HUMAN RIGHTS COUNCIL

Renewed energy at the Council's 19th session



Photo: UN photo/Violaine Martin

Members of the Organisation of Islamic Cooperation walk out of a panel discussion on sexual orientation and gender identity.

enewed energy marked the Human Rights Council's 19th session, 27 February to 23 March 2012, particularly in the Council's response to country situations. This was especially welcomed following the disappointments of the Council's lacktriangle lacktriangle 18th session, when a re-emergence of old dynamics had raised fears that the Council's increased engagement in country situations, seen in relation to the Arab Spring, had been short-lived. However, the renewed vigour at the latest session may represent a more sustained shift in the Council's approach.

THEMATIC DEVELOPMENTS

The session saw the long-anticipated and first-ever United Nations panel discussion on sexual orientation and gender identity. The panel had been mandated by a South Africa-led resolution at the June 2011 session. It discussed a report prepared by the High Commissioner for Human Rights, also commissioned by the resolution, on violence and discrimination on the basis of sexual orientation and gender identity.

It was unfortunate that almost all States from the Organisation of Islamic Cooperation (OIC) chose not to engage in the debate, staging a walkout as the panel began. This lack of engagement has been the OIC's position on the resolution since negotiation of the text at the June 2011 session, through to its implementation to date. Aside from some relatively minor negative interventions from Egypt early on in the resolution negotiations, the OIC did not participate in discussions. Then, immediately prior to the start of the 19th session, the OIC sent a letter to the President of the Council protesting against the panel. It stated its position that culture and religion must be taken into account when implementing human rights standards.¹

Many States emphasised during the discussion that if the goal is to facilitate understanding between States on both sides of the debate, dialogue is the only way forward. The OIC's position was therefore particularly disappointing. The decision to withdraw from the discussion entirely may reflect the OIC's consideration that it is no longer in a position to prevent this issue from advancing at the international level, and that non-engagement may be the best strategy to undermine the legitimacy of the discussions. In particular, engaging in discussion would potentially weaken its position: that these issues fall outside the remit of the Universal Declaration of Human Rights and therefore outside the mandate of the Council. It was therefore heartening to see that some OIC States chose to remain for the debate, including Burkina Faso. No further action was taken on the issue of sexual orientation and gender identity at this session, but further developments are expected at the June session.

Reprisals and intimidation against those cooperating with the UN human rights system gained increased prominence during the session. On several occasions, the President of the Council, the High Commissioner for Human Rights and a number of States expressed concern about reprisals and called for an end to this practice. The continuing occurrence of reprisals

In its letter, Pakistan (on behalf of the OIC) made reference to the Vienna Declaration and Programme of Action (VDPA), which it interprets selectively. The relevant part of the VDPA in fact reads: 'All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.' (OP5, http://bit.ly/IGDNNZ).

was put into sharp focus by events surrounding a resolution on Sri Lanka. Several human rights defenders present in Geneva faced intimidation and threats against themselves and their families, from members of the Sri Lankan delegation. The intimidation in Geneva was coupled with a vicious campaign in State-controlled Sri Lankan media, against what it described as 'traitors' in Geneva. An outburst from a Sri Lankan minister, in which he threatened to 'break the limbs' of human rights defenders, indicates just how daunting and dangerous the situation is for these groups and individuals.

The incidents in Geneva were reported to the President of the Council and Ambassador of Uruguay, Ms Laura Dupuy Lasserre, who made a statement on the matter. She said 'aggressive and insulting language' and 'intimidation of representatives' would not be tolerated, and called on the Council to take seriously its responsibilities 'to ensure that those who wish to participate in our debates and share their experience can do so without fear of reprisals'. The statement reiterated the fundamental role of civil society in the work of the Council.

