

# GENERAL ASSEMBLY 66<sup>TH</sup> SESSION

## Developments at the Third Committee



Photo: Gwenael Piasser

A resolution on human rights defenders recommended by the Third Committee highlights the State's role in protecting defenders from human rights violations in the context of peaceful protests.

As the so-called 'Arab Spring' turned to summer and then autumn, the United Nations General Assembly's Third Committee struggled but ultimately succeeded in giving a nod to the popular uprisings. Beyond a breakthrough resolution on the situation of human rights in **Syria**,<sup>1</sup> which represented the first new country situation examined since 2007, the Third Committee also referred to current events in some thematic resolutions, including on **human rights defenders, torture, women and political participation, and the role of the UN in enhancing periodic and genuine elections and democratisation**.

The Arab Spring also resulted in an important shift in the behaviour of certain States undergoing transition. Both Tunisia and Libya shifted their positions this session to vote in favour of resolutions on the situation of human rights in specific countries (**Myanmar, Iran, and the Democratic People's Republic of Korea (DPRK)**). However, Egypt continued to act in a contradictory manner, maintaining its pre-revolution position against country-specific resolutions, but ultimately succumbing to pressure and voting in favour of the resolution on Syria. On thematic resolutions, Egypt appeared to struggle between pushing old 'hard-line' positions without the authority and influence it used to command,<sup>2</sup> and shifting to a more progressive stance on some issues. In a welcome move, Egypt joined Libya and Tunisia in objecting to the removal of language on the role of youth during political transitions in a resolution on **policies and programmes involving youth**.<sup>3</sup>

Other positive developments included increased attention paid to reprisals in the torture resolution<sup>4</sup> and at a high-level side event attended by the Secretary-General and the High Commissioner for Human Rights. The General Assembly (GA) also maintained positive gains made by the Human Rights Council (the Council) in 2011, dropping a polarising text on defamation of religions, and moving instead towards a consensus text on **religious intolerance**.<sup>5</sup> A significant change in the voting pattern on the previously polarising resolution on **follow-up to the Durban Declaration and Programme of Action** may signal improved cooperation between the Group of 77 and the European Union (EU) on how to address racism. Two standard setting instruments were adopted without controversy: the *Declaration on Human Rights Education and Training*,<sup>6</sup> and a third optional protocol to the *Convention on the Rights of the Child*.<sup>7</sup>

Despite these positive trends, the Third Committee meetings (October - November 2011) were not without their challenges. The session saw the coalescing of an unofficial group of hard-line States, known to others as the Group of 11 or G-11,<sup>8</sup> which first emerged during the review of the Council by the GA in the first half of 2011. Though hardly homogeneous in their positions on all issues, G-11 members appear to be united by an anti-civil society agenda and a drive to curtail the independence of the special procedures. Though the positions taken came as no surprise, the intensified coordination between members and pseudo-burden sharing in negotiations required sustained work and new strategies on the part of more progressive States.

1 A/RES/66/176.

2 For example, Egypt was behind a resolution on the Human Rights Council report, which contained language deriding some of the Council's recommendations. Though the resolution was sponsored by the African Group, apparently the text was tabled without consulting all its members. Following a poor reception in the Third Committee, the African Group amended the offending language. See section in this article on budgetary and institutional matters.

3 A/RES/66/121.

4 A/RES/66/150.

5 <http://bit.ly/xMqXXO>.

6 A/RES/66/137.

7 A/RES/66/138.

8 Syria, Russia, China, Cuba, Yemen, Venezuela, Pakistan, Iran, Nicaragua, Belarus, and Vietnam.

This year the battleground over the independence of UN mandate holders appeared to shift away from interactive dialogues with States to the text of resolutions. In particular, the Special Representative of the Secretary-General on Children and Armed Conflict, Ms Radikha Coomaraswamy, was targeted in both the resolution on the Rights of the Child and a new Thai initiative on **strengthening of the coordination of the UN system on child protection**.

Another negative trend worth noting was the increase in attacks on civil society and non-governmental organisations (NGOs) in resolutions, including on **human rights defenders**, and the **High-level Meeting of the GA on the realisation of the Millennium Development Goals (MDGs) for persons with disabilities**.

