

THE HUMAN RIGHTS COUNCIL IN 2006

OVERVIEW OF THE WORK OF THE HUMAN RIGHTS COUNCIL

The inauguration of the new UN Human Rights Council (the Council) marked the most significant transformation of the UN human rights machinery since its foundation in 1947. However, the work of the Council during its first three sessions in 2006 was devoted primarily to the processes of transition from the Commission on Human Rights (the Commission) to the Council, thus withholding the final character of the Council until at least June 2007. The possibility that the outcome of this reform may result in no reform at all goes some way to explaining the muted fanfare that has accompanied the arrival of the Council, and the prevailing atmosphere of apprehension that permeated the first sessions. The catchphrase that seemed to emanate from the corridors aptly summarised the initial stages: 'equal parts optimism and pessimism'.

The Council is required to fulfil two main tasks in its first year: to assume the outstanding work of the Commission on Human Rights, which had dissolved without taking up any substantive decisions; and to implement the new elements of General Assembly *Resolution 60/251* in order to fully operationalise the Council. These include the review of all mandates assumed from the Commission, as well as the system of expert advice and the complaint procedure, and the establishment of modalities for the Universal Periodic Review (UPR) mechanism.

The initial debates over how to prioritise the Council's programme gave rise to the first re-emergence of the regional bloc mentality, which had previously obstructed the work of the Commission by aiming to shield group members from scrutiny. From the outset, the language of 'politicisation and selectivity' was used with the same frequency, and the same entrenched regional positions have begun to assert themselves. In some cases, in fact, the openness of the transition has resulted in an increased assertiveness of this language. This is at least apparent in the treatment of country rapporteurs and the question of country-specific resolutions.

On a more positive note, the absence of a fixed agenda and fixed working methods allowed for more flexibility in the working methods of the Council. Whereas the discussions of the Commission had been formally structured so that special rapporteurs would present their reports under a specific agenda Item, followed by general comments by concerned parties, member and observer States (with non-governmental organisations entitled to speak only at the end of each agenda Item, and not in response to each rapporteur), this was replaced at the Council by 'interactive dialogues', so that concerned parties, member and observer States and non-governmental organisations (NGOs) could address the special rapporteur directly on the substance of his/her report and presentation. An open-ended segment on 'other issues' was also introduced to accommodate the absence of a fixed agenda, providing flexibility in the Council's ability to address

any relevant human rights issues. The additional introduction of a 'follow-up' Item to previous decisions also served to strengthen the possibility that the Council will meet General Assembly *Resolution 60/251's* instruction that it should become a 'results-oriented body'.¹

It should be noted, however, that there is no assurance that these good practices will necessarily carry over to the formal agenda and working methods of the Council once these have been finalised. The temporary system was accepted primarily because time did not allow for negotiations on more formal arrangements, and the President was therefore granted exceptional latitude in deciding the programme and methods for the first year.² It should also be noted that this informality did not constitute an improvement in every case. For example, the treatment of the presentations of country-specific rapporteurs resulted in NGOs being forced to speak at the end of the meeting, when the rapporteurs had already left. In addition, the number of NGOs wishing to speak required that an early deadline be created for submissions, and this created problems for those who had travelled to speak. More generally, the absence of a clear agenda for each session and for the year made it difficult for NGOs outside Geneva to decide whether it was worthwhile attending the Council. NGO participation was therefore generally lower than during the Commission.

The responsibilities of finalising the transition within one year meant that considerably less substantive work was completed in 2006 than would have been completed in an average year of the Commission. There are reasonable grounds to argue, in fact, that less substantive work was achieved than could have been achieved despite the requirements of the transition. Nonetheless, the Council managed to adopt two very important international instruments at its first session; began the process toward an *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (ICESCR); created four commissions of inquiry/fact-finding missions; and adopted over a dozen substantive resolutions, including the first resolution of its kind on the right to water. The majority of the substantive resolutions tabled before the Council at the second session were postponed until the fourth session on account of the lack of time for adequate consideration.

¹ A/RES/60/251, Operative Paragraph 12.

² Non-papers on the suggested programme of work for the first session and for the first year were submitted by the Group of Five (Chile, India, Norway, the Russian Federation and South Africa), the Organisation of the Islamic Conference (OIC), the Like Minded Group, Indonesia and Venezuela, and were discussed during the informal consultations prior to the first session, but the final decision rested with the President of the Council.

Overall the process remained a tentative one throughout. The formalisation of arrangements will only begin to take shape at the fourth session of the Council in March-April 2007, and is expected to be complete by the end of June 2007. For this reason alone, the Council in 2006 will remain unique in the annals of the UN human rights machinery, in that its practices will never be repeated in the same manner again. Whether this is a good or bad thing still remains to be seen.

BACKGROUND

The adoption of General Assembly *Resolution 60/251* to establish the Human Rights Council, and the outcome of the final session of the Commission on Human Rights are dealt with more appropriately in the section on transition, which provides a stock-taking of the whole process. This section is intended to provide an analytical summary of the actual sessions of the Council in 2006, the Items addressed, and the conclusions reached.

Prior to the election of members of the new Council, informal consultations were held in Geneva to prepare a provisional programme of work. In accordance with *Resolution 60/251*, it was preliminarily agreed that the priority responsibilities of the Council for the first year would include: establishing an agenda and rules of procedure as a body now subsidiary to the General Assembly; establishing the modalities of the Universal Periodic Review mechanism; establishing a review of the mandates, mechanisms, functions and responsibilities of the Commission 'in order to maintain a system of special procedures, expert advice and a complaint procedure'; and dealing with the outstanding reports of the Commission's five working groups and all other special procedures.

A provisional programme of work for the year was also presented at the informal consultations. In accordance with General Assembly *Resolution 60/251*, it was decided that the Council would meet for four sessions in its first calendar year, three of which would take place in 2006. The main session, resembling most closely the focus of the former Commission on Human Rights, would take place in March-April 2007.

The general programme of work was divided as follows:

First session (19-30 June 2006)
covered:

- The High Level Segment of dignitaries;
- The Annual Report of the High Commissioner and chairs or vice-chairs of special procedures, the Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission) and treaty bodies;
- Consideration of the outstanding reports of the Commission's five working groups;
- Discussions on the review of mandates and the UPR mechanism as part of the Council's implementation of General Assembly *Resolution 60/251*;
- Discussions on dialogue and cooperation on human rights.

Second session (18 September-6 October 2006) covered:

- Update of the High Commissioner for Human Rights (the High Commissioner);
- Interactive dialogue with special procedures based on outstanding reports from the Commission;
- Reports of the Sub-Commission, and studies prepared by the Secretariat, the Office of the High Commissioner for Human Rights (OHCHR), etc;
- Joint report of the Commission of Inquiry on Israel/Lebanon.

Resumed second session³ (27-29 November) and third session (29 November-8 December 2006)
covered:

- Outstanding resolutions/decisions from the second session;
- Update by the High Commissioner and presentation of the Special Advisor to the Secretary-General on genocide;
- Methods of work and agenda of the Human Rights Council;
- Follow-up to decisions of the Council;
- Progress reports of the working groups on review of mandates and the UPR.

The sessions were structured in this manner so that the first phase of the transition – the initiation of the review of mandates and the UPR – could be implemented at the earliest opportunity. Similarly, the draft *Declaration on the Rights of Indigenous Peoples* and the *International Convention for the Protection of All Persons from Enforced Disappearance* were dealt with immediately as they were ready for adoption at the aborted Commission.⁴ The opportunity to concurrently extend the mandates of all special procedures for one year provided clarity and stability before their presentations at the second session, which was dedicated to finally addressing the reports of special procedures overdue from the Commission. The third session then reverted to assessing the progress of the inter-sessional working groups on review of mandates and the UPR and to finally tackling the question of working methods of the Council. The High Commissioner was granted time at each session to update the Council on her work and the work of her Office.

The present section on the Human Rights Council proceeds by addressing issues before the Council under thematic headings. These may or may not relate to prescribed Items of the Council, but are ordered in this manner on the basis that they best encompass the separate and interrelated work of the Council in its first three sessions. Beginning with the High Level Segment, the section moves to the substantive input of the High Commissioner and special procedures, and assesses developments and challenges faced before the Council. This is followed by a review of standard-setting, both in the form of new international instruments and the fulfillment of General Assembly *Resolution 60/251*. Any other substantive issues are then addressed, including new resolutions and new thematic developments, before turning to the four special sessions of the Council and their outcomes. It is hoped that this shall provide a concise and accurate summary of the practice of the Human Rights Council in 2006.

³ The reason for the postponement of the conclusion of the second session is detailed below under 'Other decisions and resolutions'.

⁴ This applies also to the final reports of the Working Group on the elaboration of an optional protocol to the ICESCR, the Working Group on the right to development, and the Working Group on the effective implementation of the Durban Declaration and Programme of Action.

WHAT HAPPENED IN 2006

High Level and General Segment

The practice of inaugurating the Commission on Human Rights with a High Level Segment was carried over to the first session of the Council, and assumed an added significance this year in providing an opportunity for States to outline their **future prospects for the Council**. When it was addressed, the tone fluctuated from positive aspirations to warnings of avoiding the past practices of 'selectivity and politicisation'.

Mirroring the language of General Assembly *Resolution 60/251*, many States reiterated the Secretary-General's assessment that development, security, and human rights are interlinked and mutually reinforcing, and spoke of the need for the Council, as the UN's primary human rights body, to preserve the accomplishments of the Commission while addressing its shortcomings.⁵ The majority of States called on the Council to engage in constructive dialogue among States and focus on implementation, rather than revert to polarised and negative discussions. Many also called for equal attention to economic, social and cultural rights, civil and political rights, and the right to development.⁶

Many States also took the High Level Segment as an opportunity to express opposition to the Commission's previous role in addressing **country-specific situations**. Others emphasised that the Council should only focus on situations of grave human rights violations and the work should be carried out in a strictly non-confrontational manner. Many of those States opposing country-specific targeting nonetheless found no contradiction in claiming that the situation in the Occupied Palestinian Territories (OPT) should remain a core priority of the Council, on the basis that foreign occupation constituted a 'thematic issue'.