It is notable that the issue of reprisals, both through these serious incidents but also in other contexts, is gaining more recognition at the Council as a pressing issue that requires action. State interest is widening; delegations ranging from Botswana to Norway have raised the issue during Council proceedings, including in the interactive dialogues with the Special Rapporteur on human rights defenders and the Special Rapporteur on Iran, and general debates on the Universal Periodic Review and country situations. For example, during the interactive dialogue with the Special Rapporteur on human rights defenders, Botswana firmly stated that the responsibility to investigate and prosecute acts of reprisal against human rights defenders rests with governments. It added that placing the rights of human rights defenders in a non-binding international instrument, that is, the Declaration on Human Rights Defenders, may not be sufficient.2

Ms Margaret Sekaggya, the Special Rapporteur on the situation of human rights defenders, presented her report to the Council. The report focused on human rights defenders considered to be at particular risk, including journalists, students, and defenders of land rights. The issue of national legislation was a prominent topic of discussion, with many States saying human rights defenders must comply with national laws. This issue has been raised repeatedly during previous dialogues with the Special Rapporteur, both in

Botswana shows signs of becoming a more positive voice at the Council. In the context of the urgent debate on Syria, Botswana made a strong statement criticising Russia and China for blocking action by the Security Council, and calling for referral of the situation to the International Criminal Court.

the Human Rights Council and the General Assembly.3 The Special Rapporteur clarified that while defenders should abide by national legislation, there is also an obligation for States to ensure legislation is in compliance with international human rights law.

A similar issue arose in the context of the resolution on 'promoting and protecting human rights in the context of peaceful protests.'4 Operative Paragraph 5 of this resolution originally called on States to 'create and ensure an environment where protests may be conducted in a peaceful and lawful manner by enacting legislation respecting international human rights law'. Since no agreement was found on balancing the reference to lawfulness and the national legislation with the obligation for States to uphold international law in dealing with peaceful protest, the paragraph was dropped. This reflects the Council's unwillingness or inability to pronounce itself clearly on the fact that national legislation often contradicts international law, and thus is often used to criminalise the legitimate activities of human rights defenders.

The resolution further mandates the Office of the High Commissioner for Human Rights (OHCHR), with the assistance of relevant special procedures,⁵ to prepare a thematic report on 'effective measures and best practices to ensure the promotion and protection of human rights in the context of peaceful protest'.6 OHCHR is explicitly encouraged to seek the views of civil society. It is hoped the report will address the above-mentioned dilemma. While originally this report was to include a specific study on the national implementation of legal obligations under international human rights law, this aspect was removed from the final version of the text.

Finally, the issue of **defamation of religions**, which Pakistan had replaced with a resolution on combating intolerance against persons based on religion or belief at the March 2011 session, remained off the agenda at this session. Pakistan tabled another resolution on combating intolerance, while Denmark, on behalf of the EU, tabled a resolution on freedom of religion or belief. Both texts were adopted by consensus. Although Pakistan has never given any definite assurances

- The General Assembly began adopting resolutions on human rights defenders in 1998 with the adoption of the Declaration on Human Rights Defenders. Though the Declaration included a reference to the requirement that human rights defenders should operate within the framework of national legislation, it was not until 2005 that a similar reference was made in the resolution. This was due to threats by Cuba that it would call a vote on the resolution if the reference was not included. States opposed to civil society engagement seek to include such references in order to limit the rights of defenders to those prescribed by domestic law, which are often not in line with international human rights law.
- See A/HRC/19/L.17 here: http://bit.ly/HrsfjK.
- Including the rapporteurs on freedom of assembly and association, freedom of expression, and human rights defenders.
- To be presented in March 2013.

that the issue of 'defamation of religions' will not be revived, its most recent resolution, following the generally positive debate on religious tolerance at the Council's 17th session,7 suggests the issue may finally be off the table.

COUNTRY DEVELOPMENTS

The Council's response to country situations at this session saw a combination of significant breakthroughs and disappointing responses.

The major achievement was a resolution on Sri Lanka. At its September 2011 session, the Council had squandered an opportunity to respond to the situation in the country, when the Secretary-General transmitted the report of his 'Panel of Experts' to the President of the Council. This had been the best opening in some time for the Council to take action, and its failure to do so seemed to make it even more unlikely that it would respond in the future. However, the inter-sessional period saw the release of the report of the Lessons Learnt and Reconciliation Commission (LLRC),8 and another opportunity for action.