### COMMITTEE STRIVES FOR RELEVANCE IN CONTEXT OF ARAB SPRING

The Third Committee referred to current events in the Arab world in several thematic resolutions. Despite sharp opposition, the biannual **human rights defenders resolution**<sup>9</sup> calls on States to 'ensure that human rights defenders can perform their important role in the context of peaceful protests' and implies the role of social media by recognising that 'new forms of communication can serve as important tools for human rights defenders'. The resolution also includes strong language on the State's role in protecting human rights defenders from specific violations in the context of peaceful protests, including the excessive and indiscriminate use of force, arbitrary arrest and detention, and abuse of criminal and civil proceedings or threats of such acts. Though these timely references are notable achievements, it is regrettable that detractors were able to gain additional references in the 2011 text to the requirement that human rights defenders operate in the framework of national legislation.<sup>10</sup> 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 often is not in line with international human rights law.

The session's **resolution on torture**<sup>11</sup> mentions current events by expressing deep concern at acts that can amount to torture and other cruel, inhuman or degrading treatment or punishment committed against 'persons exercising their rights of peaceful assembly and freedom of expression'.

A **resolution on women and political participation**<sup>12</sup> includes numerous references to situations of political transition. Despite staunch resistance from several States,<sup>13</sup> the US-sponsored resolution was adopted by consensus. Notably,

9 A/RES/66/164.

10 China, Russia and Iran.

11 A/RES/66/150.

12 A/RES/66/130. This resolution was last seen at the GA in 2003, A/RES/58/142.

13 Syria, Russia, China, Cuba, Yemen, Venezuela, Pakistan, Iran, Nicaragua, Belarus, and Vietnam.

the new language was supported by States currently undergoing significant transitions, including Egypt, Libya and Tunisia.

Lastly, the biannual resolution on **the role of the UN in enhancing periodic and genuine elections and the promotion of democratisation** included new language highlighting the importance of fair, periodic and genuine elections in 'new democracies and countries undergoing democratization'.<sup>14</sup>

### COUNTRY-SPECIFIC RESOLUTIONS

Despite 'in principle' objections raised by the Non-Aligned Movement (NAM) and others (DPRK, China, and Kazakhstan) to the consideration of any country-specific resolutions by the Third Committee, the GA adopted four such texts at the 66<sup>th</sup> session, mostly with large margins.<sup>15</sup>

Only the resolution on **Syria** faced a no-action motion<sup>16</sup> in the Third Committee, which was defeated by an overwhelming majority of 118 to 20, with 29 abstentions. Only the resolution on **Iran** faced a no-action motion in the GA Plenary, which was defeated 100 to 35, with 42 abstentions. The sustained progress against no-action motions in the GA is encouraging; especially considering a no-action motion on Iran was defeated by only one vote as recently as 2007 and by two votes in 2006.<sup>17</sup>

In the case of Iran and the DPRK, the votes in favour of the resolutions increased from 2010.<sup>18</sup> Unfortunately, the resolution on Myanmar had two fewer 'yes' votes in 2011. However, the margins increased from the last session for all.<sup>19</sup>

The resolution on **Syria** passed with the largest margin of 'yes' to 'no' votes (a 122 vote difference). It was marked by strong regional support with Bahrain, Jordan, Kuwait, Morocco, Qatar, and Saudi Arabia cosponsoring, and no Arab country voting against it. Russia and China, which vetoed an earlier Security Council resolution on Syria, abstained from the vote despite opposing all other country-specific resolutions. At the time of writing, the Security Council is meeting to discuss a resolution tabled by Morocco, which calls for an end to the violence in Syria and supports the Arab League's Action Plan of 2 November 2011 and its decision of 22 January. This includes calling for Mr Bashar Al-Assad to cede power to his

14 A/RES/66/163.

15 The vote in the GA plenary on the DPRK resolution was 123 in favour, 16 against, with 51 abstentions; on Iran, 89 in favour, 30 against, with 64 abstentions; on Myanmar, 83 in favour, 21 against, with 39 abstentions; and on Syria, 133 in favour, 11 against, with 43 abstentions.

16 A no-action motion is a procedure that prevents member States at the UN from continuing to debate a resolution. It allows countries to avoid taking a position on politically sensitive issues, such as human rights in specific countries, and allows the country in question to escape scrutiny.

