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MARIYA STOYANOVA

The UN Human Rights Council (also referred to as the HRC or the Council) convened for its 7th session from 3 to 28 March 2008. In its work during this session, the Council: considered 36 resolutions, 25 of which (or approximately 70%) were adopted by consensus and without a vote; appointed the 18 members to constitute its new Advisory Committee; appointed also 16 new Special Procedures mandate-holders; and considered the work of the OHCHR among others. In her address to the HRC, the UN High Commissioner for Human Rights, Louise Arbour, announced her deliberate decision not to seek a second term with the expiration of her present mandate. Rather than seeking to provide a comprehensive overview of the Council's work accomplished throughout the entire session, the present report will concentrate only on the main political developments observed by the author. For more detailed information and comprehensive summaries FES recommends the websites of the *OHCHR* (www.ohchr.org) and the *International Service for Human Rights* (www.ishr.ch). Background to the institutions of the HRC is given in the Handbook "A New Chapter for Human Rights and FES Occasional Paper 33, "Building the New Human Rights Council"; both available on www.fes-geneva.org.

Political Commitments during the High Level Segment

The HRC opened its seventh session with a High Level Segment (HLS) during which 67 dignitaries, including one Vice-President (Columbia) and a number of Ministers, presented their respective positions on issues relating to the work of the Council and to human rights in general. Several dignitaries used this as an opportunity to announce their country's intention to table resolutions during the upcoming plenary session, notably Mexico (protection of human rights in the fight against terrorism; human rights of persons with disabilities), Azerbaijan (rights of missing persons and their families), Canada (freedom of opinion and expression; violence against women), Peru (human rights and extreme poverty), Greece (human rights and climate change).

Many dignitaries expressed their position on specific rights and treaties; and/or shared their plans for marking the 60th anniversary of the Universal Declaration of Human Rights (UDHR). Many also referred to the human rights situation in their own country and/or those in other countries. Judging by the replies of concerned states, among the last group Sweden appeared to have touched upon the most sensitive country issues by making direct reference to human rights in Myanmar, the DPRK, Somalia, Ethiopia, Sri Lanka and Sudan among others. A number of OIC (the Organisation of the Islamic Conference) members alluded to "double standards" with regard to the application of the freedom of expression and voiced concerns over growing islamophobic sentiments. Western societies were said to have

waged a "campaign against Islam"¹ and it was demanded that respective governments adopt the necessary measures to deter the alleged practice of "tarnishing the image of Islam and Muslims"². These sentiments were voiced again towards the very end of the session and succeeded in influencing the renewal of mandate of the Special Rapporteur on the freedom of expression (*see details below*).

Several heads of inter-governmental organizations also addressed the HRC during the HLS - Ban Ki-moon, Secretary General of the United Nations, and Terry Davis, Secretary General of the Council of Europe (CoE) among others. Ban Ki-moon reminded the Council of the high expectations placed in it by the international community and promised his unconditional support for the young body provided that it tackled the important issues on its agenda for the next months. Terry Davis additionally prioritized several issues which he wanted to see addressed in the Council's work³: the protection of human rights in the context of the fight against terrorism, the issue of the United Nations and European Union blacklists, the abolition of the death penalty, the trafficking in human beings, and the human rights protection gaps in Kosovo (regardless of its status). With the approach of the 60th

¹ H.E. Mr. Zaid bin Abdul Muhsin Al-Hussain Vice-Minister for Human Rights of Saudi Arabia before the Seventh Session of the Human Rights Council on 5 March 2008.

² H.E. Mr. Manouchehr Mottaki, Minister of Foreign Affairs of the Islamic Republic before the Seventh Session of the Human Rights Council on 4 March 2008.

³ Speech by the Right Hon Terry Davis, Secretary General of the Council of Europe, United Nations Human Rights Council, Geneva 4 March 2008.

anniversary of the UDHR (to be celebrated on 10 December 2008), many non-state actors look up to the HRC in its capacity of the UN platform for decision-making in the area of human rights, hoping it would provide guidance to the international community and a breakthrough on particular human rights issues.

HRC's Relationship with the High Commissioner for Human Rights

Under the General Segment following the HLS a number of countries and political blocks, notably the Arab Group and OIC⁴, made statements that they would like to see the work of the OHCHR reviewed by the Council with regard to the level to which it satisfied its mandate and expectations. The Office was challenged on several specific issues such as the recently-released Strategic Management Plan (SMP) for 2008-2009, the OHCHR's transparency in financial and budgeting matters, its geographic composition, the regional balance of its field operations, and its provision of technical assistance. Demands were made by the OIC and the African Group (among others) for redefining the Council's relationship with the OHCHR and interpreted by observers as aiming to limit the essential independence and integrity of the Office.

