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The UN Human Rights Council (HRC) concluded its 10th regular session on March 27. Presided by Ambassador Martin Ihoeghian Uhomoibhi of Nigeria the HRC adopted 34 texts on a wide range of – sometimes controversial – issues.

Viewed from the perspective of victims of human rights violations, it was a rather disappointing session as it continued the trend of weak resolutions on country specific resolutions in its pursuit of a consensus oriented approach. (NGO)Information and statements which do not fit into this approach are dealt with as disturbance of the self-defined spirit of cooperation. In relation to truly worrying human rights situations, the majority of HRC member States tends to appeasement and containment of allegations. To make the HRC a body for political directives on improving human rights, a large path has to be gone

The Human Rights Council (HRC) held its 10th regular session from March 2 - 27. During the High-Level Segment of the HRC, some 70 dignitaries, including Vice Presidents, Ministers and other high officials of Governments honoured the HRC with their presence. For the first time in the history of the HRC, the President of the UN General Assembly addressed the HRC.

Viewed from the perspective of victims of human rights violations, it was a rather disappointing session. HRC adopted 34 texts on a wide range of – sometimes controversial – issues. The HRC took action on Myanmar (A/HRC/RES/10/27) and the Democratic People's Republic of Korea (A/HRC/RES/10/16) by extending the mandates of the Special Rapporteurs for one year each. The HRC expressed serious concerns at ongoing grave, widespread and systematic human rights violations in both countries. In relation to Myanmar, the HRC strongly urges the government to desist immediately from further politically motivated arrests, to release all political prisoners without delay and without conditions. Notably, this year the majority of 26 votes in favour of the resolution on DPRK has been absolute, as in the past there was always only a narrow majority of 22 or 23 votes. May be that the re-established active engagement of the USA into the HRC affairs might have contributed to that larger majority. In addition, there have been not more than 6 votes against (China, Cuba, Egypt, Indonesia, Nigeria, and Russian Federation) while these are still 6 votes too much favouring a government which makes its population starving.

The HRC appointed the Special Rapporteur on the situation of human rights in Cambodia (Mr. Surya Prasad Subedi; Nepal), and extended the mandates of the Independent Expert on the situation of human rights in Somalia

(A/HRC/RES/10/32). The resolution calls on the UN Office of the High Commissioner for Human Rights to sign a technical cooperation agreement with Somali authorities that focuses exclusively on capacity-building and ignores the serious need for monitoring and protection activities in the country as well as the urgent problem of impunity. The mandate was extended only for 6 months until the end of September 2009. This decision repeats the departure from the HRC's own rule of one-year extensions for country specific mandates, which was already set at the September 2008 session with the renewal of the mandate of to the Special Rapporteur on the Sudan.

Failed actions

But HRC was unable to establish a strong monitoring mechanism in order to address the humanitarian and human rights crises in the Democratic Republic of Congo. Despite the alarming summary report of seven thematic Special Procedure mandate holders, presented by the Representative of the UN Secretary-General on Internally Displaced Persons (Mr. Walter Kälin; A/HRC/10/59), the African Group and its speaker, Egypt, opposed the establishment of an expert mandate on the country situation; proposed by the European Union (EU; A/HRC/10/L.1). In a procedural battle, Egypt forced the HRC to consider the African draft resolution first (A/HRC/10/L.3). The mandate suggested by the EU aimed to assess the human rights situation and to provide assistance to the government of the DR Congo in a number of areas including drafting human rights policies and legislation.

Some critics may say that the methodology chosen by the EU for pushing that mandate was not very fortunate as they did not advance consultations with other Regional Groups.

Irrespective of that fact, Egypt and the African Group would have been free to choose a different methodological but substantive approach. Instead, the resolution presented by the African Group, proposed a group of thematic experts to simply report to the HRC again in March 2010. Germany, speaking on behalf of the European Union, then presented a package of amendments to the African Group's proposal in order to strengthen the action of this group of experts. Particularly, the amendments condemned acts of sexual violence and child recruitment, called on the expert group to coordinate their work, and establish benchmarks to identify progress on human rights in the DR Congo. The amendments called on the UN Office of the High Commissioner for Human Rights, to support the work of the experts (A/HRC/RES/10/33 Situation of human rights in the Democratic Republic of the Congo and the strengthening of technical cooperation and consultative services).

