

NEW BODY, OLD BATTLES: THE HUMAN RIGHTS COUNCIL IN YEAR TWO

INTRODUCTION

2007 saw the end of the first year of operation of the Human Rights Council (the Council), and the beginning of its second year. According to General Assembly *Resolution 60/251*, the first year was primarily dedicated to the so-called 'institution building'. This process encompassed all negotiations on the modalities of the new universal periodic review (UPR), the review of mechanisms and mandates from the Commission on Human Rights (the Commission) assumed by the Council, and the elaboration of the future rules of procedure, methods of work, agenda and programme of work of the Council. The institution-building process as such came to a formal conclusion during the 5th session on 18 June 2007, when the Council adopted *Resolution 5/1*, the fruit of most of the work done in the first year. The 'institution-building text' laid down the modalities for the UPR and for the continued review of special procedures.¹ It also established a complaint procedure and a new Human Rights Council Advisory Committee (the Advisory Committee). Finally, the Council managed to settle on its own rules of procedure, and, more importantly, on a real agenda and programme of work. An analysis of the institution-building text and of the final discussions leading up to its adoption is contained in pages 15-31 of this *Human Rights Monitor*. The present chapter will focus on the, albeit limited, substantive practice of the Council in 2007.

Since the abolition of the Commission in June

2006, the main UN body entrusted with the promotion and protection of human rights had focused on its own functioning. With the conclusion of the first year on 18 June 2007 and the new Presidency of Ambassador Doru Romulus Costea of Romania, hopes were high that the second year would focus less on institutional issues, and once again turn its attention to substantive issues. However, with a considerable backlog of institution-building tasks still to be completed during the September and December sessions, these hopes were only partially fulfilled. The Council had to finalise arrangements for the operationalisation of the UPR and take important decisions regarding the Advisory Committee as well as the functioning of one element of the complaint procedure (Working Group on communications). It was also scheduled to start the review of individual mandates of the special procedures in September.

Despite this heavy workload and competing commitments, the Council did manage to do some substantive work. As had been the practice during the first year, it continued to hold interactive dialogues with special procedures mandate holders. While this exchange of information between States, non-governmental organisations (NGOs), and the Council's experts continues to be fruitful, too frequent changes in the programme have made it sometimes impossible for NGOs to interact effectively with the special procedures. In March, during the 4th session, the Council held two special events on violence against children and on the *Convention on the*

¹ The institution-building text is also referred to as 'institution-building package', or, in official terms, *Resolution 5/1*. It is available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_5_1.doc.

Rights of Persons with Disabilities. In September, during the 6th session, another special event on the mainstreaming of gender into the work of the Council was held.

The programme of work for the remainder of the 2nd cycle, the first half of 2008, is tight. The Council's main session in March will consider more than 20 special procedures reports and a number of other thematic reports. It can thus be expected that the Council will progressively move beyond institutional aspects and focus on the core of its mandate.

BACKGROUND

The institution-building process is more adequately dealt with in the chapter on institution building. This chapter is intended to provide an analytical summary of the sessions of the Council in 2007, the items addressed, and the conclusions reached.

In the first half of 2007, the Council was still operating under its provisional agenda and programme of work. The **provisional agenda** only contained one substantive item, the 'effective implementation of General Assembly *Resolution 60/251*.' While this provided a considerable amount of flexibility in the programme of work for the 4th and the 5th sessions, it also made it more difficult for all participants to effectively prepare their contribution. In addition, while substantive discussions also took place under the 'effective implementation of General Assembly *Resolution 60/251*' the focus of the agenda item was clearly on the institution building. After the adoption of the 'institution-building text' on 18 June 2007, the new agenda entered into force. It is a compromise between proposals for a generic and flexible agenda and others for a detailed and predictable agenda.² Together with the programme of work to be elaborated based on the agenda, the fixed agenda promised some more certainty to NGOs in terms of the preparation their interventions. However, as it turned out, constant changes to the programme of work of the 6th session made that promise an empty one.

A **provisional programme of work** for the first

year had been presented at the informal consultations prior to the election of members in early 2006.³ According to this, the main session of the first year of the Council would take place in March and April 2007. Initially, the Council had not planned to hold a 5th session in June. However, as it became apparent that the institution-building process was under considerable time pressure and that not all substantive issues scheduled for the 4th session would fit into the programme, Ambassador Luis Alfonso de Alba of Mexico, the first President of the Council, proposed an additional session. Accordingly, the Council bought itself some more time and decided to hold a short session in June 2007.⁴

After the adoption of *Resolution 5/1*, which contains the Council's final agenda and a framework for its final programme of work, the new Bureau⁵ of the Council proposed a calendar for the second cycle. The 6th session of the Council was divided in two. The first part took place from 10 to 28 September 2007 and the second part from 10 to 14 December 2007.

General programme of work in 2007

As mentioned, the 4th and 5th sessions were run according to the provisional programme of work adopted at the 1st session. The 6th session was organised around the final agenda, as will all the future sessions of the Council. The following list provides an overview of the work done in each of the sessions:

4th session (main session, 12 March to 5 April 2007):

- High-level segment of dignitaries;
- Annual Report of the High Commissioner for Human Rights (the High Commissioner), followed by an interactive dialogue;
- Interactive dialogue with 28 special procedures mandate holders, based on their annual reports;
- Follow-up to previous decisions of the Council, including those taken at the special sessions on Darfur on 12 to 13 December 2006 and the occupied Pal-

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See A/HRC/6/1, 31 July 2007. All documents related to the Human Rights Council are easily accessible through the following search: <http://ap.ohchr.org/Documents/gmainec.aspx>. Alternatively, you can access resolutions and oral statements through the OHCHR extranet at www.ohchr.org/english/bodies/hrcouncil/form.htm (fill out the form on the page to receive the user name and password).

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International Service for Human Rights (ISHR), *Human Rights Monitor 2006* (Geneva, 2007), p. 34. For the framework for the programme of work see Human Rights Council *Decision 1/105*.

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See document A/HRC/4/L.5.

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The 'Bureau' of the Council is composed of the President and representatives from the other four regional groups in the Council. For the second cycle of the Council, the Bureau consists of Ambassador Doru Romulus Costea of Romania (President of the Council, from the Eastern European Group), Ambassador Alejandro Artucio of Uruguay (from the Latin American and Caribbean Group), Ambassador Mohamed-Siad Doualehof of Djibouti (African Group), Ambassador Boudewijn Van Eenennaam of the Netherlands (Western European and Others Group), Ambassador Dayan Jayatilake of Sri Lanka (Asian Group).

estinian territories (OPT) on 15 November 2006;

- Two special panel events on violence against children and on the *Convention on the Rights of Persons with Disabilities*;
- Consideration of the progress made in the institution-building Working Groups.⁶

5th session (additional session, 11 to 18 June 2007):

- Update by the High Commissioner;
- Interactive dialogues with 11 special procedures mandate holders;
- Follow-up to previous decisions, including the 1st and 3rd special session on the OPT, the 2nd special session on Lebanon, and the 4th special session on Darfur;
- Institution building: consultations on the President's text and on the draft code of conduct for special procedures mandate holders.

6th session (first part, 10 to 28 September 2007):

- Implementation of the institution-building text, including the determination of the order of review for the UPR, the establishment of eligibility criteria for special procedures mandate holders and members of the Advisory Committee, and the review of individual special procedures mandates.
- Substantive part, according to the Council's formal agenda:
 1. Organisational matters;
 2. Update by the High Commissioner;
 3. Promotion and protection of all human rights (interactive dialogues with thematic special procedures and general debate);
 4. Human rights situations that require the Council's attention (Darfur and general debate);
 5. Human rights bodies and mechanisms (only formally discussed, not fully operational yet);
 6. Universal periodic review (only formally discussed, not fully operational yet);
 7. Human rights situation in Palestine and other occupied Arab territories;
 8. Follow-up to the *Vienna Declaration and Programme of Action*, including a special panel event on mainstreaming gender

considerations into the work of the Council, and a general debate;

9. Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up and implementation of the *Durban Declaration and Programme of Action*;
10. Technical assistance and capacity building (interactive dialogue with country-specific special procedures established under Commission agenda Item 19).

Resumed 6th session (10 to 14 December 2007):

- Implementation of the institution-building text, including the review of individual special procedures mandates;
- Continued discussion of Item 3, Promotion and protection of all human rights (report of the Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights, interactive dialogues with remaining thematic special procedures);
- Continued discussion of Item 4, Human rights situations that require the Council's attention (follow-up to decisions taken during the first part of the 6th session and to the 5th special session on Myanmar).

The impact of the more formal agenda at the 6th session was only marginal, as the work of the Council became only slightly more structured. The fact that fixed agenda items have been agreed on gave some direction to the Council. In comparison with the agenda of the Commission, the Council's new agenda is shorter and more coherent.⁷ It is designed to allow for some measure of predictability, which should facilitate planning for all stakeholders for Council sessions. However, it also contains sufficiently broad agenda items, allowing the Council to react to pressing situations and discuss broader issues. This is in particular the case of Item 3 on the 'promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development.' By treating all human rights under one agenda item instead of separate ones, the Council is likely to be able to pay more attention to cross-cutting issues.

To make the programme of work more flexible, President Costea decided to allow for a 'general debate' under each agenda item. While this

⁶ See section on institution-building, pp. 13-29.

⁷ Meghna Abraham, *Building the New Human Rights Council. Outcome and analysis of the institution-building year*, Friedrich Ebert Stiftung (Geneva, 2007), pp. 12-13. The paper is available at <http://library.fes.de/pdf-files/bueros/genfi/04769.pdf>.

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During the three weeks of the first part of the 6th session, six different versions of the programme of work were circulated. See <http://ohchr.org/english/bodies/hrcouncil/6session/ood.htm> to download the versions.

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This meant that the Council held two high-level segments in its first cycle (one at the first session in June 2006, and the second one in March 2007).

However, according to *Resolution 5/1*, in the future the Council will hold only one high-level segment per cycle. Para. 116 of the text says that the high-level segment 'shall be held once a year during the main session of the Council. It shall be followed by a general segment wherein delegations that did not participate in the High-Level Segment may deliver general statements'. The next high-level segment will be held in March 2008 at the 7th session.

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In the meantime, such a code of conduct was adopted by the Council as part of the institution building. See section on the institution-building, pp. 15-31.

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Burma/Myanmar (Argentina, France, Sweden, Switzerland, United Kingdom), Iraq (Bahrain, Cameroon, Saudi Arabia), Democratic People's Republic of Korea (France, Japan, Sweden, UK), Sri Lanka (France, Sweden, Switzerland, UK), other situations mentioned included the Western Sahara, Cyprus, Belarus, Iran, Afghanistan, Nepal, Jammu and Kashmir, Lebanon, Cuba, Uzbekistan, Fiji, Zimbabwe, Somalia.

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Algeria, Botswana, Burkina Faso, Denmark, France, Germany (on behalf of the EU), Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Nigeria, Norway, Poland, Republic of Korea, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Netherlands, Organization of the Islamic Conference (OIC), UK, Yemen.

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Algeria, Bahrain, Burkina Faso, Cuba, Iran, Jordan, Libya, Liechtenstein, Malaysia, Norway, Pakistan, Saudi Arabia, Senegal, Slovenia, South Africa, Sweden, Switzerland, OIC, Tunisia, UK, Yemen.

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Angola, Argentina, Brazil, Cyprus, Denmark, France, Germany (on behalf of the EU), Iraq, Ireland, Italy, Lithuania, Luxembourg, Romania, Slovak Republic, Sweden, Tanzania, Philippines, Uzbekistan (abolished as of 1 January 2008).

