

GENERAL ASSEMBLY: SOME SURPRISE VICTORIES, BUT MOSTLY MORE OF THE SAME¹

INTRODUCTION

The 62nd session of the General Assembly saw a number of important achievements for human rights, including the adoption of a historic resolution on the moratorium of the use of the **death penalty**, and the unanimous decision to create a Special Representative of the Secretary-General on **violence against children**. Despite a continuing mistrust of **country resolutions** by a majority of the membership,² four such resolutions were ultimately adopted, with the human rights situations in the Democratic People's Republic of Korea (DPRK), Belarus, Myanmar, and Iran drawing international attention and concern. Despite a difficult passage through the Third and Fifth Committees, the resolution containing the **Report of the Human Rights Council**, which included its institution-building package, was also adopted. A remarkable breakthrough in terms of standard setting was the adoption, in September 2007, of the UN *Declaration on the Rights of Indigenous Peoples* after 20 years of lobbying and negotiations led by indigenous peoples.³ Three new initiatives were also considered this year, which resulted in the declaration of an International Year of Human Rights Learning,⁴ a resolution on ending obstetric fistula,⁵ and another on eliminating rape in conflict situations, all of which were adopted by consensus. In all, the Third Committee (the Committee) adopted 60 human rights resolutions covering the areas of civil and political rights; economic,

social and cultural rights; human rights situations in countries; women's rights; children's rights; indigenous rights; and racism. The most significant developments and outcomes in each of these areas are analysed below.

REPORT OF THE HUMAN RIGHTS COUNCIL

The Report of the Human Rights Council (the Report) was considered under agenda Item 65 of the 62nd session of the General Assembly. The Human Rights Council (the Council) was established as a subsidiary organ of the General Assembly and consequently reports annually on the results of its work for the General Assembly to endorse and approve them. The President of the Council, Ambassador Doru Romulus Costea of Romania, introduced the Report. Member States then held a general discussion about it. He prefaced his remarks with an acknowledgement that 2008 marks the 60th anniversary of the *Universal Declaration of Human Rights*, and that there is a greater need for the Council to uphold the highest human rights standards.

For a number of reasons, contention accompanied the resolution that proposed the adoption of the Report from the day of its introduction through to and including its eventual adoption

¹ The footnotes referring to resolution numbers in this document refer to texts adopted by the Third Committee, all of which are available at www.un.org/ga/third/62/propslist.shtml. For the correlating General Assembly resolution numbers see www.un.org/ga/62/resolutions.shtml. Please note that, at the time of writing, not all General Assembly texts were accessible online.

² This was especially evident in the proposal of no-action motions in relation to three of the four country-specific resolutions.

³ The adoption of the Declaration and the process leading up to it is examined in more detail in the chapter on standard setting.

⁴ A/C.3/62/L.28/Rev.1, available at www.un.org/ga/third/62/propslist.shtml.

⁵ See fn. 123 in this chapter.

by a vote in the plenary on the final day of the session.

⁶ Human Rights Council *Decision 5/101*, which states that Council *Resolutions 5/1* and *5/2* are to be acted upon jointly. Both resolutions are available at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/Council/RES/5/1.

⁷ For an overview of the discussion leading up to the adoption of the institution-building package, please see the chapter on the Council's institution-building work.

⁸ During the lead-up to the creation of the Human Rights Council, former UN Secretary-General Kofi Annan and many member States had expressed their hope that the body would become a principal organ of the United Nations. Member States eventually decided that it would be only a subsidiary organ of the General Assembly. However, OP1 of General Assembly *Resolution 60/251* which created the Council provides that the General Assembly will review the Council's status within five years of its formation.

⁹ States such as those from the African Group, Cuba, the Russian Federation, the United States (US), China.

¹⁰ The General Assembly delegates most human rights matters to the Third Committee, which is viewed as having the expertise on such issues.

¹¹ The General Committee makes decisions on organisational matters, which are then submitted to the General Assembly for adoption. The General Committee is composed of the President and 21 Vice-Presidents of the General Assembly and the Chairmen of the six main Committees of the General Assembly.

¹² The Non-Aligned Movement (NAM) was originally formed as a bloc of countries that would remain neutral during the Cold War. It is 'non-aligned' in name only and operates as a voting and negotiating bloc throughout the UN system. It includes 117 UN States.

¹³ See A/C.3/62/L.84 which contains Cuba's amendment to the draft resolution to adopt the Report (A/C.3/62/L.32). Both are available at www.un.org/ga/third/62/propolist.shtml.

¹⁴ Canada, Israel, US.

¹⁵ The seven States who joined Israel in voting against the adoption of the Report were the US, Australia, Canada, Palau, Micronesia, Marshall Islands. Nauru and Equatorial Guinea abstained. Swaziland initially appeared to have abstained, but later clarified they had intended to vote in favour.

In the first instance, it had been left undecided whether the Report would be considered by the General Assembly plenary, the Third Committee, or both. Second, the resolution proposing the adoption of the Report by the General Assembly noted Council *Resolution 5/1* (containing the institution-building package) but lacked any specific reference to Council *Resolution 5/2* (containing the code of conduct for special procedures).⁶ Third, although the institution-building package had been adopted by consensus in the Council,⁷ it was not without controversy, both in terms of its content and its considerable budget implications, and this led to concerns that the package could be reopened in the General Assembly.

The allocation of the Report within the General Assembly proved contentious because States held differing opinions depending on whether they regarded the Council as a potential principal UN body⁸ or as a subsidiary organ of the General Assembly. States that thought the Report should go directly to the General Assembly plenary maintained that the Council's stature justified it, while those⁹ pushing for the Third Committee to consider the Report pointed to the need for it to be considered by a body with human rights expertise.¹⁰ The eventual decision adopted by the General Committee,¹¹ and subsequently the General Assembly, stipulated that the Report would be considered by the Third Committee and then forwarded to the plenary. As there was no decision to clarify the process regarding next year's Report, we can expect some controversy that may hinder its adoption next year as well, although it is likely to be much less controversial.

In regard to the Council's institution-building package, most States were positive overall, noting that compromises were made to achieve a consensus outcome, which on balance they could accept. The inclusion of a standing agenda item solely concerning the human rights situation in the occupied Palestinian territory (OPT) however drew pointed criticism from Israel and the United States (the US), among others. The discontinuation of the special procedures mandates relating to Cuba and Belarus was also a subject of disapproval by several States belonging to the Western European and Others Group (WEOG).

The code of conduct for special procedures mandate holders was also a divisive issue. The Russian Federation (backed by the African Group and the Non-Aligned Movement - NAM¹²) regarded the code of conduct as a critical checks and balances mechanism that had enabled them to support the Council's adoption of the institution-building package. Although many States and a number of human rights non-governmental organisations (NGOs) had concerns about including the reference to the code of conduct, in part because it could lead to an attempt to micromanage the work of mandate holders, the General Assembly resolution was ultimately amended to take note of both Council resolutions.¹³

Although rumours circulated in the months leading up to the 62nd session of the Third Committee that a few States¹⁴ may attempt to reopen the institution-building package in that forum, this did not happen. Israel did call for a vote on the package, which allowed those like-minded States with strong objections to the institution-building package to express their concerns,¹⁵ but ultimately the overwhelming majority of the Third Committee voted in support of the resolution regarding the Report of the Council as amended.

The final and most controversial aspect of the Report was the size of the budget required to implement the institution-building package. The General Assembly's Advisory Committee on Administrative and Budgetary Questions recommended that the Fifth Committee dramatically revise the budget from just over \$8 million to just over \$2.4 million. This drew strong criticism from a number of States for several reasons, not least of which was their concern that it would compromise the resources available to implement the institution-building package and its centrepiece, the universal periodic review (UPR) mechanism. This and other budget controversies resulted in the General Assembly's session having to be extended to provide additional time for consensus to be reached within the Fifth Committee.