Despite the challenging appeal by Chile, the amendments were defeated by a narrow majority of 21 votes against – among them those of Egypt, China, Cuba, Cameroon, Gabon, South Africa, Nigeria, Pakistan and the Philippines – and 18 in favour of the amendments. The Ambassador of Chile stressed that for the HRC it would be difficult not to condemn repeated violations of human rights and breaches of international humanitarian law. He also related to a latest speech by Desmond Tutu who expressed his concern particularly towards the human rights of African people to be urgently protected. Chile reminded the HRC to think about its responsibility as a body with regard to what was happening, and its ability to condemn and support situations in this case. Each Member State of HRC should hinge to its conscience regarding what was happening in the DR Congo, and look at the issue from the point of view of being the HRC and not a political body.

The appeal may have contributed to some of the 8 abstentions, among them 5 African states: Burkina Faso, Ghana, Mauritius, Senegal, and Zambia. Obviously, there was a chance to swing the unfriendly majority towards human rights while countries as the Philippines seem to have voted against the amendments being interested in preventing a strong HRC engagement; which could potentially turn onto the home situation of others as well.

HRC also failed to fulfil its mandate as it did not respond at all to the humanitarian and human rights crisis in Sri Lanka. As Human Rights Watch stated, amidst abuses by both government forces and the Tamil Tigers, about 150,000 civilians remained trapped in a small area of the northern Vanni region and more than 3000 civilians have died since January 2009. Despite the urgency of the situation in the Vanni, and the limited humanitarian assistance reaching the beleaguered population, no initiative was taken to mobilize the HRC in order to take action on Sri Lanka. Several NGOs requested in vain that the HRC should immediately convene a Special Session to urgently examine the situation in the country.

While the HRC routinely adopted the outcome of the reports on the Universal Periodic Review on Botswana, Bahamas, Burundi, Luxembourg, Barbados, Montenegro, United Arab Emirates, Liechtenstein, Serbia, Turkmenistan, Burkina Faso, Cape Verde, Colombia, and Uzbekistan (A/HRC/REC/10/101-107, A/HRC/REC/10/109-116), there was a major trouble around Israel's UPR outcome (A/HRC/REC/10/108). Egypt, among others, insisted that Israel should comment any recommendation made during the UPR while the Israeli representative simply 'took note' of some of them. 'Taking note' is not literally what is expected from a government, but Israel has not been the first and only government to do so; e.g. South Africa handled some of the recommendations in the same way. At the end, Israel was again singled out although the outcome adopted without a vote.

A new mandate of the Special Procedures

Via resolution A/HRC/RES/10/23, the HRC established an Independent Expert in the field of cultural rights for a period of three years; adopted without a vote. The mandate should foster the adoption of measures aimed at the promotion and protection of cultural rights through concrete proposals enhancing sub-regional, regional and international cooperation in that regard. The mandate should also identify any existing gaps in the promotion and protection of cultural rights and to submit proposals and/or recommendations to the HRC on possible actions to fill such gaps.

The mandate holder shall identify best practices in the protection and promotion of cultural rights at the local, national, regional and international levels; identify possible obstacles to

the protection and promotion of cultural rights; and work in close coordination with intergovernmental and non-governmental organizations, other special procedures of the HRC, the Committee on Economic, Social and Cultural Rights and the United Nations Educational, Scientific and Cultural Organization, as well as with other relevant actors. The first report of the independent expert should be presented to the HRC in 2010. The EU showed some hesitation towards this new mandate arguing that there is no compelling evidence for that mandate, since overlapping and duplicity seemed at hand. The EU also stressed that no one may invoke cultural diversity in order to infringe upon human rights but finally joined the consensus.

The HRC adopted further resolutions on the question of the realisation in all countries of economic, social and cultural rights; human rights in the administration of justice; human rights and climate change; arbitrary detention; enforced or involuntary disappearances; the right to food; cultural rights and respect for cultural diversity; protection of human rights while countering terrorism; discrimination based on religion or belief; human rights in the occupied Syrian Golan; Israeli settlements in the Occupied Palestinian Territory; follow-up to HRC resolution S-9/1 on human rights violations emanating from Israeli military attacks; and combating defamation of religions.

