the follow-up to recommendations, to overcome the gaps in their implementation" (paragraph 49 of the non-paper of 26 January 2007).

Brazil noted that the lack of adequate follow-up by the Council to special procedures recommendations was a serious shortcoming in the system. Argentina and Peru stressed the importance of sufficient and effective follow-up mechanisms, with Peru also focusing on the need to strengthen early warning mechanisms. The NGO representative from Action Canada for 7 and Development (ACPD) welcomed the consensus noted in the Facilitator's non-paper as to the need for improved follow-up to recommendations of special procedures. ACPD introduced an important distinction, by suggesting that States should distinguish between follow-up directed at a particular State on the one hand, and general follow-up directed at all States on the other. He pointed out that the former could not be handled by the UPR (because the periodicity of the UPR would make it impossible to react quickly to urgent situations) as suggested by some States. As to the latter and more general category of follow-up, the UPR could be used to further the reach of special procedures and help the implementation of their recommendations.

Relationship between the mandate holders and other human rights mechanisms and actors

The Working Group discussed the relationship between the special procedures mandate holders and other human rights mechanisms and actors. This debate included a debate on the links with the universal periodic review (UPR), the complaint procedure, UN country teams, the Security Council and with NGOs.

UPR

The non-paper prepared by the Facilitator offers room for interaction between the UPR and special procedures so that the two mechanisms can share information on specific countries or thematic issues. Several States opposed the explicit mention of any such connection between mandate holders and the UPR mechanism.⁶⁴ Algeria (on behalf of the African Group) again expressed its dismay at the mention of the UPR, as this would prejudge the outcome of the debates in the other Working Group.

Japan and Australia spoke in favour of special procedures engaging with the UPR, with Australia arguing that no human rights mechanism should act in a vacuum, but necessarily as a part of an interdependent system. Canada said that the special procedures should be a vital partner in the UPR; their reports as well as the States' responses thereto should be a source of information for the UPR. In addition, the special procedures should be able to make presentations and provide additional input to the UPR where relevant. Norway proposed that States use the UPR in the follow-up to recommendations and to assess cooperation by States with special procedures.

Human Rights Watch urged States not to divorce the UPR from special procedures, arguing that UPR should benefit from the analysis and recommendations of special procedures and follow-up to them. ACPD said the UPR would renounce on very important information if it would not use the special procedures.

Complaint procedure

The Facilitator in his non-paper had proposed closer cooperation of special procedures with the complaint mechanism. On the one hand, such cooperation could help the complaint procedure to analyse the situation in a given country using the special procedures' specialisation in certain areas. On the other hand, complaints that do not meet the threshold required by the complaint mechanism could be dealt with by special procedures. These proposals met with strong opposition. A number of States expressed concern that this could

⁶⁴ India, Iran, Malaysia, Pakistan on behalf of the OIC, Russia.

undermine the confidential nature of the complaint procedure.⁶⁵ This opposition is not surprising, given the emphasis put on confidentiality in the segment on the complaints procedure in the same Working Group.⁶⁶

UN Country Teams

Many States argued strongly against the interaction of special procedures with UN Country Teams.⁶⁷ Malaysia was of the opinion that too close a cooperation between the two would undermine the independence of special procedures.⁶⁸ Pakistan (on behalf of the OIC) argued that UN Country Teams could “become controversial (...) if they get involved in the preparation of visits by special procedures, make recommendations or follow up on implementation”.

The Chair of the Working Group on Arbitrary Detention, Ms Leila Zerrougui expressed her surprise at how the same States that called for special procedures to work with credible sources of information could argue against cooperation of special procedures with UN Country Teams. She was of the opinion that these teams could provide the most credible source of information for special procedures.