The General Assembly ultimately approved a slightly higher budget than recommended by the Advisory Committee on Administrative and Budgetary Questions of \$3.98 million for the implementation of the institution-building package, the bulk of which will allow for 17 new posts in the Office of the High Commissioner for Human

Rights (OHCHR) to carry out preparation for UPR process. Most of the remainder of the budget will go towards the cost of providing conference services when the Council is meeting. In addition, the General Assembly approved additional resources (including additional posts) to support the work of the Council as requested by the Secretary-General.¹⁶ It should be noted, however, that the resources ultimately approved did not meet the total requirements requested.¹⁷

At the end of these lengthy and complex deliberations, there was a sense that the Council now has some of the resources necessary to carry out its mandate and to give effect to its institution-building package. Nonetheless, seven States led by the US and Australia voted against the adoption of the resolution, either because they believed the institution-building package was 'unbalanced', or because they could not support what they regarded as a 'politicised' Council.

COUNTRY SITUATIONS

This year the Third Committee considered four country-specific resolutions under agenda Item 70(c).¹⁸ These related to the **Democratic People's Republic of Korea**,¹⁹ **Myanmar**,²⁰ **Iran**,²¹ and **Belarus**.²² All of the resolutions were ultimately adopted after lengthy and heated debates, and despite 'no-action motions' being proposed in relation to all but the DPRK resolution. The level of resistance towards the resolution on Iran in the General Assembly plenary resulted in the proposal of a second no-action motion, as well as the unusual attempt to make an oral amendment to the text.²³ Both proved unsuccessful. Unlike in previous years, there were no retaliatory country-specific resolutions initiated by the States that were the subject of such resolutions.

Consideration of country-specific matters was as controversial as it has been in previous years, though the political agreement struck in the Council on its institution-building package in the months prior to the General Assembly's 62nd session added a new element to the long-standing regional tensions. The Council's adoption of the UPR mechanism to individually review the human rights record of each UN member State, meant that many States²⁴ expressed strong

opposition to the Third Committee continuing to consider country-specific resolutions. They argued repeatedly that the Council's UPR mechanism provides a non-selective, non-confrontational, and non-political means of addressing human rights concerns through direct dialogue and engagement with States, criticising the Third Committee for undermining the Council's authority to exclusively deal with these matters. The NAM's strong advocacy of the UPR mechanism as the circuit breaker for political debate in the Third Committee only adds to the already significant pressure on this mechanism to deliver and meet expectations.

Despite the controversy, the voting patterns of the Third Committee on the country-specific resolutions and the concern on the part of many WEOG members that the General Assembly continue to consider any country situation that raises a serious human rights issue, suggest that there is sufficient political will for this type of resolution to continue. Most States are aware that the overlapping roles and responsibilities of the Council and the Third Committee constitutes a broader issue that needs be addressed, but the effectiveness of the UPR mechanism, which commences operation in April 2008, will play a key role in determining the division of responsibilities between the two bodies. The fact that the Council is a standing body that theoretically has the ability to address human rights violations year-round, will also be a factor in this evaluation.

Also under agenda Item 70(c), the Third Committee considered the reports of, and held interactive dialogues with, special procedures mandate holders on the human rights situation in the DPRK,²⁵ Myanmar,²⁶ the **occupied Palestinian territory (OPT)**²⁷ and the **Sudan**,²⁸ and the Independent Experts on the situation of human rights in the **Democratic Republic of the Congo (DRC)**²⁹ and **Burundi**.³⁰ With the exception of Burundi, each of the special procedures reported that the human rights situation had failed to improve or had worsened over the course of the year. All four countries continue to experience serious human rights violations and are struggling to address an entrenched atmosphere of impunity. The absence of political stability is a further impediment to demonstrable improvements in people's ability to more fully enjoy their human rights in these countries.

16 See A/62/125 for the Secretary-General's report, submitted to the General Assembly in fulfilment of Council Decision 3/104. It sets out the resources and services needed to implement the Council's decisions, which total \$8,057,000.

17 The General Assembly only agreed to fund a small component of the considerable conference services, administration, and public information costs that were requested by the Secretary-General because the Fifth Committee advised that many of these expenses could be met from within the regular budget of the UN if the Secretary-General deemed them to be a priority.

18 Agenda Item 70: Promotion and protection of human rights (c) Human rights situations and reports of special rapporteurs and representatives.

19 A/C.3/62/L.37/Rev.1. Available at www.un.org/ga/third/62/doclist.shtml.

20 A/C.3/62/L.41. Available at www.un.org/ga/third/62/doclist.shtml.

21 A/C.3/62/L.43. Available at www.un.org/ga/third/62/doclist.shtml.

22 A/C.3/62/L.51. Available at www.un.org/ga/third/62/doclist.shtml.

23 The no-action motion was proposed by Iran, and the oral amendment by Venezuela.

24 Belonging to the NAM.

25 A/62/318. Available at www.un.org/ga/third/62/doclist.shtml.

26 A/62/233. Available at www.un.org/ga/third/62/doclist.shtml.

27 A/62/275. Available at www.un.org/ga/third/62/doclist.shtml.

28 A/62/354. Available at www.un.org/ga/third/62/doclist.shtml.

29 A/62/313. Available at www.un.org/ga/third/62/doclist.shtml.

30 A/62/213. Available at www.un.org/ga/third/62/doclist.shtml.

31
A/62/346. Available at www.un.org/ga/third/62/doclist.shtml.

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A/62/347. Available at www.un.org/ga/third/62/doclist.shtml.

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WEOG States, together with some Latin American and Caribbean States (54 in total), voted against the deletion of the reports from the agenda, most NAM members (76) voted in favour, 20 States abstained.

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Agenda Item 70: Promotion and protection of human rights (b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms.

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These included Iran and the Russian Federation.

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A/C.3/62/L.33/Rev.1. The resolution's full title is the 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.'

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Iran and Venezuela made several controversial proposals to substantially alter the text.

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Parallel to the meeting of the Third Committee, Norway co-hosted a side event with a group of New York-based human rights NGOs on the theme of women human rights defenders, where government delegates (Norway, Brazil, Nigeria and Indonesia) expressed support for the mandate on human rights defenders.

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These resolutions were dealt with under agenda item 70(c) of the Third Committee which is entitled 'Promotion and protection of human rights (c) Human rights situations and reports of special rapporteurs and representatives'. They are analysed in more detail in the International Service for Human Rights' (ISHR) *New York Update* on country-specific matters at the General Assembly's 62nd session, available at www.ishr.ch.

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OP2(b), A/C.3/62/L.41. Available at: www.un.org/ga/third/62/propolist.shtml.

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OP2(e), A/C.3/62/L.43. Available at www.un.org/ga/third/62/propolist.shtml.

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OP1 (b)(iii), A/C.3/62/L.37/Rev.1. Available at: www.un.org/ga/third/62/propolist.shtml.

43
OP1 (a), A/C.3/62/L.51. Available at: www.un.org/ga/third/62/propolist.shtml.

The reports of the High Commissioner for Human Rights (the High Commissioner) on the human rights situation in **Nepal**³¹ and **Northern Uganda**,³² which were introduced on the opening day of the Third Committee, brought considerable drama to the proceedings. Both Nepal and Uganda were highly critical of OHCHR for failing to make copies of the reports available to them prior to their consideration by the Committee, and argued that due process had not been followed. Rather than inquiring with OHCHR about the circumstances surrounding the submission of these reports, or deferring consideration of them to another time, the Committee, on the suggestion of the Chairperson, voted to withdraw them from the agenda altogether.³³

HUMAN RIGHTS DEFENDERS

The Third Committee considered the situation of human rights defenders under agenda item 70(b).³⁴ This year members of the Third Committee were clearly divided in their responses to the report and presentation by the Special Representative of the Secretary-General on human rights defenders, Ms Hina Jilani. The confrontational atmosphere of the interactive dialogue saw States belonging to the WEOG strongly support her mandate and report, while some members of the NAM³⁵ questioned her impartiality and debated whether she was overreaching her mandate.