17 In 2006, the vote on the no-action motion was 75 in favour, 77 against, 24 abstentions, and in 2007 it was 78:79:24.

18 Comparing this session's plenary votes to the last's, the resolution on Iran gained 11 additional 'yes' votes, and the resolution on the DPRK gained 17.

19 <http://bit.ly/xMqXXO> and <http://bit.ly/zQwCWw>

vice president, who would help form a unity government that would prepare for elections.

Ultimately, the increased support for country-specific resolutions, coupled with dwindling opposition and the groundbreaking resolution on Syria, beg the question whether to expect additional resolutions on unfolding country-specific situations from the GA in future years. The other possibility is that the increased support was a 'one-off', given the extraordinary events of 2011. Unfortunately, regardless of political will and/or the situation of human rights in a country, the significant resources required of a sponsor to run a successful country-specific resolution is sure to weigh heavily in any future decisions.

## HUMAN RIGHTS DEFENDERS

Negotiations on the human rights defenders resolution demanded significant time and energy from co-sponsors, and produced mixed results.<sup>20</sup> The initially strong text lost some bite during the negotiations, and States critical of human rights defenders blocked important new language. The main controversy revolved around the role of defenders in peaceful protests. Co-sponsors were split on whether to put the text up for adoption without the reference to national legislation, and thus face the possibility of a hostile amendment from the Third Committee floor with similar or worse language.<sup>21</sup> In the end Norway (the main sponsor) included the reference to national legislation in the final text put forward for adoption. This decision was made despite the fact that a vote on a hostile amendment would likely have ended in a defeat for the hardliners.

Significant concessions were made in other provisions. Language from Human Rights Council resolution 13/13, recognising the importance of an 'enabling environment' for human rights defenders<sup>22</sup> was dropped in the face of pressure to include a national legislation reference.<sup>23</sup> Reflecting the ongoing argument about whether journalists can meet the definition of 'human rights defenders', language referring to journalists was removed from a new preambular paragraph expressing grave concern for the 'targeting of human rights defenders for reporting and seeking information on human rights violations'.<sup>24</sup> The title of the resolution was modified to include

20 The resolution's full title is the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*. It was sponsored by a cross-regional group of 77 States. A smaller number of co-sponsors were active in negotiations, including US, EU and Mexico. The co-sponsors' new proposals were consistently blocked by China, Russia, Singapore, Iran, Egypt, and Pakistan, which were backed by Cuba, Venezuela, and Syria.

21 One looming threat was that China would propose an amendment seeking to add 'lawful' to peaceful protests.

22 Operative Paragraphs (OP) 2 and 4.

23 OP3 of HRC 13/13 in fact also includes language on national legislation, with the qualifier 'consistent with the Charter of the United Nations and international human rights law.'

24 An earlier draft expressed grave concern about 'reports that human rights defenders, including journalists, are often targeted for investigating, monitoring and reporting on human rights abuses.'

'promotion' of human rights, although a proposal to also add the word 'implementation' was rejected by G-11 States.

In the future, sponsors and stakeholders may need to carefully consider whether the gains made in the resolution outweigh the losses, and decide whether the price of consensus is becoming too high. Co-sponsors could commit to a substantially strengthened resolution, and refuse to fold to pressure from a few hardliners that seek to restrict the activities of human rights defenders, even if it means a paragraph (or the resolution) will be voted upon.

## NEW INITIATIVES AND TROUBLING TRENDS

### Threats to the independence of human rights mandate holders

This session saw several new initiatives, including a resolution by Thailand on **strengthening of the coordination of the UN system on child protection**.<sup>25</sup> This initiative was widely viewed as a rebuke of the Special Representative of the Secretary-General for Children and Armed Conflict, Ms Coomaraswamy, for mentioning Thailand in her annual report on the same subject.<sup>26</sup> Framed by Thailand as an initiative to strengthen the UN child protection system, the resolution came across to many States and NGOs as a thinly-veiled attempt to undermine the independence of mandate holders working on child protection through a new evaluation mechanism and a focal role for UNICEF in coordination. In the end, a much watered-down text was adopted by consensus. A number of States<sup>27</sup> expressed concern at the dishonest intent of the resolution.