Among other thematic issues raised were the need to provide adequate space for the **rights of women and the rights of the child**, the issue of **defamation of religions**, the entering into force of the *Optional Protocol to the Convention against Torture* (OPCAT), the future UPR and **working methods** of the Council (little of substance was presented at this early stage), and the **participa-**

tion of NGOs and national human rights institutions (NHRIs) at the international level.

Under the heading of 'Other Statements', four human rights defenders addressed the Human Rights Council on 22 June 2006.⁷ Adopting a very different tone from that exercised by the previous dignitaries, the four defenders added to the debate, among other issues, enhancing the participation of grass-roots defenders, the need to address **HIV/AIDS** as a sustained threat to human rights, and the need to substantively address the '**endemic intra-State deficits in good governance and democracy**'.

Annual report and updates of the High Commissioner

Overview/Priorities

Given the abrupt cancellation of the Commission, the first session of the Council allowed the High Commissioner to detail her future priorities, and to outline her vision for the **future relationship between the Council and the OHCHR**. The September session finally provided the High Commissioner with the opportunity to present her annual report, with an interactive dialogue on update and follow-up at the third session. These meetings were less formal than those of the Commission,⁸ and it was agreed by the majority of States that the **High Commissioner should continue to present updates to the Council** at each session. On the other hand, there was marked hostility by concerned States and others towards certain observations raised by the Commissioner, and on many occasions the **impartiality of the OHCHR** was called into question.

Country situations

The High Commissioner maintained her focus on country situations throughout the first three sessions. At the first session, the High Commissioner spoke generally of her concerns regarding lack of access to and co-operation by the Government of **Uzbekistan**, allegations of labour camps in the **Democratic People's Republic of Korea (DPRK)**, attacks against civilians in Iraq, and the militarisation of eastern **Myanmar**.⁹ The High Commis-

5

Recognition of these achievements included its history of standard-setting, its system of special procedures (Austria, France, Brazil, Timor-Leste, Chile, Burundi), and individual situations such as its role in the abolition of apartheid in South Africa. Criticisms of its failures included the targeting of small nations (Venezuela), regional block voting, and 'politicisation'.

6

Brazil, Argentina.

7

Arnold Tsunga from Zimbabwe; Natasa Kandic from Serbia; Sunila Abeysekera from Sri Lanka; and Marta Ocampo de Vasquez from Argentina.

8

A formal arrangement equivalent to that exercised by the Commission was maintained for the first session, with statements by concerned States, member States, observers, and NGOs. While there was scope for interactive dialogue, few States directed questions to the High Commissioner.

9

Additional country situations mentioned during the dialogue of the first session were Colombia, Nepal, Uganda, Syria, and Sri Lanka.

sioner emphasised in her conclusions that any government's commitment to human rights must include a willingness to allow an Office of the High Commissioner to operate in their country. Focus during the second session was given to the welcomed peace process in **Nepal**, with the hope that the OHCHR field presence could remain beyond spring 2007. The High Commissioner also raised concern at the escalating violence in Sri Lanka and supported the call for an immediate Commission of Inquiry to be established.

At the third session, the High Commissioner provided details on her missions to Haiti, Israel, and the OPT and provided updates on **Nepal, Sri Lanka, Iraq, and Darfur**. Regarding **Haiti**, she spoke of equal economic, social and cultural rights violations to those civil and political rights more commonly known. The case of **Beit Hanoun** illustrated a worsening climate of impunity in the **Occupied Palestinian Territories**, and she emphasised to the Council that the human rights of Israelis and Palestinians could not be the subject of negotiation or compromise and that those in power must fulfill their obligations to ensure that all throughout the region could enjoy their human rights.

The Sudan

Throughout 2006 the High Commissioner maintained a consistent focus of the situation of human rights in the **Sudan**. Responding to efforts by the European Union (EU) to engage in active dialogue at the first session, the High Commissioner expressed that she was concerned about the **continued impunity of perpetrators** of violence and the vulnerability of refugees in Darfur. She noted the efforts of the Sudanese Government with the *Abuja Peace Agreement* but stated that these had not yet been implemented. At the second session, the High Commissioner identified Darfur 'as a tragic reminder of... protection failures' and where, 'in the face of a near collapse of the prevention and protection initiatives put forward by the international community, we must stress, in the last instance, the need for unflinching accountability.'

The most detailed reaction to the situation in the Sudan was delivered at the third session. The High Commissioner now stressed that attacks on villages, killings of civilians, rape, and forced displacement in Darfur had returned to the hor-

rific levels of early 2004. The High Commissioner underlined that the Government of the Sudan and militias aligned with them, some of whom still received active support, continue to be responsible for the most serious violations. She clearly asserted that the Government must provide convincing answers regarding its well-documented links with the militia and on the possible criminal culpability of its officials in aiding or abetting acts committed by the militia on the Government's behalf. She also emphasised that the same atrocities which had led the Security Council to refer the case to the ICC continued to be daily occurrences in Darfur and urged the international community to express full support to the Court to ensure that those responsible for war crimes and crimes against humanity were held accountable.

Thematic issues

At the first session, the High Commissioner highlighted the **alleviation of poverty, gender discrimination, religious intolerance** (including in government policy), and the independence of the judiciary as priority issues in her plan of action. Also, in anticipation of the entering into force of the *Optional Protocol to the Convention against Torture*, the High Commissioner did not shy away from addressing the increasing challenges to the absolute prohibition of torture and other cruel, inhuman and degrading treatment; the growing disregard for the **principle of non-refoulement**; and the existence of **secret detention centres**, claiming that all such practices are not only prohibited under international law but also serve to de-legitimise government power. Responding to questions on implementation of the OPCAT, the High Commissioner stated that her Office is in the process of establishing a technical assistance fund for this purpose.

At the second session of the Council, the High Commissioner drew attention to the need for States to ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*,¹⁰ and emphasised the need for universality of coverage and equal treatment in **the UPR**. At the third session she added that States should be assessed on all of their obligations and commitments, and that due to the UPR's inclusive character, there should be no reason to expect anything short of full cooperation. At the third session she also drew atten-

¹⁰ The Philippines also called for more member States to join it in ratifying this Convention.

tion to Chile as a case example of the effectiveness of special procedures.¹¹

Challenges to the work of the High Commissioner and the OHCHR

Whilst many States supported the need for increased **technical assistance** provided by the OHCHR, this was not necessarily founded on a benevolent wish to improve domestic human rights practices. Instead, emphasis was often placed on technical assistance as a desirable alternative to special procedures and OHCHR country missions, which were often viewed as intrusive of State practice. The High Commissioner received requests for technical assistance from the Sudan, Iraq, and Sri Lanka during the second session of the Council.

The Russian Federation and China also continually challenged the **geographic representation of the OHCHR**.¹² While the High Commissioner has recognised that an imbalance does exist, and referred to the doubling of the OHCHR budget as an opportunity to further redress the imbalance, there remains a concerted effort by certain States to bring the administration of the OHCHR further under the authority of the Council. The same tactic of interference with the autonomy of the OHCHR is presently being pursued at the General Assembly.¹³

The High Commissioner herself was directly challenged by the Russian Federation and Algeria on the source of her figures concerning atrocities in the Sudan, thus questioning her credibility. The High Commissioner felt that it was necessary to respond to these allegations, at the expense of being able to answer other questions raised during the interactive dialogue, and proceeded to detail an absolutely thorough checklist of programmes and individuals on the ground, including the UN Country Rapporteur on the Sudan, the United Nations Mission in the Sudan's 38 human rights officers in Darfur and their access to first-

hand verified information collected through on-site visits and witness testimonies, and daily updates and information exchange meetings with the African Union Mission in the Sudan (AMIS).¹⁴ The Russian Federation and Algeria made no effort to thank the High Commissioner for her explanation, or proffer that they had a better source of information.

China tabled its resolution on strengthening of the Office of the High Commissioner at the second session, which 'calls upon the High Commissioner to take into account all relevant resolutions of the General Assembly and the Council in planning the activities of the Office and requests her to reflect them appropriately in her annual reports to the Council and the Assembly'.¹⁵ Its consideration, however, has been postponed until the fourth session in March-April.

Reports of special procedures

The key task of the second session of the Council was to review the reports of the special procedures mandate holders that had been submitted to the 62nd Commission on Human Rights.¹⁶ These reports were not considered at the last Commission session, but rather transferred to the new Council for review. Following their consideration at the Council, States did not sponsor resolutions 'welcoming' the conclusions of individual rapporteurs, as was customary at the Commission. Instead, the Council issued an omnibus decision, which 'notes all the reports and studies presented at its second session'.¹⁷ The reason for such an approach, it was argued by many States, was to avoid interference with the process already underway of the review of mandates. Instead, the presentation of mandates provided an opportunity to try new methods of interaction, termed 'interactive dialogues'. However, the lasting image of 2006 was not the advent of this new process, but the sustained attack on the work of both thematic and country-specific procedures.

The thematic mandate holders who presented reports to the Council and participated in the interactive dialogues with States and NGOs were:¹⁸

Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Chairperson of the Working Group of Experts on People

11

In her statement to the Council, the High Commissioner said that: 'We can all draw inspiration from the words of Minister Paulina Veloso of Chile who, in addressing the inaugural session of the Council, noted that the Special Procedures "have been decisive for our country's overcoming the dark period of its history".'

12

It should be noted that the same countries favoured a paragraph in the draft resolution to establish the Council providing that the Council would have increased review powers over the work of the OHCHR. For a review of States' drafting positions, see <http://www.reformtheun.org/index.php?module=uploads&func=download&fileid=1226>

13

See the section on the General Assembly.