This split between WEOG and NAM States carried over into the negotiations on the biennial resolution on human rights defenders, which was again sponsored by Norway.³⁶ Norway managed to retain much of the text from previous years as a result of intense negotiation, and largely avoided attempts to insert new language that would have undermined the intent of the resolution.³⁷ However, the strength of the criticism from NAM States, particularly Iran, did result in a weakening of the language in the resolution regarding her report, which was 'noted with appreciation', rather than welcomed, as had been the case in 2006. The resolution also included an indirect **reference to the code of conduct**. By inserting this new language, States appeared to single out the Special Representative for excessive control. No other General Assem-

bly resolution mentioning special procedures mandates contained such a reference.

Despite the level of hostility towards the Special Representative, there were also important positive signs about the importance that the General Assembly attaches to the mandate and the Special Representative's work. Not least of these is the fact that the resolution received more sponsors than in previous years and was adopted by consensus in both the Third Committee and the General Assembly. These are positive indicators for the renewal of the mandate by the Council in 2008.³⁸

Further, the harassment, persecution, and intimidation that many human rights defenders have experienced in the last year were also addressed in the four country-specific resolutions adopted by the General Assembly.³⁹ The resolutions relating to the human rights situation in Myanmar,⁴⁰ Iran,⁴¹ the DPRK,⁴² and Belarus⁴³ each expressed 'deep' or 'serious concern' at the manner in which the respective governments were targeting human rights defenders and actively seeking to restrict or remove their rights to freedom of expression, association, and movement. In each resolution the various governments were 'urged' or 'called upon' to stop these violations, and in the case of Belarus, to hold the perpetrators accountable.⁴⁴

The General Assembly also considered reports by the Special Rapporteurs on the situation of human rights in the Sudan⁴⁵ and Myanmar⁴⁶ that drew particular attention to the 'severe restrictions' on fundamental freedoms as well as the violations that human rights defenders are subjected to. In both cases the special procedures called on the governments to uphold their human rights obligations by ending these restrictions and violations. These reports and country-specific resolutions are evidence of the need for the Special Representative's mandate and served to reinforce the concerns and recommendations Ms Jilani brought to the Third Committee.

The resolution on human rights defenders requests the Special Representative to continue to report to the General Assembly, and to the Council.⁴⁷ The Third Committee will continue its review of the situation of human rights defenders at its 64th session in 2009. Human

rights defenders are planning to closely monitor and provide input on the review of the mandate at the Human Rights Council session in March 2008.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Third Committee considered six reports from special procedures and four resolutions relating to economic, social and cultural rights under agenda Item 70(b). The reports addressed the following thematic areas and in relation to the themes of food, health, and foreign debt, there was an interactive debate with the relevant mandate holder:

- The right to development;⁴⁸
- The right to food;⁴⁹
- The right to health;⁵⁰
- Human rights and cultural diversity;⁵¹
- The effects of economic reform policies and foreign debt on human rights;⁵²
- Globalisation and its effects on human rights.

Resolutions on the **right to development**,⁵³ the **right to food**,⁵⁴ **cultural diversity**,⁵⁵ and **globalisation**⁵⁶ were adopted by a vote.

As in previous years, the consideration of economic, social and cultural rights by the Third Committee highlighted the division among its members along north-south, or developed and developing country lines. The support of NAM members was critical to the adoption of the resolutions on the right to development and globalisation, however the resolution on cultural diversity⁵⁷ was adopted by consensus, although not without controversy. The resolution on the right to food also enjoyed widespread support amongst Committee members, but as was the case last year, the US requested a vote and was the sole dissenting voice. All of the resolutions – with the exception of the one on cultural diversity, which was adopted by consensus – also went to a vote in the General Assembly and were adopted with similar voting patterns to last year.

While there was clear agreement among States that the language of previous years' resolutions

should be preserved, there were also important additions to emphasise that most States welcomed the adoption of the *Declaration on the Rights of Indigenous Peoples* and the *Convention on the Rights of Persons with Disabilities*.⁵⁸ In the case of the resolution on the right to food, some of the recommendations of the Special Rapporteur were incorporated,⁵⁹ and his valuable work commended by the Third Committee.

The work of the Special Rapporteur on the right to health also drew praise from some members of the Third Committee, but the General Assembly did not consider a resolution on the right to health. The Special Rapporteur brought a number of critical issues to the attention of the Third Committee, including the impact of global warming on people's access to clean water, and the largely preventable human rights problem of maternal mortality, both of which he said require stronger leadership from the international community and the Human Rights Council.

The Special Rapporteur on the right to food drew the Committee's attention to a number of concerning trends that require concerted international action. These included the need to extend the principle of *non-refoulement*⁶⁰ to refugees fleeing hunger, and to restrain the use of arable land⁶¹ for the production of biofuels. His recommendation that a five-year moratorium on the production of biofuels from arable land drew strong criticism from several States with sizeable biofuel industries.⁶²

The Third Committee was also updated on progress in relation to the development of several sets of guidelines by the special procedures. The draft guidelines on the relationship between debt payments, structural reform programmes, and human rights were on track to be finalised by the end of 2007; the draft Human Rights guidelines for pharmaceutical companies on access to medicines should be presented to the Council in early 2008; and the review of the guidelines on the right to development criteria should be completed by the end of 2009.

For the mandate holders in relation to the right to health, the right to food, and foreign debt, this was the last session of the Third Committee that they will address before their term of office expires.⁶³ Similarly, the Third Committee will be addressed by a new Independent Expert on

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For more details, see ISHR's *New York Update* on human rights defenders at the General Assembly's 62nd session, available at www.ishr.ch.

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A/62/354: Executive Summary and paragraphs 5 and 87(i)(h). Available at www.un.org/ga/third/62/doclist.shtml.

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Executive Summary and paras 27, 32, and 67(d), A/62/223. Available at www.un.org/ga/third/62/doclist.shtml

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OP16, A/C.3/62/L.33/Rev.1.

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A/62/183. Available at www.un.org/ga/third/62/doclist.shtml.

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A/62/289. Available at www.un.org/ga/third/62/doclist.shtml.

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A/62/214. Available at www.un.org/ga/third/62/doclist.shtml.

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A/62/254. Available at www.un.org/ga/third/62/doclist.shtml.

52
A/62/212. Available at www.un.org/ga/third/62/doclist.shtml.

53
A/C.3/62/L.49. Available at www.un.org/ga/third/62/propolist.shtml.

54
A/C.3/62/L.53/Rev.1. Available at www.un.org/ga/third/62/propolist.shtml.

55
A/C.3/62/L.39. Available at www.un.org/ga/third/62/propolist.shtml.

56
A/C.3/62/L.31. Available at www.un.org/ga/third/62/propolist.shtml.

57
For more information see ISHR's *New York Update* on economic, social and cultural rights at the General Assembly's 62nd session, available at www.ishr.ch.

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For example, the resolution on the right to development (A/C.3/62/L.49 – OP31 and OP32) and the resolution on the right to food (A/C.3/62/L.53/Rev.1 – OP7 and OP12) provide clear support for the adoption of both instruments. In total nine resolutions from the Third Committee made direct references to the adoption of the *Declaration on the Rights of Indigenous Peoples*. For more details, see ISHR's *New York Update* on indigenous issues in the General Assembly's 62nd session, available at www.ishr.ch.

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The resolution includes a new operative paragraph 'recognising' the need for 'national protection mechanisms for people forced to leave their homes and land because of hunger or natural or man-made disasters'. This gives partial effect to the Special Rapporteur's recommendation regarding the need for legal protections for refugees from hunger. In addition, a new operative paragraph 'stresses that all States' should ensure that their international policies and trade agreements do not negatively impact on the right to food in other countries.

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A principle of international law that forbids the extradition of a person into an area where he or she might be subjected to persecution.

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Land that is capable of producing crops, suitable for farming.

62

Colombia suggested a full analysis of the idea of moratorium on biofuels is needed, whereas Brazil, Indonesia and Paraguay elaborated on how biofuels had improved their economy and cautioned against the moratorium.

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They have each served for two terms of three years, which is the limit.