The controversy also spilled into the **rights of the child** resolution, where the resolution's sponsors succumbed to pressure from Thailand and other States that objected to the extension of Ms Coomaraswamy's mandate from the usual three years to four. An initial draft was revised to merely 'recognise' rather than 'take note with appreciation' of the work of Ms Coomaraswamy's office. Despite these concessions, Pakistan proposed an amendment that all mandate holders perform their functions in 'strict observance of their mandates upholding the principles of impartiality, objectivity and non-selectivity, as well as avoiding politicisation.' The amendment was defeated by a vote: 78 against, 48 in favour, 21 abstentions. The plenary later adopted the resolution without a vote.

There were concerns that the report of the Special Rapporteur on the right to health, which links decriminalisation of abortion to the right to health, would provoke criticism from numerous States and would result in attacks on the Special Rapporteur's independence in his dialogue with

25 A/RES/66/139.

26 A/65/820-S/2011/250.

27 The US, Norway on behalf of Lichtenstein and Switzerland, Poland on behalf of the EU, Costa Rica, and Chile.

the Third Committee. However, the report was received surprisingly positively.<sup>28</sup>

### Nordics run procedural resolutions on CEDAW/ International Covenants

Resolutions have traditionally been brought in the GA on the topic of treaty bodies to raise awareness about key developments in relation to the treaty bodies, such as the adoption of new optional protocols and general comments. This session, Sweden (on behalf of Nordic countries) tabled much shorter 'temporary' procedural resolutions on the Committee on the Elimination of Discrimination against Women (CEDAW) and the International Covenants on Human Rights.<sup>29</sup> Running temporary, procedural texts is said to give States time to reflect on the purpose of the biannual resolutions and how they may continue to fulfil the original objectives, including increasing ratification of the conventions and the optional protocols, and minimising the number of reservations. The ongoing treaty body reform process may also inform the direction of a substantive resolution in future years.

In reality, the resolutions on treaty bodies have achieved few concrete gains in recent years and have become dangerous battleground on contentious issues. In that regard, the move to streamline the resolutions was an important strategy to avoid the controversy that befell the International Covenants resolution when it was put to a vote in 2009, for the first time in its forty-year history. This was in part because it sought to 'take note' of General Comment No.20 of the Committee on Economic, Social and Cultural Rights on non-discrimination.<sup>30</sup>

Both the resolutions on CEDAW and the International Covenants risked facing similar opposition this session, as both CEDAW and the Human Rights Committee recently produced general recommendations/comments that engendered opposition.<sup>31</sup>

28 See <http://bit.ly/rNTZKo>. Several NGOs that described the report as a 'milestone in the struggle for the full realisation of the right to health for all', were active in advocating for a positive outcome. Supporters included the EU, Netherlands, Switzerland, Norway, US, Belgium, Sweden, Finland, Denmark, and South Africa. Egypt, Swaziland and Chile reacted more negatively. The Holy See rejected the report.

29 The International Covenants resolution covers the work of both the Human Rights Committee (which monitors the implementation of the *International Covenant on Civil and Political Rights*) and the Committee on Economic, Social and Cultural Rights (which monitors the *International Covenant on Economic, Social and Cultural Rights*).

30 General Comment No.20 on 'Non-discrimination in economic, social and cultural rights (Art.2, Para.2)', Para. 32 provides that State Parties should ensure that neither a person's sexual orientation nor their gender identity can be used as a barrier to their enjoyment of Covenant rights. For a more detailed account of the deliberations, visit <http://bit.ly/xr5XmW>.

31 CEDAW General Recommendation No. 27 on older women (CEDAW/C/GC/27), and CEDAW General Recommendation No.28 on the core obligations of States Parties under Article 2 of the *Convention on the Elimination of Discrimination against Women* (CEDAW/C/GC/28), both reference discrimination on the basis of sexual orientation and gender identity. Human Rights Committee General Comment No. 34 of Article 19: 'Freedom of opinion and expression' (CCPR/C/GC/34), stipulates that blasphemy laws are incompatible with the *Covenant on Civil and Political Rights*, except in specific circumstances.