14

An audio archive to the High Commissioner's reply to questions can be accessed at <http://webcast.un.org/ramgen/conferences/hrc2006/three/hrc061129pm-eng.rm?start=01:47:56&end=01:54:50>

15

A/HRC/2/L.24, Paragraph 2.

16

Human Rights Council, *Decision 1/102*.

17

Human Rights Council *Decision 2/102*.

18

Reports presented to the Council, as well as copies of oral statements, can be found on the OHCHR extranet (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm. For descriptions of the presentations and dialogue on each of these reports, please see the International Service for Human Rights' *Council Monitor Daily Updates*, available at <http://www.ishr.ch/hrm/council/updates/dailyupdates.htm>.

of African Descent; Special Rapporteur on the human rights of migrants; Working Group on enforced disappearances; Independent Expert on minority issues; Special Rapporteur on indigenous persons; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Representative on internally displaced persons; Special Rapporteur on violence against women, its causes and consequences; Special Rapporteur on trafficking in persons, especially women and children; Special Rapporteur on torture and other cruel, inhuman or degrading treatment and punishment; Working Group on Arbitrary Detention; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on freedom of religion or belief; Special Rapporteur on the right to freedom of opinion and expression; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the right to food; Special Representative of the Secretary-General on the situation of human rights defenders; Special Rapporteur on the sale of children, child prostitution and child pornography; Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights; Working Group on Mercenaries; Special Rapporteur on the right to adequate housing; Special Rapporteur on the right to education; Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises; Special Rapporteur on the promotion and protection of human rights while countering terrorism; Independent Expert on the question of human rights and extreme poverty; Acting Special Representative of the Secretary-General for Children and Armed Conflict; Special Rapporteur on International Solidarity.

In addition the following topical reports/documents were presented and discussed in an interactive dialogue:

Joint Report on the situation of detainees at Guantánamo Bay; Joint Report on the incitement to racial and religious hatred and the promotion of tolerance; Report of the High Commissioner for Human Rights on incitement to racial and religious hatred and the promotion of tolerance; Report of the Special Rapporteur on the situation of human rights in the Palestinian Territories Occupied since 1967; Letter from the members of the Commission of Inquiry on Lebanon addressed to the President of the Human Rights Council.

The country-specific mandate holders who presented reports to the Council and participated in the interactive dialogues with States and NGOs were:

Special Rapporteur on the situation of human rights in Somalia; Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba; Special Rapporteur on the situation of human rights in the Palestinian Territories Occupied since 1967; Special Representative of the Secretary-General for human rights in Cambodia; Independent Expert on the situation of human rights in Haiti; Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea; Independent Expert on the situation of human rights in Burundi; Independent Expert on the situation of human rights in the Democratic Republic of the Congo; Special Rapporteur on the situation of human rights in Myanmar; Special Rapporteur on the situation of human rights in the Sudan; Special Rapporteur on the situation of human rights in Belarus; Independent Expert on technical cooperation and advisory services in Liberia.

Interactive dialogues with special procedures

Prior to the second session it was devised that special rapporteurs would be grouped together

in threes to present their reports individually, and for the floor to be opened to delegates and NGOs to respond to these presentations. Rapporteurs were then entitled to give one response to the questions posed. This was a notable depar-

ture from the practice of the Commission, allowing States to use the time to address the reports that were more relevant to them. It also allowed rapporteurs to rebut statements by States concerning the accuracy of their reporting. But this also resulted in a situation where the time was absorbed by more controversial mandates, leaving the other rapporteurs on the panel overshadowed. It was also not logistically possible for rapporteurs to answer all questions posed.

It was also notable for the new development of the participation of NGOs in the dialogue. However, for the dialogue with country-specific mandate holders, NGOs were not entitled to contribute to the interactive dialogue with the special rapporteur but had to wait until the end of the day, by which stage the dialogue was in fact finished and the rapporteurs were no longer present. Participation was also limited because of demand and limited time, and the speakers' list created to deal with this meant that only those who registered early could present their statements. It was clear at the time that better arrangements were necessary in the future.

New joint and individual reports

The second session of the Council was notable for the presentation of joint reports of special procedures, responsive to human rights situations that applied to multiple special procedures. The *Joint Report on Guantánamo Bay*, undertaken following the attempted mission of five thematic special rapporteurs,¹⁹ was most publicised by the lack of willingness of the United States of America (USA) to cooperate with the mission by denying access to detainees. The mission responded that they would not visit Guantánamo if their terms of reference for country visits were not respected, as this would 'undermine an objective and fair assessment of the situation of detainees'.²⁰ The USA then countered that the Report was based on unsubstantiated material and was not credible. The eventual presentation of the joint statement of special rapporteurs proceeded with the US summarising its 60-page conclusions to the joint report of March 2006, whilst adding that it 'would like to see Guantánamo closed down... but we can only close Guantánamo if we can still protect ourselves and our allies from the threat posed by the dangerous men held there, while

ensuring that transferred or released detainees are treated humanely.' The interactive dialogue proved valuable in allowing the special rapporteurs to lay bare what they saw as the unsustainable position of the USA.

The Council also heard the presentation of the *Joint Report on incitement to racial and religious hatred*, initiated at the request of the Council in response to the Danish cartoons controversy.²¹ Distinguishing between State and non-State actors, Ms. Asma Jahangir warned of the danger of violating the right to freedom of expression in combating religious defamation, stating that the freedom of religion or belief does not include a right to be free from 'analysis, satire or criticism'. She therefore encouraged the Human Rights Committee to draft a general comment relating to Article 20 of the *International Covenant on Civil and Political Rights* (ICCPR) on this issue.

The interactive dialogue was particularly fruitful following the Joint Report, with various concerned parties speaking out. Pakistan, on behalf of the Organization of the Islamic Conference (OIC), feared that recent events surrounding the speech of Pope Benedict XVI at Regensburg University would give rise to anti-Islamic sentiment, and called for a high level segment that focused on incitement to racial and religious hatred and the promotion of tolerance. There were suggestions raised of the possibility of drafting a convention to combat defamation of religions.

The atmosphere surrounding the *Joint Report on the mission to Lebanon and Israel*²² was not so pleasant however. The main issues of the Report concerned economic, social, and cultural rights and the problems of internally displaced persons (IDPs), housing, and health following the recent conflict. Although the Report addressed the obligations of Hezbollah as a non-State actor, Mr. Philip Alston, Special Rapporteur on extrajudicial executions, emphasised that this was not meant to imply equivalence between the two parties. The legal analysis concluded that serious violations of human rights and humanitarian law were committed by Israel; that Israel had failed to distinguish between civilian and military targets; and had acted disproportionately. The Report also concluded that Hezbollah had violated humanitarian law and targeted civilian populations. This Report contained recommendations for the concerned governments, as

19

'Situation of detainees at Guantánamo Bay', Report of the Chairperson of the Working Group on Arbitrary Detention, Ms. Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir, and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt, UN Doc. E/CN.4/2006/120, 15 February 2006.

20

According to the UN press release of 16 February 2006, the joint mission 'did not accept the exclusion of private interviews with detainees, as that would contravene the terms of reference for fact-finding missions by special procedures and undermine the purpose of an objective and fair assessment of the situation of detainees held in Guantánamo Bay. In the absence of assurances from the Government that it would comply with the terms of reference, the mandate holders decided on 18 November 2005 to cancel the visit.' Available at [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/1F52C6CCBF80416CC1257117003C02AC?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/1F52C6CCBF80416CC1257117003C02AC?OpenDocument)

21

Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène, further to Human Rights Council *Decision 1/107* on incitement to racial and religious hatred and the promotion of tolerance, A/HRC/2/320 (September 2006).

22

Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt; the Representative of the Secretary-General on human rights of internally displaced persons, Walter Kälin; and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari - *Mission to Lebanon and Israel A/HRC/2/7*, 2 October 2006. The Report is available at www.ohchr.org/english/bodies/chr/sessions/62/listdocs.htm

well as for the Council and the Commission of Inquiry established as a result of Council *Resolution S-2/1*. The Special Rapporteur on the right to food, Mr. Jean Ziegler, chose to submit his own individual report, distancing himself from the common position, and concentrating on Israeli violations during the war, including the use of cluster bombs and the Israeli Government's refusal to disclose information needed to demine fields.

The Joint Report was effectively dismissed by all sides. Israel rejected the Report as missing adequate descriptions of Hezbollah's actions, while Lebanon rejected the Report on the grounds that it placed too much blame on Hezbollah, with others, including the OIC, claiming that it sought to 'rationalise Israeli actions'.²³ The allegations of partiality extended to suggesting that the Report sought to place Israel and Hezbollah on an equal footing. The US claimed that it was not helpful of the rapporteurs to take on an issue that was being dealt with at the Security Council, as if to suppose that its treatment there would address all elements related to human rights violations. In contrast most of those who criticised the Joint Report warmly received the individual report of Jean Ziegler.

Individual presentations included that of Mr. John Ruggie, Special Representative of the Secretary-General on the **responsibilities of transnational corporations**. Mr. Ruggie had been requested by his mandate to 'identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights' and his presentation was the first of its kind before the Council or Commission. This was all the more notable as the Report of the Special Representative had been conclusively dismissive of the *UN Norms on the Responsibilities of Transnational Corporations*²⁴ and had caused considerable unease amongst many NGOs and campaigners.²⁵ The presentation to the Council brought Mr. Ruggie to announce that the Norms are too controversial to result in effective action, but would rather produce another 'unenforced declaration'. He also detailed how he intended to proceed in fulfilling his mandate. States' responses were relatively mediocre, and did not reflect the sense of importance that was attached to Mr. Ruggie's Report outside the confines of the Council.