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Although the General Assembly resolution did not consider the establishment of a mandate to promote human rights and cultural diversity, this was the focus of a resolution adopted by consensus at the recent 6th session of the Human Rights Council. That resolution, A/HRC/6/L.3/Rev.1, sponsored by Cuba, 'acknowledged' that there is a 'momentum towards the establishment of an independent expert on the promotion of the enjoyment of the cultural rights of everyone and respect for cultural diversity', and requested that the High Commissioner for Human Rights consult on the content and scope of the mandate and report to the Human Rights Council at its 8th session in June 2008.

65

Item 70: Promotion and protection of human rights (a) Implementation of human rights instruments (b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms and (c) Human rights situations and reports of special rapporteurs and representatives.

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A/62/298. Available at www.un.org/ga/third/62/doclist.shtml.

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A/62/221. Available at www.un.org/ga/third/62/doclist.shtml.

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A/62/265. Available at www.un.org/ga/third/62/doclist.shtml.

human rights and extreme poverty at its 63rd session in 2008. In 2008, the Committee is likely to be interested in whether there has been any progress towards an international standard on the right to development which is being advocated by NAM States. Although it will not be considered until the 64th session in 2009, many members of the Third Committee will also be closely following discussion about the possibility of establishing a mandate to promote human rights and cultural diversity, which is another ambition of NAM States.⁶⁴

CIVIL AND POLITICAL RIGHTS

The Third Committee considered 11 reports and seven resolutions relating to civil and political rights under agenda Items 70(a), (b) and (c).⁶⁵ In the following thematic areas, the Committee heard from the mandate holder and author of the report and engaged in an interactive dialogue with them:

- Human rights and countering terrorism;⁶⁶
- Torture;⁶⁷
- Extra-judicial, summary or arbitrary executions;⁶⁸
- Independence of judges and lawyers;⁶⁹
- Freedom of religion and belief.⁷⁰

Resolutions⁷¹ were adopted by consensus on the **protection of human rights and countering terrorism;**⁷² **torture;**⁷³ **administration of justice;**⁷⁴ **international covenants on human rights;**⁷⁵ and **freedom of religion or belief.**⁷⁶ Two were adopted by vote, namely the **death penalty resolution**⁷⁷ and **defamation of religion.**⁷⁸

One of the most positive and, for many, surprising outcomes of this year was the successful adoption of a historic resolution on a moratorium of the use of the death penalty.

Although two resolutions mentioning the death penalty were adopted in the 1970s,⁷⁹ the international community refused to act on the issue when it was brought back on the agenda nearly eight years ago. Many States, as well as international NGOs, were concerned that the 2007 draft resolution would not fare any better than that

proposed in 1999, which was ultimately scuttled by wrecking amendments. Indications of a tense and confrontational atmosphere between the NAM and WEOG States at the start of the Third Committee session did not alleviate these fears.

Victory, though, was achieved. Several factors are likely responsible, including that the text was co-authored by a group that was representative of all geographical regions.⁸⁰ The make-up of the key group of sponsors was critical since many detractors tried to de-legitimise the resolution by calling it a European Union/Western initiative. When the text came under pressure in the Third Committee, the alliance maintained cohesion, withstanding a string of cleverly worded amendments⁸¹ that were designed to undermine the text's fundamental purpose or sought to introduce issues unrelated to the death penalty. Another element contributing to the successful outcome may have been that many States had already undertaken extensive national debates on the subject. Their delegates therefore brought an informed national opinion to the table, which did not correspond with the bloc-oriented regional views that usually shape voting patterns in the Third Committee.⁸² Additional support came from international and national NGOs who lobbied extensively throughout the process and the co-sponsoring States, many of whom carried out major diplomatic efforts worldwide to convince countries to support the resolution.

When the text finally came to vote as a whole,⁸³ opposition came mostly from members of the Organization of the Islamic Conference (OIC), the League of Arab States, China, and a few Caribbean and Asian countries.⁸⁴ Abstaining delegations that took the floor to explain their vote mostly stated that even if there has been a *de facto* moratorium in their countries, they were unable to vote in favour of something contrary to their domestic law or, in their view, not prohibited under international law. Several Islamic countries indicated that the adoption of the resolution may trigger future resolutions on the right to life. African countries were split on the issue.

In many ways, the success of the death penalty resolution overshadowed outcomes on other civil and political rights issues during this session. However several important issues were brought

to the attention of member States, in particular by the special procedures, both in terms of thematic issues and country situations.

During the presentations of their reports and the interactive dialogues that followed, the special procedures updated the Third Committee on recent country missions they had undertaken.⁸⁵ The international protection of internally displaced peoples (IDPs), asylum seekers and refugees was a key theme for the Special Rapporteur on freedom of religion and belief, as well as the Special Representative on protecting human rights while countering terrorism, who estimated refugees to be one of the biggest adversely affected populations by the 'war on terror'. The latter also brought attention to the work of the UN Counter-Terrorism Implementation Task Force,⁸⁶ which offers a key framework for mainstreaming human rights into counter-terrorism efforts. The Special Rapporteur on the independence of judges and lawyers discussed, among other issues, access to justice, and the protection of rights during states of emergency. The Special Rapporteur on torture focussed on the role of forensic medical expertise in combating impunity for torture, and avoiding deprivation of liberty as a means of preventing torture.

Resolutions on these issues integrated some of the recommendations made by the special procedures. The annual resolution on torture and other forms of cruel, inhuman or degrading treatment or punishment contained new language on the prosecution or extradition of those alleged to have committed acts of torture, a follow-up to one of the recommendations of the Special Rapporteur in his report to the Human Rights Council.⁸⁷ This resolution also incorporated new language to ensure that perpetrators have no future involvement in the interrogation or treatment of any detained persons.⁸⁸ The resolution on the protection of human rights while countering terrorism also integrated issues proposed by the Special Rapporteur in his report and oral presentation to the Third Committee, including new references to the use of diplomatic assurances,⁸⁹ State obligations in regard to the return and transfer of individuals suspected of terrorist activities,⁹⁰ and border controls.⁹¹ The text also included a new preambular paragraph on the danger of torture in situations of deprivation of liberty, a theme of the report of the Special Rapporteur on torture and

69
A/62/207. Available at www.un.org/ga/third/62/doclist.shtml.

70
A/62/280. Available at www.un.org/ga/third/62/doclist.shtml.

71
For more analysis of these resolutions, see ISHR's *New York Update* on civil and political rights at the General Assembly's 62nd session, available at www.ishr.ch

72
A/C.3/62/L.47. Available at www.un.org/ga/third/62/propolist.shtml.

73
A/C.3/62/L.26. Available at www.un.org/ga/third/62/propolist.shtml.

74
A/C.3/62/L.45. Available at www.un.org/ga/third/62/propolist.shtml.

75
A/C.3/62/L.25. Available at www.un.org/ga/third/62/propolist.shtml.

76
A/C.3/62/L.42. Available at www.un.org/ga/third/62/propolist.shtml.

77
A/C.3/62/L.29. Available at www.un.org/ga/third/62/propolist.shtml. The resolution was adopted with 99 in favour, 52 against, and 33 abstaining. In the General Assembly, five additional States voted in favour, with a final tally of 104 votes in favour, 54 votes against, and 29 abstentions.

78
A/C.3/62/L.35. Available at www.un.org/ga/third/62/propolist.shtml. In the Third Committee, 95 States voted in favour of the resolution, 52 against, and 30 abstained. In the General Assembly, the vote was 108 in favour, 51 against, and 25 abstentions.

79
In those texts, the General Assembly indicated that it was 'desirable' that all States abolish the death penalty. General Assembly *Resolutions 2857 (XXVI)* of 20 December 1971 and *32/61* of 8 December 1977.

80
Ten co-authors from five regions were involved in drafting the text: Albania, Angola, Brazil, Croatia, Gabon, Mexico, New Zealand, the Philippines, Portugal (on behalf of the EU), and Timor-Leste.