The HRC elected four members of the Human Rights HRC Advisory Committee; namely Halima Embarek Warzazi (Morocco), Shiqiu Chen (China), Miguel Alfonso Martinez (Cuba), and Jean Ziegler (Switzerland).

Reports

In addition to the issues mentioned above, at the 10th session, the HRC heard reports and held interactive dialogues with several mandate holders and Working Groups of the Special Procedures (for details and document numbers see

<http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>); i.e. with the Independent Expert on the situation of human rights in Somalia, the Special Rapporteur on the situation of human rights in Myanmar, the Representative of the Secretary-General on internally displaced persons, the Special Rapporteur on trafficking in persons, especially women and children, the Special Adviser to the

Secretary-General on the prevention of genocide, the Independent Expert on Minority Issues, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on human rights defenders, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the right to food, the Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living; the Working Group on Arbitrary Detention, the Working Group on the Use of Mercenaries as a means of impeding the exercise of the right of peoples to self-determination, the Working Group on enforced or involuntary disappearances; the Working Group of Experts on People of African Descent.

In addition, reports were heard from the Human Rights HRC Advisory Committee, the Expert Mechanism on the Rights of Indigenous Peoples, and the Forum on Minority Issues; the Ad Hoc Committee on Complementary Standards, and the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action. Interactive dialogues were held with the High Commissioner on her annual report, and with the Deputy High Commissioner for Human Rights on country reports on technical cooperation and assistance to Guatemala, Bolivia, Afghanistan, Colombia, Sierra Leone and Nepal, and a report on Cyprus.

During the session, the HRC conducted a number of general debates, including on reports of the Office of the High Commissioner for Human Rights, on genocide, arbitrary deprivation of nationality, activities of the United Nations Development Fund for Women to eliminate violence against women, and the protection of human rights in the context of HIV/AIDS, on the protection of all human rights, the human rights situation in Palestine and other Occupied Palestinian Territories, and follow-up to and implementation of the Vienna Declaration and Programme of Action.

Issues

At March 11, the HRC discussed during its annual full day meeting on the rights of the child,

holding a panel discussion on promoting the implementation of the Convention on the Rights of the Child at the international level, followed by a panel discussion on achievements and obstacles in implementing the Convention on the Rights of the Child at the national level, followed by a general debate on the same topic. The UN High Commissioner for Human Rights said it was timely and appropriate to focus on the implementation of the Convention on the Rights of the Child, which, twenty years after its adoption, enjoyed almost universal acceptance. The Convention had transformed the way the world viewed children: they were no longer viewed as the property of parents or the passive recipients of charity or goodwill, but as rights-holders. This conceptual shift also underscored States' accountability in fulfilling their obligations towards children's rights.

According to the High Commissioner for Human Rights, poverty, impunity, armed conflict and authoritarian rule continue to undermine the human rights of countless victims. The imperatives of fairly managing migration and combating terrorism within the parameters of human rights and the rule of law were also of pressing concern. All these long-entrenched factors challenged the international community's capacity to cope in an environment of compassion fatigue and shrinking resources. At the same time, new threats, such as climate change, scarcity of food, and the global economic crisis exposed the most vulnerable to additional risk. It is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms and eradicate inequality and discrimination.

The President of the HRC stressed the severe budget shortages faced by the HRC and he appealed to all delegations to make efforts, to address this problem.

Selected resolutions adopted by the HRC

The resolution on *the question of the realisation in all countries of economic, social and cultural rights* (A/HRC/RES/10/1) notes with interest the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights by the General Assembly as one of the important tools to help strengthen the protection of economic, social and cultural rights world wide, and invites all States parties to

participate in the ceremony of the opening for signatures of the Optional Protocol.

The resolution on *the UN Declaration on Human Rights Education and Training* (A/HRC/RES/10/3) welcomes the initiative of the Platform for Human Rights Education and Training to organize a seminar to further reflection on elements to be included in the draft declaration; and requests the Advisory Committee to submit its draft Declaration on Human Rights Education and Training to the HRC for consideration at its thirteenth session in March 2010.

The resolution on *Human rights and climate change* (A/HRC/RES/10/4) mandates the HRC to hold a panel discussion on the relationship between climate change and human rights at its eleventh session (June 2009) in order to contribute to the realisation of the goals set out in the Bali Action Plan and to invite all relevant stakeholders to participate therein. The resolution also welcomes the decision of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living to prepare and present a thematic report on the potential impact of climate change on the right to adequate housing.