Other UN bodies

The Facilitator proposed that the reports and other observations of special procedures could be shared with the General Assembly, the Security Council and the Peacebuilding Commission upon request of these bodies. This could be a way to give mandate holders greater legitimacy, as they would be interacting with the highest UN bodies. Several States opposed this idea.⁶⁹ Cuba pointed out that the Human Rights Council was a body subsidiary of the General Assembly, and that it should thus not report to the Security Council.⁷⁰

Canada emphasised that human rights should be mainstreamed into all parts of the UN system. They went on to say that the inter-linkages between peace and security, human rights and development had been recognised. As a result, special procedures should naturally be able to inform the Security Council in urgent situations. Human Rights Watch defended the interaction of special procedures with the Security Council, arguing that the “mainstreaming” of the UN system was beneficial to the protection of victims. In particular, they pointed to the precedent where the special procedure on counter-terrorism was able to have a dialogue with the Security Council, deepening the understanding of the issue for all participants.

Interaction with NGOs

Some States were of the opinion that the Facilitator’s non-paper should not address the interaction of special procedures with NGOs.⁷¹ Others underlined the importance of such interaction. Norway pointed out that the special procedures constitute a unique link between the Council and NGOs. Brazil suggested that the Coordination Committee of Special Procedures should play a central role in the relations between NGOs and special procedures mandate holders.

⁶⁵ China, Philippines, Russia.

⁶⁶ The Working Group on the review of mechanisms and mandates is divided into three segments, dealing with the review of special procedures, the future expert advisory system as well as the complaint mechanism. For further information on the division of labour within the Working Group as well as for reports on the deliberations in the other two segments, see the ISHR website, available at <http://www.ishr.ch/hrm/council>.

⁶⁷ Malaysia, Pakistan (on behalf of the OIC).

⁶⁸ The same applied in their opinion to the collaboration with regional organisations.

⁶⁹ Bangladesh, Cuba, Indonesia, Russia, South Africa.

⁷⁰ South Africa.

⁷¹ Bangladesh.

The Indian Council of South America drew the Working Group's attention to the fact that not only should the relationship of special procedures with the Council be clarified, the Council also needed to make sure that information provided by NGOs was taken up in the reports by special procedures.

Next steps

Australia asked that the next non-paper presented by the Facilitator be a negotiating text from which the Working Group could finalise their positions on the review of mandates. This call was in the spirit of General Assembly *Resolution 60/251*, which calls for all institution building of the Council to be completed by June 2007.

The Facilitator has presented a progress report on the Working Group to the 4th session of the Council.⁷² During the 4th session of the Council, he also held a set of informal consultations on the latest version of his non-paper. On that occasion, most States called on the Working Group to prioritise certain issues, and drop others, if the main goal of finishing the review of mandates were to be reached by 18 June 2007.⁷³ For more detailed information on the informal consultations including a discussion of the proposals that were put forward, please refer to ISHR *Daily Updates* of 22 and 28 March 2007, that are available on our website.⁷⁴

During the third and last session of the Working Group, ISHR is publishing "Daily Highlights" on the main points of each day's discussion. In connection with the current and previous reports, these highlights are intended to allow interested parties to follow the developments in this final stage of the institution-building phase of the Council.

⁷² A/HRC/4/118, 20 March 2007.

⁷³ On 18 June 2007 the term of the one-year-members of the Council expires. Even if one possible interpretation of General Assembly *Resolution 60/251* allows for the institution building to continue until 30 June 2007 (see fn 12), this calls for the institution building to be finished before the one-year-members leave.

⁷⁴ http://www.ishr.ch/hrm/council/daily_updates.

COUNCIL MONITOR STAFF

Meghna Abraham, Program Manager, Information Program
Eléonore Dziurzynski, Communications Officer, Information Program
Michael Ineichen, Fellow, Information Program
Tony Morris, Information Program
Gareth Sweeney, Human Rights Officer, Information Program

Contributors

Rami Chalabi, Intern
Brigit Moris, Intern
Hannah Klein, Intern
Betty Yolanda, Intern

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