In her annual report to the HRC, Louise Arbour, UN High Commissioner for Human Rights (HC), announced her decision not to seek reappointment with the expiration of her present term (end June 2008) and elaborated on the above-mentioned issues:

- The *SMP* was essentially the HC's own managerial initiative to ensure that the OHCHR stayed on course with the 5-year broadly defined set of priorities defined under the "Plan of Action" she presented upon the request of the UN Secretary General for the preparation of his report "In Larger Freedom". The *SMP* did not originate in any organizational rule or mandate and was therefore not subject to review by the HRC. The HC additionally remarked that the Council had the same authority over the OHCHR as the former Commission and this did not include programme planning and management.
- Regarding the *geographic composition* of the OHCHR, the HC noted that while

this had been a point of continuous criticism over the last years, the Office had not received clear targets as to what that should be. With the exception of two regions – Asia and the Eastern Group, the geographical balance of the OHCHR was not "dramatically different" from that of the Secretariat as a whole. Furthermore, the office had shown steady and continuing progress over the past year towards improving this balance.

- With regard to *field presences*, the HC explained that the OHCHR country engagement was not limited to country presences only. A good proportion of the presences was in fact peace-keeping missions (18 out of 49) and consequently mandated by Security Council resolutions. The remaining were human rights advisers (essentially demand-driven deployments) and country and regional officers (resulting from voluntary bilateral agreements). As for the alleged neglect of the OPT (Occupied Palestinian Territories), the HC commented that it was actually "the most resourced" of OHCHR's presences in the region.
- With regard to *technical cooperation and capacity building*, the HC explained that the Office had engaged in increased inter-agency cooperation, particularly in the area of economic, social and cultural rights. As for the voluntary trust funds for technical cooperation and for the UPR (the Universal Periodic Review), the OHCHR hoped that priority would be given to ensure the follow-up to the UPR conclusions and recommendations, first and foremost to assist the least developed countries but later also to support a variety of other initiatives.

On a more positive note, a number of states expressed their regret about the HC's decision to leave her post of head of the OHCHR, pledged their support for the Office, and defended its institutional independence from the Council asserting that there were no legal reimits to discuss certain areas of its work. Unfortunately, sharp contrasts between the political block formations at the HRC resurged already in its first days of work and may have inhibited the possibility for constructive dialogue on certain issues.

⁴ Palestine on behalf of the Arab Group, 5 March 2008.

Follow-up to HRC Resolution 5/1 on the Institution-Building Package

Given the significance of HRC's institution building phase for identifying the working modalities and the Council's actual capacity to improve institutionally on the achievements of the former Commission on Human Rights, it is of particular importance to civil society observers to follow closely the practical realization of the so-called Institution-Building Package. Given that the Council devoted much of its attention to institution-building work over this session, the present report will elaborate on how the HRC dealt with important institution-building tasks and what this means for the international human rights system.

Advisory Committee (AC) Elections

As mandated by HRC resolution 5/1 (Institution-Building Package), the Human Rights Council is charged with the establishment of an Advisory Committee (AC) to "function as a think tank for the Council and work at its direction". As decided under the same document, the Council prepared to elect the 18 members of the AC in secret ballot and in view of a pre-determined geographic distribution (African States – 5; Asian States – 5; Eastern European States – 2; Latin American and Caribbean States – 3; Western European and other States – 3). Given that three of the five regional groups, namely the groups of African States, Asian States, and Latin American and Caribbean States, had appointed the same number of nominees as the number of AC members they were ascribed, they had previously requested that these nominees be endorsed without a vote as they represented *clean slates*. Despite objections to this practice raised by NGOs already several weeks before the AC elections and also by some states⁵, the wish was granted by Ambassador Costea, President of the Human Rights Council, with the explanation that this had also been the practice of the former UN Commission on Human Rights.

Consequently, 13 out of the 18 members of the AC were appointed without a vote. Among the 5 elected AC members (allocated to the Eastern European States and Western European and other States groups), Jean Ziegler's election (40 out of 47 cast votes), whose work as a UN Special Rapporteur on the right to food is well known, was warmly welcomed by a large num-

ber of states and civil society groups. Also for the Western Group, Wolfgang S. Heinz of the German Institute for Human Rights was elected with 24 votes. Due to a formerly-adopted decision to stagger the mandates over the first three years of the AC, Jean Ziegler and Wolfgang Heinz are to serve with the AC for one and two years respectively.