The resolution on *the composition of the staff of the Office of the United Nations High Commissioner for Human Rights* (A/HRC/RES/10/5) was controversial as always. The HRC requests the High Commissioner to enhance the implementation of measures in order to achieve a better representation of countries and regions which are unrepresented or underrepresented, particularly from developing world. She should consider applying a zero growth cap on the representation of countries and regions already over-represented in the Office.

The resolution on *enhancement of international cooperation in the field of human rights* (A/HRC/RES/10/6) urges all actors on the international scene to build an international order based on inclusion, justice, equality and equity, human dignity, mutual understanding and promotion of and respect for cultural diversity and universal human rights, and to reject all doctrines of exclusion based on racism, racial discrimination, xenophobia and related intolerance.

The resolution on *Human Rights of Persons with Disabilities: National Frameworks for the Promotion and Protection of the Human Rights*

of *Persons with Disabilities* (A/HRC/RES/10/7) decides that HRC's next annual interactive debate on the rights of persons with disabilities will be held at its thirteenth session, and that it will focus on the structure and role of national mechanisms for the implementation and monitoring of the Convention on the Rights of Persons with Disabilities.

The resolution on *the draft United Nations guidelines for the appropriate use and conditions of alternative care for children* (A/HRC/RES/10/8) welcomes the progress made during consultations on the draft guidelines and decides to continue efforts to take action on them at its eleventh session.

The resolution on *arbitrary detention* (A/HRC/RES/10/9) encourages all States to ensure that immigrants in an irregular situation and asylum-seekers are protected from arbitrary arrest and detention; requests the Secretary-General to ensure that the Working Group receives all necessary assistance and resources for the effective fulfilment of its mandate.

The resolution on *enforced or involuntary disappearances* (A/HRC/RES/10/10) calls on the governments that have not provided for a long period of time substantive replies concerning claims of enforced disappearances in their countries to do so and to give due consideration to relevant recommendations concerning this subject made in the reports of the Working Group; urges States to prevent the occurrence of enforced disappearances.

The resolution on *the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination* (A/HRC/RES/10/11) requests the Office of the High Commissioner, as a matter of priority, to publicize the adverse effects of the activities of mercenaries and of private companies offering military assistance, consultancy and other military security-related services on the international.

The resolution on *the right to food* (A/HRC/RES/10/12) expresses its concern that women and girls are disproportionately affected by hunger, food insecurity and poverty. It requests the Advisory Committee to undertake a study on discrimination in the context of the right to food, including identification of good practices of anti-discriminatory policies and strategies.

The resolution on *the implementation of the Convention on the Rights of the Child and the Optional Protocols thereto* (A/HRC/RES/10/14) calls on the States that had not yet become States parties to the Convention and the Optional Protocols thereto to do so as a matter of priority, and to systematically assess any proposed law, administrative guidance, policy or budgetary allocation that was likely to have an impact on children and their rights, ensuring appropriate enforcement of their obligations under the Convention and the Optional Protocols thereto.

The resolutions on *torture* and on *discrimination based on religion or belief* were both adopted by a vote while the resolution on torture has previously enjoyed broad support and been adopted by consensus. The resolution on discrimination on religion or belief did not achieve a majority in terms of absolute votes (22 in favour) and had to face 24 abstentions.

The resolution on *torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of medical and other health personnel* (A/HRC/RES/10/24) condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which can never be justified, and calls upon all States to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Egypt and others have been reluctant to 'take note' of the report of the special Rapporteur, as the mandate holder, Mr. Manfred Nowak, discussed widely the matter of the death penalty in terms of cruel, inhuman or degrading treatment or punishment.

The resolution on *discrimination based on religion or belief and its impact on the enjoyment of economic, social and cultural rights* (A/HRC/RES/10/25) emphasises that discrimination based on religion or belief often has an adverse impact on the enjoyment of economic, social and cultural rights, particularly with regard to members of religious minorities and other persons in vulnerable situations. The resolution urges States to ensure that everyone has the right, i.e. to education, work, an adequate standard of living, the enjoyment of the highest attainable standard of physical and mental health and to take part in cultural life, without any discrimination on the basis of religion or belief.