81
18 amendments (plus four tabled orally on the floor) were defeated. The amendments were brought and defended primarily by Egypt, Barbados, the Bahamas, Singapore, Botswana, and Antigua and Barbuda. To access these proposals, see www.un.org/ga/third/62/propolist.shtml. For voting breakdown on each amendment see www.un.org/ga/third/62/votingsheets.shtml.

82
The number of countries who do not have the death penalty has increased exponentially since the 70s: 130 out of 192 countries have already abolished the death penalty in law or practice, and in 2006 only 25 countries actually carried out the death penalty.

83
The resolution, as tabled, was adopted with 99 in favour, 52 against, and 33 abstentions. In the General Assembly, five additional States voted in favour, with a final tally of 104 in favour, 54 against, and 29 abstentions.

84
Opposing States argued that the death penalty is a question for national criminal justice systems and should not be considered under international human rights law; that there is a need to consider the right to life comprehensively (i.e. prohibit abortion); that the hidden objective of the resolution was abolition rather than a moratorium, and this will be the objective of next year's resolution on this theme; and that the co-sponsors were imposing their values on other States.

85
The Special Rapporteur on the independence of judges and lawyers discussed his recent missions to the Maldives and the Democratic Republic of the Congo (DRC). The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism discussed the three country missions (to South Africa, the US, Israel, and the occupied Palestinian territories - OPT) he had undertaken in the past year. The Special Rapporteur on extra-judicial, summary or arbitrary executions discussed missions to the Philippines and Sri Lanka. The latter Special Rapporteur also condemned the execution of juveniles in Iran and the application of the death penalty for crimes that, by the measure of international law, are not 'most serious'. He has not, however, been able to visit Iran as his request for a visit has been denied even though the Government agreed to it in principle many years ago.

86
The task force involves approximately 30 agencies, including the Office of the High Commissioner for Human Rights (OHCHR). For more information see: www.un.org/terrorism/cttaskforce.html and www.un.org/terrorism/pdfs/CT_factsheet_may2007x.pdf.

87
OP7, A/C.3/62/L.26. Available at www.un.org/ga/third/62/propolist.shtml. The paragraph was inserted pursuant to the recommendation of the Special Rapporteur in his report to the Council, see para 47, A/Council/4/33, available at www.ohchr.org/english/bodies/hrcouncil/4session/reports.htm; and his report to the General Assembly, see para. 2, A/62/221 available at www2.ohchr.org/english/bodies/GeneralAssembly/62documents.htm

88
OP8, A/C.3/62/L.26. Available at www.un.org/ga/third/62/propolist.shtml.

89
PP8, A/C.3/62/L.47. Available at www.un.org/ga/third/62/propolist.shtml.

90
OP7, *Ibid.*

91
OP8, *Ibid.*

other cruel, inhuman or degrading treatment or punishment.⁹² A key issue in the report of the Special Rapporteur on freedom of religion or belief, namely the right of atheists and non-theists to refrain from affiliating themselves with any religion or belief, and the importance that such persons are not discriminated against, was referenced in the text on the elimination of all forms of religious intolerance, but not as strongly as the co-sponsors would have liked.

INDIGENOUS ISSUES

Discussion under agenda Items 67(a) 'Indigenous Issues' and 67(b) 'Second International Decade of the World's Indigenous People' spanned just one meeting of the Third Committee, which included an introductory statement by the UN Under-Secretary-General for Economic and Social Affairs, an interactive dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and a general debate. The main issues addressed were:

- The need to combat continued violations of the individual and collective rights of indigenous peoples worldwide;
- The inter-relationship between the Human Rights Council, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and the UN Permanent Forum on Indigenous Issues⁹³ in the promotion and protection of the rights of indigenous peoples; and
- Ensuring that the newly adopted UN *Declaration on the Rights of Indigenous Peoples* (the Declaration)⁹⁴ is mainstreamed into the work of the UN so that it becomes a living document and bridges the 'implementation gap' between international standards and practice.

An important development this year was the number of resolutions from the Third Committee that were subsequently adopted by the General Assembly, which called on States to give effect to the human rights of indigenous peoples, as expressed in the recently adopted Declaration.⁹⁵ Although the inclusion of such language

in a broad range of resolutions was primarily initiated by a few Latin American States,⁹⁶ the adoption of these resolutions, mostly by consensus,⁹⁷ is a positive indication that the General Assembly is prepared to take a leadership role in **mainstreaming indigenous rights** through its work. It is also an important means of drawing the international community's attention to the need to **give effect to the Declaration** that applies at the local, national, and international levels.

While the Third Committee was in session, important developments in the advancement of indigenous rights were also occurring at the 6th session of the Human Rights Council. These included the **renewal and expansion of the mandate** of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples and the establishment of a **new expert mechanism on indigenous peoples**.⁹⁸ Both of these developments are designed to promote the implementation of the Declaration.

When viewed collectively, the developments outlined above indicate the level of recognition and growing acceptance of the human rights of indigenous peoples within the UN system. This progress is remarkable given that it was only in the 61st session of the General Assembly that the passage of the Declaration was stalled due to lack of support from member States. However it is important to remember that this apparent 'new dawn' for indigenous rights has been several decades in the making and a number of influential Western States remain staunch opponents of the Declaration and its implementation within their domestic jurisdictions.⁹⁹ States on the whole remain cautious in their approach to a fuller recognition of indigenous rights, as evidenced by the compromises that were negotiated with respect to the resolution creating the new 'expert mechanism' on the rights of indigenous peoples at the Council. The Permanent Forum on Indigenous Issues, the Special Rapporteur, and the new expert mechanism will each have to work to demonstrate that individually they add value to the work of the UN to advance the human rights of the world's indigenous peoples.

92

See the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment, A/62/221. Available at www.ohchr.org/english/bodies/GeneralAssembly/62documents.htm.

93

The UN Permanent Forum on Indigenous Issues is an advisory body to the Economic and Social Council, with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health, and human rights. For more information, see www.un.org/esa/socdev/unpfii/en/opportunities.html.

94

The *Declaration on the Rights of Indigenous Peoples* was adopted by the General Assembly on 13 September 2007 under *Resolution 61/295*. For more information, see the chapter on standard setting, and www2.ohchr.org/english/issues/indigenous/declaration.htm

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A total of 12 resolutions in the Third Committee refer to indigenous peoples and to the Declaration. Details of the individual paragraphs of the resolutions are provided in ISHR's *New York Update* on indigenous issues at the General Assembly's 62nd session, available at www.ishr.ch.

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The main initiators were Guatemala and Ecuador, with support from others.

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Three resolutions (relating to the rights of the child, the right to development, and the right to food) went to a vote in both the Third Committee and the General Assembly and were adopted in both fora.

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See the chapter on the Council's institution-building work, pp. 15-31.

99

These States include Canada, Australia, New Zealand, and the US.

WOMEN'S RIGHTS

Under agenda Item 63: Advancement of women (a) and (b),¹⁰⁰ the Third Committee covered similar ground to previous years in its consideration of six resolutions and one decision on the following themes:

- The *Convention on the Elimination of All Forms of Discrimination against Women*;¹⁰¹
- Intensification of efforts to eliminate all forms of violence against women;¹⁰²
- Violence against women migrant workers;¹⁰³
- The improvement of the situation of women in rural areas;¹⁰⁴
- Follow-up to the Fourth World Conference on Women and full implementation of the *Beijing Declaration and Platform for Action* and the outcome of the 23rd special session of the General Assembly;¹⁰⁵
- United Nations Development Fund for Women;¹⁰⁶
- Decision on the term of office of the members of the Consultative Committee on the United Nations Development Fund for Women.¹⁰⁷

The Committee also considered seven reports on the same topics, plus one on the future operations of the International Research and Training Institute for the Advancement of Women, for which there was no correlating decision or resolution. Under the related agenda Item on the 'Promotion and Protection of Human Rights', the Third Committee also heard an oral report from Ms Yakin Erturk, the Special Rapporteur on violence against women, its causes and consequences.¹⁰⁸

The Committee also adopted a **new resolution on 'eliminating rape** and other forms of sexual violence in all their manifestations, including in conflict and related situations.' In its original form, the resolution condemned rape as a tool of State policy and made specific reference to when rape is used by soldiers and militia as a tactic in intimidation and in warfare. However, the African Group, led by South Africa and Angola, found the text politicised and selective, arguing that the US was directing it at particular countries in their region. They also argued that the text created two categories of rape, that is, rape by

military and militia groups and rape by civilians, instead of addressing rape in a holistic manner. Language on organised and State-sanctioned rape was ultimately deleted, which led to a considerable weakening of the final text. Though the resolution was ultimately adopted by consensus, the substance had shifted so far from the original intention that its value is questionable. Nonetheless, the resolution requires the Secretary-General to report to the General Assembly on its implementation next year. Some international NGOs questioned the usefulness of the text from the start, given the Security Council's attention to sexual violence in specific countries in recent years.