Other new individual reports included that of the **Special Rapporteur on the promotion and protection of human rights while countering terrorism**, Mr. Martin Scheinin. The Report of Mr. Scheinin was self-described as an initially more thematic exercise, and included a useful study on the impact of the recommendations of the **Security Council's Counter-Terrorism Committee (CTC)** on the protection and promotion of human rights. To this end he welcomed his communications with the CTC and proposed joint country missions in the future. Other areas of investigation included the lack of an adequate internationally accepted definition of 'terrorism', which creates the potential for unintended human rights abuses or even deliberate abuse of the term.

Challenges to individual special procedures

One of the most disturbing practices of the second session of the Human Rights Council was the targeted attacks against special rapporteurs. This began with the response of Nigeria to the statement of the Special Rapporteur on extrajudicial executions, Philip Alston, concerning reports of individuals who have been sentenced to death by stoning on account of their sexual orientation. While Mr. Alston referred to such practice as 'a fundamental negation of all that human rights norms stand for', Nigeria responded that references should not have been included in the Special Rapporteur's report, and that 'the notion that executions for offences such as homosexuality and lesbianism are excessive is judgmental rather than objective. What may be seen by some as disproportionate penalty in such serious offences and odious conduct may be seen by others as appropriate and just punishment'.²⁶ None of the 32 States who in 2005 presented a joint statement to the Commission urging States to 'prevent, investigate, prosecute and punish the perpetrators of violence committed against individuals because of their sexual orientation'²⁷, and who at the third session of the Council would commend the work of special procedures for their contributions, challenged the Nigerian position on the floor at this time.

Considerably more ferocious attacks were then directed at Ms. Hila Jilani, Special Representative of the Secretary-General on the situation of

²³ Allegations of selectivity were aired by Pakistan, on behalf of the OIC, Bahrain, on behalf of the Arab Group, Egypt, Iran, Saudi Arabia, Malaysia, Syria, Morocco, Kuwait, Indonesia, Algeria, Azerbaijan, Libya, Palestine, Tunisia, the Sudan, and the Russian Federation.

²⁴ E/CN.4/Sub.2/2003/12/Rev.2 (2003)

²⁵ For a selection of responses to Mr. Ruggie's Report, and his counter-responses, see <http://www.business-humanrights.org/Updates/Archive/SpecialRepresentativeinterimreportcommentaries>.

²⁶ Nigeria's response to the *Report on Extrajudicial, Summary or Arbitrary Executions*, submitted by Philip Alston to the second session of the Human Rights Council (19 September 2006), 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).

²⁷ For a discussion of this statement, see International Service for Human Rights, *Human Rights Monitor*, no. 63 (2005), pp. 16-17.

human rights defenders. Algeria, on behalf of the African Group, along with a number of other States, strongly criticised the Special Representative for having sent a communication to ECO-SOC members regarding the refusal to grant consultative status to four NGOs working on human rights for lesbian, gay, bisexual and transgender (LGBT) persons. They complained about the substance and procedure of the communication, and accused the Special Representative of going beyond her mandate. Aside from the gratuitous nature of the attack, it was even more disappointing that the entire contribution of the African Group and others were devoted to this matter, to the detriment of any mention of the actual work of the Special Representative that year. This example was instead used as a springboard for Algeria to request the drafting of a 'code of conduct' for special procedures. This resolution passed at the resumed second session, as discussed below in the section 'Implementation of General Assembly Resolution 60/251'.

Criticism of country-specific mandate holders

The practice of criticising country-specific special procedures as exercises in selectivity continued from the Commission, beginning with Cuba's traditional haranguing of Ms. Christine Chanet, the Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba. Suggesting that she should retire because 'no one would remember her mandate', Cuba found vocal support from China, the DPRK, Zimbabwe and Algeria. The Russian Federation added that all such mandates are 'counter-productive' and 'give rise to confrontation between States'. India then added its support to Myanmar's refusal to allow Mr. Paulo Sérgio Pinheiro to visit the country, declaring without example that these visits are inclined to lead to negative outcomes.

The most vitriolic outbursts were reserved, however, for Mr. Adrian Severin, Special Rapporteur on the situation of human rights in Belarus. Belarus condemned Mr. Severin's Report as Cold War propaganda and 'a clear attempt to stigmatise and slander the Republic of Belarus', and called for an end to the mandate. The Cuban delegate declared that he 'had never witnessed a more repugnant spectacle'. Pakistan, Iran,

Yemen and others criticised the Special Rapporteur for addressing their countries in his Report, thus surpassing his mandate, and the Russian Federation aligned itself with Belarus in declaring that it will seek the termination of the Special Rapporteur's mandate. The overarching criticism, of course, was that country mandates were contrary to the spirit of cooperation and were intended only to 'politicise' work of the Council.

Standard-setting

The three outstanding standard-setting achievements of 2006 were the adoption of the *Declaration on the Rights of Indigenous Peoples*, the *International Convention for the Protection of All Persons from Enforced Disappearance*, and the extension of the mandate of the Working Group to begin the drafting of an *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*. The substance of the *Convention for the Protection of All Persons from Enforced Disappearance* is addressed in the section on new international standards (although, unfortunately, not the *Declaration on the Rights of Indigenous Peoples*, as its adoption has been postponed at the General Assembly). The following paragraphs are designed rather to provide an overview of deliberations leading up to their adoption at the Council.

Declaration on the Rights of Indigenous Peoples

The Chairperson of the Working Group on a draft United Nations *Declaration on the Rights of Indigenous Peoples*, Ambassador Luis-Enrique Chávez of Peru, introduced the draft declaration to the Council as the middle ground of the Working Group's negotiations, and emphasised that, despite remaining divergences of opinion surrounding articles on self-determination, territorial integrity, the right to redress and reparations, and natural resources, this was the best document the Working Group could produce.²⁸ This was contested from the outset by certain delegations who raised concerns that the text was in fact produced in isolation by the Chairperson without adequate discussion or consultation with the Working Group.²⁹

²⁸ For a review of the annual reports of the Working Group and other documentation, see <http://www.ohchr.org/english/issues/indigenous/groups/groups-02.htm>

²⁹ Japan, the Philippines, the Russian Federation.

Concerning the substantive elements of the draft text, States assumed the positions adopted within the Working Group. At the forefront of objections were Australia, Canada, New Zealand and the USA. The Canadian delegation argued that the Declaration should clearly set out State obligations and felt that there was potential for further improvement. Similarly, New Zealand, Australia, and the USA argued that the text was confusing and would risk having differing interpretations. The legal arguments put forward by Canada, Australia and the USA have however been roundly dismissed as inaccurate and alarmist, with the intention of avoiding greater accountability in the area of indigenous rights.³⁰

The general view was that the Working Group had accomplished all it could and that further dialogue would not yield any real results, even though, according to the majority of indigenous groups who spoke, the Declaration is the very minimum that could be accepted. The re-opening of discussions on the text might even lead to the indefinite shelving of the Declaration. The Resolution, adopting the Declaration and requesting the General Assembly to do the same, was then put to the vote at the request of Canada, and was adopted by 30 votes in favour, two against (Canada and the Russian Federation), and 12 abstentions.

The Declaration was subsequently forwarded to the General Assembly for consideration, but its adoption was postponed at the request of Namibia for reasons equivalent to those debated at the Council. However, there was a notable negative shift in opinion by certain countries from positions adopted in Geneva, a point raised by the International Service for Human Rights at the third session of the Council.³¹ The developments in New York are discussed in detail in the section on the General Assembly.

*International Convention for
the Protection of All Persons
from Enforced Disappearance*

The Chairperson-Rapporteur of the Intersessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from **enforced disappearance**, Mr. Bernard Kessedjian pre-

sented the draft convention for the protection of all persons from enforced disappearance as agreed on by consensus in the last meeting of the working group.³² The draft convention was then discussed in a **positive atmosphere**, with many States speaking of the opportunity to adopt a convention as a very good start to the work of the Council. It was also stressed that it was important to adopt the Convention at the first session to ensure that it would be presented to the forthcoming session of the General Assembly for adoption, as was the case. Only India and the USA objected to elements of the text but both expressed that they would nonetheless respect the consensus in this case.

The resolution adopting the Convention and requesting the General Assembly to do the same was adopted by consensus. The Convention was subsequently adopted by the General Assembly and is now open for signature and ratification.

*Working Group on an Optional
Protocol to the International
Covenant on Economic,
Social and Cultural Rights*

Following the fruitful outcome of the last session of the Working Group to consider the elaboration of an *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*,³³ the Chairperson, Ms. Catarina de Albuquerque, was in a position to recommend to the Council that it request the Working Group to begin drafting an optional protocol. The main source of disagreement before the Council on this issue, reflecting that within the Working Group, centred around the form that this drafting process would take. The opinion was divided between the majority, who were happy to allow the Chairperson to present an initial draft, and the minority, led by the UK, which favoured an options-oriented draft, reflecting the different options expressed by all parties. There remained a third party, led by the USA, who saw no purpose in an optional protocol on the basis that economic, social and cultural rights are essentially non-justiciable, and who also rejected any notion of an optional protocol on the basis that it would impact on resource allocation, and that the Committee on Economic, Social and Cultural Rights was not mandated or equipped to make such judgments. The fact that the Netherlands remained fervently in this camp illustrated

30 See 'A Declaration Long Overdue', *Human Rights Features* (June 26-30), at <http://hrdc.net/sahrdc/hrcouncil06/pdf/issue2.pdf>; International Service for Human Rights, 'Oral Statement on Follow Up to Decisions of the Human Rights Council' (1 December 2006), at HRC Extranet (forms available at <http://www.ohchr.org/english/bodies/hrcouncil/form.htm>).

31 International Service for Human Rights, 'Statement on Follow Up to Decisions of the Human Rights Council' (1 December 2006), 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).