The US took the opportunity to table a moderate resolution urging the Government of Sri Lanka to implement the recommendations from the LLRC and ensure accountability for all Sri Lankans. Despite the moderation, Sri Lanka expressed fierce opposition to the initiative and stated its intention to not engage in deliberations on the resolution. The US chose to forge ahead regardless, and the resolution was passed with 24 votes in favour, 15 against, and 8 abstentions.

Western States, along with most of the Group of Latin America and Caribbean Countries (GRULAC) (excluding Ecuador and Cuba) and several African States, including Benin, Cameroon, and Nigeria, voted in favour of the resolution. India's vote, however, was the most remarkable. It broke away from most of its fellow Asian States and voted in favour. This is a significant change for a State that, until now, had been an uncritical ally of Sri Lanka. However, India made it clear that it still held to its position that Sri Lanka's sovereignty should be fully respected, and the role of the international community should be to support Sri Lanka's own efforts. The price for India joining the 'yes' vote was that advice and technical assistance from OHCHR and relevant special procedure mandate holders would only be provided in 'consultation with and with the concurrence of the Government of Sri Lanka', without calling on the Government to accept that help. The High Commissioner for Human Rights will present a report on the provision of such assistance at the Council's 22nd session, in March 2013.

'Human Rights Council: panel discussion on promotion of tolerance sees less divisive debate', http://bit.ly/rcVcgP. This debate was held on the basis of the previous resolution on intolerance and religion.

The Council's renewed energy on country situations was highlighted early on in the session by an urgent debate on Syria. However, the resolution adopted at the conclusion of that debate9 was relatively weak. It did not respond to calls made by several States for stronger language on accountability, in particular, for referral of the situation to the International Criminal Court.10

The direction of the resolution was an apparent effort to gain greater support from China, Cuba, and the Russian Federation, by altering the focus to the humanitarian situation in the country. During the debate, both the Russian Federation and China expressed concern at the escalating situation and called for humanitarian access to the country. The Russian Federation in particular welcomed Syria's cooperation with the International Committee of the Red Cross, and the UN's decision to send the Under Secretary-General for Humanitarian Affairs, Ms Valerie Amos, to the country. Nevertheless, both States, together with Cuba, voted against the resolution.11

However, the session later saw the adoption of the Council's strongest resolution to date on the situation in Syria, 12 following the report of the Commission of Inquiry. The resolution calls for international accountability for potential crimes against humanity, and references the High Commissioner's call for the Security Council to refer the situation to the International Criminal Court. The resolution also extends the mandate of the Commission of Inquiry for a further six months.¹³

Syria's engagement with the Council continued to be obstructive. The delegation withdrew from the urgent debate, and during the interactive dialogue with the Commission of Inquiry reiterated its well-known position, that the crisis in the country is due not to peaceful demonstrators, but external parties that are arming opponents and waging war through the media. The State dismissed the report of the Commission of Inquiry as based on 'biased information' and 'hearsay', and stated its expectation that the mandate not be renewed. The representative added that the State would take all necessary steps to 'defend its people' and territorial integrity, and would reject any attempt to foil those efforts.

Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, http://bit.ly/uA1dOi.

See A/HRC/19/L.1 here: http://bit.ly/HrsfjK.

¹⁰ Requested by Austria, Botswana, the Netherlands, and Slovakia,

¹¹ There were 37 votes in favour, 3 votes against and 3 abstentions. Four States were absent at the time of voting.

¹² See A/HRC/19/L.38/Rev.1 here: http://bit.ly/HrsfjK.

¹³ This vote passed with 40 in favour, 3 against and 3 abstentions (India, which voted yes, later corrected its vote to an abstention). The additional 'yes' votes came from three States that had been absent during the first vote (Angola, Burkina Faso, and Kyrgyzstan).

Security Council authorises deployment of military observers to Syria

On 21 March 2012, the Security Council issued a non-binding presidential statement¹⁴ endorsing a mediation plan to halt the crisis in Syria. The six-point plan, which was developed by the Joint Special Envoy for the United Nations and the Arab League (Joint Special Envoy), former Secretary-General Kofi Annan, addresses both the opposition and Syrian government, and calls for an end to the violence with a UN-supervised ceasefire 'to protect civilians and stabilize the country'. The plan also calls for secure humanitarian access; the launch of an inclusive, Syrian-led political transition to a democratic, plural political system; the release of the detained; the right to demonstrate; and access for the media.