While the establishment of this practice of nominating a clean-slate number of post-holders can be seen in a negative light as it depreciates the (democratic) legitimacy of the AC, the "scramble" of certain political blocks to limit the choice of AC members can also be seen as a positive indication. Given that the AC was until now largely seen as a weak body, having lost the power of initiation - an important feature in the handover from its predecessor - the Sub-Commission⁶, perhaps the AC too has some unexplored institutional potential. The fact that certain political blocks at the Council sought to influence its membership might be an indication that a strong leadership from within could theoretically allow it to grow beyond its initial mandate, as has happened in the case of other human rights bodies.

Appointment of Special Procedures

During this session, the HRC also considered the appointment of 16 new mandate-holders for a total of 14 Special Procedures (SPs)⁷, namely thematic mandates working on the right to adequate housing, the right to food, the rights of indigenous people, the sale of children, the effects of economic reform policies and foreign debt, human rights defenders, human rights and extreme poverty, contemporary forms of slavery, African descent, arbitrary detention, enforced disappearances; as well as the country mandates on Myanmar, Somalia, and the Palestinian territories⁸. For the appointment of mandate-holders, the Institution-Building Package requires that a *consultative group* shortlists the candidates with "the highest qualifications". On the basis of these recommendations and following broad consultations, the HRC President then makes the new appointments.

⁶ In its full name, the Sub-Commission on the Promotion and Protection of Human Rights.

⁷ For the full "List of candidates for Special procedures mandate holders" please see information note released by Ambassador Costea on 25 March 2008 also available on the HRC extranet.

⁸ Special Procedures – Mandate Holders. List of Vacancies.

⁵ In a later statement Canada dissociated itself from the decision of the HRC to exempt the three regional groups from a vote on their nominated candidates.

During the selection process for the above-mentioned Special Procedures, the Consultative Group (CG), formed by one member of each regional group, presented the President with their selection⁹ containing a severely limited list of candidates (ranging between one and three for each post and with clear indication of the intended appointee). Following its public release, the list was criticized for its lack of gender and geographical balance by several NGOs¹⁰. Upon the President's insistence the list was later revised and, in his words, was slightly improved with respect to these requirements.

The President's choice was announced only the day prior to the final appointment of mandate-holders and appeared to have come as a surprise to some states said to have been involved in the consultations during earlier stages. A number of Latin American states, notably Uruguay and Ecuador, expressed their disappointment with the discarding Nelsa Curbelo – a nominee they had supported for the post of a Special Representative on human rights defenders together with civil society and the present mandate-holder. Following the official appointment, several states¹¹ declared they would like to see the method of appointing SPs revised alluding to the possibility of exchanging the roles of the President and the CG, leaving the final decision with the latter. Contrary to claims that the operational terms of reference of the CG were not clear and that the present working method resulted from a minimalist interpretation of the Institution-Building text, the suggested revision would most certainly require amending the package.

Review, Rationalisation and Improvement (RRI) of Mandates

In its takeover of the Special Procedures from the former Commission on Human Rights, the Council was charged by the General Assembly with the task¹² of conducting a *review, rationalization and improvement* (RRI) of their mandates.

⁹ Released to HRC members and the public on 7 February 2008

¹⁰ Amnesty International was one of the first to point out this issue. For details see "UN Human Rights Council: Unravelling the tissue" on Amnesty International Australia website.

¹¹ Pakistan stated that the operational terms of references of the CG were not clear and that it constituted a minimalist interpretation of the relationship between the President and the CG in this regard

¹² GA Resolution establishing the Human Rights Council of 3 April 2006

According to the Institution-Building Package this is to take place through negotiations under separate resolutions and with a view of "the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation". For its 7th session, the HRC was scheduled to review 11 Special Procedure mandates, namely those working on violence against women, the sale of children, freedom of expression, economic reform, human rights defenders, the use of mercenaries, minority issues, racism, Myanmar, the DRC, Somalia and the DPRK.

The RRI appeared to be one of the most contested areas of the Council's work during this session as the Group of African states, the OIC, the Group of Arab states and the African group prevailed in the revision of certain mandates. The last and most controversial RRI – *Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* - clearly signified the rift between certain political blocks at the Council. As this resolution portrays the political issues underlying the entire session, it will be dealt with in more depth in this part.

The resolution, originally tabled by Canada (with a great number of co-sponsoring states), was challenged by the above-mentioned political blocks, through proposing an amendment to the draft that contradicts the very concept of the freedom of expression. The amendment calls upon the SR to look at individual responsibility, instead of state obligations, namely "To report on instances in which the abuse of the right to freedom of expression constitutes an act of racial or religious discrimination"¹³. States which opposed the amendment were of the view that it gave the SR "policing functions" contrary to the established practice of Special Procedures and ran the risk of setting a precedent. As an NGO observer commented on this text: "What seems harmless and reasonable turns the original meaning of the mandate upside-down"¹⁴.