The text on the *Convention on the Elimination of All Forms of Discrimination against Women* had a number of sticking points, and was the only resolution under this agenda item to be voted upon. Debate during the informal consultations focused on several issues relating to the Committee on the Elimination of Discrimination against Women's (CEDAW) work programme between 2008 and 2010, including:

- The number of sessions CEDAW should hold per year;
- Whether to use a single chamber or dual chamber meeting structure to address the backlog of reports;
- The budgetary implications of both of these matters; and
- Whether to hold the meetings in Geneva and New York, or exclusively in Geneva, CEDAW's new home base from 2008.

In the final text, the General Assembly authorised a total of five sessions in 2008-2009, three of which will take place in parallel chambers. Two of these meetings will take place in New York and the remaining three in Geneva. From 2010 onwards, the resolution allows for three annual sessions (with each session lasting three weeks). After two separate votes that retained the paragraphs related to budgetary implications, the text was adopted as a whole with 173 States in favour, a sole State in opposition,¹⁰⁹ and no abstentions. The Fifth Committee approved the \$10.77 million budget for the additional meetings, which was very close to the full amount requested.

100
Item 63 (a) 'Advancement of women' and (b) 'Implementation of the outcome of the Fourth World Conference on Women and of the twenty-third special session of the General Assembly'.

101
A/C.3/62/L.20. Available at www.un.org/ga/third/62/propolist.shtml.

102
A/C.3/62/L.15/Rev.1. Available at www.un.org/ga/third/62/propolist.shtml.

103
A/C.3/62/L.14/Rev.1. Available at www.un.org/ga/third/62/propolist.shtml.

104
A/C.3/62/L.19. Available at www.un.org/ga/third/62/propolist.shtml.

105
A/C.3/62/L.89. Available at www.un.org/ga/third/62/propolist.shtml.

106
A/C.3/62/L.17/Rev.1. Available at www.un.org/ga/third/62/propolist.shtml.

107
A/C.3/62/L.18/Rev.1. Available at www.un.org/ga/third/62/propolist.shtml.

108
Ms Yakin Erturk presented her fourth report, as well as country reports from her missions to Turkey, the Netherlands, and Sweden to the Human Rights Council during its 4th session in March 2007 (A/HRC/4/34, A/HRC/4/34/Add.2, A/HRC/4/34/Add.3 and A/HRC/4/34/Add.4).

109
The US.

In general, there were no notable substantive developments in the resolutions under this agenda item. In fact, in regard to language on reproductive and sexual rights, the challenge was rather to try to make sure that the clock was not turned back on commitments agreed to over a decade ago at the Fourth World Conference on Women in Beijing. In particular, the references to the *Convention on the Rights of the Child*, the *Convention on the Elimination of All Forms of Discrimination against Women*, and commitments from the *Beijing Declaration and Platform for Action* in the text on eliminating rape in conflict situations could have been stronger. As it has done in previous years, the US continued to be the lone voice to comment (after adoption of multiple resolutions) that references to the *Beijing Declaration and Platform for Action* and its follow-up did not create, support, or endorse any **right to abortion**.

A pressing issue not adequately addressed by the General Assembly during the 62nd session was the issue of the reform of the UN's gender equality architecture. The call for reform arose as a result of one of the recommendations of the Secretary-General's High Level Panel on System-wide Coherence.¹¹⁰ The Panel analysed the deficiencies of the current gender equality architecture, which it found to be fragmented, incoherent and under-resourced. During the general debate in the Third Committee on the agenda Item on the advancement of women, several countries referred to the need for gender equality architecture reform¹¹¹ and highlighted the need for broader inter-governmental negotiations on the issue. However concrete developments on when and in what forum negotiations would move forward remained unknown at the end of the 62nd session.¹¹² A consortium of national and international NGOs closely following the issue urged States to use the March 2008 session of the Commission on the Status of Women to jumpstart the process.¹¹³ Although the majority of States view reform of the UN gender entities as necessary, a major obstacle is that it has become caught in the political fight over the larger question of UN reform. It is also just one of many recommendations competing for attention and resources from the Panel's final report.

RIGHTS OF THE CHILD

During the 62nd session, the Third Committee considered a range of reports on the promotion and protection of the rights of the child under agenda Item 66(a), and adopted four resolutions, including:

- The annual omnibus resolution on the rights of the child;¹¹⁴
- The biannual resolution on the girl child;¹¹⁵
- A new resolution to end obstetric fistula;¹¹⁶
- A new resolution to generate global awareness of autism.¹¹⁷

All the drafts were adopted by consensus, except the resolution on the rights of the child, which was adopted by a vote of 176 to one¹¹⁸ (the US) with no abstentions.

One of the most significant achievements of the Committee this year was its decision to appoint a **Special Representative of the Secretary-General on violence against children**. This mandate provides that a high-profile and independent global advocate on all matters relating to violence committed against children will be appointed for a three-year term. The mandate of the Special Representative of the Secretary-General is contained in the annual omnibus resolution on the rights of the child, and provides a critical mechanism for ensuring follow-up to the recommendations made in the *United Nations Secretary-General's Study on Violence Against Children*¹¹⁹ that was completed in 2006. The new post will also ensure continued visibility at a high level on the issue.¹²⁰ One particularly controversial issue was the mandate's funding, with some States emphasising that the UN regular budget should finance the post, while others preferred voluntary contributions as the source for support. Ultimately, States agreed to support the mandate through voluntary contributions, but to review funding in three years.

No noteworthy discussions took place in relation to the omnibus resolution on the contentious issue of linking corporal punishment with violence against children. Last year already, all references to corporal punishment were replaced with less specific language such as 'all forms of violence and abuse' or 'any form of cruel or degrading punishment', in order to achieve

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Secretary-General Kofi Annan established the High Level Panel on System-wide Coherence, after it was requested by the 2005 World Summit. In its final report in November 2006, the Panel examined how the UN could achieve better coherence through changing its structures and systems, and in particular recommended the strengthening of the UN architecture for women's equality. In April 2007, the Secretary-General presented his report on these recommendations (A/61/836) to the General Assembly, in which he supported the Panel's recommendation to consolidate and strengthen the current structures into a single women's agency. For more information on the Panel and related documents see www.un-ngls.org/site/article.php3?id_article=263.

111

Russian Federation, Philippines, Mexico, Iceland, Norway.

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On January 11 2008, the President of the General Assembly appointed two new Co-Chairs for ongoing consultations, requiring them to report back to the President in early June 2008.

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In particular, the campaign for Gender Equality Architecture Reform (GEAR) which now comprises 82 organisations in over 35 countries. More information regarding advocacy on and the status of GEAR is available at www.cwgl.rutgers.edu/globalcenter/policy/unadvocacy/gea.html.

114

A/C.3/62/L.24/Rev.1. Available at www.un.org/ga/third/62/propslist.shtml.

115

A/C.3/62/L.23/Rev.1. Available at www.un.org/ga/third/62/propslist.shtml.

116

A/C.3/62/L.21/Rev.1. Available at www.un.org/ga/third/62/propslist.shtml.

117

A/C.3/62/L.22. Available at www.un.org/ga/third/62/propslist.shtml.