On 23 March, Germany hosted an 'Arria formula' meeting of Security Council members with the Commission of Inquiry (CoI) on Syria, a fact-finding mission mandated by the Human Rights Council. This closed briefing was the first time a Human Rights Council special procedure had met with the Security Council. The CoI engaged in a discussion with members regarding their findings, including how the CoI findings were established given that its members have not been granted access to Syria.

The Security Council adopted another presidential statement¹⁶ on 5 April, which supported a 10 April military pullback by Syrian forces, a deadline negotiated by the Joint Special Envoy. The statement also requested the Secretary-General to draw up options for a UN 'supervision mechanism.'

On 14 April the Security Council unanimously adopted *Resolution 2042*,¹⁷ which authorised the deployment of a team of 30 unarmed military observers to begin to report on the implementation of the ceasefire. The Security Council also called on the Syrian government to ensure the UN monitors enjoy unimpeded freedom of movement, and allows them to freely communicate with individuals throughout Syria without retaliation against any person as a result of interaction with the mission. On 18 April, the Secretary-General proposed that the Security Council establish a UN supervision mission in Syria, comprising up to 300 military observers supported by a civilian component, including human rights personnel. On 20 April, the Security Council unanimously adopted *Resolution 2043*¹⁸ calling for the formation of the 'United Nations Supervision

- 16 S/PRST/2012/10 available at http://bit.ly/HBvWSl.
- 17 See http://bit.ly/HUt6Vg.
- 18 See http://bit.ly/Jyrodg.

Mission in Syria (UNSMIS),' in line with the Secretary-General's proposal. The mission is authorised to monitor a cessation of armed violence 'in all its forms by all parties' as well as the full implementation of the Joint Special Envoy's six-point proposal.

Both presidential statements and resolutions followed a prolonged period during which Security Council members were unable to agree on how to address the 13-month uprising in Syria. The Russian Federation and China had vetoed previous Security Council resolutions that sought to end the Syrian government's assault and violence on the Syrian people, citing concerns about Western governments using the mandate to justify outside interference (October 2011 and February 2012). The unanimously approved presidential statements and resolutions signalled a positive shift in the international community's commitment to stop the government crackdown and to push for a peaceful end to the crisis. It was matched by equally firm expressions of concern at the Human Rights Council in Geneva.

Despite finding some common ground, Security Council members still disagree on how best to move the process forward. In Resolution 2042, the US and EU pushed for emphasis on the Syrian government's role in the ceasefire commitments, whereas the Russian Federation insisted on also including the opposition's responsibilities. The Russian Federation also proposed weak language in regard to the conditions required for the observers to work effectively. The resolution 'calls upon' rather than 'requires' the government to provide freedom of movement and access. In Resolution 2043, the Russian Federation fiercely resisted a US and European push to include language threatening sanctions if the Syrian government does not comply with the Security Council's demands. Instead, the Security Council only expressed its intention to assess the implementation of the resolution and 'to consider further steps as appropriate'.

There were disappointing signs that other States that had passed through the upheavals of the Arab Spring with minimal confrontation at the international level, had not significantly changed their stance in Geneva. For example, **Libya** presented a weak resolution in follow-up to the report of the Commission of Inquiry on its human rights situation.

Recently it has become more common within the Council for countries to take the lead on resolutions concerning their own situations. While it is obviously preferable to follow a process of cooperation and consensus, such an approach should not be favoured to the extent that the Council loses its strong, critical voice.

S/PRST/2012/6 available at http://bit.ly/GMVB8p.
The Arria Formula is an informal arrangement that allows the Council greater flexibility to be briefed about international peace and security issues.

¹⁹ The Security Council previously issued a presidential statement on 3 August 2011 and a press statement on 1 March 2012.