An additional amendment was orally proposed last minute by Cuba (some rumour on the instigation of China), which sought to add text (to the Preamble) that could exonerate the subjection of Internet platforms to increased state scrutiny - "and also the importance of all forms of

¹³ A/HRC/7/39

¹⁴ Theodor Rathgeber in "UN-Menschenrechtsrat in Krebsgang" - Press Release by the German Forum Menschenrechte on 28 March 2008.

media to report and to deliver in a fair and impartial manner”¹⁵. After a suspension of the session, heated discussions, and procedural complications, both amendments were adopted with the strong opposition of Canada and the EU. The amended resolution¹⁶ was subsequently adopted with the abstention of 15 of the Council’s 47 members. While the real meaning of this revised mandate is not yet clear as it will be epitomised by the newly-appointed mandate holder, one possibility to limit the negative effects of this resolution would be to interpret the mandate as requiring “to report on state-sponsored abuses of the right to freedom of expression... [and] to include in their reporting instances where states have imposed restrictions... using the “abuse” of freedom of expression as a pretext for doing so”¹⁷.

An example of well conducted negotiations can be found in the leadership provided by Norway in sponsoring the resolution¹⁸ extending the mandate of the Special Procedure on the situation of human rights defenders. In the desired consensual and constructive spirit in the work of the Council, the resolution was said¹⁹ to have taken into account the views of all interested governments. While some changes were made such as substituting the title “Representative of the Secretary General” with “Special Rapporteur”, the resolution retained important features of the mandate and was adopted with consensus.

Another innovation introduced through the RRI and similarly an example of successful negotiations was the adoption of the long awaited resolution establishing the mandate for an *Independent Expert on human rights and access to safe drinking water and sanitation* on the initiative of Germany and Spain. While some may have preferred the establishment of a mandate that clearly indicates water and sanitation as a

human right and establishes a stronger procedure such as a “Special Rapporteur”, the text, which was adopted by consensus, goes some way in making up for this. It calls for the appointment of an “independent expert on the issue of human rights obligations related to access of safe drinking water and sanitation”²⁰ and indicates that further elaboration of obligations is needed.

Despite the fact that country mandates have come increasingly under attack since the Council’s inception (with the insistence of some countries that these are only justified if accepted by the concerned state) very few members objected²¹ to extending the mandate of the *Special Rapporteur on the human rights situation in the DPRK*. The opposition of Cuba and Egypt to this resolution without the support of the groups they normally speak for (respectively the Non Aligned Movement and the African Group) is a positive indication that political blocks are rather loose formations and do not always derogate decision-making to their chosen leaders. The HRC did not renew the mandate of the *Independent Expert on the situation of human rights in the Democratic Republic of Congo*. The other two country mandates scheduled for the RRI – *Mandate of the Special Rapporteur on the situation of human rights in Myanmar* and *Assistance to Somalia in the field of human rights* - were extended with the consensus of all HRC members.

Other Work of Substance

Through its work, the Council adopted also a number of other resolutions²² on thematic and

¹⁵ Submitted orally

¹⁶ A/HRC/7/L.39

¹⁷ Explanation of the Vote after the vote – L.24: Mandate of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, delivered by Canada on 1 April 2008.

¹⁸ A/HRC/7/L.23

¹⁹ Intervention by the representative of the delegation of the Russian Federation during the 7th session of the UN Human Rights Council before the vote on the draft resolution on “Mandate of the Special Rapporteur of the Human Rights Council on human rights defenders” delivered in Russian (available on HRC extranet)

²⁰ A/HRC/7/L.16

²¹ 7 out of the 47 HRC members voted against the resolution - China, Cuba, Egypt, Indonesia, Malaysia, Nicaragua, and the Russian Federation.

²² Resolutions on: human rights in the OPT, Sudan, the occupied Syrian Golan; composition of OHCHR staff, enhancement of international cooperation in the field of human rights, promotion of human rights and fundamental freedoms while countering terrorism, human rights of persons with disabilities, human rights and arbitrary deprivation of nationality, the role of good governance in the promotion and protection of human rights, right to food, the right of Palestinian people to self-determination, Israeli settlements in the OPT, combating defamation of religions, human rights and climate change, prevention of genocide, International Convention for the Protection of All Persons from Enforced Disappearance, human rights and extreme poverty, missing persons, rights of the child, and from rhetoric to reality: a global call for concrete

country issues relating to human rights. Among the more contested decisions was the *Resolution Combating defamation of religions*²³, which concentrates on the negative stereotyping of Muslims and requests the HC to compile “relevant existing legislation and jurisprudence concerning defamation of and contempt for religions”. The resolution was eventually adopted with the strong opposition of the EU and other states on the grounds that the resolution concentrated excessively on Islam and that the defamation of religions had no direct bearing to human rights.