32 For the annual reports of the Working Group and other documentation, see <http://www.ohchr.org/english/issues/disappear/group/index.htm>

33 The essential purpose of the protocol is to allow for individuals/groups under the jurisdiction of States parties to submit complaints of violations of the Covenant upon the exhaustion of domestic remedies. For a review of the work of the Working Group including the annual reports of its three sessions, see <http://www.ohchr.org/english/issues/escr/group3.htm>

one of the few public divergences of policy within the EU at the Council. The Netherlands conceded that they would not interfere with the process and would respect the drafting of a text.

The final amended resolution extended the mandate of the Working Group for two years and requested the Chairperson of the Working Group to prepare a draft text, which 'takes into account all views expressed during the sessions of the Working Group, and which includes draft provisions corresponding to the main approaches outlined in her analytical paper'.³⁴ This means that the views of the UK and others, who do not presently favour a draft that incorporates all elements of the Covenant, are reflected in an options paper, as opposed to a working draft.

The Working Group will meet in June 2007 to begin this process, as opposed to its previous January sessions.

Effective Implementation of General Assembly Resolution 60/251

A significant element of the Council's work in its first year was the establishment of three inter-sessional working groups for the purpose of implementing General Assembly Resolution 60/251. These comprised of: a **Working Group to develop the modalities of the universal periodic review** mechanism, in conformity with Operative Paragraph 5(e), established at the first session of the Council; a **Working 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, in conformity with Operative Paragraph 6, also established at the first session; and a **Working Group to formulate recommendations on the agenda**, programme of work, working methods and rules of procedure of the Council.

The particularities of the sessions of the respective working groups are more appropriately addressed under the chapter on transition. This chapter rather details their creation and discussion before the Human Rights Council.

Universal Periodic Review

Prior to the discussion on the Universal Periodic Review (UPR) at the first session, a draft resolution had been circulated by the President of the Council proposing the creation of a formal Working Group to establish the modalities of the UPR mechanism. Having been generally supported by States,³⁵ there was little discussion on pre-judging the modalities. Instead, States provided very general comments on who should examine States; how often States should be examined; what information should be used in the examination; and the role of civil society in this process.

States generally agreed that the mandate of the UPR was sufficiently clear in General Assembly Resolution 60/251, and that any process should be transparent, structured, flexible and non-confrontational. Divisions of opinion then surfaced over the standard by which States should be reviewed, with certain States arguing for consideration of capacity³⁶ and/or cultural particularities.³⁷ Statements were raised about the need to avoid overlap, and the need to provide complementarity with the work of treaty bodies and special procedures. Others, such as Malaysia, attempted to propose that only domestic legislation and treaties ratified by States should be considered.

Concerning the sources of information, little was discussed with regard to the parameters of 'objective and reliable information', yet most delegations agreed that States under review should be involved in the submission of information. There were also various recommendations that the review include information from special procedures, international organisations, civil society and the OHCHR. Finally, an important joint statement by NHRIs³⁸ suggested that they were in the best position to identify the issues and commitments of each State since it is within their mandate to monitor, review, analyse and advise at the national level and cooperate with UN bodies. The NHRIs also stressed that they operate within the State and have a strong ability to follow up.

The President's decision to establish a working group on the modalities of the UPR was subsequently adopted by consensus at the first session.³⁹

34

Paragraph 2, Human Rights Council Resolution 1/3.

35

Those who declared their support during the first session included Austria (on behalf of the EU), Cuba, Uruguay, India, the Russian Federation, South Africa, Malaysia, Japan, the Philippines, China, Sri Lanka, Pakistan, Thailand, Colombia, Bhutan, Singapore, Vietnam and Iran.

36

Indonesia, Brazil, the Russian Federation, Republic of Korea, Japan and the Philippines.

37

China, Iran.

38

Statement by Commission on Human Rights – Philippines, Commission Nationale Consultative des Droits de l'Homme – France (on behalf of the European Group of National Human Rights Commissions), and the Mexican National Commission for Human Rights.

39

The content of the Resolution and the subsequent discussions of the working groups are addressed in the chapter on transition.

Review of mandates

The discussion of the Council on the review of mandates remained general at the first session, with the overwhelming majority of States declaring support for an intersessional intergovernmental working group. It therefore sufficed at this preliminary stage for States to lay down general positions.⁴⁰

While most emphasised the need to ‘maintain and strengthen’ the protection and promotion of human rights as the ultimate objective, certain States emphasised that ‘rationalisation’ remains intrinsic to any such strengthening. Central to this rationalisation was, according at least to China and Cuba, the need to address the question of country-specific mandates, which served as the main source of politicisation and double standards at the Commission.⁴¹

These positions led to the more general debate over whether the mandates of special procedures should be **reviewed individually**, so that rationalisation was equated with reducing the number of mandates, or whether the **system should be ‘maintained and strengthened’ as a whole** before consideration of individual mandates. Elsewhere, other States and NGOs spoke of the need for transparency and inclusiveness by facilitating the involvement of civil society, NGOs, NHRIs, human rights defenders, special procedures, and members of the Sub-Commission on the Protection and Promotion of Human Rights. States were also reminded that the review was being undertaken under the umbrella of other reforms, and that co-operation and complementarity must be borne in mind.

The review of mandates also addresses the review of the **Sub-Commission on the Protection and Promotion of Human Rights**, under ‘expert advice’, and the confidential **1503 complaint procedure** of the Commission. The discussion regarding both elements was cursory at the first session. While most speakers envisaged the future system of expert advice as a think tank,⁴² there were some contradictions between delegations who saw it essentially as a research facility under the direct orders of the Council, and others who called for a more action-oriented body with the autonomy to initiate its own studies. There were also general statements to the effect that the complaint procedure should not be affected by the process of

transition, with Argentina and Peru suggesting the possibility of a future procedure that would be orchestrated by independent experts, in place of the present system where the experts of the Working Group on Situations refers complaints to the Council for consideration.

The decision introduced by Norway to establish the Working Group was adopted by consensus at the conclusion of the first session. The President proceeded to nominate three facilitators to chair separate meetings of the Working Group on review of mandates of special procedures, expert advice, and the complaint procedure respectively.⁴³

The second week of the third session of the Council was devoted to hearing the progress reports of the Working Groups on review of mandates (allocating one day to each of the three Facilitators on review, expert advice, and complaint procedure) and the UPR. There was little enlightened development beyond the Working Groups’ conclusions, as States merely consolidated their positions for the benefit of the Council audience.⁴⁴ In fact, in certain cases, such as those concerning expert advice and special procedures, considerable energy was devoted to challenging the Facilitator’s interpretation of the conclusions of the Working Group.⁴⁵

Expansion of the mandate of the Working Group on review of mandates to draft a code of conduct for special procedures

As addressed in this section under the subject of special procedures, the second session of the Council witnessed confrontation surrounding instances where it had been alleged that special procedures acted outside of their mandate. The outcome of this confrontation was the adoption of a resolution at the resumed second session, tabled by the African Group, requesting the Working Group on the review of mandates to resume an additional task of drafting a code of conduct for special procedures.⁴⁶ Despite protestations from the EU and others that such a code would prejudice the outcome of the Working Group, the Ambassador of Algeria insisted that its primary intention was to ‘preserve the independence and objectivity of mandate holders’. It also requested the Coordinating Committee

40 For a more detailed overview of the debate, see <http://www.ishr.ch/hrm/HRC/Session1/Item4Review.pdf>.

41 New Zealand countered that country-specific mandates had in fact contributed greatly to the promotion and protection of human rights worldwide, notably through the provision of targeted technical assistance to countries.

42 For a discussion of the Sub-Commission’s own contributions to the future of the expert advice body, see the section on the Sub Commission.

43 The content of the Resolution and the subsequent discussions of the Working Groups are addressed in the section on transition.

44 The Council’s meetings on the progress of the Working Groups were divided into a general debate in the morning, and informal consultations in the afternoon. For a comprehensive summary of these meetings, see International Service for Human Rights, *Council Monitor Daily Update*, 4, 5, 6, 7 December 2006, at <http://www.ishr.ch/hrm/council/updates/dailyupdates.htm>

45 See International Service for Human Rights, *Council Monitor Daily Update*, 7 December 2006, at http://www.ishr.ch/hrm/council/updates/7_December_06.pdf

46 Human Rights Council *Resolution 2/1*.

of the special procedures to extend the deadline for submission of comments on the revised draft manual until the closure of the fourth session. Canada added that the Working Group's 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.

The Resolution was adopted with 30 votes in favour, 15 against,⁴⁷ and two abstentions (Argentina and Uruguay). Brazil defended its vote on the reasoning 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.

Agenda and rules of procedure

In establishing the Human Rights Council, General Assembly *Resolution 60/251* provided that 'the Council shall apply the rules of procedure established for committees of the General Assembly, as applicable, unless subsequently otherwise decided by the Assembly or the Council.' It was only at the recent third session of the Human Rights Council that the questions of rules and agenda were formally discussed.⁴⁸ During the three sessions of 2006, the Council operated without a fixed agenda or methods of work. This provided interesting opportunities to develop new modalities, including the use of interactive dialogues with special procedures, the introduction of an open agenda item entitled 'other issues', and the introduction of an agenda item on follow-up to Council decisions.⁴⁹

During the discussions at the third session, the Council had before it two non-papers by the EU and the Asian Group, which offered divergent views on future methods.⁵⁰ The Council was also provided with a non-paper by the Secretariat on issues relating to working arrangements. From the early discussions, it appeared that there were two diverging approaches. Several States called for a structured and thematically organised agenda, evoking memories of the former Commission agenda. Many other States however called for an agenda that was more flexible and not organised on a pre-set list of thematic issues that would have to be discussed at every session.⁵¹

The outcome of these discussions resulted in the adoption by consensus of a President's decision to establish the intersessional Working Group to 'formulate concrete recommendations on the Council's agenda, annual programme of work, methods of work and rules of procedure.'⁵² The Working Group is chaired by the President of the Council and will be facilitated by the Ambassadors of Guatemala and the Philippines. The first session of the Working Group was held from 15-19 January 2006. The content of the decision and the subsequent discussions of the Working Groups are addressed in the section on transition.