The process by which the resolution on Libya was adopted illustrates this point. The resolution was presented by Libya with the support of the EU. During the adoption, the Russian Federation and Uganda presented a series of amendments. Among other points raised, they called for the High Commissioner to be given a mandate to report on the human rights situation in the country, and for more specific attention to certain human rights violations. With Libya rejecting these amendments, and threatening to withdraw the resolution should the amendments be accepted, many EU States and the US decided to also oppose strengthening the resolution. The result was a weak resolution that does not acknowledge the serious and ongoing violations in the country as contained in the findings of the Commission of Inquiry. The resolution also lacks a robust mechanism to ensure followup by the Council.²⁰ Although the resolution was adopted by consensus and with the cooperation of the State concerned, the absence of strong and effective action points ultimately makes the Council complicit in Libya's unwillingness to seriously tackle the human rights violations being committed.

Yemen, another country that is taking the lead on its own country resolution, tabled a somewhat stronger draft, which requests the High Commissioner to report to the Council on the human rights situation in the country. However, as this is the minimum kind of response that should be expected, it points to the weakness of the resolution rather than to any merit on Yemen's part. It too was adopted by consensus.

Another country related development was a joint statement on Eritrea, presented by Somalia and endorsed by 44 States at the time of delivery.²¹ The statement expresses concern at the situation in Eritrea, and invites the High Commissioner to brief the Council on the situation in the country at its 20th session. This is an important development that may pave the way for a resolution. It is unclear if and in what form the High Commissioner will respond to the invitation, given that in other cases she has proven reluctant to brief the Council in depth, in the absence of a clear mandate.

The report of the Special Rapporteur on the situation of human rights in Iran, the first since the creation of the mandate at the 16th session of the Council, elicited a sharp response from Iran. Given that Iran had not given permission for the mandate holder, Mr Ahmed Shaheed, to enter the country, it was ironic that it criticised his report for not reflecting the true situation of human rights there. The delegation dismissed the report as 'biased, politicised, and selective, and as based on poorly sourced information and

allegations. It went so far as to call the report a 'compilation' of lies'. While the mandate of the Special Rapporteur was renewed,22 the interactive dialogue illustrated just how difficult the mandate holder will find it to engage in any meaningful way with Iran.

The mandates on Myanmar and the Democratic People's Republic of Korea were also renewed, both by consensus; it was the first time the latter mandate has enjoyed the full support of the Council.²³ While criticism of country specific resolutions and debates at the Council continued (the general debate under Item 4 saw many statements to that effect) it is notable that 17 out of the 41 texts tabled at this session were country focused.

INSTITUTIONAL DEVELOPMENTS

In what would have been a damaging development in terms of NGO access to the UN human rights system, China attempted to insert language in a resolution on the Forum on Minority Issues. China hoped to limit NGO participation to those NGOs 'who respect sovereignty, territorial integrity and independence of States'. The proposed amendment was ultimately rejected.²⁴ However, this open attempt to undermine NGO participation may mark the beginning of a more aggressive strategy by China to silence criticism, and is in line with a more active position taken by the State over the past few sessions.

This session marked the tentative beginning of remote participation by some stakeholders in the Council's work. At its conclusion, the Council adopted a President's statement that included proposals for the remote participation of NGOs and national human rights institutions (NHRIs) in the Council's work. This followed on from the review of the work and functioning of the Council last year, through which a taskforce was created to evaluate the use of information technology, access for persons with disabilities, and secretariat services of the Council.

Although the President's statement was adopted at the end of the session, a decision had already been taken to trial the recommendations on remote participation of NHRIs during the March session. NHRIs were able to participate through pre-recorded video-messages in panel discussions, Universal Periodic Review (UPR) adoptions, and interactive dialogues with special procedures. The first NHRI to address the Council by video was the Office of the Provedor for Human Rights and Justice, from Timor Leste, during the

²⁰ Concerned NGOs circulated a letter to States that voted 'no' on the amendments (Benin, Czech Republic, Djibouti, Hungary, Italy, Jordan, Kuwait, Malaysia, Maldives, Mauritania, Poland, Qatar, Romania, Saudi Arabia, and the US) acknowledging the political context of the vote, but calling on States to set politics aside for the sake of the Council's credibility.

²¹ The 44 States included several African States: Benin, Djibouti, Mauritius, Nigeria, and Somalia.

²² By a vote of 22 in favour, 5 against, and 20 abstentions.