In this session the Council considered a number of reports by Special Procedures and the OHCHR, relating substantively to particular human rights issues. The following thematic issues were discussed between the relevant Special Procedures and the Council under Item 3 of the Agenda²⁴: migrants, toxic waste, arbitrary detention, mercenaries, disappearances, sale of children, torture, health, food, freedom of expression, human rights defenders, violence against women, economic reform, housing, and minority issues. Several reports paving the road to new dimensions of specific human rights, such as the interpretation²⁵ of violence against women within the family and community as an act of torture and ill-treatment in the private sphere, were particularly welcomed by civil society observers.

In the general discussion under Item 4, there was a general reluctance to “name and shame” with only several WEOG (Western European and Others Group) states raising concerns on specific country issues²⁶. It was only later, under Agenda Item 9 (on racism, racial discrimination, xenophobia and related forms of intolerance), that the issue of the human rights situation in Tibet was taken up by several HRC members and observers (the EU as a block and Switzerland), as well as a number of NGOs. While several civil society groups were pointed out of order by China, others were swift in avoiding procedural pitfalls and succeeded in delivering their statements on

action against racism, racial discrimination, xenophobia and related intolerance.

²³ A/HRC/7/L.15

²⁴ Item 3: Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

²⁵ See A/HRC/7/3, Report of the Special Rapporteur on Torture and other cruel inhuman or degrading treatment or punishment, Manfred Nowak

²⁶ Such as the human rights situations in Darfur, Burma, DPRK, Kenya, Somalia, the DRC, Iran, Sri Lanka, Zimbabwe, Belarus, and China (briefly touched upon by the EU).

human rights concerns in Tibet. In view of the political limitations surrounding its work, the Council did not call for a special session on human rights violations in China, nor did it make a motion for a resolution on the same.

During its 7th session, the Human Rights Council conducted also two panel discussions, another new feature intended as an improvement from the work of the former Commission on Human Rights, on *Human Rights Voluntary Goals* (in the context of celebrating the 60th anniversary of the UDHR) and on *An Intercultural Dialogue on Human Rights*, which concentrated excessively on religious interpretations of human rights values²⁷. Given that the first ever discussion panel held by the Council was on the *gender perspective in the work of the HRC*, it is regrettable that none of the participants in these panels were female.

FES activities

Besides monitoring of the HRC work, the Friedrich Ebert Foundation undertook the organization of two side events on Irregular Migration²⁸ (co-organized with the OHCHR) and on Civil Society Involvement in UPR – the example of Indonesia (co-organized with Forum Menschenrechte, Papua Land of Peace, and Pax Romana).

Concluding remarks

The dynamics revealed through the Council's work during this session indicate that regional blocks are not as solid as they appear. While at times states were reluctant to agree on key issues, they tried their best to develop a common approach whenever this was possible and in many cases this proved to be a successful working strategy. The Council is best understood as an accumulation of decisions (achieved through its various working groups) that do not actually converge to epitomize a fully-fledged body that exemplifies consistency and continuity through its work.

²⁷ Statement by H.EM. Metropolitan Kirill of Smolensk and Kaliningrad, Chairman of the Department for External Relations of the Moscow Patriarchate, who in the context of homosexual relationships expressed the idea that “human rights should not run contrary to the moral norms accepted by most people as a desirable form of behaviour”.

²⁸ Detailed reports on both events can be accessed on the FES *Dialogue on Globalization* website (www.fes-globalization.org) under FES Geneva, Events in Geneva

About the author:

Mariya Stoyanova holds BA in history from the International University Bremen and a master's degree in human rights from the University of Sarajevo and the University of Bologna. She has been attending the 6th, 7th and 8th session of the Human Rights Council as an NGO observer.

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Friedrich-Ebert-Stiftung
Hiroshimastrasse 17
10785 Berlin
Germany
Tel.: ++49-30-26-935-914
Fax: ++49-30-26-935-959
Roswitha.Kiewitt@fes.de
www.fes.de/globalization

Friedrich-Ebert-Stiftung, Genf
6 bis, Chemin du Point-du-Jour
1202 Geneva
Switzerland
Tel. 0041 22 733 3450
Fax: 0041 22 733 3545
E-mail: fes.geneva@econophone.ch
<http://www.fes.de/globalization>