While the 2011 resolutions do not draw specific attention to the controversial texts, the resolutions 'welcome' the annual reports that contain the general recommendations/comments produced that year.<sup>32</sup> In the case of CEDAW, the effect is thus to welcome General Recommendations 27 and 28.<sup>33</sup> Due to bureaucratic delays, the report of the Human Rights Committee to the 66<sup>th</sup> GA was not available in time for the adoption of the International Covenants resolution. Therefore, the resolution only welcomes the report by the Human Rights Committee to the 65<sup>th</sup> GA, leaving General Recommendation No. 34 without explicit welcoming by the GA.

### India, Brazil and South Africa (IBSA) 'group' makes its Third Committee debut

A new resolution on **the universal, indivisible, interrelated, interdependent and mutually reinforcing nature of all human rights and fundamental freedoms** was most notable for its main sponsors: India, Brazil and South Africa, otherwise known as the 'IBSA' countries.<sup>34</sup> As three emerging countries or 'middle powers', IBSA are increasingly coordinating on matters such as climate change, sustainable development and UN Security Council reform, 'determined to contribute to the construction of a new international architecture'.<sup>35</sup> As IBSA are most recently notorious for abstaining on a Security Council resolution on Syria in October 2011, some States and NGOs feared what might result from the group's joint action in the Third Committee. Regardless of whether the resolution was designed more for posturing than to achieve concrete objectives, in the end the text was adopted by consensus; this was despite comments by Switzerland and Poland (on behalf of the EU) during the text's adoption that expressed concern about its overemphasis on the right to development.

### Egypt abandons initiative on human rights and information technology

One negative possibility that never eventuated was an Egyptian resolution on **human rights and information technology**. Apparently Egypt wanted to highlight the negative use of media, including for anti-Islamic purposes, and in that regard included obligations for media in its draft text. Though the draft text was shared with a select cross-regional group of States, it was never discussed in informals, nor was it tabled. Several delegations expressed concern about any language limiting freedom of expression, especially in the current context of media crackdowns across the world. The US was especially adamant not to lose ground achieved through the US/Egypt co-sponsored resolution on freedom of expression, adopted at the Human Rights Council.<sup>36</sup> A similar resolution on freedom of expression had apparently been planned for

32 Because the resolutions are biannual, normal practice is to consider the reports of both the current and previous year (in this case the annual report to the 66<sup>th</sup> and 65<sup>th</sup> General Assembly).

33 A/66/38(Supp.).

34 A/RES/66/151.

35 [www.ibsa-trilateral.org](http://www.ibsa-trilateral.org).

36 A/HRC/RES/12/1.

the 18<sup>th</sup> session of the Council in September 2011, but negotiations broke down due to Egypt's approach to media freedom. A Uruguayan-sponsored GA resolution met a similar fate in July 2011, this time due to calls by Russia and Syria for 'responsible' freedom of expression.<sup>37</sup> Clearly, the issue is far from settled, there is concern the Egyptian resolution will reappear at the Human Rights Council in coming sessions.

### 'G-11' unite to restrict civil society access at UN headquarters

In the human rights defenders resolution, the so-called 'G-11' States focused their energy on including language on restricting defenders' activities to those allowed under national legislation. They also united in limiting civil society access and participation at the international level.<sup>38</sup> In negotiations for a **high-level meeting of the General Assembly on the realisation of the MDGs for persons with disabilities**, set to take place in 2013,<sup>39</sup> the group pushed for the inclusion of the 'no-objection' rule in procedures for selecting civil society participants, which allows States to object to an NGO's participation. A concerning aspect of this process is that States can anonymously object to an NGO, without giving the rejected organisation a reason for the denial or a chance to contest the decision.<sup>40</sup> However, EU attempts to introduce an element of transparency to the procedure were blocked.<sup>41</sup> The final language of the resolution on the high-level meeting is vague. It provides more details on the GA's role in the NGO selection process, but ultimately does not change the no-objection practice.

Historically, civil society, and in particular, organisations representing persons with disabilities, have enjoyed good participation and broad access to UN inter-governmental processes related to disability. It was therefore particularly disappointing that States were unable to draw on these precedents to bridge their differences on the no-objection rule. Unfortunately, this reflects the general state of affairs at UN headquarters, where access by NGOs to UN buildings and meetings has become increasingly restrictive over recent years. Despite rhetoric supporting the vital role that civil society plays within the UN, several States consistently flout basic

37 Informals for 'International Day of Freedom of Expression' under GA agenda item 15: Culture of Peace.

38 China appeared to take the lead for the group in these negotiations, backed up by Pakistan.

39 A/RES/66/124.

40 The same rule was applied to the selection of NGOs for the September 2011 high-level meeting of the GA to commemorate the 10<sup>th</sup> anniversary of the adoption of the Durban Declaration and Programme of Action. Controversy had flared at the meeting when one organisation was denied access without a fair process.