Adoption of other resolutions and decisions

Following the establishment of the two Working Groups at the first session, the second session of the Council was scheduled to take place over a period of three weeks with the intention of addressing the rest of the outstanding work of the Commission. Central to this were the reports of special procedures, which were now six months overdue. In keeping with the practice of the Commission, States also sought to table substantive resolutions to be adopted at the end of the session. A total of 46 draft proposals were submitted, yet during the final days it was clear that time would not permit States to hold adequate consultations on draft resolutions, and it would therefore be impossible for the Council to adopt them. In a surprising and unprecedented move, the second session was therefore not closed at the end of the three weeks, but simply postponed until the beginning of November, when the third session was intended to start, thus providing States with more adequate time to consider drafts. Three decisions were adopted at the end of the regular second session, including on the situation of human rights in Kyrgyzstan.⁵³

However, even prior to the resumed second session, the President had informally requested that States voluntarily postpone resolutions until the fourth session wherever possible, as it would still be impossible to move through the volume in the allotted two days. It therefore transpired that the Council had only a dozen substantive resolutions before it in 2006.⁵⁴

47

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

48

For a summary of these discussions, International Service for Human Rights, *Council Monitor Daily Update*, 31 November 2006, at http://www.ishr.ch/hrm/council/updates/30_November_06.pdf.

49

In compliance with Operative Paragraph 12 of General Assembly *Resolution 60/251*, which decides 'that the methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results-oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures and mechanisms.'

50

The text of all non-papers and statements 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).

51

For a more detailed summary of these discussions, see International Service for Human Rights, *Council Monitor Daily Update*, 30 November 2006, at http://www.ishr.ch/hrm/council/updates/30_November_06.pdf.

52

For the President's Decision, see the draft report of the third session of the Council at <http://www.ohchr.org/english/bodies/hrcouncil/docs/3session/A.HRC.3.L.11.pdf>.

53

Human Rights Council *Decision 2/101*.

The Council adopted three country-specific resolutions, on **Darfur, Israeli settlements in the Occupied Palestinian Territories** (including East Jerusalem and the occupied Syrian Golan),⁵⁵ and a separate resolution on **human rights in the Syrian Golan**.⁵⁶ All were adopted by vote, with particular difficulties surrounding the content of the African Group's Resolution on Darfur and the lack of accountability attributed to the Government of the Sudan. This is discussed in more detail under the special session on Darfur.

The majority of thematic resolutions/decisions submitted focused on economic, social and cultural rights. These included the first resolution dealing solely with **access to water**, requesting the OHCHR to conduct a 'detailed study on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments'. This was adopted by consensus. Other resolutions included the **incompatibility of democracy and racism**, which requested that the Special Rapporteur on contemporary forms of racism address the issue of political participation of groups that are vulnerable to racism in the decision-making processes of national governments. Resolutions addressing civil and political rights included **impunity, deprivation of liberty in the context of counter-terrorism**, and the **integrity of the judicial system**.

Other issues relevant to the Council

The introduction of the agenda Item entitled 'other issues' provided a window of opportunity to raise issues that might otherwise be neglected by the Council. It was evident, however, that the possibilities were not fully utilised, and indeed even issues that were erroneously brought up under the incorrect agenda Items, leading to inevitable points of order and/or rights of reply, should have been brought up here. In any case, certain interesting and valuable contributions were made.

Violations on the basis of sexual orientation

The 'other issues' Item of the third session provided the space for Norway, on behalf of 54 States, to present a statement on the subject of

human rights violations based on sexual orientation and gender identity.⁵⁷

The statement referred to the vast amount of evidence that the Council had received of human rights violations based on sexual orientation and gender identity, including deprivation of the right to life, and of freedom from violence and torture. Norway commended the special procedures and treaty bodies for their attention to these issues and requested them to continue to integrate these issues in their respective mandates. Norway requested the President of the Council to provide an opportunity at a future session of the Council to address 'these important human rights issues' in light of the need to ensure principles of equality and non-discrimination.

This was followed by an important statement of the Canadian HIV/AIDS Legal Network presented on behalf of 19 ECOSOC-accredited NGOs and supported by 400 NGOs from over 60 countries. It questioned how any country committed to human rights 'could disagree with the principle that no person should face death, torture or violence because of their sexual orientation or gender identity'. They were encouraged by heightened international scrutiny and looked forward to future discussion within the Council 'with a view to safeguarding the principle of universality, and ensuring that all persons are free and equal in dignity and rights'.

NGO participation

The future scope for the participation of NGOs will be decided by the newly formed Working Group on agenda, programme of work, working methods and rules of procedure. By providing that the participation of NGOs and others 'shall be based on arrangements, including Economic and Social Council resolution 1996/31 of 25 July 1996 and practices observed by the Commission on Human Rights, while ensuring the most effective contribution of these entities', General Assembly *Resolution 60/251* ensured that NGOs would be entitled to at least the same level of participation as before. However, the working methods of the Council may be rearranged by member States of the Working Group in order to better ensure 'the most effective contribution' of NGOs and others as they see it. It is for this reason that the future advocacy

54

The substantive resolutions/decisions adopted at the second session of the Council included Darfur, Impunity, Persons deprived of liberty in the context of counter-terrorism measures, Human rights and arbitrary deprivation of nationality, Integrity of the judicial system, Effects of economic reform policies and foreign debt on the full enjoyment of all human rights, Israeli settlements in the Occupied Palestinian Territories, including East Jerusalem and in the Occupied Golan, The right of everyone to the realization of the highest attainable standard of physical and mental health, Access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria, Incompatibility between democracy and racism, Human rights in the Occupied Syrian Golan, Human rights and extreme poverty, Human rights and access to water. The resolutions adopted at the first and third sessions were procedural in nature. These documents are available on the OHCHR extranet (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm. A list of these documents can also be found in International Service for Human Rights, *Council Monitor Daily Update*, 3 October 2006, available at http://www.ishr.ch/hrm/council/updates/3_October_2006.pdf.

55

Sponsored by Palestine, adopted by vote (45 in favour, 1 against, and 1 abstention) with Canada voting against and Cameroon abstaining.

56

Sponsored by Syria, adopted by vote (32 in favour, 1 against, 4 abstentions) with Canada voting against.

57

Oral statements made at the Council can be found on the OHCHR extranet (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

of NGOs is as critical in the deliberations of the Working Group to further strengthen participation in the future sessions of the Council.

In 2006, the role of NGOs began brightly with commendations provided by States to the input of NGOs in support of the Convention on Disappearances, a convention which owes its very existence to the perseverance and hard work of grassroots NGOs. The strength of the NGO lobby was equally visible surrounding the adoption at the Council of the *Declaration on the Rights of Indigenous Peoples*.

NGOs then proceeded to benefit collectively from the new system of interactive dialogues as they applied to the reports of the High Commissioner and thematic procedures. For the first time, NGOs were entitled to partake directly in the dialogue on the floor of the Council, as opposed to delivering oral statements at the end of each agenda Item. This meant that proportionately more time was allocated to NGOs than before. However, the devised new system also stipulated that NGOs would be allocated up to 20 minutes during the interactive dialogue, as opposed to a previously non-exhaustive list under the old system of general comments, meaning that NGOs had to coordinate amongst themselves to decide upon the most equitable use of time. Such a system would clearly not be sustainable beyond the present transition, as the volume of NGOs participating at the Council is likely to increase once the transition is completed. It would therefore be unreasonable to expect NGOs who have travelled a great distance to forsake their opportunity to speak before the Council.

Likewise, a very clear circle was drawn around the right of NGOs to join the interactive dialogue on country mandates. Following intense pressure from Cuba, China and others, the President conceded that NGOs would only be allowed to speak at the end of the day, which meant that special rapporteurs would not be able to respond to their statements. In this context, there was nothing 'interactive' about the dialogue at all. The introduction of the agenda Item entitled 'other issues' did, however, create an opportunity for NGOs to present country-specific statements of concern.

It was perhaps during the special sessions that NGOs best exhibited their responsiveness to

the opportunities of the newly evolving machinery. During the first special session on the OPT, the discussions were so lax that NGOs were not afforded the chance to speak because Pakistan called for the general debate to be concluded and no States requested a point of order on the fact that NGOs had been ignored. By the fourth session, NGOs in Geneva and elsewhere had coordinated with activists in Darfur, and every effort was made to ensure that local human rights defenders provided their personal testimonies to the Council. These constituted the most important statements made over the two days.

Transparency

The President of the Council emphasised throughout the year that much of the relevance of the Council could be measured according to its public visibility, and he made it clear that he favoured increased use of the Internet, live Internet video screening of each session and substantial video archiving.

Access to information has improved considerably since the time of the Commission. The extranet page of the Council is updated daily, and has been expanded to cover the working groups and special sessions of the Council. It also provides all non-papers, draft resolutions, bulletins and other points of note in advance of forthcoming meetings. Similarly, the possibility of watching sessions on the Internet in real time is beneficial to those who are unable to travel to Geneva for each session, or indeed to any individual who is interested. Such attempts to increase public exposure were a notable initiative of 2006 and can only be applauded.

Special sessions of the Human Rights Council and follow-up

Among the many criticisms of the former Commission on Human Rights was its inability to adequately respond to immediate human rights situations. In order to address this, Operative Paragraph 10 of General Assembly *Resolution 60/251* provided that the Council 'shall be able to hold special sessions, when needed, at the request of a member of the Council with the

support of one third of the membership of the Council. Such a special session is expected to be convened soon after.⁵⁸ Questions surrounding the use, or potential misuse, of special sessions were identical to those surrounding the regular sessions of the Council. The Council has so far called four special sessions; three relating to Israel and one on Darfur. The fact that the first three special sessions concerned Israel led to inevitable allegations of selectivity, even implied by the Secretary-General in his referral to the Council's obligations to give due recognition to serious human rights situations elsewhere in the world. The achievement of the Secretary-General and others to move the Council to convene a special session on Darfur, and perhaps more significantly, the achievement of a consensus outcome, went somewhat however to restoring a sense of balance and responsiveness.

