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### HUMAN RIGHTS COUNCIL

Sixth session

#### SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,  
on Monday, 17 September 2007, at 10 a.m.

President: Mr. COSTEA (Romania)

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#### HUMAN RIGHTS BODIES AND MECHANISMS (continued)

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The meeting was called to order at 10.55 a.m.

HUMAN RIGHTS BODIES AND MECHANISMS (continued) (agenda item 5)

Review, rationalization and improvement of mandates (continued)

1. The PRESIDENT said that the agreed goals and modalities for the review, rationalization and improvement of mandates were contained in Human Rights Council resolution 5/1. In previous discussions, the Council had decided to adopt a three-stage approach, beginning with statements from the sponsors of mandates, followed by updates from mandate-holders; thereafter, member States would have an opportunity to provide their views on the mandates.

Mandate of the Special Rapporteur on freedom of religion or belief (continued)

2. Mr. MAHAWAR (India) said that the continuing relevance of the mandate of the Special Rapporteur on freedom of religion or belief had been evident in the Council's discussion of the Special Rapporteur's recent report. His delegation therefore supported the proposed three-year extension of that mandate.

3. Mr. FLORÊNCIO (Brazil) said that the mandate of the Special Rapporteur on freedom of religion or belief had promoted a comprehensive and non-selective understanding of the right to freedom of religious belief. Monitoring of mutual respect among religions and the right of all individuals to manifest their beliefs freely was essential to the success of the United Nations human rights system, and should be reinforced. His delegation was in favour of extending the mandate of the Special Rapporteur.

4. Mr. THORNE (United Kingdom) said that his delegation was in favour of the renewal of the Special Rapporteur's mandate. He thanked the Special Rapporteur for her visit to the United Kingdom in June 2007 and looked forward to her full report and recommendations. The Special Rapporteur made an important contribution to helping States to identify new challenges and develop mechanisms to ensure that the right to freedom of religion or belief continued to be protected worldwide.

5. Mr. CHANG Dong-hee (Republic of Korea) said that his delegation fully supported the Special Rapporteur's holistic approach, including her cooperation with other mandate-holders in addressing the issue of freedom of religion or belief. Since hatred, intolerance and discrimination based on religion or belief persisted and had even increased, the Special Rapporteur could play a central role in efforts to promote and protect freedom of religion or belief. His delegation was therefore in favour of extending her mandate for an additional three years.

6. Mr. O'BRIEN (Observer for Australia) said that the Council should promote and protect the right to freedom of religion or belief by monitoring international compliance with the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Since the work of the Special Rapporteur on freedom of religion or belief was one of the most effective means of promoting and protecting that right, his delegation strongly supported the extension of her mandate.

7. Mr. ROSALES (Observer for Argentina) said that the Council should strengthen its system of special procedures and should maintain those mandates that had made a positive contribution to the promotion and protection of human rights. The Special Rapporteur on freedom of religion or belief had accomplished much valuable work, and his delegation supported the continuation of her mandate.
8. Ms. RONDEUX (Observer for Belgium) commended the Special Rapporteur on the balanced and effective manner in which she had examined all religions and beliefs and had taken other human rights and fundamental freedoms into consideration in her work. Her delegation fully supported the extension of the Special Rapporteur's mandate.
9. Mr. AYALA MELÉNDEZ (Observer for Colombia) supported the renewal of the Special Rapporteur's mandate. Respect for freedom of religion or belief was of great importance in helping the international community to meet the major challenges of building peace and security and promoting development and peaceful coexistence in an increasingly globalized and interdependent world.
10. Mr. JAZAÏRY (Observer for Algeria) said that it would have been logical for the Council to have examined the mandates that had expired in 2006 before turning to others that had not yet expired. Moreover, the Council should ensure that the content and terms of reference of mandates were properly discussed at a plenary session before drafting and circulating resolutions for their renewal. The review, rationalization and improvement of mandates should focus on the context in which mandates were established and on an evaluation of the achievements made under each mandate.
11. Ms. KRONK (Worldwide Organization for Women), speaking also on behalf of the Pan-Pacific and South-East Asia Women's Association International, said that, since it was under the guidance of women that children were first taught tolerance and respect for others and an appreciation of the value of religious tradition, women must be given recognition and support in their influential role in shaping the early education of children. Educational systems were established in order to support the lessons first learned at home, and the mandate of the Special Rapporteur on freedom of religion or belief should promote education for all, particularly girls. The Special Rapporteur's recommendations would have an impact only if women participated fully in their religious and cultural communities. The Special Rapporteur should therefore consider making recommendations on ways of increasing female education and participation.
12. Mr. TAYLOR (International Association for Religious Freedom), speaking also on behalf of the Anglican Consultative Council, the Baha'i International Community, Conscience and Peace Tax International, Dominicans for Justice and Peace, Franciscans International, Interfaith International, the International Federation of Social Workers, the International Federation of University Women, the Institute for Planetary Synthesis, Pan-Pacific and South-East Asia Women's Association International, Susila Dharma International, the World Federation of Methodist and Uniting Church Women and the Worldwide Organization for Women, said that the mandate of the Special Rapporteur on freedom of religion or belief had proved to be the most effective instrument for promoting the implementation of the principles of the Declaration on the

Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. In the absence of any legally binding convention on freedom of religion or belief, the Council should strengthen and improve her mandate.

13. Ms. MARTINS (Observer for Portugal), speaking on behalf of the European Union, said that the review, rationalization and improvement of mandates should result in the strengthening of the special procedures system as a whole, and it was important that the procedures should be allowed to pursue their work in complete independence. The European Union was in favour of renewing the Special Rapporteur's mandate, since her work was essential for the promotion and protection of the right to freedom of religion or belief.