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Italy, Norway, Slovak Republic.

16

France, Norway, Sweden, UK.

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Iran, Pakistan, OIC, Turkey.

opportunity for general comments on each item was a welcome initiative, it also created difficulties. On one hand, it allowed States and NGOs to draw attention to important country situations not listed on the programme of work under Item 4, or to the specific needs of vulnerable groups under Item 3. On the other hand, more pressure was placed on the already tight schedule. Because debates spilled over more and more to the following day, the programme of work became rather unpredictable. This made it difficult for NGOs to know when to contribute their expertise to the work of the Council.⁸

The general debate under each agenda item is an extension of the practice started in the first year of the Council of holding 'related debates'. The related debate usually took place after the interactive dialogues with special procedures mandate holders and was used to comment on issues relevant to the general themes and situations covered by the special procedures, but not dealt with in the reports presented. By extending the general debate to all agenda items, the Council has added flexibility to its programme, which could prove crucial in future sessions.

This chapter will proceed with a summary of issues covered by the Council in 2007 and using the broad headings of the Council's agenda items. The structure of the chapter will thematically follow the agenda even if that agenda was not operational during the 4th and the 5th sessions.

HIGH-LEVEL SEGMENT

Following the practice of its opening session, the Council heard speeches from high-level dignitaries at the beginning of its main session in March 2007.⁹ A large number of dignitaries addressed the Council, underlining their State's efforts to improve the protection of human rights.

Since the Council was still in the midst of its institution-building phase, dignitaries commented on a number of aspects of the institution building. In particular, the importance of the special procedures system, the central role of the UPR, and the indispensable contribution of NGOs and national human rights institutions (NHRIs). Several dignitaries also reiterated their

calls for a code of conduct for special procedures mandate holders.¹⁰

A number of country-specific situations were highlighted.¹¹ Many States expressed concern about the situation in the Sudan in general and in the Darfur region in particular, saying that the Council should deal with it as a priority issue.¹² Equally the situation in the OPT received many comments.¹³

The dignitaries focused on a large range of thematic issues that they considered a priority. As a recurring theme, criticism of the continued use of the **death penalty** and calls for its abolition came up.¹⁴ Uzbekistan pledged that it would abolish the death penalty by 1 January 2008. In a right of reply, China, while maintaining that the abolition of the death penalty did not enjoy consensus under international law, explained that the Government was currently developing a policy that would reduce the implementation of the death penalty. Like at the opening session in 2006, the **rights of women** and the **rights of the child** were highlighted again. Some States raised the particular situation of **human rights defenders**, saying that the Council should pay particular attention to their protection.¹⁵ A number of States deplored violations of human rights based on **sexual orientation**.¹⁶ A theme that was raised on many occasions, also later in the year, and would prove to be one of the major fault lines of the new Council, was **freedom of religion**. While some States approached the issue on the basis of defamation of religions, and in particular Islamophobia,¹⁷ others saw it through the prism of freedom of religion and freedom of speech.¹⁸

The high-level segment was also used as an opportunity to announce the ratification of or accession to treaties, and the removal of reservations.¹⁹ Particular attention was paid to the newly adopted *Convention on the Rights of Persons with Disabilities*, its optional protocol and the *International Convention for the Protection of All Persons from Enforced Disappearance*, with many States declaring their intention to sign the two instruments. Several States also announced their candidacy for the elections to the Council.²⁰

ANNUAL REPORT AND UPDATES OF THE HIGH COMMISSIONER

As had become practice in the first cycle of the Council, the High Commissioner for Human Rights, Ms Louise Arbour, gave an update on her work and that of her Office at the beginning of each session. However, the most substantive interaction with the High Commissioner took place on the occasion of the presentation of her annual report during the 4th session.²¹ That was also the only time when there was a formal interactive dialogue with her. During the other three sessions (5th, 6th, and resumed 6th session), the High Commissioner presented an update only. While States and NGOs had the opportunity to comment on these updates, their comments were not directly followed by replies from the High Commissioner. It seemed that this was the result of the open criticisms voiced during 2006, when the High Commissioner was often attacked for her country engagement work and even for her management of the Office of the High Commissioner for Human Rights (OHCHR). The rationale seemed to be that less criticism would be conjured by not exposing herself to an 'interactive dialogue' each time. However, as the experience of the 6th session showed, plenty of criticism was voiced even in the absence of a formal interactive dialogue. In addition, two resolutions adopted at the 4th and at the 6th session could be seen as attempts at micromanaging the work of OHCHR, and therefore potentially undermining the independence of the Office.²²

Country engagement and particular situations

Throughout the year, the High Commissioner continued to update the Council on the engagement of OHCHR in countries, which is identified as a priority in her *Strategic Management Plan 2006-2007*.²³

The situation in **Sri Lanka** was of concern to the High Commissioner throughout the year. At the 4th session, Ms Arbour stressed that she was of the view that a robust human rights presence in the country was necessary. She expressed her hope that an OHCHR office could be set up. During the first part of the 6th session, Ms Arbour

announced that she would be visiting the country before the end of the year. In December, at the resumed 6th session, the High Commissioner reported on her visit and drew particular attention to the loss of credibility and independence of the National Human Rights Commission of Sri Lanka and the failure of the President-appointed Commission of Inquiry to adequately investigate abuses. In this context, Ms Arbour noted that Sri Lanka would benefit from the presence of OHCHR in the country with a broad mandate to offer technical assistance and public reporting. However, despite negotiations between OHCHR and the Government of Sri Lanka, no agreement has yet been reached on a model for an OHCHR presence. It seemed that the Sri Lankan delegation did not appreciate the attention it was given by the High Commissioner and by members and observers of the Council, in particular during both parts of the 6th session. While pledging its cooperation, Sri Lanka aggressively defended its pride in its national institutions, and stated that these should be 'supplemented and supported' by international assistance, but 'never supplanted or substituted' by it.

The establishment of **new country and regional offices for OHCHR** emerged as an important part of the High Commissioner's strategy, and was commented upon at each session. Regarding **Latin America**, the High Commissioner highlighted the increased cooperation OHCHR had enjoyed with **Panama**, where a regional office for Latin America was set up in 2007. For **Central Asia**, the High Commissioner announced the planned opening of an OHCHR regional office in Bishkek, Kyrgyzstan.²⁴ A further regional office for **West Africa** is planned for 2008 and will be based in Dakar, Senegal.

For **North Africa**, the preparations for a regional office seemed more difficult. At the 5th session, the High Commissioner said that Egypt had informed OHCHR in July of its inability to host the regional office as planned. This was somewhat surprising, as Egypt had pledged only three months previously that it was willing to host the office.²⁵ Accordingly, while the *Strategic Management Plan 2008-2009* foresees the opening of a regional office for North Africa for 2008, it does not specify where it will be located.

At each session, the High Commissioner also commented on particular country situations. At

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UK.

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Bahrain mentioned that it is aiming at the ratification of the *International Covenant on Economic, Social and Cultural Rights*. Honduras and Iraq declared their intention to ratify or accede to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Indonesia said it would ratify the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

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Each year in May, the General Assembly elects one third of the membership of the Council. Members are elected for three-year terms. According to General Assembly *Resolution 60/251* establishing the Council, voluntary pledges and commitments made by States are to be taken into account when electing members. In addition, the UPR will, among other things, be based on voluntary pledges and commitments made by States, including those undertaken when presenting their candidature for election. If these are indeed taken into account in the UPR and when members are elected, the pledges made during the high-level segment have the potential to become more than statements made by dignitaries, in that they could be analysed when electing new members.

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The High Commissioner will continue to present her annual report at the main session.

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Resolution 4/6 aims at changing the geographic imbalance of OHCHR staff, and *Resolution 6/22* renames a unit within OHCHR. See below at p. 39.

23
See www.ohchr.org/Documents/Publications/strategic.pdf. For the biennium 2008-2009, see www.ohchr.org/Documents/Press/SMP2008-2009.pdf.

24
According to the *Strategic Management Plan 2008-2009*, the regional office will be opened in early 2008.

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In its pledge prior to the election to the Council, Egypt stated that it 'looks forward to hosting the new OHCHR regional office for North Africa in Cairo' (A/61/878, 23 April 2007). In replying to the High Commissioner at the 6th session, Egypt claimed that it was 'the considered opinion of the Government of Egypt (...) to give prominence to the principle of equitable geographic distribution of UN regional offices since Egypt is already host to a large number of these offices.' As a consequence, it had decided to allow other countries in the region the opportunity to host the OHCHR regional office.

the 4th session, the High Commissioner highlighted the situation of **Nepal**. While she insisted that considerable work still needed to be done, the case also showed how cooperation, sufficient resources, and support from the international community could achieve positive change. During the interactive dialogue, she expressed her regret that the Special Rapporteur could not access the **Democratic People's Republic of Korea (DPRK)**. She also mentioned that despite security constraints, OHCHR had been closely working with the Ministry for Human Rights of **Iraq** to address impunity. Regarding **Kosovo**, she said that OHCHR would continue to be present, in particular to address intolerance against minorities. In relation to **Fiji**, she expressed continued concern, in particular about the independence and impartiality of the national human rights commission. Finally, she also mentioned the **occupied Palestinian territories**, saying that Israel's security concerns did not legitimise the violations of human rights and humanitarian law that continued to occur.

At the 5th session, the High Commissioner gave an update on her visits to Central Asia and to the Great Lakes region in Africa. In relation to the Great Lakes region, she highlighted the situation in the **Democratic Republic of the Congo (DRC)**, and expressed particular concern about the prevailing culture of impunity.

During the first part of the 6th session, Ms Arbour updated the Council on her visits to **Indonesia** and **Iran**. The High Commissioner's update at the resumed 6th session in December 2007 focused on the visits she had announced in the first part of the 6th session to Sri Lanka, Afghanistan, and Brazil. In relation to **Afghanistan**, the High Commissioner expressed concern about the slow progress of women's rights and transitional justice. She also noted her appreciation for the work of the Afghan Human Rights Commission and of Afghani civil society. Regarding **Brazil**, she commended the Government's efforts to address the situation of indigenous peoples and the social programme for poor families, but expressed her concern about continuing urban violence, and police operations and interrogation methods.

Reflecting the concern of many about the situation in **Pakistan** following the emergency rule imposed by President Musharraf in early Novem-

ber 2007, the High Commissioner welcomed the release of detainees, and in particular that of the Special Rapporteur on freedom of religion or belief, Ms Asma Jahangir. She expressed her concern that the state of emergency could have long-term negative effects on the judiciary and on civil society.

In addition, Ms Arbour highlighted the deteriorating the situation of human rights in **Somalia** and the grave violations of human rights and humanitarian law in the **Sudan**. Concerning the latter, the High Commissioner called on the Government and the international community to ensure the protection of civilians and commended both the Special Rapporteur on the human rights situation in the Sudan and the Experts Group on Darfur for their work.

Thematic issues

A considerable part of the High Commissioner's annual report presented during the 4th session of the Council focused on the **institution-building process** that was ongoing at the time. In particular, the High Commissioner stressed the importance of the involvement of NGOs and NHRIs in the UPR process. She emphasised their crucial role in the follow-up and implementation of the outcome of the UPR. She also underlined that independent experts should be formally involved in the process, a suggestion that was not retained in the final institution-building text.