118

The US.

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The study is available at www.violencestudy.org/r25.

consensus.¹²¹ The inability to explicitly urge the abolition of corporal punishment once again is disappointing, particularly since both the Secretary-General's study on violence against children¹²² and the Committee on the Rights of the Child have recommended that it be prohibited and eliminated.

On a related issue, a number of States, in particular New Zealand and Switzerland, complained about the lack of transparency in the process of drafting the omnibus resolution, which is led jointly by the EU and the Group of Latin American and Caribbean States (GRULAC). New Zealand proposed that the Third Committee shorten the resolution and consider one thematic issue on a yearly basis, thus avoiding the repetition of previously agreed chapters. This recommendation could help the text become more concise, focused, and action-oriented in the future.

Another notable development was the adoption of a **new resolution on supporting efforts to eradicate obstetric fistula**.¹²³ The resolution was convened by Senegal in close collaboration with the United Nations Population Fund (UNFPA).¹²⁴ It was a welcome African initiative on a developing world issue,¹²⁵ and the process of drafting the resolution was educational for those involved.

Other developments and issues of note during the proceedings included:

- The release of a ten-year strategic review of Ms Graça Machel's 1996 study *The Impact of Armed Conflict on Children*¹²⁶ and comments by member States regarding it;
- Presentation of the report by the Special Representative of the Secretary-General on children and armed conflict, Ms Radhika Coomaraswamy,¹²⁷ and the report on the study on violence against children by the Independent Expert of the Secretary-General, Mr Paulo Sérgio Pinheiro,¹²⁸ followed by interactive dialogues with these special procedures;
- Presentation by Mr Ishmael Beah, a former child soldier from Sierra Leone and author of the recent book *Long Way Gone*.¹²⁹

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The mandate of Special Representative of the Secretary-General was created (rather than a Special Rapporteur) because violence against children relates to the mandates of many UN bodies and agencies, and the high-level Special Representative of the Secretary-General post helps ensure strong leadership and coordination. Also, several key UN agencies will play an important follow-up role, including the World Health Organization (WHO) and the International Labour Organization (ILO), that do not have a formal relationship with the Council or the human rights mechanisms. See www.crin.org/docs/OA_SRSG.doc.

121

See ISHR's report on promotion and protection of the rights of children during the General Assembly's 61st session. Available at www.ishr.ch.

122

See fn. 119 above.

123

According to the United Nations Population Fund (UNFPA), obstetric fistula is an injury of childbearing. It is usually caused by several days of obstructed labour, without timely medical intervention. The consequences of fistula are that the baby usually dies, and the woman is left with chronic incontinence. The injury has been relatively neglected up to now, largely because it affects the most marginalised members of society: young, poor, illiterate women in remote areas, many of whom never present themselves for treatment.

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In 2003, UNFPA started the global Campaign to End Fistula. See www.endfistula.org/q_a.htm.

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Fistula is most common in poor communities in sub-Saharan Africa and Asia where access to or use of obstetric care is limited. It has been virtually eliminated in Europe and North America through improved obstetric care.

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A ten-year strategic review report by the Special Representative of the Secretary-General on children and armed conflict and UNICEF discusses the evolving and severe impact of conflicts on children and measures progress made since the Graça Machel study in 1996. Ms Machel's report was requested in late 1993 by the Committee on the Rights of the Child and the General Assembly. See A/51/306 and Add.1.

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A/62/228. Ms Coomaraswamy's report can be found at: www.un.org/ga/third/62/doclist.shtml. The issues discussed in the interactive dialogue with Ms Coomaraswamy included, *inter alia*, how the international community could better link its peace-building efforts with its attempts to combat violence against children; the documentation of children affected by armed conflict; the importance of incorporating youth representation in national governments at the State and local levels to ensure children's needs are being adequately met, and the use of rape against the girl child in the DRC.

128

A/62/209. Mr Pinheiro's report can be found at: www.un.org/ga/third/62/doclist.shtml. The issues discussed in the interactive dialogue with Mr Pinheiro included, *inter alia*, progress made in the initial phase of follow-up to the study; defining the factors that contribute to impunity for the perpetrators of violence against children; multi-disciplinary approaches to eradicating violence against children; assessing the progress of the implementation of his report's recommendations; highlighting the gap in the protection of children (especially as it relates to mentally disabled or institutionalised children); and linking corporal punishment with violence against children.

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Mr Ishmael Beah spoke of his own traumatic experience as a former child soldier, and urged the international community to further expand upon the Machel report's findings by incorporating more situations where the rights of children are compromised. He also asked the international community to proactively engage in dialogues about children's concerns and rights when conflicts first appear as opposed to waiting until they become protracted and difficult to solve. Information on his book can be found at www.alongwaygone.com.

The General Assembly recognised an important milestone in children's rights during the 62nd session with the high-level plenary meeting commemorating the five-year follow-up to the special session of the General Assembly on children.¹³⁰ The event provided an opportunity for the international community to scrutinise progress and obstacles for children following the adoption of the plan of action *A World Fit for Children* in 2002. The meeting concluded with the adoption of a declaration reaffirming global and national commitments to the goals set five years earlier.¹³¹

130

The follow-up session took place on 11 and 12 December 2007. For more information, see www.unicef.org/worldfitforchildren/index_42198.html. Also see A/62/259, the report of the Secretary-General on the progress made to date in achieving the commitments in *A World Fit for Children* at www.un.org/ga/third/62/doclist.shtml.

131

Declaration of the commemorative high-level plenary meeting devoted to the follow-up to the outcome of the special session on children. See www.unicef.org/media/media_42201.html.

132

Item 68(a) refers to 'Elimination of racism and racial discrimination,' and 68(b) to 'Comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action.'

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The Durban Declaration and Programme of Action (the Declaration) was the main outcome document from the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the Durban Review Conference) that was held from 31 August to 7 September 2001.

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The Durban Review Conference dealt with several controversial issues, including compensation for slavery and the actions of Israel. The language of the Declaration was strongly disputed in these areas. The US and Israel withdrew from the conference after failing to agree a common text with other countries.

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The resolution (A/C.3/62/L.65/Rev.1) began with a very different title but along with the body of the text, it was revised to 'Global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action'. Associated with this resolution is document A/C.3/62/L.90, which contains the programme budget implications. Both are available at www.un.org/ga/third/62/proplislist.shtml

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These bodies included the Committee on the Elimination of All Forms of Racial Discrimination, the Human Rights Committee, and the ILO.

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These included concern that the text contradicted earlier decisions of the Third Committee and consensus decisions that had been made by the Preparatory Committee of the Review Conference.

eventually adopted in the two Committees and the General Assembly plenary.¹³⁸ The second resolution proposing the adoption of the Report of the Human Rights Council on preparations for the Durban Review Conference¹³⁹ was also adopted despite opposition from the US.

The two other reports before the Committee dealt with the steps taken by the international community over the last year to implement the Declaration (noted by the Committee in a decision without a vote)¹⁴⁰ and the work of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.¹⁴¹

The Committee's interactive dialogue with the Special Rapporteur also generated some heated debate, particularly between the Special Rapporteur and the representative of France, due to the Special Rapporteur's criticism that recent comments by the French President had contributed to the global trend towards the political legitimisation of racism. The interactive dialogue also exposed divergent views among Committee members about how the rights to freedom of expression and association should interact with rights in relation to non-discrimination and freedom of religion, and the extent to which the State has a role in regulating this interaction.¹⁴² The debate about these matters carried over into the third resolution titled 'the inadmissibility of certain practices that contribute to fuelling contemporary forms of racism.'¹⁴³ Although this resolution was also adopted by both the Third Committee and the General Assembly plenary,¹⁴⁴ the US voted against it and WEOG States abstained on the grounds that curtailing freedom of expression cannot not be justified as a legitimate means of eliminating racism.¹⁴⁵

RACISM

The theme of racial discrimination was dealt with by the Third Committee under agenda Items 68(a) and 68(b).¹³² The latter item, relating to the **follow-up to the Durban Declaration and Programme of Action** (the Declaration),¹³³ proved to be very controversial as a result of strong resistance from the US and Israel to any follow-up on what they regarded as inherently flawed initiatives.¹³⁴ The Committee considered three reports and voted to adopt three resolutions related to the theme of racism.