41 For example, language requesting the GA to 'consider' the final list was rejected. China and others also dismissed a suggestion to use the much broader list of civil society representatives that had participated in the Ad Hoc Committee for the *Convention on the Rights of Persons with Disabilities*, in addition to the ECOSOC-accredited NGO list. The suggestion that organisations only be required to go through the no-objection vetting process, and a proposal for a civil society representative to co-chair some of the roundtables were also rejected.

principles of accountability, transparency, and due process. This is particularly true in the Economic and Social Council (ECOSOC) Committee on NGOs that deals with applications for accreditation to ECOSOC, and where governments play 'gatekeeper' to NGOs seeking to engage with the UN.

### INCREASED ATTENTION ON REPRISALS AGAINST DEFENDERS

Building on the 2010 reprisals language in the resolution against torture,<sup>42</sup> this session's resolution<sup>43</sup> featured additional language stressing that national legal systems must ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment, obtain redress without suffering any retribution for bringing complaints or giving evidence, and have access to justice.

The issue of reprisals also received attention during a side event on 'Stopping reprisals for cooperating with the United Nations in the field of human rights'.<sup>44</sup> The panel discussion involved ISHR, the Secretary-General, the High Commissioner for Human Rights, the Special Rapporteur on human rights defenders, and a former Special Rapporteur on extrajudicial, summary or arbitrary executions. The event highlighted that reprisals affect the credibility of the UN, deterring defenders from cooperating and providing information, thereby compromising its ability to respond effectively.

### BUDGETARY AND INSTITUTIONAL DEVELOPMENTS

#### General Assembly split on Human Rights Council report

The Third Committee addressed several recommendations of the Human Rights Council's report through separate resolutions, including two standard setting instruments. The Committee also considered a general resolution on the report, a process that generated some controversy. The African Group-sponsored resolution initially noted with concern some of the recommendations contained in the Council's report, without referring to any particular resolution or decision. Co-sponsors from other regional groups pushed for more neutral language that would not send a negative message to the Council. The final resolution, which was adopted with 122 in favour to 3 against (Belarus, Syria and DPRK), and with 59 abstentions, 'notes the report ... and its recommendations.' Most of those abstaining expressed that the General Assembly Plenary, and not the Third Committee, should consider the report. Several States that voted in favour of the resolution qualified their positions by citing the 'politicisation' and double standards within the Council, particularly on country-specific resolutions.<sup>45</sup>

42 A/RES/65/205 para 9.

43 A/RES/66/150.

44 See <http://bit.ly/q7FhH0>.

45 <http://bit.ly/xMqXXO>.

Ongoing debates on sexual orientation and gender identity surfaced in discussions on the Human Rights Council's resolution on the issue.<sup>46</sup> Several States expressed concern at the Council's request that the High Commissioner oversee a study and convene a panel on discriminatory laws and acts of violence against individuals based on their sexual orientation and gender identity.<sup>47</sup> While a few States voiced their support for the Council's initiative,<sup>48</sup> others registered their concern about its focus on 'sexual preferences' and notions that they felt were 'undefined'.<sup>49</sup>

### Russian initiative usurps High Commissioner-led treaty body reform

A report on treaty body strengthening<sup>50</sup> was considered by the GA. The report proposes a system whereby the resources needed by the treaty bodies would be reviewed periodically, instead of relying on ad-hoc requests for additional meeting time.<sup>51</sup>

Although States examined treaty body reform during the interactive dialogue with the High Commissioner for Human Rights and in a side event, the Third Committee did not formally address the report through a resolution. However, in January 2012, following up on its complaint to the High Commissioner<sup>52</sup> that States had not been properly consulted during the High Commissioner-led Dublin process on treaty body reform, Russia attempted to initiate a new inter-governmental process on treaty body reform.<sup>53</sup> Given the High Commissioner-led process has yet to conclude, some States<sup>54</sup> expressed reservations about the initiative's timing.<sup>55</sup> Others showed enthusiastic support.<sup>56</sup>

46 Resolution 17/19. See <http://bit.ly/xdNnLL>.

47 Russia and Pakistan.

48 US and Israel.

49 The African Group and the Holy See.

50 Report of the Secretary-General on measures to improve further the effectiveness, harmonization and reform of the treaty body system (A/66/344).