Similarly, during the 5th session, she praised the special procedures system as one of the most important legacies of the Commission, and also strongly supported NGO participation in the work of the Council. At the 6th session, after the adoption of the institution-building text, she focused on the need for the UPR to begin at the earliest opportunity. At the December part of the 6th session, she welcomed the adoption of the institution-building package by the General Assembly and reasserted her commitment to assist the Council in the UPR process. Inviting States to cooperate more constructively with special procedures, she added that standing invitations to special procedures mandate holders are 'vital to the realization of the objectives of the UDHR.'

Throughout the year, the High Commissioner focused on several other thematic issues. During the 4th session, she highlighted in particular the **fight against poverty** as an important step in the quest of guaranteeing dignity for all, and the **rights of women**. The latter was illustrated by the establishment of a Women's Rights and Gender Unit within OHCHR, and by the move of the Committee on the Elimination of Discrimination Against Women (CEDAW) from New York to Geneva.

Her advocacy for the abolition of the **death penalty** led to mixed reactions from States, with some claiming that such a position by the High Commissioner would infringe on their sovereignty.²⁶ The High Commissioner expressed the view that she was entitled to take a stance on this issue, while leaving the decision on whether or not to use the death penalty to States. During the resumed 6th session, Ms Arbour congratulated Gabon and Rwanda for their abolition of the death penalty and urged all States that continue to apply the death penalty to do so in conformity with restrictive international standards.

At the resumed 6th session, the High Commissioner welcomed the adoption of the *Charter of the Association of Southeast Asian Nations* (the ASEAN Charter)²⁷ and the commitment of ASEAN to set up a human rights body for the region.

Challenges to the work of the High Commissioner and the OHCHR

As observed in 2006, the dialogues with and updates by the High Commissioner were used to try to influence the direction and independence of the High Commissioner's work. A number of different approaches were visible throughout the year. First, as shown by the long negotiations between the High Commissioner and Sri Lanka about an OHCHR presence in the country, some States seem to view OHCHR country engagement as a one-way street. They seemed to argue that the human rights situation in a country should not be a decisive criterion for the establishment of an OHCHR presence, but simply the request for technical assistance by the country concerned.²⁸

At its 4th session, the Council adopted, by vote,

the draft resolution entitled 'Strengthening of the Office of the United Nations High Commissioner for Human Rights' that China had tabled during the 2nd session in September 2006.²⁹ The resolution seems to aim to give the Council more control over the High Commissioner's planning of activities. It also seeks to remedy the geographic imbalance of OHCHR staff.³⁰

Finally, during the 6th session, a number of States raised the issue of the relationship between OHCHR and the Council. While a number of States had previously suggested 'institutionalising' the relationship,³¹ only at the 6th session did it become clear what was actually meant by institutionalisation. The Russian Federation said that there was a need to improve the work of OHCHR and to strengthen transparency and accountability. Pakistan, on behalf of the Organization of the Islamic Conference (OIC), called for institutional checks and balances. At the resumed 6th session, Egypt (on behalf of the African Group) claimed that States' comments should be reflected in the Strategic Management Plan of OHCHR. What had seemed a legitimate call for dialogue with the High Commissioner turned into an attempt at micromanaging the work of OHCHR.

A further resolution pushed through by a vote, and regulating the work of OHCHR, confirmed this impression.³² The resolution focused on the effective implementation of the commitments to fight racism, made at the Durban Conference.³³ However, it is revealing that the first paragraph of the resolution 'decides to realign the work and name of the Anti-Discrimination Unit in the Office of the United Nations High Commissioner for Human Rights' to make it the 'anti-racial discrimination unit'. By deciding to change the name of a unit within OHCHR, the Council did not appropriately further the fight against racism. Rather, it attempted to interfere with the work of OHCHR. It did so not only against General Assembly *Resolution 48/141* of 1994, which puts the High Commissioner 'under the direction and authority of the Secretary-General',³⁴ but also against the established practice of the Commission. Indeed, while the High Commissioner's mandate is, among other things, to 'carry out the tasks assigned to him/her by the competent bodies', the practice was that the Commission would simply set the broad framework within which the High Commissioner would carry out this mandate.

²⁶ OIC.

²⁷ The ten members of the Association of Southeast Asian Nations (ASEAN) signed the *ASEAN Charter* on 20 November 2007. See for example <http://apnews.myway.com/article/20071120/D8T19FJG0.html>. The text of the charter is available on www.aseansec.org/ASEAN-Charter.pdf.

²⁸ China, Philippines, Sri Lanka.

²⁹ A/HRC/RES/4/6. 35 States voted in favour, 12 abstained.

³⁰ This was already challenged during the first year of the Council. ISHR, *Human Rights Monitor 2006*, p. 38. The resolution calls on the High Commissioner to take further measures to improve geographic balance, despite the fact that the High Commissioner already noted a reversing trend in that regard.

³¹ During the two organisational meetings of 25 July and 24 August 2007, States that raised this point included Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), China.

³² Human Rights Council *Resolution 6/22* was tabled by Egypt (on behalf of the African Group) and is entitled 'From rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance'.

³³ The World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001.

³⁴ Para. 4. A/RES/48/141, 7 January 1994.

PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS

Item 3 on the Council's new agenda is framed in quite broad terms. It is devoted to the 'promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development'. With this inclusive language, it was expected that a wide range of human rights concerns would be addressed under this item. As already mentioned, this chapter of the *Human Rights Monitor* is structured around the new agenda of the Council, adopted in June 2007. All the thematic elements of the Council's work prior to the adoption of the institution-building package that would fall under the 'promotion and protection of all human rights' are therefore included under this subheading.

Interactive dialogues with special procedures

The majority of the work done under Item 3 were the interactive dialogues with the special procedures mandate holders. In the course of the three sessions held in 2007, interactive dialogues with the following thematic special procedures mandate holders were held:³⁵

4th session:

- Chairperson of the Working Group on disappearances;
- Special Rapporteur on minority issues;
- Special Rapporteur on the human rights of migrants;
- Special Rapporteur on indigenous persons;
- Special Rapporteur on internally displaced persons;
- Special Rapporteur on violence against women, its causes and consequences;
- Special Rapporteur on the sale of children, child prostitution and child pornography;
- Chairperson of the Working Group on mercenaries;
- Independent Expert on the effects of economic reform policies and foreign debt on the full enjoyment of human rights;

- Special Rapporteur on the right to education;
- Special Rapporteur on the promotion and protection of human rights while countering terrorism;
- Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment;
- Special Rapporteur on freedom of religion or belief;
- Special Rapporteur on the right to freedom of opinion or expression;
- Chairperson of the Working Group on arbitrary detention;
- Special Rapporteur on extrajudicial, summary or arbitrary executions;
- Chairperson of the Working Group of experts on people of African descent;
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
- Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises;
- Special Rapporteur on the right of everyone to enjoyment of the highest attainable standard of physical and mental health;
- Special Representative of the Secretary-General on the situation of human rights defenders.

5th session:

- Special Rapporteur on judges and lawyers;
- Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance;
- Special Rapporteur on the right to food;
- Special Rapporteur on toxic waste;
- Special Rapporteur on adequate housing;
- Independent expert on human rights and extreme poverty.

6th session:

- Special Rapporteur on freedom of religion or belief;
- Independent Expert on human rights and international solidarity;

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Please note that only thematic mandates are listed under this agenda item. Country-specific mandates are dealt with under Items 4 and 10 respectively. The mandate of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 is dealt with under Item 6.

- Special Representative of the Secretary-General for children and armed conflict;
- Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people;
- Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.

Other reports considered throughout the year under Item 3 or falling under the promotion and protection of all human rights included the following:

- Study of the High Commissioner on the right to truth;³⁶
- Note by the Secretariat on reports and studies relevant to human rights and arbitrary deprivation of nationality;³⁷
- Report of the High Commissioner on equitable access to safe drinking water;³⁸
- Report of the Secretary-General on human rights and unilateral coercive measures.³⁹

As observed during the first year of operation of the Council, the modalities for interactive dialogues have allowed for greatly improved interaction between special procedures and members and observers, including NHRIs and NGOs, compared to the times of the Commission.⁴⁰ Most of the interactive dialogues with special procedures proved to be substantial and useful exchanges. An analysis of the substance covered in these dialogues is contained in the International Service for Human Rights' (ISHR) *Daily Updates*, which are published daily during sessions of the Council.⁴¹ The format of the interactive dialogues has not changed drastically compared to the first year of the Council. There are still two or three special procedures grouped together in the presentation of their reports. After an introductory statement by the mandate holder, States and then NHRIs and NGOs are given the opportunity to speak on all of the reports considered.

While this allows for substantive interaction, the Council faces a problem of time management in this regard. Only rarely are the dialogues completed in the three-hour slot allocated to them. This usually means that the Council has to finish

consideration of some reports on the next day, with the result that often NGOs or the mandate holders who were supposed to speak or reply to the issues raised can no longer be present. Respecting the programme of work could already go a long way in improving this situation. But apart from that, creative new solutions need to be found for the interactive dialogues to be truly effective. Their effectiveness could also be improved through substantive follow-up. While the drafters of resolutions sometimes 'take note of the interactive dialogue', to date, no clear mechanisms have been established to translate the discussions and the reports into decisions and follow-up.⁴²

Challenges to special procedures mandate holders

As in previous sessions, some States used the interactive dialogues to challenge the mandate holders on account of the **substance of their reports**, or on their working methods. Most of the time, States concerned by a particular report levelled the criticism. They mainly expressed their disagreement with the mandate holder's assessment of the situation in the country,⁴³ or criticised mandate holders for allegedly exceeding their mandates.⁴⁴ In a way, this is to be expected, as States in general do not like to hear about the challenges they face from independent mandate holder. However, the line between legitimate sensitivity to uncomfortable conclusions and recommendations of special procedures and destructive attacks on mandate holders is thin. It would be more appropriate for States to receive all reports of special procedures as constructive criticism.

During the 2nd session, some mandate holders came under heavy attack for raising the issue of human rights and sexual orientation. In particular, Nigeria criticised the Special Rapporteur on extrajudicial, summary or arbitrary executions for his remarks on the issue.⁴⁵ While a number of special procedures continued to draw attention to issues of sexual orientation and gender identity, they were rarely directly attacked for this. A sad exception was the dialogue with the Special Rapporteur on the highest attainable standard of physical and mental health, Mr Paul Hunt. His mandate was reviewed in the course of the review of mandates during the resumed 6th session of

³⁶
A/HRC/5/7.

³⁷
A/HRC/5/8.

³⁸
A/HRC/6/3.

³⁹
A/HRC/6/2.

⁴⁰
See for example session overviews of previous sessions of the Council and the *Human Rights Monitor 2006*, available at www.ishr.ch.

⁴¹
The *Daily Updates* are available on www.ishr.ch.

⁴²
This lack of substantive follow-up to special procedures reports is at least partly due to the general lack of substantive resolutions, given the Council's heavy focus on institution-building even in its second year.

⁴³
For example, during the 4th session Ukraine said the Special Rapporteur on the sale of children, child prostitution and child pornography was using 'doubtful methodology and emotional overstatements'; Australia, at the 5th session, said the report of the Special Rapporteur on adequate housing was 'inadequate and unbalanced'.

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At the 5th session, the Republic of Korea and the United States of America (US) criticised the scope of the report of the Special Rapporteur on the independence of judges and lawyers, suggesting that it exceeded the mandate. The US was of the opinion that the Special Rapporteur's thinking on states of emergency was outside the mandate and did not coincide with its legal analysis.

⁴⁵
ISHR, *Human Rights Monitor 2006*, p. 41.

46

See also the section on institution building, pp. 15-31.