Also by a vote was adopted the resolution on *defamation of religions* (A/HRC/RES/10/22). The resolution strongly deplores all acts of psychological and physical violence and assaults, and incitement thereto, against persons on the basis of their religion or belief, and such acts directed against their businesses, properties, cultural centres and places of worship, as well as targeting of holy sites, religious symbols and venerated personalities of all religions. The HRC notes with concern the intensification of the overall campaign of defamation of religions and incitement to religious hatred in general.

The resolution on the *Social Forum* (A/HRC/RES/10/29) requests that the next meeting of the Social Forum be held during 2009, in Geneva, and decides that the Social Forum should focus at its next meeting on negative impacts of economic and financial crises as well as on efforts to combat poverty; national anti-poverty programmes: best practices of States in implementing social security programmes from a human rights perspective; and on international assistance and cooperation in combating poverty.

A somewhat rare controversy emerged on the resolution on *publication of reports completed by the Sub-commission on the Promotion and Protection of Human Rights* (A/HRC/DEC/10/117). Although nearly all Member States agreed to make these reports to the UN system available which have been completed and submitted to the Office of the United Nations High Commissioner for Human Rights pursuant to the resolutions and decisions of the Sub-Commission at its fifty-eighth session be issued as United Nations documents, there was a vote. Particularly India opposed the decision being concerned on the study on Dalits as now becoming an official document of the UN.

Five resolutions have been adopted in relation to the *conflict in Palestine*: A/HRC/RES/10/17 on Human rights in the occupied Syrian Golan; A/HRC/RES/10/18 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan, A/HRC/RES/10/19 on Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory, A/HRC/RES/10/20 on the Right of the Palestinian people to self-determination, A/HRC/RES/10/21 on the Follow-up to Council resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to

the recent Israeli military attacks against the occupied Gaza Strip.

Two remarkable shifts happened. The resolution on *Israeli settlements in the Occupied Palestinian Territory* (10/18) found a large majority (46 Yes, only Canada voted against), as the EU recognised the settlements in an occupied country are illegal everywhere. The previous text for the resolution on *Human rights violations emanating from the Israeli military attacks and operations in the Occupied Palestinian Territory* (10/19) was orally amended in Operational Paragraph 2 condemning now also the firing of rockets on Israeli civilians. A new OP 9 bis was introduced urging now all parties concerned to respect the rules of international human rights and humanitarian law and to refrain from violence against civilian population. Despite these amendments, the resolution was adopted by a vote with 35 Yes, 4 votes against and 8 abstentions.

The resolution on the *elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination* (A/HRC/RES/10/30) was voted on request of the EU as it steps away from a previous, fragile agreement on this issue (34 Yes, 13 against). The EU doubted whether the resolution really endorses the road map adopted by the Ad Hoc Committee of the Human Rights HRC on the Elaboration of Complementary Standards during the second part of its first session as a guiding framework document for all future work in this regard.

The resolution *from rhetoric to reality: a global call for concrete action against racism, racial discrimination, xenophobia and related intolerance* (A/HRC/RES/10/31) was adopted by a delicate consensus as the EU doubts the intention of this text and its openness towards the outcomes of the Durban Follow-Up Conference in April this year. The resolution requests the UN Secretary-General to examine the challenges that have impeded the work of the Group of Five Independent Eminent Experts in fully discharging its mandate in following up on the implementation of the Durban Declaration and Programme of Action, and, in this regard, requests that the HRC take appropriate action in accordance with its process of review, rationalisation and improvement of mandates.

Concluding remarks

Most of the tenth session of HRC has been characterised by a certain routine within a state orientated approach. Information and statements which do not fit into this approach are dealt with as disturbance of the self-defined spirit of cooperation and consensus. In relation to truly worrying human rights situations, the majority of HRC tends to appeasement and containment of allegations. To make the HRC a body for political directives on improving human rights, a large path has to be gone. In relation to crucial problems as DR Congo, the HRC is not

the expected guardian of human rights, not yet; if ever. A next litmus test will be the discussion about the extension of the country mandate on Sudan to be renewed during the regular 11th session in June 2-18, 2009. During this 11th session, also high-level panel discussions on the situation of civilians in armed conflicts and on the protection of human rights defenders, journalists and vulnerable groups as well as on climate change in terms of human rights will be organised. In addition, the outcomes of UPR on e.g. Germany, Russian Federation, China, and Cuba will be discussed.

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