51 As they did in 2010, several treaty bodies requested additional meeting time, including the Committee on the Rights of the Child and the Committee on Rights of Persons with Disabilities. Only the latter was granted one week of additional meeting time.

52 Russia made this point during the interactive dialogue with the HCHR in the Third Committee

53 At the time of writing in January 2012, informals were underway to discuss the establishment of a working group on treaty body reform.

54 The EU and Switzerland.

55 A consultation on treaty body strengthening began in Dublin in November 2009, and progressed with meetings with different stakeholders in Marrakech, Poznan, Seoul, Sion, and Pretoria. Further consultations on treaty body strengthening took place in October 2011 and a wrap-up meeting was held in Dublin in November. The High Commissioner for Human Rights, Ms Navi Pillay, is scheduled to present her report compiling the various proposals in early 2012, with consultations to take place in Geneva and New York. For more information see <http://bit.ly/ifOFot>.

56 China, Belarus and Syria. The Caribbean and African groups may also support the initiative as they often view New York-centred UN processes as providing greater opportunities for their engagement. This is despite the fact that the Dublin process is open to all Member States and consultations are due to be held in 2012 in Geneva and New York.

The Third Committee also rectified the long-standing issue of the lack of uniformity in reporting by treaty body chairpersons. In previous years, the GA had omitted to invite the Chair of the Human Rights Committee, among others, and had only requested the Chair of the Committee on the Rights of the Child to present an oral report. The GA addressed this disparity by inviting all chairpersons to present reports and engage in interactive dialogues at the 67<sup>th</sup> session of the Third Committee in late 2012.

### OHCHR budget

Despite the Secretary-General's call for budget reductions across the UN Secretariat for 2012-13, the Office of the High Commissioner for Human Rights (OHCHR) requested an increase relative to the 2010-2011 budget. This left Member States in the Fifth Committee, which deals with UN budgetary matters, weighing the call for uniform cuts against the factors that have led to the need for an OHCHR budget increase. These include the expansion of the UN human rights machinery over recent years, such as the quasi-standing nature of the Human Rights Council, the Universal Periodic Review, and the new treaty bodies, which have led to a massively increased support role for OHCHR. Without commensurate budget increases to accompany the additional workload, an undue burden had been imposed on the Office. Another consideration was that OHCHR's budget remains small compared to the other main pillars of the UN: development and security. In her dialogue with the Third Committee, the High Commissioner for Human Rights,<sup>57</sup> Ms Navi Pillay described the three percent of the total UN budget allocated to OHCHR as 'scandalous', saying the financial management and planning 'cannot continue at this pace.' In the end, OHCHR did receive an unknown increase,<sup>58</sup> while the overall UN budget took a five percent cut. This is only the second time in 50 years that the UN budget has declined over the previous one.

The Fifth Committee also considered a report of the Secretary-General on options for financing 'unforeseen and extraordinary expenses' of the Human Rights Council.<sup>59</sup> Until now, OHCHR was forced to carry out unforeseen tasks, such as fact-finding missions, by diverting funds away from other activities, due to the lack of a clearly-defined procedure to assess and approve resources for 'unpredictable' Council decisions. During the GA's review of the Council, some States<sup>60</sup> had proposed the creation of a 'contingency' mechanism for unexpected expenses,<sup>61</sup> which would be managed by the Secretary-General. However, this did not find broad

57 <http://bit.ly/zDj9ci>.

58 It appears OHCHR received USD 142,743,800 in the overall 2010-2011 budget (A/RES/64/244 A-C) and USD 154,315,400 in the overall 2012-2013 budget (A/C.5/66/L.20), representing an approximate increase of 8 percent. However, it is not yet clear how a further USD 17 million cut called for across the UN for 2012-2013 will affect OHCHR.