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Egypt claimed that given the definition of sexual orientation and gender identity contained in the Principles, it was unacceptable that Mr Hunt signed the Principles with his title as Special Rapporteur. While Egypt claims that it understands and does not object to the fact that 'these values are acceptable in many countries', it objected to 'any attempt to use the UN name to promote any concept that does not enjoy consensus within the UN'. The Yogyakarta Principles are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity. The Principles, which reflect the state of international law regarding the issue, were elaborated at an international seminar of legal experts that took place in Yogyakarta, Indonesia, from 6 to 9 November 2006. For more information, please see www.yogyakartaprinciples.org. See also the chapter on standard setting in 2007, pp. 83-91.

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See also the section on the General Assembly, pp. 57-70.

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At the 5th session, see ISHR's *Daily Update* of 11 June 2007.

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The advisory procedure permits all stakeholders to bring to the attention of the Coordination Committee any situation that 'either 1) calls for an examination of the effectiveness or appropriateness of the methods of work as detailed in the Manual; 2) calls for a consideration of whether specific acts or practices align with best practices as presented in the Manual or 3) could be considered a practice prejudicial to the integrity, independence, and impartiality of the system of Special Procedures or to the protection of human rights.' The paper is available on <http://www2.ohchr.org/english/bodies/chr/special/docs/InterimProcedure14sep07.pdf>.

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See ISHR's *Daily Updates* of 22 and 29 March 2007, available at www.ishr.ch.

52

The Czech Republic, Denmark, Finland, Iceland, Sweden, Switzerland and Norway referred to the Principles.

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See ISHR's *Daily Update* of 17 September 2007, available at www.ishr.ch.

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See the 'Framework for the programme of work' section of the institution-building text (section V. C, A/HRC/RES/5/1).

the Council.⁴⁶ During the interactive dialogue in the context of the review, Egypt was outraged by Mr Hunt's signature of the *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* (the Yogyakarta Principles).⁴⁷ Mr Hunt pointed out that his position on sexual orientation is consistent with that of many other special procedures, who have also signed the Yogyakarta Principles with their title. He also referred to a recent statement by the High Commissioner for Human Rights, in which she had expressed a firm commitment of her Office to promote and protect the human rights of all people regardless of their sexual orientation or gender identity.

The Special Representative of the Secretary-General on **human rights defenders**, who already faced heavy criticism during the 2nd session of the Council, was again challenged directly. The Russian Federation rejected the definition of human rights defenders used by Ms Hina Jilani, claiming that it results in a loss of confidence in her work.⁴⁸ In addition, it alleged that the Special Representative had used inaccurate information, to the discredit of her mandate.

Some of the challenges came in the form of quite **virulent attacks**. In particular the response of the Russian Federation to the report of the Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance seemed to take on a personal dimension that went beyond legitimate criticism on account of diverging views of a situation.⁴⁹ The delegate accused the Special Rapporteur of having presented a report that was not serious, and politically motivated. In addition, the Russian Federation called into question the Special Rapporteur's professionalism, impartiality, and objectivity. It is probably significant that this attack took place during the 5th session, in the context of the negotiations of the code of conduct for special procedures mandate holders. By raising vocal criticism of individual mandate holders, States wanted to generate a climate favourable to the adoption of the code of conduct.

The criticism of mandate holders and of their work is, in itself, regrettable. There is a tendency to increasingly blur the distinction between the substantive disagreement with the recommendations of mandate holders and the person of the mandate holder. It is worrying if mandate

holders are attacked on a personal level for the work they carry out; after all they do so on a voluntary basis, and the Council should display a higher level of courtesy towards them. This tendency is particularly worrying in the context of the review of special procedures mandates. The basis for the review should be the contribution of the mandate to the promotion and protection of human rights, and not whether States are favourably inclined towards the mandate holder. For this reason, States should be very cautious with publicly criticising special procedures. In addition, there are now better channels to communicate legitimate concerns about the professional record of special procedures mandate holders than public attacks during the presentation of reports. The Coordination Committee of Special Procedures has adopted an interim 'internal advisory procedure to review practices and working methods' that will give States an opportunity to raise their concerns in terms of working methods.⁵⁰

Related and general debates

A notable innovation in the working methods of the Council was first tested at the 4th session: interspersed in the programme of work, usually following interactive dialogues with special procedures, were segments of 'related debate'. These segments were intended to allow States and NGOs to raise issues related to the themes discussed, but not directly covered in the report of special procedures and other reports. For example, in the related debate dealing with violence against women, the links between violence against women, persecution of women human rights defenders, and discrimination based on sexual orientation were discussed.⁵¹

During the 4th session, Switzerland and Norway took the opportunity to focus on the issue of human rights violations based on sexual orientation and gender identity. Switzerland noted that this issue had been raised several times before the 3rd and 4th sessions of the Council. It noted that at the 3rd session of the Council, Norway had made a statement on behalf of 54 States on violations of human rights linked to sexual orientation and gender identity. Several States also positively noted the Yogyakarta Principles

and proposed future dialogue on these principles.⁵²

With the operationalisation of the formal agenda at the 6th session, a general debate segment under each agenda item replaced the related debate segment. The general debate allowed to cover issues that were not mentioned on the programme of work, but would fall under a given agenda item. During the time set aside for general debate under Item 3 at the 6th session, many different issues were raised.⁵³ These included the ratification of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, the implementation of the Millennium Development Goals, the abolishment of the death penalty, the role of the Council in early warning and prevention, and the right to self-determination.

The segment of general debate was also used for substantive contributions by NGOs. Item 3 allows for a very wide range of issues to be discussed.⁵⁴ These included among others the structural issue of protection gaps within the system of special procedures⁵⁵ and the Council's responsibility to address persistent human rights violations against marginalised groups.⁵⁶

Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights

At the resumed 6th session in December 2007, the Council considered the report of the Open-ended Working Group on an optional protocol to the International Covenant on Economic, Social and Cultural Rights (the Working Group) on its 4th session, which took place in Geneva from 16 to 27 July 2007.⁵⁷ The Chairperson, Ms Catarina de Albuquerque, expressed her hope that the Working Group could achieve further progress at its next session from 4 to 8 February 2008. The substance of the meeting of the Working Group in July 2007, and an analysis of the draft optional protocol are contained in the chapter on standard setting.⁵⁸

HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

Item 4 on the Council's new agenda is devoted to human rights situations that require the Council's attention. While the Item as such is new, and was used for the first time at the 6th session in September 2007, the Council considered 'situations' in previous sessions as well. Even though not formally treated under Item 4, the situations that later fell under this Item are discussed within this subheading. This is the case of the continued debates on the situation of human rights in Darfur and in Burma/Myanmar, as well as the interactive dialogues with country-specific special procedures.⁵⁹

Darfur

In 2006, the Council held a special session to consider the human rights situation in the Darfur region of the Sudan.⁶⁰ Based on the decision taken at the special session, the President of the Council appointed 'five highly qualified persons' for the High-Level Mission to the Sudan.⁶¹ Already early in the process, the mission faced difficulties. One of the members of the mission was denied a visa to enter the Sudan, because the Government claimed that he had publicly spoken against the Sudan on previous occasions.⁶² Another member of the mission, Ambassador Wibisono of Indonesia, used this as a pretext to withdraw from the mission, claiming it would have been incomplete without the fifth member.⁶³ This, in turn, led the Sudanese Government to deny visas to the remaining three members of the mission, claiming its composition had changed. While the remaining members of the mission nevertheless presented a report to the 4th session of the Council, the report was based on information received from third parties⁶⁴ and a visit to neighbouring Chad.

Even though the findings of the report clearly confirmed the continuing systematic human rights violations in Darfur, which were already well known during the 4th special session in December 2006, the report was heavily criticised.

55 Action Canada for Population and Development suggested that the Council should define areas for which new mandates should be created, and identify areas where initial exploration could be undertaken by one or more existing mandate holders.

56 The Canadian HIV/AIDS Legal Network looked forward to a discussion of human rights violations based on gender identity and sexual orientation at a future session of the Council.

57 A/HRC/6/8, 30 August 2007. The optional protocol aims at giving the Committee on Economic, Social and Cultural Rights the competence to receive individual communications.

58 See pp. 83-91.

59 The Commission established two types of country-specific mandates. The mandates established under Item 9, human rights situations, were more controversial, and were generally voted upon. Many States claim that 'Item 9 mandates' were the principal source of the infamous 'politicisation' of the Commission's work. The mandates established under Item 19 were geared towards technical assistance and capacity building, and generally enjoyed the support of the State concerned. The mandates established under Item 9 of the Commission now fall under Item 4 of the Council. Those created under Item 19 of the Commission now fall under Item 10 of the Council. These are the mandates on Cambodia, Burundi, Haiti, Liberia, Democratic Republic of the Congo (DRC), and Somalia. The mandate on the OPT, although also geographically framed, has its own agenda item, Item 6 on the Council's agenda.

60 ISHR, *Human Rights Monitor 2006*, p.52. See also ISHR's report on the special session available at www.ishr.ch.

61 The High-Level Mission was composed of Professor and Nobel Peace Laureate Jody Williams (Head of Mission), Mart Nutt, Estonian Parliament Member and Member of the Council of Europe's European Commission Against Racism and Intolerance, Professor Bertrand Ramcharan, former Acting and Deputy UN High Commissioner for Human Rights, Patrice Tonda, the Permanent Representative of Gabon to the International Organisations in Geneva, and Indonesian Ambassador Marakim Wibisono, President of the 61st session of the Commission, as well as Ms Sima Samar, the Special Rapporteur on the situation of human rights in the Sudan.

62 Professor Bertrand Ramcharan, in his capacity as acting High Commissioner for Human Rights in 2004, had commented on possible war crimes occurring in Darfur. See for example www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/5295d2bc2b3b585256e8d005c3906.

During the 4th session, many States tried to use the difficulties faced by the High-Level Mission to reject the report on procedural grounds, without considering its content.⁶⁵ However, the report received some substantial engagement. Many States, including many African States, focused on the Council's responsibility to protect the people of Darfur.⁶⁶

Despite the opposition to the report, the Council managed to achieve a compromise outcome. It adopted, at its 4th session, a resolution establishing an Experts Group composed of several special procedures mandate holders.⁶⁷ The Experts Group's task would be to foster the implementation of resolutions and recommendations on Darfur adopted by the Council, the Commission, and other UN human rights institutions. It presented a first report to the 5th session of the Council,⁶⁸ and was mandated to work for another six months and present two further reports; one to the 6th session in September and one to the resumed 6th session in December.⁶⁹ The model of a group of experts focusing on pre-existing recommendations, rather than a mechanism that generates new recommendations that stay unimplemented, was thought to be a promising new approach when it was established. However, in terms of achieving concrete results in implementation, the Experts Group has had questionable success. At the resumed 6th session in December, the Experts Group reported that in procedural terms, the process of cooperative engagement with the Government of the Sudan had worked increasingly well. However, the United Nations Mission in the Sudan (UNMIS), United Nations agencies, and other relevant sources report that, with few exceptions, activities undertaken by the Government of the Sudan have had no tangible impact on the ground in Darfur.