²³ At the renewal of the mandate in 2011, China, Cuba and Russia voted against, while Angola, Bangladesh, Cameroon, Ecuador, Malaysia, Mauritania, Nigeria, Pakistan, Qatar, Senegal, and Uganda abstained. Of these States, only Pakistan is no longer a Council member.

²⁴ By a vote of 18 in favour, 15 against, and 12 abstentions.

interactive dialogue with the Working Group on Enforced or Involuntary Disappearances. The NHRIs of Georgia and South Africa also delivered video messages.

During the session several panel sponsors also experimented with new formats for panel discussions. A discussion on freedom of expression on the internet, for example, was moderated by Mr Riz Kahn of Al-Jazeera. Mr Kahn's handling of the debate ensured a more interactive discussion, as State comments were immediately handed over to a panellist for a response. There were, however, limitations to this format, not least the time constraints. As the three-hour slot progressed, State interventions were prioritised over panellists' responses, with those on the podium ultimately being limited to a few brief remarks in closing. Not all States welcomed the new format; there were criticisms from Cuba, China, and the Russian Federation. Amongst other concerns, they said it was not consistent with the Council's rules of procedure for anyone other than the President to give the floor to speakers.

Five new mandate holders were appointed during the session.²⁵ Mr Pablo de Greiff was appointed to the post of Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Mr Paulo Pinheiro, current Chairperson of the Commission of Inquiry on Syria, was appointed to the position of Special Rapporteur on the situation of human rights in Syria. The work of the Special Rapporteur on Syria will commence once the mandate of the Commission of Inquiry concludes, which is scheduled for the end of September 2012. Also filled were the posts of Independent Expert on the promotion of a democratic and equitable international order, and the Independent Expert on the situation of human rights in the Sudan.²⁶ A new member was appointed to the Expert Mechanism on the rights of indigenous peoples.²⁷ Finally, Ms Cecilia Rachel Quisumbing was appointed as a new member of the Advisory Committee.²⁸

The Council adopted the final set of **UPR** country reports, thus concluding the first cycle of the UPR. During the general debate on the mechanism, many States welcomed the fact that all States had been reviewed, with only three failing to submit a national report. Discussions focussed on how to ensure follow up of UPR recommendations during the second cycle. In this vein, several States shared their midterm progress reports with the Council. Morocco also called for increased donations to the Voluntary Fund for Technical Cooperation in the Field of Human Rights set up by OHCHR.²⁹ The Czech Republic made the critical point

that *all* recommendations should be followed-up by reviewing States in the second cycle, including recommendations rejected by the State.

Finally, the Council continues to struggle with the burden of an ever-increasing workload. This session saw 55 meetings held over the course of 20 days. This required the Council to meet mostly for full (rather than part) days, including through the usual two-hour lunch break. The schedule comprised of the adoption of the UPR reports of 18 countries, interactive dialogues with 14 special procedures, and nine panel debates, including a full-day panel on children's rights. There were 41 resolutions, a record number. The Secretariat succeeded in managing the heavy workload while also accommodating meetings that ran over time.³⁰ However, as there is no sign of States moderating the number of resolutions tabled, the Council's workload is likely to increase. Since the Council is already operating at almost full capacity, before long it will be impossible to fit everything within the time allocated.

NEXT STEPS

The Human Rights Council will hold its 20th session from 18 June to 6 July. Among the highlights of that session will be the first report of the Special Rapporteur on freedom of association and assembly, a panel discussion on Women Human Rights Defenders, and a possible follow-up action to the panel on sexual orientation and gender identity. A draft programme will be available here: http://bit.ly/HBVX2h.

²⁵ President's list of special procedures, http://bit.ly/HGKKOK.

²⁶ Mr Alfred de Zayas and Mr Mashood Baderin respectively.

²⁷ Mr Danfred Titus.

²⁸ Ms Cecilia Rachel Quisumbing was elected following the demise of Ms Purification Quisumbing in December 2011, both nationals of the Philippines.

²⁹ The fund currently contains around \$1.4 million, consisting of donations from seven States, and of which a third is donated by Morocco.

³⁰ However, this problem caused disruption to several side events when planned speakers, including special rapporteurs, were unable to participate as a result of being delayed in the plenary session.