59 A/66/558.

60 Kazakhstan, Peru, Mexico, Chile, Iceland, and Switzerland.

61 The type of mechanism the Security Council uses for 'unforeseen and extraordinary' activities that fall under the need to maintain peace and security.

support because many States preferred that budgetary decisions remain in the inter-governmental forum of the Fifth Committee. The GA postponed addressing the issue during the Council review process, and instead requested the Secretary-General to provide the aforementioned report to its Fifth Committee in the GA's 66<sup>th</sup> session. To the surprise of many, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) shared in its review of the report that there is already a procedure for financing unforeseen expenses (not related to peace and security). This applies to expenses for which no provision has been included in the approved programme budget and for which the Secretary-General cannot await the approval of the GA.<sup>62</sup> The ACABQ said this mechanism does not appear to have been utilised since the establishment of the Human Rights Council.

The ACABQ therefore concluded that the proposal to change the 'current' arrangement is premature, suggesting that the GA maintain the existing procedure. It also recommended that the GA not take action on the Secretary-General's report, and instead request the Secretary-General to report back at the 68<sup>th</sup> session of the GA in 2013, on the utilisation of the existing procedure. Though some delegations, including the EU and Norway, agreed with the recommendation, others (G77) preferred to defer the consideration of the issue. Cuba in particular said a discussion was needed but disagreed with the ACABQ recommendation. In the end, further discussion was deferred to March 2012.

### Adoption of a new complaints mechanism for children's rights violations

On 19 December 2011, more than twenty years after the adoption of the Convention on the Rights of the Child (the Convention), the General Assembly took a landmark step for children's rights and adopted a new optional protocol on a communications procedure (the Protocol).<sup>63</sup> The new Protocol allows children and their representatives to submit complaints to the Committee on the Rights of the Child (the Committee) about child rights violations.<sup>64</sup>

The adoption marks the end of the drafting process that started at the Human Rights Council in 2009 and involved more than 70 States, several regional organisations, UNICEF, the Committee, national human rights institutions, child ombudspersons, and civil society.<sup>65</sup>

This long-awaited instrument effectively puts children's rights on an equal footing with other human rights, as it recognises that children too have the right to appeal to their specific international mechanism. The Committee on

the Rights of the Child was the only treaty body deprived of this competence so far. The new Protocol therefore completes the UN human rights framework by providing the Committee with the power to receive and examine allegations of violations under the Convention, the OPSC and the OPAC, committed by a State party to the Protocol if it has ratified the respective text.<sup>66</sup>

Fifty-six States from all regions, including States that have not yet accepted any existing communications procedure,<sup>67</sup> expressed their formal support for this new instrument.<sup>68</sup>

While the final outcome fails to explicitly include all the innovations called for to address the specific status of children,<sup>69</sup> the *chapeau* provision in Article 2 offsets this by enabling the Committee to interpret the Protocol in light of the best interests of the child and to take into account the views of the child complainant. The Committee also has *carte blanche* to guarantee the communications procedure is child-sensitive and prevents the manipulation of the child by those acting on his or her behalf.<sup>70</sup> These practical aspects of the Protocol will be found in a new set of rules of procedure, which the Committee is expected to discuss and draft in 2012.

The Protocol will be opened for signature and ratification at an official ceremony in 2012 and will enter into force upon ratification by at least ten Member States.

The coalition of 80 international and national NGOs established under the NGO Group for the Convention on the Rights of the Child, which campaigned for the establishment of a communications procedure for child rights, will now become an international coalition for the widespread ratification and effective use of the new Protocol. All interested organisations are invited to join. For more information please contact Anita Goh at [goh@childrightsnet.org](mailto:goh@childrightsnet.org). ■

62 A/66/7/Add.16.

63 For the final text of the Optional Protocol, see <http://bit.ly/yZybyqm>.

64 See resolution A/RES/66/138.

65 For more information on the drafting process, see <http://bit.ly/hpoB3G>.

66 See Article 1 of the Protocol at <http://bit.ly/yZybyqm>.

67 Such as Japan, Jordan, Kenya, and the US. The US is also one of the three States that has not yet ratified the Convention.

68 See resolutions A/HRC/RES/17/18 and A/RES/66/138.

69 For more detail on key provisions of the Protocol, see <http://bit.ly/peiM8o>.

70 See Article 3 of the Protocol at <http://bit.ly/yZybyqm>.