The fact that no tangible impact on the ground was noted is only part of the problem. The coordination of five special procedures mandate holders demands considerable resources, resources that these special procedures then lack for their own principle substantive work. A further negative effect of the Experts Group model is systemic. During the resumed 6th session, the Council also discussed the review of special procedures mandates. The mere existence of the Experts Group reinforced the arguments of those States that were always critical of the mandate of the Special Rapporteur on the situation of

human rights in the Sudan. In particular Egypt (on behalf of the African Group) argued that since the Experts Group enjoyed such high levels of cooperation from the Government of the Sudan, the Special Rapporteur's mandate was no longer needed. The ensuing negotiations on the mandate have had a somewhat unexpected, but nevertheless regrettable result. Instead of terminating the mandate of the Special Rapporteur, as had been requested by Egypt before, the Council at its resumed 6th session decided to terminate the mandate of the Experts Group. This decision was taken despite the clear evidence that as good as the cooperation between the Experts Group and the Government of the Sudan might have been, it has not yielded tangible results. As a compromise, the functions of the Experts Group, the fostering of the implementation of existing recommendations, have been folded into the mandate of the Special Rapporteur. Warnings that such an approach might overburden the Special Rapporteur and result in less focus on the situation in Darfur and in the rest of the Sudan have been in vain.

More than 12 months ago, at its 4th special session, the Council showed a fair amount of political will to contribute to the improvement of the situation in Darfur. Now, after a lot of back and forth, it is back to square one. The Special Rapporteur's mandate still exists, but has been weighed down by tasks that should have been entrusted to others, at least for another six months. The situation on the ground has not changed, despite all the reporting, the dialogues, and the Experts Group. Unfortunately, the case of Darfur is a stark indication of the Council's limitation in a situation where competing geopolitical interests collide.

Burma/Myanmar

The situation of human rights in Burma/Myanmar received increased focus over the year. At the 4th session, the Special Rapporteur on the situation of human rights in Myanmar, Mr Paulo Sérgio Pinheiro, presented his annual, and what he then thought final, report to the Council. The situation of non-cooperation by the Government of Myanmar had not changed, in that since 2003, he had been refused access to the country. While he noted certain progress, he emphasised that

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And in particular that the geographical balance of the mission's members was no longer maintained without Professor Ramcharan.

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In particular from UN agencies, former senior UN officials in the Sudan, the International Committee of the Red Cross (ICRC), international and Darfuri human rights organisations, human rights representatives from Darfur, and international humanitarian organisations.

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Algeria (on behalf of the League of Arab States), Bahrain, Bangladesh, Belarus, China, Egypt, Iran, Jordan, Lebanon, Malaysia, Morocco, Pakistan (on behalf of the OIC), Qatar, Syria.

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The Zambian statement was particularly pertinent. The Ambassador stated that the people of Darfur did not need discussions about technicalities, but 'they need to live in peace, freedom and human dignity, now'.

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The Experts Group was presided by the Special Rapporteur on the situation of human rights in the Sudan and composed of the Special Representative of the Secretary-General for children and armed conflict, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Representative of the Secretary-General on the situation of human rights defenders, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on the question of torture, and the Special Rapporteur on violence against women, its causes and consequences.

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The report was essentially a compilation of pre-existing recommendations on Darfur. The recommendations were divided into short-, medium-, and long-term goals.

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Contained in document A/HRC/6/19. An unofficial summary of the report is available on www.ishr.org.

severe problems remain. These included increasing militarisation in Eastern Burma/Myanmar and the continuing lack of access for humanitarian organisations, including the International Committee of the Red Cross (ICRC). At the 6th session, when Item 4 was discussed, the situation in Burma/Myanmar was one of many situations of concern to members and observers of the Council. In particular, concern was voiced about the continued curtailment of civil and political rights and freedoms. One NGO called for a special session to be held.⁷⁰

However, as the session evolved, the increasingly brutal repression of peaceful protests in Burma/Myanmar generated more heat in the Council. During the last week of the 6th session of the Council, media reports of increasingly violent reactions to the protest by the military and security forces dominated the headlines around the world. At the next opportunity in the programme of work, a large number of States focused on the situation in earnest, and started citing specific violations that were occurring. By the end of the first part of the 6th session, 17 members and 36 observers had requested a special session on the human rights situation in Myanmar. The 5th special session was convened on 2 October 2007.

Special session on Burma/Myanmar⁷¹

The 5th special session of the Council was proof that the Council has the tools to quickly react to pressing situations. In the weeks prior to the 6th session, Burma/Myanmar had witnessed large-scale public protests, initially led by Buddhist monks but increasingly supported by the general public. The immediate trigger for the protests was a significant increase in fuel prices, which led to a sharp increase in food prices.

The special session was dominated by expressions of grave concern at the ongoing situation by many States and NGOs. A number of personal testimonies by both State and civil society representatives added a sense of urgency to the debate. The presence of human rights defenders from Burma/Myanmar, alongside an increased media presence, raised expectations that the Council could meaningfully contribute to improving the situation on the ground. Notably, a number of Asian States appeared to

be losing their patience with the Government of Myanmar, and seemed to start using their influence.

The High Commissioner first addressed the Council, saying that the shocking response to peaceful protests by the authorities in Myanmar was only the most recent manifestation of nearly 20 years of repression of fundamental rights and freedoms. She emphasised that the authorities should no longer expect that their self-imposed isolation would shield them from accountability, as modern media and information technology now gave an unprecedented access to what was happening. She then expressed her concern at the 'deafening silence' that now came from Myanmar, as protesters had become invisible, and urged the Government of Myanmar to give full account for its actions during and after the protests.

Following the statement by the High Commissioner, the Special Rapporteur on the situation of human rights in Myanmar, expressed shock and sadness at the recent brutal response of the Government and strongly condemned the use of deadly force against peaceful protesters. The High Commissioner, Mr Pinheiro, and the States and NGOs that followed paid particular attention to the responsibility that rests on Burma/Myanmar's neighbours, the Association of Southeast Asian Nations (ASEAN), and the Asian region as a whole in stopping the human rights violations.

After a day's deliberations, the Council adopted *Resolution S-5/1* by consensus. The resolution 'strongly deplores the continued violent repression of peaceful demonstrations'. It also encourages the Government of Myanmar to cooperate with the UN and requests the Special Rapporteur on the situation of human rights in Myanmar to assess the situation and monitor the implementation of the resolution. As discussed above, the Special Rapporteur subsequently had the opportunity to visit Burma/Myanmar. So far, the special session has therefore had an impact. It remains to be seen how the Council will manage the ground it has gained in its future discussions and decisions.

⁷⁰ Human Rights Watch.

⁷¹ See also ISHR's report on the 5th special session, available at www.ishr.ch.

Follow-up to the special session

The special session mandated Mr Pinheiro to visit Burma/Myanmar, and to report back to the resumed 6th session in December. The combined political pressure of the Human Rights Council, other UN bodies, and influential States within and outside the Asian region led to the Government finally inviting the Special Rapporteur, after almost five years of recalcitrance. In his report to the resumed 6th session, he essentially confirmed what many had claimed during the special session, namely that the Government forces had used excessive, disproportionate, and lethal force against civilians during their crackdown on the peaceful demonstrations in September and October 2007. While the permanent representative of Myanmar accused the Special Rapporteur of having produced an inaccurate report that lacked 'objectivity and impartiality' and of violating Myanmar's sovereignty, no other State challenged the Special Rapporteur on the accuracy of his report or on the relevance of his recommendations. The Council then adopted a further resolution on Burma/Myanmar, which asks the Special Rapporteur to conduct a follow-up mission to assess in greater detail the human rights violations having occurred and occurring as a result of the violent repression of peaceful demonstrations. He will present his next report to the 7th session of the Council.

Just as had been the case of the Experts Group on Darfur that eventually flowed from the 4th special session, the special session on Burma/Myanmar reinvigorated the work of the Special Rapporteur on Myanmar. Arguably, the high level of attention the Council has paid to Myanmar since September 2007 has led to unprecedented levels of cooperation from the Government. It now remains to be seen if, like in the case of Darfur, that attention will exhaust itself after a while. Or, hopefully, whether the attention of the Council will have a tangible impact on the lives of the people of Burma/Myanmar.

Follow-up to the special session on Lebanon

The 2nd special session on Lebanon, called on 11 August 2006 in the wake of the military conflict in Lebanon in summer 2006, had established

a Commission of Inquiry, which presented its findings to the 3rd session of the Council in December 2006.⁷² At its 5th session, the Council considered a report by the High Commissioner on the follow-up to the Commission of Inquiry's recommendations. The report outlines activities and programmes launched by the international community designed to follow-up on these recommendations, and describes the efforts by the High Commissioner and specialised UN agencies to implement the recommendations. Lebanon welcomed the report, expressing its gratitude for the support of the UN in the reconstruction of the country.

In the interactive dialogue, the same fault lines as during the special session were observed. Israel claimed that the report made no mention, as an essential element, of Hezbollah's aggression on Israel. NGOs stressed the need to provide victims with remedies and legal assistance. Pakistan (on behalf of the OIC) tabled a short resolution designed to ensure the follow-up to the special session. The resolution notes the report of the High Commissioner and requests her to 'extend support to the activities and programmes of the Government of Lebanon, in particular those consistent with her report.'⁷³ The resolution was adopted by consensus. It does not foresee any further reports by either the Commission of Inquiry or the High Commissioner. With that, the follow-up to the special session seemed to be completed.⁷⁴

Other country-specific situations

A large number of other country situations were discussed during the year. The Council heard reports from and held interactive dialogues with the following country-specific special procedures:

4th session:

- Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967;⁷⁵
- Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea;

⁷² ISHR, *Human Rights Monitor 2006*, p. 50.

⁷³ Paragraph 2, Council Resolution OM/1/1.

⁷⁴ President de Alba explained initially that the Council would return to the matter as soon as more information on the implementation of the Commission of Inquiry's recommendations was available. However, as noted, Resolution OM/1/1 does not provide for further action of the Council. It remains to be seen if follow-up to the special session on Lebanon will be scheduled for future sessions.

⁷⁵ This mandate is now considered under Item 6, the human rights situation in Palestine and other occupied Arab territories.

- Special Rapporteur on the situation of human rights in Myanmar;
- Independent Expert on the situation of human rights in Burundi;*
- Independent Expert on technical cooperation and advisory services in Liberia.*

5th session:

- Special Rapporteur on the situation of human rights in Belarus;
- Personal Representative of the United Nations High Commissioner for Human Rights on the situation of human rights in Cuba;
- Special Representative of the Secretary-General for human rights in Cambodia;*
- Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti;*
- Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia.*

6th session:

- Independent Expert on the situation of human rights in the Democratic Republic of the Congo.

As any spectator of the Commission and the first year of the Council would be used to, the country-specific special procedures mandates suffered some of the most sustained attacks. The DPRK reiterated its position that the mandate of the Special Rapporteur on the situation of human rights in the DPRK was built on politicisation and double standards, and was the result of political forces trying to interfere with the DPRK's social system under the pretext of human rights.

Belarus once again rejected the 'so-called report' by Mr Adrian Severin, the Special Rapporteur on the situation of human rights in Belarus, deploring that he continued 'his practice of open distortion and absurd conclusions'. In the eyes of Belarus, Mr Severin is carrying out political orders from 'Washington, Brussels and other EU States'.

Cuba had been protesting against the mandate of Ms Christine Chanet, the Personal Repre-

sentative of the High Commissioner for Human Rights on the situation of human rights in Cuba, since its creation.⁷⁶ In particular throughout the institution-building phase in late 2006 and early 2007, Cuba had left no doubt that its most vital interest in the institution-building process was the abolition of that mandate. Cuba, at the 5th session, said that it was grateful that, 'at last the farce is about to come to an end', and that the 'curtain will come down to put an end to this grotesque spectacle' that was in its view the mandate of Ms Chanet. In Cuba's view, that would also end the hypocrisy, double standards, and selectivity of the defunct Commission. Clearly, Cuba was referring to the imminent adoption of the institution-building package: part and parcel of the package is the omission to include the mandates on Cuba and Belarus on the list of mandates that are renewed, in other words their termination.