First special session on the Occupied Palestinian Territories

The first of three special sessions relating to Israel was convened on 5 and 6 July 2006 at the request of the Arab Group in order to 'consider the latest escalation of the situation in the Palestinian and other occupied Arab Territories'.⁵⁹ This was seen by many as a demonstration of the Council's commitment to responding to gross and systematic human rights situations, and an opportunity to prove itself.⁶⁰ Israel and the USA, however, expressly challenged the validity of the session, with the latter referring to it as a regurgitation of the selectivity and politicisation of the former Commission on Human Rights.

The situation in Gaza was first described by the Special Rapporteur on the Occupied Palestinian Territories, Mr. John Dugard, as one of continuing occupation, as Israel maintained control of airspace, sea and external borders. This was followed by criticism of Israel's military operation 'Summer Rains', undertaken in response to the kidnapping of the Israeli soldier Corporal Gilad Shalit. The majority of delegations stressed the critical humanitarian situation in which people find themselves in the OPT. A number of reasons were given for the rising poverty and unemployment, the shortage of food, water, electricity and medical supplies. These included: the withholding of foreign aid by the Quartet (the EU,

the Russian Federation, the UN, and the USA); the withholding of Palestinian tax revenues by Israel; and the restrictions imposed by Israel on the freedom of movement of both goods and people, notably through the use of checkpoints and the continued existence of the Wall. Many delegations also drew attention to the abduction of Palestinian officials, including elected members of the Legislative Council and the Government, while the EU, the USA, Canada, China, and Japan called for the immediate and unconditional release of Corporal Gilad Shalit.

The Resolution: expresses concern at the breaches by Israel of international humanitarian law and human rights law in the OPT; demands that Israel end its military operations in the OPT and abide by the provisions of international humanitarian and human rights law; urges Israel to release arrested Palestinian ministers and other officials, as well as all other arrested Palestinian civilians; urges all concerned parties to respect the rules of international humanitarian law, refrain from violence against civilians and treat all detained combatants and civilians in accordance with the Geneva Conventions; decides to dispatch an urgent fact-finding mission headed by the Special Rapporteur; and calls for a negotiated solution to the current crisis.

The difficulties surrounding the outcome Resolution of the first special session stemmed from the question of balance. Whilst the sponsors of the Resolution sought to focus almost exclusively on the violations of international humanitarian law and international human rights law committed by Israel in the OPT, its opponents maintained that the Resolution failed to give sufficient attention to the responsibilities of Palestinian armed groups and others. Additionally, while the draft resolution called for the immediate release of Palestinian ministers, other officials, and civilians, it made no reference to the release of Corporal Gilad Shalit. The text's core substantive element was to dispatch an urgent fact-finding mission headed by the Special Rapporteur.

Switzerland attempted to introduce amendments to this effect, but the incorporated elements by the delegate of Pakistan⁶¹ did not satisfy the European Union, Canada, the Czech Republic, Japan, Romania, Ukraine and others. It was on this basis that the final Resolution was adopted by vote.⁶²

⁵⁸ Although it has not yet been finalised in the Council's working methods, there is still some debate as to whether this should be no sooner than four days so as to allow States to adequately prepare.

⁵⁹ A/HRC/S-1/1. It was supported by 21 member States.

⁶⁰ Zambia, the Russian Federation.

⁶¹ 'Urges all concerned parties to respect the rules of international humanitarian law, to refrain from violence against the civilian population, and to treat under all circumstances all detained combatants and civilians in accordance with the Geneva Conventions'. Adopted by 28 in favour, 0 against, and 17 abstentions.

⁶² 29 in favour, 11 against, and 5 abstentions.

It is also worthy of note that NGOs did not speak at the first special session. Towards the end of the first meeting of the special session of the Council and before the list of speakers had been completed, the representative of Pakistan made a point of order, calling on the Council to conclude its general debate and move towards consideration of the draft resolution. As no delegation expressed its opposition to this point of order, the President ended the general debate. The Secretariat later informed NGOs that their statements would be published on the Council's extranet page, but this was scant consolation to those who wished to contribute on the day, but could not do so because no member State seemed to register their presence.

The Special Rapporteur on the Occupied Palestinian Territories was appointed to conduct the inquiry, but was refused permission to enter the territory by Israel. This refusal to cooperate was roundly criticised at the third session of the Council under the 'follow-up' item as an affront to the efforts of the Council. Israel countered that the Special Rapporteur was not prohibited from visiting in his normal capacity, despite the fact that, in the opinion of the Ambassador of Israel, Mr. Dugard transformed his mandate into a 'personal political exercise to promote his own agenda'.

Second special session on Lebanon

The Human Rights Council held its second session on 11 August 2006 at the request of the Arab Group to 'consider and take action on the gross human rights violations by Israel in Lebanon, including the Qana massacre, the country-wide targeting of innocent civilians and the destruction of vital civilian infrastructure'.⁶³ A draft resolution circulated by the OIC formed the basis for discussion.

The general discussion paralleled that of the first special session, and assumed the same general political allegiances. All delegations expressed their concern at the deteriorating human rights situation in the Middle East. Although most comments focused on the situation in Lebanon, many also expressed their concern for the suffering of civilians in Israel. Certain States, such as New Zealand, while deploring Hezbollah's kidnapping of soldiers, made clear its view that

Israel's retaliation and use of force had been disproportionate. Whilst many spoke of the necessity for such a session and perceived it as a test of the Council's effectiveness, Israel, Canada, Australia, and the USA maintained that this was outside of its mandate, and should be resolved by the Security Council.

The assessment of the human rights situation in Lebanon during the conflict included: general statements on the deteriorating situation in Lebanon at the time; unofficial figures of over 1,000 dead, with over one million people displaced, and thousands injured (Israel also spoke of over 3,000 Israelis injured by Hezbollah rocket attacks); the use of unconventional or illegal weapons such as 'phosphorous bombs'; and the destruction of civilian infrastructure, airports, and routes to neighbouring countries, hampering efforts to bring aid and relief. These acts were described by Pakistan, on behalf of the OIC, as direct violations of the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, the *Convention on the Rights of the Child* and the *Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War*.

The draft resolution of the OIC strongly condemns the grave violations of human rights and breaches of international humanitarian law in Lebanon, calls on Israel to immediately stop military operations, and decides to dispatch an urgent high-level commission of inquiry to investigate the humanitarian situation in Lebanon and report back to the Council by 1 September 2006. In a re-run of the former special session, the EU, Switzerland and others objected to what they saw as a one-sided resolution ignoring any reference to Hezbollah and others. The Pakistani delegation refused to entertain any notion of such a reference, but proposed after closed sessions, again in a reproduction of the first special session, that a general reference be inserted urging 'all concerned parties to respect the rules of international humanitarian law, to refrain from violence against the civilian population and to treat under all circumstances all detained combatants and civilians in accordance with the Geneva Conventions'.⁶⁴ These amendments were not enough to appease the EU and others, and the Resolution was finally adopted by vote.⁶⁵ In its explanation after the vote, Switzerland deplored the OIC's use of

⁶³

http://www.ohchr.org/english/bodies/hrcouncil/docs/specialsession/A.HRC.S-2.1_en.pdf

⁶⁴

The OIC also amended the language concerning the type of commission of inquiry in order to attempt to accommodate other recommendations, so that the final wording requested the dispatch of 'a high level commission of inquiry comprising eminent experts of human rights law and international humanitarian law including the possibility of inviting the relevant UN special procedures to be nominated to the Commission'.

⁶⁵

27 in favour, 1 against, and 8 abstentions. The majority of States from the African and Arab Group, as well as from the OIC voted in favour of the Resolution. States from the EU and Romania, as well as Ukraine, Canada, and Japan voted against the Resolution. The majority of States from the Group of Latin American and Caribbean countries also voted in favour.

closed meetings to produce amendments on the floor as an indication of their unwillingness to communicate.

On 1 September 2006, João Clemente Baena Soares (Brazil), Mohamed Chande Othman (Tanzania) and Stelios Perrakis (Greece) were formally appointed to the Commission of Inquiry.⁶⁶ They began their preparatory work on 11 September, and traveled to Lebanon on 23 September for two weeks. On 1 December the Commission of Inquiry presented its findings to the Commission. On assessing the devastating impact of the conflict,⁶⁷ the Commission of Inquiry formed a clear view that, all together, the deliberate and lethal attacks by the Israel Defence Forces on civilians and civilian objects amounted to collective punishment. It stated that its report contained many indications of conduct that constitute severe violations of international humanitarian and human rights law for which individual responsibility can be imputed. It stressed the obligation of Israel to put an end to serious breaches, and investigate and prosecute those responsible. The Commission of Inquiry presented its findings to the third session of the Council, complete with a clear list of recommendations to follow up on these issues.⁶⁸

Third special session on the Occupied Palestinian Territories

The third special session of the Council was held on 15 November 2006 at the request of Bahrain and Pakistan to discuss the recent Israeli military incursions in the OPT, including in Northern Gaza and the assault on Beit Hanoun, resulting in the deaths of 18 Palestinians. The Group of Arab States and the OIC also distributed a draft resolution to Council members prior to the session.⁶⁹ The High Commissioner also informed the Council that she would be visiting Israel and the OPT from 19 November 2006 and that her visit would focus on the protection of civilians during armed conflict.