Opposition was strongest in relation to the resolution proposed by Pakistan¹³⁵ that requested the Secretary-General to allocate almost \$6.8 million from the UN's regular budget to facilitate regional preparatory conferences and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the Durban Review Conference). The US argued that other bodies¹³⁶ were following up on the Declaration and that this money could be better spent at the country level, rather than on another conference. In the Third and Fifth Committees and the General Assembly plenary, the US also objected to the overall direction and procedures leading up to the conference. Although the EU supported the Durban Review Conference, it opposed the resolution due to concerns¹³⁷ that the text undermined what had been agreed by States in other forums, and doubts as to whether those States sponsoring the resolution genuinely wanted an inclusive follow-up conference in 2009. Despite the consistent opposition from the US, Israel, and the EU, the resolution was

SPECIAL PROCEDURES

A divisive development this year was the attempt by some States to insert a reference to the **code of conduct for special procedures** (the code of conduct) into the Third Committee resolution adopting the Human Rights Council Report. A related issue was that the same States also pushed for the code of conduct's mention in a number of resolutions that refer to the mandates

of the special procedures.¹⁴⁶ Ultimately the result of these efforts was minimal, with only one resolution, on human rights defenders, including an indirect reference to the code of conduct. This helped alleviate concerns that moves in favour of reference to the code of conduct by NAM States would give the General Assembly the power to micromanage Council decisions on the creation or extension of special procedure mandate.

Twenty-two special procedures presented their reports and/or engaged in an interactive dialogue with the Third Committee this year. The main issues covered by them can be found in other sections of this report, and in ISHR's comprehensive analytical reports on all the debates.¹⁴⁷ A continuing trend in the interactive dialogues is the frustration expressed by several of the special procedures at the lack of substantive engagement by some governments with their mandates, which is essential if the system is to work effectively. The Special Rapporteur on freedom of religion and belief noted that the average rate of replies to urgent appeals sent out was of about 63.6%, and that some 20 States had not replied to any communications for over 20 years. The Special Rapporteur on extra-judicial, summary or arbitrary executions lamented that 90% of governments approached for a visit have failed to cooperate, adding that the fact that neither the General Assembly nor the Council had responded to this lack of accountability made a mockery of the mandate. In terms of resolutions this year, language on the **need for government cooperation with mandate holders** was often weak, further underlining the lack of political will of some governments. It was also disappointing that only a handful of the numerous recommendations from special procedures were incorporated into the 60 resolutions adopted by the Third Committee.

Although, in theory, interactive dialogues with the special procedures¹⁴⁸ offer an opportunity for States to receive independent and impartial reports on the promotion and protection of human rights at the country level and represent an opportunity to engage in fruitful and constructive dialogue with experts, the reality is quite different. In the General Assembly, where only member States – not NGOs – can contribute comments and questions, it seems that the same few countries take the floor to ask similar and often generic questions. Although member

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A/C.3/62/L.65/Rev.1 was adopted in the Third Committee by 110 in favour, 45 against, and 6 abstaining. Japan was one of the States abstaining, due to concerns about the large budget required to hold the review. In the Fifth Committee it was adopted by 94 in favour, 40 against, and 6 abstentions. In the General Assembly, 105 voted in favour, 46 against, and 6 abstained. Those countries consistently abstaining in all three bodies were Liechtenstein, New Zealand, Norway, and Switzerland.

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A/62/375. Available at www.un.org/ga/third/62/doclist.shtml.

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Report of the Secretary-General on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Declaration. A/62/480. Available at www.un.org/ga/third/62/doclist.shtml.

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Note by the Secretary-General transmitting the interim report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. A/62/306. Available at www.un.org/ga/third/62/doclist.shtml.

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For example, the representative of Libya asked whether States should exclude extremists from both sides when trying to foster debate between different civilisations; the Russian Federation stated that it is unacceptable to use the principle of freedom of speech to legitimise racism, given that this is a non-derogable right; and the US opposed any State intervention in the operation of freedom of speech, including in relation to expressing an opinion on religion.

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A/C.3/62/L.61. Available at www.un.org/ga/third/62/propolist.shtml.

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The vote in the Third Committee was of 122 in favour, one against, and 52 abstentions. The vote in the General Assembly was of 130 in favour, two against, and 53 abstentions. Those States against the resolution in the General Assembly were the US and the Marshall Islands.

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The EU also objected to the manner in which the Nuremberg Tribunal was referred to in PP3. It explained that the fight against neo-Nazism should not be used to undermine fundamental freedoms and human rights. The vote in the Third Committee was of 122 in favour, one against, and 52 abstentions. In the General Assembly it was of 130 in favour, two against, and 53 abstentions. The Marshall Islands joined with the US to vote against the resolution in the General Assembly.

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This included the resolution on human rights defenders, A/C.3/62/L.33/Rev.1, and the resolution on the right to food, A/C.3/62/L.53/Rev.1. Available at: www.un.org/ga/third/62/propolist.shtml.

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See our *New York Updates*, available at www.ishr.ch.

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The first 'spontaneous' interactive dialogue was held in the Third Committee in 1998. The Commission on Human Rights followed suit, establishing a similar practice in 2003. Now the Council follows a similar practice, with States as well as NGOs providing comments on the reports. NGOs are still unable to speak in such dialogues in the Third Committee.

States hold the main responsibility for ensuring a successful process and outcome, their level of interest and commitment is uneven. Even the larger, more resourced delegations do not appear to read all the reports of the special procedures. Added to this, member States blame the mixed quality of the interactive dialogues on logistics, including the need to attend the seemingly ubiquitous informal consultations on draft resolutions. Other State delegates comment that the dialogues in New York are not as significant as they are in Geneva, as Council dialogues feed into the 'whole package of work', including as the basis for consideration of country situations.

This state of affairs underlines how detached many delegates are from the reality of the level of enjoyment of human rights by people around the world. It is no wonder then, as some NGO commentators have pointed out, that the debates in both New York and Geneva have for the most part failed to give effect to and effectively follow up the recommendations made by both thematic and country-specific special procedures. Given the evolution of the human rights machinery in Geneva this past year with the establishment of the Council, it is now perhaps time to take stock of the process and outcomes of the dialogues in New York and evaluate how they can build on and support the process in Geneva, and so ultimately achieve concrete outcomes in the protection and promotion of human rights. This will be a challenging aspect of the review of the status of the Human Rights Council by the General Assembly in 2011.

CONCLUSIONS AND LOOKING AHEAD

The General Assembly's endorsement of the Council's decision to adopt the institution-building package and code of conduct has opened the way for the implementation phase of the Council to begin in earnest. The international community's attention is now shifting to Geneva to pay close attention to the beginning of the **universal periodic review** mechanism in April 2008. The rigour or otherwise of this process will have important implications for the 63rd session of the General Assembly, not least of which is how country-specific matters are dealt with, and what part this plays in shaping the future **division of responsibilities** between the Third Committee, the General Assembly, and the Human Rights Council.

Although there were some notable highlights in the General Assembly's 62nd session, such as the adoption of the *Declaration on the Rights of Indigenous Peoples*, the realisation of long-held ambitions to establish the post of a Special Representative of the Secretary-General on violence against children or the call for a moratorium on the use of the death penalty, much of the Third Committee's work was somewhat mechanical. The well-trodden path that has been carved out by previous ideological voting patterns was rarely departed from, and the issues to be raised at the 63rd session have already been pre-identified. These are likely to include the Durban Review Conference, the consideration of the Council's future reports, and whether another resolution on the death penalty can be adopted. It will be interesting to see if a majority of States continue to share the view that as the UN's universal body with a mandate to consider human rights matters, the Third Committee, should continue to consider human rights concerns wherever they occur.