The report of Mr Yash Gai, the Special Representative of the Secretary-General for human rights in **Cambodia**, was also attacked directly by Cambodia. It expressed its view that the statements made by Mr Gai were unacceptable, and that it would 'no longer accept the mandate in Cambodia'. Whether this was mere rhetoric, emboldened by the demands of Cuba and Belarus that the Council abolish those mandates, will be seen when the mandate on Cambodia is reviewed. Currently, the mandate on Cambodia is scheduled to be reviewed at the 9th session of the Council in September 2008.

General debate

As mentioned previously, the 6th session saw the beginning of a practice of general debate under each agenda item. Arguably, this is of most critical importance for Item 4 on human rights situations that require the Council's attention. At the 6th session, States and NGOs commented on the situation of human rights in Belarus, Burundi, China, Colombia, Cuba, Darfur, the DPRK, the DRC, Egypt, Fiji, Gabon, Haiti, Iran, Iraq, Jammu and Kashmir, Myanmar/Burma, the OPT, Pakistan, the Philippines, the Russian Federation, Sri Lanka, the Sudan in general, the US, Uzbekistan, Western Sahara, and Zimbabwe.⁷⁷

* These mandates were or will in the future be considered under Item 10, technical assistance and capacity building.

⁷⁶ See Commission on Human Rights *Resolution 2003/13* of 17 April 2003 (document symbol E/CN.4/RES/2003/13).

⁷⁷ For a summary of the detailed comments on these situations, please refer to ISHR's *Daily Update* of 24 September 2007, available at www.ishr.ch.

Some States also raised general 'situations' not directly related to a country-specific situation, thereby underlining the broad scope and flexible nature of Item 4. For example the United States drew attention to **human rights defenders**. Amnesty International expressed concern at the erosion of human rights law as a result of the '**war on terror**', in particular enforced disappearances, unlawful transfers of detainees (rendition), and secret detention. The International Association of Schools of Social Work (IASSW) were concerned about **extreme poverty** as a violation of human rights and noted the importance of human rights education in eradicating poverty. As these examples show, the creative use of the agenda could allow NGOs to raise a number of issues under different items.

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The Working Group had met from 26 February to 2 March 2007. See the report A/HRC/4/47, 14 March 2007.

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A/HRC/RES/4/4.

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See also the chapter on the institution building, pp. 15-31.

81

<http://www.ohchr.org/english/bodies/chr/special/ccspecialprocedures.htm>.

82

In the meantime, the Coordination Committee has produced an interim 'Internal Advisory Procedure to Review Practices and Working Methods', by which all stakeholders can bring to the attention of the Coordination Committee any situation that 'either 1) calls for an examination of the effectiveness or appropriateness of the methods of work as detailed in the Manual; 2) calls for a consideration of whether specific acts or practices align with best practices as presented in the Manual or 3) could be considered a practice prejudicial to the integrity, independence, and impartiality of the system of Special Procedures or to the protection of human rights.' The paper is available on <http://www2.ohchr.org/english/bodies/chr/special/docs/InterimProcedure14sep07.pdf>.

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See also the chapter on institution building, pp. 15-31.

84

After the 7th session when the UPR has started.

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Para. 22, Human Rights Council *Resolution 5/1*.

86

Each session of the Working Group on the UPR will review 16 countries. The 1st session will be held in April, and the 2nd in May 2008.

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32 times one hour divided over a normal 6-hour day would require 5.5 days to consider all outcome reports, if the time is strictly observed.

HUMAN RIGHTS BODIES AND MECHANISMS

Agenda Item 5, 'human rights bodies and mechanisms', did not become fully operational in 2007. It will be interesting to see how Item 5 will be used in future sessions of the Council. The only human rights body or mechanism that reported to the Council in 2007 was the Working Group on the right to development (the Working Group). At the 4th session in March 2007, the Council considered the report of the 8th session of the Working Group.⁷⁸ It proposes a programme of work for the Working Group and for the high-level task force on the implementation of the right to development for the period 2007-2009. The Council adopted a resolution renewing the mandate of both the Working Group and the task force for two years, and endorsing the proposed programme of work.⁷⁹

Item 5 is likely to be reserved for hearing reports of the various bodies established by the Council, including the Advisory Committee and the expert mechanism on the rights of indigenous peoples that was established at the resumed 6th session.⁸⁰ This Item also holds potential for improving the coordination between different UN bodies concerned with human rights. For example, it would be positive to see a regular and systematic engagement by the Council with the Coordination Committee of Special Procedures established in 2005.⁸¹ This might be important,

in particular in relation to the implementation of the code of conduct for special procedures. At the 4th session of the Council, the Coordination Committee reported that the special procedures had begun to 'concretise their mechanisms of accountability' and that the Coordination Committee would play a role in the implementation of the code of conduct.⁸² For the Coordination Committee to play this role, a regular slot on the Council's agenda would be useful.

UNIVERSAL PERIODIC REVIEW

Because the UPR has not yet started, Item 6 (universal periodic review) too was not operational. At the 6th session, the Council finalised some aspects related to the UPR, including the determination of the order of review and guidelines for the information submitted.⁸³

In the future,⁸⁴ Item 6 will be devoted to the consideration of the reports submitted by the Working Group on the UPR to the Council plenary. The Working Group on the UPR will review each country in a separate three-hour segment. The Working Group's meetings will be held in addition to the minimum of ten weeks the Council is mandated to meet in plenary. The plenary of the Council will only consider the reports of the Working Group on each country reviewed. *Resolution 5/1* specifies, that 'additional time of up to one hour will be allocated for the consideration of the outcome by the plenary of the Council'.⁸⁵ According to the current calendar of meetings for 2008, the June session of the Council will have to consider the outcome of the reviews of 32 countries.⁸⁶ This means that more than half of the two-week session in June is likely to be devoted to Item 6.⁸⁷

HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Since the Council took up its work, it has paid significant attention to the situation in Palestine, and other occupied Arab territories. It has held its 1st and 3rd special sessions on the issue, and

has used considerable time for the follow-up to decisions taken in during and following these two special sessions. Clearly, the situation is singled out for greater attention than any other situation. To reserve an entire agenda item for the human rights situation in Palestine and other occupied Arab territories was controversial during the debates on the Council's agenda.⁸⁸

Special Rapporteur on the situation in Palestinian territories occupied since 1967 and follow-up to the 1st special session

The 1st special session on the occupied Palestinian territories (OPT) decided to dispatch an urgent fact-finding mission headed by the Special Rapporteur on the situation in the Palestinian territories occupied since 1967, Mr John Dugard. At its 4th session, the Council considered both the annual report by the Special Rapporteur and his oral presentation on the failed fact-finding mission he was mandated to carry out pursuant to special session *Resolution S-1/1*. The fact-finding mission could not take place, because Israel refused to accept the mission. Mr Dugard had visited Israel in December 2006, but in his capacity as Special Rapporteur and not as head of the fact-finding mission. Accordingly, he was not able to obtain information related to the fact-finding mission.

The Special Rapporteur explained that the international community has identified three regimes that are inherently detrimental to human rights: occupation, colonialism, and apartheid. Mr Dugard stated that the Israeli regime was clearly an occupation, and had some features of colonialism. While he had been reluctant to refer to it as having characteristics of an apartheid State, he suggested that Israel shares many similarities to apartheid in South Africa, as many laws and practices are comparable. As expected, Israel rejected the report as one-sided, selective, and unreservedly biased. Palestine, of course, welcomed the report. Mr Dugard's final remarks were worthy of note: he expressed his disappointment that there had been so little response to his report in the Council outside of the States in the OIC and the Arab Group. He stated that the situation in Palestine is not a regional issue, but one of universal concern, and that he would

appreciate if non-Muslim countries played a more active role.

Follow-up to the 3rd special session

The 3rd special session, again on the OPT, was convened in November 2006 in reaction to the Israeli military incursions in Gaza and the assault on Beit Hanoun.⁸⁹ It established a high-level fact-finding mission, to be appointed by the President of the Council. However, the two members, Archbishop Desmond Tutu and Ms Christine Chinkin, were unable to carry out the visit because Israel did not issue the necessary visas. At the 4th session of the Council, Ms Chinkin nevertheless reported back to the Council. Even though the visit could not take place, she suggested that Israel's actions in Beit Hanoun amounted to grave violations of human rights. As it was the case for Mr Dugard's mission, Israel rejected the entire planned visit as politicised, while Palestine welcomed Ms Chinkin's statement.

Since Israel had not cooperated with either the fact-finding mission established at the 1st special session, nor with the high-level fact-finding mission established at the 3rd special session, the Council adopted a follow-up resolution calling for the implementation of both *Resolution S-1/1* and *Resolution S-3/1*.⁹⁰ It seemed that the Council had realised that the follow-up to the 1st and 3rd special sessions was difficult to treat separately, since they were essentially dealing with the same situation. At the 5th session the Council therefore considered follow-up to both special sessions in one segment. Archbishop Tutu presented his and Ms Chinkin's final report, which was still not based on a visit to Beit Hanoun. Despite that, he and Ms Chinkin made a number of recommendations.⁹¹ Again, Archbishop Tutu appealed to both sides to solve the situation in a cooperative manner, but neither tone nor content of the reactions changed. In this light, it came as no surprise that the resolution adopted after the 5th session is an exact copy of the resolution adopted only three months earlier.⁹²

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See also the chapter on institution building. Item 7 was placed on the agenda of the Council following calls by a large number of States, but it was heavily contested towards the end of the institution-building process. The opposition to the said Item, headed by Canada, was so strong that it nearly undermined the consensual adoption of the institution-building package in June. Canada had contested the adoption of the institution-building package, because the agenda contained only one item (Item 7) on a particular country situation.

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ISHR, *Human Rights Monitor 2006*, p. 51.

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A/HRC/RES/4/2, 27 March 2007.

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Including that the process towards peace be undertaken within the framework of the law and guided by the *UN Charter*, international humanitarian law, and international human rights law; that the people of Gaza should be afforded protection under the *Fourth Geneva Convention*; that Israel should indicate publicly the steps to ensure Beit Hanoun does not happen again; that those responsible for Beit Hanoun should be brought to justice and not granted impunity; that the victims of Beit Hanoun should be afforded ongoing medical treatment; that those responsible for human rights in Gaza should take special account of women victims and survivors; and that the joint mechanism should be established with representation from both Israel and Palestine to move towards peace.

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A/HRC/OM/1/2, 20 June 2007. Technically, the resolution was adopted at the 'first organisational meeting' of the Council, held from 19 to 20 June 2007. Because the last days of the 5th session were entirely used for the conclusion of the negotiations of the institution-building package, the Council had to take the remaining decisions and resolutions in the days following 18 June 2007.

Developments at the 6th session

This was the background against which Item 7 on the Council's new agenda was first opened for discussion at the 6th session in September 2007. Under these circumstances, it was not surprising that the discussions under Item 7 were, to use a term that is very popular in the Human Rights Council, 'politicised'.⁹³ States and NGOs in support of Palestine accused Israel of being the sole perpetrator of human rights violations in the conflict, and stressed the right of the Palestinian people to self-determination and resistance against foreign occupation. Israel, along with some other States and NGOs, perceived the whole discussion to be 'Israel-bashing' and a manifestation of the selective approach of the Council, while stressing the right of Israel to self-defence. Rarely, more balanced statements were heard and these came mostly from NGOs, who took into account human rights violations by both parties.