Once more the debate of the special session fluctuated between condemnations of the human rights situation in the OPT, and particularly the attacks of Beit Hanoun, on the one hand, and allegations of one-sidedness and imbalance on the other. This was initiated by Palestine's plea

for States to recognise that continued Israeli attacks had led to 280 Palestinian civilian fatalities since June 2006, and that the attack on Beit Hanoun had prompted the Secretary-General to issue a statement on 8 November 2006 expressing his shock at the Israeli military operation, subsequently described by many other States as a gross violation of human rights and international humanitarian law.

The point was also initially raised by Cuba, and less explicitly by others, that failure of the Security Council to act on this matter was due to the decision of the USA to exercise its veto power and thus it was left to the Human Rights Council to take action. However, according to Libya and the OIC, the refusal of Israel to cooperate with the previous decisions of the Council also needed to be addressed.⁷⁰ The counter-argument was that the Council's mandate required it to be non-selective, and, in holding three special sessions on Israel and the OPT, the Council had failed to respond to the universal human rights of all.⁷¹ Israel and the USA drew the attention of the Council to Palestinian rocket attacks and stockpiles of arms.

The draft resolution tabled by the OIC called for the immediate protection of Palestinian civilians, in compliance with human rights law and international humanitarian law, and for the perpetrators of human rights violations to be brought to justice. It also called for the urgent dispatch of a high-level fact-finding mission to travel to Beit Hanoun⁷² and requested that it report back to the Council regarding its progress in implementing its mandate no later than the middle of December 2006.

As with the previous two special sessions, the EU stated that it would vote against the Resolution as it was imbalanced in its failure to recognise that human rights violations are being committed by both sides.⁷³ Nonetheless, the Resolution was adopted by a sizeable majority.⁷⁴

The President of the Council appointed Archbishop Desmond Tutu and Ms. Christine Chinkin to conduct the fact-finding mission.⁷⁵ Upon traveling to Geneva on 1 and 7 December respectively, it became clear to the fact-finding mission that the Israeli authorities intentionally refused to process their visas on time. This resulted in Archbishop Tutu and Ms. Chinkin

66 Letter dated 22 September 2006 from the members of the Commission of Inquiry on Lebanon addressed to the President of the Human Rights Council, A/HRC/2/4 (26 September 2006).

67 According to the Commission of Inquiry, 1,191 people were killed, 4,409 were injured, and 900,000 fled their homes. During the conflict, major damage was inflicted on civilian infrastructure. The Israel Defence Forces targeted 32 'vital points'. 109 bridges and 137 roads were damaged.

68 See pp. 76-78, *Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council Resolution S-2/1, A/HRC/3/2* (10 November 2006).

69 'Human Rights Violations emanating from Israeli military incursions in the Occupied Palestinian Territories including the recent one in Northern Gaza and the assault on Beit Hanoun', available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/specialsession/A.HRC.S-3.L1.pdf>

70 The question of the enforceability of Council decisions, particularly in the context of special sessions, has subsequently been raised by Egypt at the Working Group on agenda, programme of work, methods of work and rules of procedure.

71 Chile, the USA, Australia, and UN Watch.

72 The fact-finding mission is mandated to assess the situation of victims, address the needs of survivors, and make recommendations on ways and means to protect Palestinian civilians against further Israeli assaults.

73 The same basis for abstaining on the Resolution were expressed by Guatemala, before the vote, and Switzerland, France and Japan after the vote.

74 32 in favour, 8 against, and 6 abstentions. Against - Canada, the Czech Republic, Finland, Germany, the Netherlands, Romania, Poland and the United Kingdom. Abstained - Guatemala, Japan, France, Ukraine, Switzerland and the Republic of Korea. Cameroon was absent and thus did not participate in the voting.

75 See 'President of Human Rights Council Names Archbishop Desmond Tutu as Head of Fact-Finding Mission to Beit Hanoun' (29 November 2006); 'President of Human Rights Council Appoints Christine Chinkin to Serve on High-Level Fact-Finding Mission to Beit Hanoun' (6 December 2006), at [http://www.unog.ch/80256EDD006B9C2E/\(Httpnewsbyyear_En\)/0DA05CA2094FE903C125723C00514DAF?opendocument](http://www.unog.ch/80256EDD006B9C2E/(Httpnewsbyyear_En)/0DA05CA2094FE903C125723C00514DAF?opendocument)

sending a report to the President of the Human Rights Council based on what had happened, and leaving the President and the Council to decide how to respond. According to Archbishop Tutu, 'this is a time in our history that neither allows for indifference to the plight of those suffering, nor a refusal to search for a solution to the present crisis in the region', yet 'sometimes not making a decision is making a decision.'⁷⁶

Fourth special session on Darfur

There had been calls for immediate action on the situation of human rights in Darfur since the first session of the Council. A resolution on Darfur sponsored by the African Group was adopted at the resumed second session of the Council, but was criticised heavily by the EU and others as a weak resolution that in no way reflected the seriousness of the situation on the ground, and did not attribute primary responsibility to the Government of the Sudan to protect the human rights of civilians in the country. The subsequent failure of the EU to secure amendments to the draft text, and the eventual adoption of the African Union's Resolution, set a bad precedent for the Council with respect to Darfur.

The need for further action was thus re-iterated in the recommendations of the High Commissioner and the statement of the Secretary-General to the Council at its third session, where he emphasised that selectivity should not be exercised in the case of situations of gross and systematic human rights violations in the world. He pinpointed the Sudan as a 'glaring case in point...[that]...merited a special session.'⁷⁷

The discussion at the special session on 12-13 December 2006 was divided between those who categorised the situation in Darfur as amounting to gross and systematic violations of human rights that had remained the same or worsened since the *Abuja Peace Agreement*, and those who claimed that the Agreement had brought relative peace to the region. The EU maintained that the facts had been sufficiently established by a wide variety of impartial observers, and referred to the situation in Darfur as 'a severe and large-scale human rights and humanitarian crisis'. On this basis, they recognised the need of the Council 'to continue

to be provided with clear, accurate and substantiated information on the human rights situation in Darfur' and sought to dispatch an urgent assessment mission of independent experts to Darfur headed by the Special Rapporteur on the situation of human rights in the Sudan. The independence of experts would avoid any political element to the mission, and was consistent with the types of missions dispatched by previous special sessions.

Algeria supported the Sudanese delegation's allegations of an 'international campaign to disseminate false information'.⁷⁸ It tabled a competing resolution on behalf of the African Group which noted 'with concern' the seriousness of the human rights and humanitarian situation in Darfur despite the conclusion of the *Abuja Peace Agreement*, which 'some parties have yet to sign'.⁷⁹ While also calling for the dispatch of an assessment mission, it preferred that it be 'headed by the President of the Council' and that it would 'include members of the Bureau and the regional group coordinators members of the Council'.⁸⁰ The rationale for such a composition, according to Algeria, was that it would better ensure a more objective analysis.

The appearance of a President's Decision incorporating elements from both the African and EU texts aimed to resolve the dispute and reach consensus. It decided to dispatch 'five highly qualified persons, to be appointed by the President of the Human Rights Council following consultation with the members of the Council, as well as the Special Rapporteur on the situation of human rights in Sudan'.⁸¹ After private, informal consultations between States on the President's compromise Resolution, a consensus was achieved.

The special session on Darfur was also notable for the broad **participation of NGOs** and individuals from the region, in contrast to the treatment of NGOs at previous special sessions. Their contributions supported the facts provided by other agencies and increased the sense of urgency in achieving a consensus.

Whilst it was expected that the President would have appointed the five persons to be dispatched to Darfur at the earliest opportunity, nothing had been finalised as of 15 January 2007.

76

See 'Highlights of Archbishop Tutu Press Conference Announcing Lack of Israeli Cooperation for Council's Beit Hanoun Fact-Finding Mission' (11 December 2006), at [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear_en\)/360C9BB10EAE8D4C12572410052CCC3?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/360C9BB10EAE8D4C12572410052CCC3?OpenDocument)

77

The subsequent EU request for a special session attracted 33 co-sponsors, including many States that opposed the EU's amendments to the African Group's Resolution on Darfur at the resumed second session. The EU request, submitted on 30 November 2006, can be viewed on the OHCHR extranet: <http://portal.ohchr.org/portal/page/portal/HRCExtranet/4SpecialSession>. Co-sponsors - Algeria, Brazil, Canada, the Czech Republic, Cuba, South Africa, Ecuador, Finland, Gabon, France, Ghana, Guatemala, Germany, Indonesia, the Republic of Korea, Tunisia, Ukraine, Poland, Peru, Morocco, Romania, the Russian Federation, Canada, Ecuador, Uruguay, the Netherlands, Nigeria, Mauritius, Brazil, Azerbaijan, Bangladesh, the United Kingdom, and Zambia.

78

International Service for Human Rights, *Council Monitor Daily Update*, 29 November 2006 at http://www.ishr.ch/hrm/council/updates/29_November_06.pdf

79

The EU draft resolution noted 'with grave concern'.

80

A/HRC/S-4/L.2, OP 6.

81

S-4/101, OP 4.

NEXT STEPS FOR 2007

The fourth session of the Council from 12 March to 5 April 2007 is intended to constitute the 'main session' of the first year. At the time of writing, most (but not all) special procedures will present their latest reports to the Council. It is expected that sufficient time will also be allocated to the adoption of both resolutions outstanding from previous sessions and new resolutions drafted in response to new developments. It can also be expected that sufficient time will be given to the outcomes of the Working Groups on review of mandates and the UPR. It has been suggested by member States that the Council might even carry on from the outcomes of the Working Groups' February sessions and request that its own progress be carried over to the final sessions of the Working Groups. In any case, the Council will certainly witness more urgency in this work if the requirements of General Assembly *Resolution 60/251* are to be met and the UPR and the review of mandates are to be completed within one year.

At face value, the fourth and final calendar session of the Human Rights Council will most resemble the old sessions of the Commission on Human Rights, which traditionally would also have sat at the same time of year. This does not mean that it is the same, of course, but nor did the developments in 2006 guarantee that it is not. In every sense, all remains open.