Without judging the merits of Item 7, or the appropriateness of its prominence on the agenda, it is regrettable that the debates were held in such a tense climate. There can be no doubt that this situation warrants intense attention by the Council. However, the approach taken by both sides distracts the Council from what it should and could achieve through its country-specific work.

6TH SPECIAL SESSION

On 23 and 24 January 2008, the Council held its 6th special session 'to consider and take action on human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory including the recent ones in occupied Gaza and West Bank town of Nablus.' It was the third special session to be held on the human rights situation in the OPT. The same divide that was already observed during the 1st and 3rd special sessions, and during the consideration of Item 7 in the Council was, once again, palpable. Already prior to the session, the US and Israel announced that they would boycott the session.⁹⁴

The High Commissioner addressed the Coun-

cil with a very clear message. She deplored the escalation of human rights violations in the OPT, saying that the right to life of everybody living in the region is at peril, Palestinians, Israelis, and others. She 'exhort[ed] the Government of Israel to completely lift all restrictions on the free flow of desperately needed aid and essential supplies to Gaza', but stressed that aid could not compensate for the denial of basic and fundamental rights. In light of the recent international conferences in Annapolis and Paris,⁹⁵ Ms Arbour called on the international community to 'intensify its efforts to ensure that the human rights dimension of this conflict is properly addressed, regardless of the development of a political settlement'.

During the session, many States expressed concern about the increasingly dire humanitarian situation in Gaza due to the closure of the strip by Israel, and the ensuing lack of electricity, fuel, and other essential commodities. Some also called for a more 'balanced' reading of the situation, reminding the Council that the human rights of Israeli civilians are also violated by rockets launched by armed Palestinian groups. A draft resolution had been tabled early on in the process, demanding that Israel stop its military attacks and lift the blockade imposed on the Gaza strip. The fact that the humanitarian situation in Gaza was indeed precarious when the session was held,⁹⁶ and that the draft resolution was formulated in comparatively mild terms, led to a very dim glimmer of hope that the Council could find, for once, a way out of its political impasse regarding the situation of the OPT. However, while some States categorically insisted that the resolution include a reference to the rockets directed at Israeli civilians by Palestinian armed groups,⁹⁷ the sponsors of the resolution were not willing to acknowledge violations by Palestinians. *Resolution S-6/1* thus could not garner consensus.⁹⁸

The 6th special session again showed the Council's difficulty in dealing with the human rights situation in the OPT. The Council's failures are two-fold. First, other situations requiring urgent attention often do not receive it. Second, in relation to the Palestine-Israel situation itself, the politics of the Council have prevented the serious, concentrated action that is required. Too often the possibility of a strong, consensus resolution of the Council is dismissed in favour

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Item 7 was discussed on 20 September 2007.

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See ISHR's report on the special session, available at www.ishr.ch.

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In late November 2007, the United States convened a peace conference in Annapolis, bringing together Palestinians and Israelis to reinvigorate the stalled peace process (see for example www.crisisgroup.org/home/index.cfm?id=4284&l=1 or http://news.bbc.co.uk/2/hi/middle_east/7126541.stm). In mid December, France hosted a 'donors conference' in Paris, where States announced their contributions to revive the Palestinian economy (see for example www.guardian.co.uk/israel/Story/0,,2228904,00.html).

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On 23 January, there was a 'mass break-out' from Gaza, as Palestinians destroyed the wall separating the Gaza strip from Egypt and tens of thousands of people left the Gaza strip to buy much needed supplies in Egypt.

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Many States called for a more 'balanced' resolution, also calling on Palestinians to stop violating the human rights of Israeli civilians. Canada said the lack of such a reference was the reason for its negative vote on Council *Resolution S-6/1*.

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Resolution S-6/1 was adopted with 30 votes in favour, one against, and 15 abstentions. Compared to the resolutions adopted at the 1st and 3rd special session, this shows a slight move towards a more consensual approach. *Resolutions S-1/1* and *S-3/1* were adopted with 29 votes to 11, with 5 abstentions and 32 votes to 8, with 6 abstentions respectively.

of polarised point-scoring. This does no service and offers no support to those in that region whose human rights are being routinely violated, Palestinians, Israelis, and others.

This, again, is regrettable, because on several other occasions in its first 18 months of existence, the Council showed that difficult and politically sensitive issues can be tackled in a constructive way. This can be said of some aspects of the approach taken to Darfur, where a cross-regional call for a special session and a consensus-driven approach has led to an innovative solution that had at least the potential to change realities on the ground.⁹⁹ A further positive development was the special session on Burma/Myanmar and *Resolution S-5/1* passed by consensus.¹⁰⁰ Arguably, that resolution has contributed to the decision by the Government of Myanmar to allow the Special Rapporteur on the situation of human rights in Myanmar to visit the country.

Even though the political and historical context of Palestine and the other occupied Arab territories is profoundly different than that of Darfur and Burma/Myanmar, lessons should be learnt. The beginnings of cooperation observed with the Sudan and with the Government of Myanmar show that a constructive approach by the Human Rights Council could contribute positively to concerted efforts by other mechanisms of the UN and the international community as a whole. In coordination with other actors of the international community, it should be possible to find workable solutions to the human rights dimensions of such protracted situations of universal significance as the OPT, Darfur, and Burma/Myanmar as well as other country situations the Council has yet to deal with. While the political attention that a situation receives in other forums can boost the Council's ability to also move the human rights dimension forward, it should not be to the detriment of the specificities of the Council's mandate. If the Council wants to fulfil this mandate, it has to focus more on a thorough human rights analysis of the situation. As it happens, the expertise for this is readily available through the system of special procedures.

FOLLOW-UP TO THE VIENNA DECLARATION AND PROGRAMME OF ACTION

The way agenda Item 8, 'follow-up to and implementation of the Vienna Declaration and Programme of Action', was used for the first time at the 6th session in September is promising. Both the organisation of a panel discussion on the integration of a gender perspective in the Council's work, and the segment of general debate under Item 8 made it clear that this Item has an extremely wide scope. In principle, it allows for any issue that is contained in the Vienna Declaration to be discussed.¹⁰¹

A new format: special events

The special event on gender integration organised during the 6th session was held in the context of Item 8. While the previous special events were not held under this item, this section will also comment on them. At the 4th session, the Council introduced a new form of interaction, the so-called 'special events'. These special events were held as panel discussions with a number of experts on the given issue. Unlike the informal or parallel events, which are often held at lunch-time outside the plenary, these events were held during the plenary session with members of the Council and many observers, including a high number of NGO representatives, present. This provided a forum for focusing on one particular issue of concern to the Council's work.

To date, the Council has held three special events: one on **violence against children**¹⁰² on the occasion of the publishing of the Secretary-General's study on the issue;¹⁰³ one on the **Convention on the Rights of Persons with Disabilities**¹⁰⁴ shortly before the Convention was opened for signature on 30 March 2007; and one on the **integration of a gender perspective in the work of the Council**.¹⁰⁵ Although, with the exception of the last panel event, no decisions or resolutions came out of these events, they were well received as a positive addition to the Council's work. The fact that new formats of work were put into action in 2007 demonstrates the real possibilities for introducing positive innovations. The open and constructive approach enabled by the special events is welcome to soften the often lengthy and

99 See the discussion of the Council's debates on the Sudan and Darfur, pp. 43-44.

100 See ISHR's report on the special session, available on www.ishr.ch and the discussion on Myanmar, pp. 44-46 above.

101 Looking at the wide scope of the *Vienna Declaration and Programme of Action* (the Vienna Declaration), this means that virtually any human rights concern can be addressed. The Vienna Declaration is the outcome document of the World Conference on Human Rights in 1993. It recognises that all human rights are inherent, universal, indivisible, inter-related and interdependent and that the promotion and protection of all human rights are legitimate concerns of the international community. The Vienna Declaration delivered a clear commitment from the international community, and, among other things, called on all UN mechanisms to integrate the equal status of men and women into all its activities.

102 The panellists were the Deputy High Commissioner for Human Rights; Mr Paulo Sergio Pinheiro in his capacity as the Independent Expert for the UN study on violence against children; Ms Roberta Cecchetti from the NGO Advisory Group on Violence against Children; and representatives from the WHO, UNICEF, OHCHR, and the ILO.

103 In 2001, General Assembly *Resolution 56/138* requested the Secretary-General to conduct an in-depth study on the question of violence against children, following a recommendation by the Committee on the Rights of the Child. The study can be accessed at <http://www.violencestudy.org/r25>.

104 The panellists were the High Commissioner for Human Rights; the Chairperson of the Ad-hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities; the Special Rapporteur on disability for the Commission for Social Development; the President of the Thailand Association of the Blind; and a representative of the International Disability Caucus.

105 Ambassador Maria Nzomo of Kenya moderated the panel, composed of Ms Kyung-wan Kang, the Deputy High Commissioner for Human Rights; Mr Miloon Kothari, the Special Rapporteur on adequate housing; Ms Radhika Coomaraswamy, the Special Representative of the Secretary-General on children and armed conflict; and Ms Charlotte Bunch, executive director of the Centre for Women's Global Leadership.

bureaucratic ways of the Council and to better focus the discussions.

In particular the panel on gender integration allowed for a useful and practical discussion. The panel discussion was separated into three segments, each of them comprised of input by the panellists, reactions by States, and reactions by NGOs. To have three shorter discussions, instead of one long block certainly improved the interaction even more. On a very positive note, the panel discussion led to a concrete result. A draft resolution tabled by Chile on the integration of a gender perspective in the Council's work was amended to include a reference to the panel discussion.¹⁰⁶

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The resolution was adopted by consensus at the resumed 6th session. A/HRC/RES/6/30, 14 December 2007.

The Council 'decides to incorporate into its programme of work an annual discussion on the integration of a gender perspective throughout its work and that of its mechanisms, including the evaluation of progress made and challenges experienced'.

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Including the situation in Burma/Myanmar (for more information, see ISHR's report on the 5th special session, available at www.ishr.ch) and Fiji. Thematic issues included alternative care for children.

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This is not covered in the present section, since the chapter on standard setting looks at the meeting of the Preparatory Committee. See p 84.

109

This included the international resurgence of racism and xenophobic violence targeted at minorities; reaction against asylum and immigration; persecution of national minorities; an international resurgence of defamation of religion, particularly against Muslims; increasing racism in sports, particularly football; the underlying causes of these trends and in particular the increasing legitimisation of racist parties and movements through tactics based on both ideologies and political alliances.

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This followed the development seen in the Council at its 2nd session, when it heard the joint report of the Special Rapporteur on freedom of religion or belief, Ms Asma Jahangir, and of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr Doudou Diène, on incitement to racial and religious hatred and the promotion of tolerance (A/HRC/2/2006, September 2006). A summary of the discussions is contained in ISHR's *Daily Update* of 21 September 2006, available at www.ishr.ch.

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The resolution was adopted by a vote of 24 in favour, 14 against, and nine abstentions. States opposed to the resolution argued that it mistakenly focuses exclusively on Islam, and not on other religions.

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See also 'Challenges to special procedures mandate holders' at pp. 39-40 above.

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A/HRC/6/6, 21 August 2007 and A/HRC/6/4, 4 September 2007.

General debate under Item 8

The general debate under Item 8 was a good example of the utility of a broad agenda item, and of the opportunities this presents for raising a wide range of issues and situations. The main theme drawn from the consideration of the Vienna Declaration was the universality, indivisibility, interdependence and interrelatedness of all human rights. However, far from academic excursions into the text of the Vienna Declaration, States and NGOs equally used the theme to focus on country-specific and thematic issues of concern to them.¹⁰⁷ This also included the focus of the Vienna Declaration on mechanisms for the promotion and protection of human rights. As a concrete suggestion, ISHR proposed to use Item 8 to hold a regular dialogue with the Coordination Committee of the Special Procedures to discuss system-wide issues, concerns, and challenges.

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED FORMS OF INTOLERANCE

Racism and racial discrimination was a prominent theme this year in the Council. Item 9 of the agenda, 'racism, racial discrimination, xenophobia and related forms of intolerance: follow-up to and implementation of the Durban Decla-

ration and Programme of Action', only came into play at the 6th session. As in earlier subsections, developments at the 4th and 5th sessions related to racism are also grouped under this heading. Three elements made up the consideration of racism and racial discrimination: the thematic reports by the **Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance** and by the High Commissioner; the reports of the **Working Group on the effective implementation of the Durban Declaration and Programme of Action**; and an update by the Preparatory Committee for the **Durban review conference**.¹⁰⁸

Special Rapporteur on racism

Mr Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia, and related intolerance, presented reports to each session of the Council. At the 4th session, he presented mission reports from his visits to Switzerland and Italy. Despite the many aspects of the phenomenon of racism raised by the Special Rapporteur,¹⁰⁹ most of the heat in the interactive dialogue concerned the issue of racism linked with religious discrimination.¹¹⁰ The same applies to the Council's action based on Mr Diène's report at the 4th session. *Resolution 4/9*, entitled 'Combating defamation of religions', was presented by Pakistan (on behalf of the OIC). Even though the core of the resolution is directed at the negative stereotyping of religions and in particular Islam, it asked the Special Rapporteur on racism to present a report to the 6th session on defamation of religions and in particular on the serious implications of Islamophobia.¹¹¹

At the 5th session, Mr Diène presented a study on the use of political platforms that promote or incite racial discrimination and a mission report of his visit to the Russian Federation. The dialogue was dominated by the hostile response of the Russian Federation to Mr Diène's report.¹¹²

Both Mr Diène and the High Commissioner presented their reports pursuant to *Resolution 4/9* on the defamation of religions to the 6th session.¹¹³ The one-sided nature of the discus-

sion of issues falling within his mandate was even more pronounced than at the 4th session in March. The consideration of defamation of religion through the prism of racial discrimination appears to be the result of an alliance of forces in the Council, led by Pakistan (on behalf of the OIC) and Egypt (on behalf of the African Group).

The usefulness of this approach is questionable. On the one hand, the report by the Special Rapporteur was indeed a valuable contribution, in that it analyses, among other things, the often hostile climate faced by Muslims living in 'Western' countries. On the other hand, the report also cautions against the establishment of any hierarchy in the discrimination against different religions. Sadly, as observed during the 6th session, the focus of the debate on Islamophobia showed the *de-facto* establishment of a hierarchy in the discrimination against different religions. While Mr Diène notes that specific forms of defamation of religions have to be acknowledged, he also stresses the need to 'recognize the *universality of their underlying causes* and the need to promote all efforts to combat these phobias and *all forms of discrimination*.'¹¹⁴

The approach taken by Pakistan and Egypt raises two other concerns; one is institutional, the other substantive. From a substantive point of view, the approach is counter-productive because it neglects other important human rights considerations. It forces the Council to approach religious intolerance exclusively from the angle of racism. This does not allow it to consider, as the Special Rapporteur on racism suggests, all forms of discrimination, taking into account the multi-faceted forms discrimination takes. Perhaps more importantly, approaching the concept of 'defamation of religion' through racism excludes the consideration of important human rights that are linked to this concept, including freedom of religion or belief in its wider sense, freedom of expression, and the right to be free from all forms of discrimination. The enjoyment of all of these rights intersects, and has to be carefully balanced. Simply deploring 'defamation of religion' as a form of racism does not do justice to the complexity of these intersections, and does not further the fight for the enjoyment of all persons of all of the human rights involved.

The institutional concern is that the Council's approach is determined by politics instead of human rights analysis. This approach has been dictated by the powerful political alliance between the OIC and the African Group, which appears to have been strengthened as a result. This approach has polarised the discussion of these important issues, and has curtailed the Council's ability to address them in an effective and comprehensive way. Only through a comprehensive human rights analysis can these issues be resolved. In this regard, the Council may have to also draw on the expertise of its experts and the treaty bodies.

Working Group on the effective implementation of the Durban Declaration

The Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action met and reported to the Council twice in 2007.¹¹⁵ The first meeting focused on complementary standards to bridge gaps in regional and international standards related to racism and racial discrimination, xenophobia and related intolerance. It was assisted by a group of five experts, who conducted a study on complementary standards and positive the obligations of States, and on complementary standards for vulnerable groups.¹¹⁶ The Council decided to convene an Ad Hoc Committee that will elaborate international complementary standards to the *International Convention on the Elimination of All Forms of Racial Discrimination*.¹¹⁷ Again, the Council was not able to find a consensus approach, and the resolution was adopted by a vote.¹¹⁸

TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Item 10 on the Council's agenda was not fully operational in 2007. It will, in the future, be dedicated to country-specific mandates created under former agenda Item 19 of the Commission, focused on technical assistance and capacity building. From the perspective of NGOs, it is regrettable that the Council has, just as the Com-

¹¹⁴ Para. 58, A/HRC/6/6. Emphasis added.

¹¹⁵ The Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action is one of the three mechanisms established to follow up the *Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, held in Durban, South Africa, in 2001. The Intergovernmental Working Group was established by Commission *Resolution 2002/68* and approved by the Economic and Social Council (ECOSOC) in its *Decision 2002/270* of 25 July 2002. See <http://www.ohchr.org/english/issues/racism/groups/>. The 5th session of the Working Group in 2007 was divided into two parts in conformity with Council *Decision 3/103*. The first part took place between 5 and 9 March 2007; the second part was convened from 3 to 7 September 2007.

¹¹⁶ The experts were appointed pursuant to Council *Resolution 1/5* of 29 June 2006.

¹¹⁷ It will meet from 11 to 22 February 2008.

¹¹⁸ A/HRC/6/21, 28 September 2007. 32 in favour, ten against, and four abstentions. The States opposed to the text regretted that its focus is not comprehensive enough, and only concentrates on discrimination against some groups.

mission did, separate agenda items for different situations.¹¹⁹ It would have made more sense to integrate technical assistance and capacity building in the consideration of situations that require the Council's attention.¹²⁰

Be that as it may, in 2007, the Council held interactive dialogues with the following special procedures that would now be dealt with under Item 10:

- Independent Expert on the situation of human rights in Burundi;
- Independent Expert on technical cooperation and advisory services in Liberia;
- Special Representative of the Secretary-General for human rights in Cambodia;
- Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti;
- Independent Expert appointed by the Secretary-General on the situation of human rights in Somalia;
- Independent Expert on the situation of human rights in the Democratic Republic of the Congo.¹²¹

With the exception of the dialogue with the Special Representative of the Secretary-General for human rights in Cambodia, the tone of these dialogues was considerably different from those with contentious country-specific special procedures mandates.¹²² This was reflected in the way these mandates were treated during the review of mandates. Most of the time, the State concerned was grateful for the support of the mandate holder and the international community in improving its levels of promotion and protection of human rights. The mandates of the Independent Expert on the situation of human rights in Burundi, the Independent Expert on technical cooperation and advisory services in Liberia, and the Independent Expert appointed by the Secretary-General on the situation of human rights in Haiti were reviewed and renewed at the 6th session of the Council. Haiti strongly supported the mandate, saying it was essential for further progress. Both Burundi and Liberia sent high-level representatives to assure the Council of their full support of the mandates. Accordingly, it was more difficult for States that are usually opposed to any country-specific mandate to voice their opposition, and they saw themselves constrained in joining the chorus of thanks to the mandate holders.

OTHER ISSUES

NGO participation

The level of NGO participation is generally regarded as one of the main challenges of the transition from the Commission to the Council. It was feared that less time would be available to NGOs to address the Council. The first year has shown that at least in terms of relevance, the level of NGO participation was maintained if not improved. While the time available to NGOs might have been slightly shorter than in the times of the Commission, the fact that NGOs were allowed to substantively participate in the interactive dialogues with special procedures directly after States, and before mandate holders gave their replies, is an improvement. This improvement was maintained in the second year, and it will be difficult to reverse this practice. As noted in the chapter on institution building, no formal rules for NGO participation have been codified yet, but the practice, also in the second year, was positive.

Despite the generally positive assessment, several problems and difficulties remain. For NGOs, and even more so for NGOs that are not based in Geneva, it is more difficult than for States to accommodate the too frequent changes in the programme of work. The fact that on several occasions in 2007, interactive dialogues with special procedures were postponed from one week, or even from one session to the other, let alone cancelled, has made it very difficult for NGOs to determine at what point in time they can or should participate. The same applies for the segments of 'general debate' that were, even though attached to all agenda items, interspersed in the programme of work and often changed. The Council urgently needs to address this question, if it wants to live up to General Assembly *Resolution 60/251*, which requires that the Council ensure 'the most effective contribution' of NGOs.¹²³ Some suggestions to this effect were made in a joint NGO statement at the closing of the 6th session.¹²⁴

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See fn 59 on an explanation of the different country-specific mandates established by the Commission.

120

Rachel Brett, *Neither Mountain nor Molehills. UN Human Rights Council: One Year On*, Quaker United Nations Office (Geneva, 2007), p. 14.

121

The dialogue with the Independent Expert on the situation of human rights in the Democratic Republic of the Congo was held at the 6th session, therefore already under Item 10.

122

See 'Other country-specific situations' at pp. 46-47 above.

123

Para. 11, A/RES/60/251, 3 April 2006.

124

The draft annual programme of work is available on the OHCHR extranet, see fn. 2 above.

CONCLUSION AND NEXT STEPS

For 2008, three sessions of the Council are scheduled.¹²⁵ The 7th session in March 2008 is scheduled to take four weeks, and will be the Council's main session during its second year. Another two weeks are planned in June, and three weeks in September. The draft programme of work for the 7th session is very ambitious. Every agenda Item will have to be treated. Under Item 3 (promotion and protection of all human rights), this includes the reports of 18 special procedures, as well as other thematic reports. On the institution-building side, it is planned to complete the review of some 20 special procedures mandates, as well as replace mandate holders who have finished their maximum of two terms.¹²⁶ It is therefore likely that one of the biggest challenges that the Council faced in its first 18 months of existence, the less-than-optimal time management, will continue to lurk in the corridors of the Palais des Nations.

So what has the Council achieved? Halfway through the second year of the Human Rights Council, its record is still mixed. The Council has been in operation for a relatively short period of time. The chances of it improving over time, as the 'new spirit of cooperation and dialogue' transcends its work, are still intact. While a lot of its time was tied up in the institution-building process, it was able to make substantive progress on a limited number of issues and situations. On other points, it is very clear that the battles that ravaged the Commission and that were present throughout the institution-building process are pushing to the fore again, not to say that they have openly erupted. While these battles sometimes have to be fought, the aim for human rights defenders should be to find space between the areas occupied by the traditional battles to deal with issues in a practical, focused, and most of all in a human rights oriented way. It remains to be seen if positive actors, be they NGOs or States, will manage to do that in 2008.

¹²⁵ The draft annual programme of work is available on the OHCHR extranet, see fn. 2 above.

¹²⁶ A total of 14 vacancies have been announced. The list is available on the OHCHR extranet at http://portal.ohchr.org/extranet/docs/SP%20list%20of%20vacancies-%20last%20review-5_12_07_pm.pdf.