14. Mr. BUTT (Pakistan), speaking on behalf of the Organization of the Islamic Conference (OIC), said that the discussion of the mandate of the Special Rapporteur on freedom of religion or belief would have been more informed if a background document had been provided by the main sponsor of the mandate. The Council had focused on the renewal of mandates rather than on their review, rationalization and improvement. Moreover, the three-stage approach adopted for the rationalization of mandates was diverting attention from what rationalization should really be. He proposed that the second part of the sixth session should be devoted to the rationalization of mandates, which would enable the Council to take an early decision on priority mandates.

#### Working Group on Arbitrary Detention

15. Mr. MATTÉI (France) said that the Working Group on Arbitrary Detention had helped to consolidate the global mechanism for promoting and protecting human rights, and it should be allowed to continue its valuable work. The Working Group had contributed to improving and clarifying the law on arbitrary detention and its application. All the members of the Working Group had endeavoured to fulfil their mandates with objectivity, independence and diplomacy, and it was important to maintain the Working Group's composition, which had achieved a geographical balance and reflected the world's main legal traditions. The Council should therefore renew the Working Group's mandate for a three-year period on the basis of the relevant resolutions of the Commission on Human Rights.

16. Mr. VIEIRA KOMINSKI (Brazil) said that the Working Group on Arbitrary Detention was the only human rights mechanism that was not a treaty-monitoring body that was entitled to consider individual communications and send urgent appeals to Governments in order to prevent serious human rights violations against persons allegedly held in arbitrary detention.

17. One of the main challenges in protecting human rights was the detention of persons arrested under counter-terrorist measures, a problem that had been recently addressed by the Working Group. The Working Group had also commented on prison populations, particularly the situation of migrants and asylum-seekers in prolonged administrative custody.

18. The Working Group played an active role in defending the rights of individuals arbitrarily deprived of their liberty, and Brazil fully supported its continuation within the Council structure.

19. Mr. ULMER (Canada) said that the issues under the Working Group's purview were of critical importance to the promotion and protection of human rights worldwide. The Working Group had been instrumental in developing international legal standards related to its mandate and had addressed a wide range of thematic issues in order to support States in their efforts to prevent arbitrary deprivation of liberty. Canada therefore supported the renewal of the Working Group's mandate.
20. Ms. LOPES (Observer for Portugal), speaking on behalf of the European Union, said that it was essential for the Working Group on Arbitrary Detention to continue to perform its task, and the European Union was in favour of renewing its mandate for a further three years. She wished to know the Working Group's procedures for receiving and considering communications, and how it arranged its programme of country visits and operational follow-up to those visits.
21. Mr. KONDRATIEV (Russian Federation) said that the Working Group on Arbitrary Detention operated on the basis of exchange of information with Governments concerning alleged cases of arbitrary detention. While the Russian Federation attached priority to preparing replies to the Working Group's enquiries, such enquiries should be carefully formulated, and the Working Group should take full account of the positions and explanations of Governments concerning specific violations. His Government supported the renewal of the Working Group's mandate and hoped that its work would be carried out in strict observance of its mandate and the Code of Conducts for Special Procedures Mandate-holders.
22. Ms. KHOLI (Switzerland) said that Switzerland supported the extension of the Working Group's mandate for three years. Over the past 15 years, the Working Group had shed light on such issues as the applicability of human rights instruments to non-State parties, the abuse of military justice, detention on grounds of sexual orientation, imprisonment for debt, secret prisons, the imprisonment of conscientious objectors and arrest and detention for publication of State secrets. Switzerland urged all States to issue a standing invitation to the Working Group to visit their countries.
23. Mr. ZEGARRA (Peru) said that the Working Group had played a key role in establishing the limits beyond which detention of any kind, whether administrative or judicial, became arbitrary. The Working Group's country visits had demonstrated its importance as a mechanism for improving the situation of individuals through appropriate and sustained cooperation with the State concerned. His delegation was therefore in favour of extending the mandate.
24. Mr. CHANG Dong-hee (Republic of Korea) said that the Working Group's investigations had made it possible to identify best practices in matters of detention, and its legal opinions constituted a set of valuable guidelines to States in their efforts to prevent arbitrary deprivation of liberty. Arbitrary detention was still prevalent in many parts of the world and its use in the context of counter-terrorism was an issue of growing concern. The Working Group should continue to analyse such practices and investigate their underlying causes.
25. Mr. ROSHDY (Egypt), speaking on behalf of the Group of African States, said that the President's remarks had provided helpful guidance to Council members in their deliberations. However, the discussion under way was not quite what the Group of African States had expected: it was neither a dialogue nor interactive. Instead delegations were presenting official

statements prepared in advance, and some of them had chosen to refer to the relevant report rather than to the mandate. The Group of African States intended to discuss the issue with other groups. Meanwhile, it requested that each resolution concerning a mandate should contain a reference to the Code of Conduct for Special Procedures Mandate-holders.

26. The PRESIDENT said that the current debate was not a discussion about how to renew mandates or what to include in draft resolutions.

27. Mr. ZHAO Xing (China) said that China supported the statements made by Algeria, by Pakistan on behalf of OIC and by Egypt on behalf of the Group of African States. In his delegation's view, the Council's task was not merely to extend mandates but to evaluate the work accomplished in order to rationalize the special procedures. It was therefore important to have a clear methodology for that assessment, and sponsor countries should provide clear and detailed justification for the extension or termination of mandates.

28. Mr. NWOBU (Nigeria) said that the activities of the Working Group on Arbitrary Detention had been fundamental in protecting human rights, and his delegation supported the extension of its mandate.

29. Mr. ROSALES (Observer for Argentina) said that his delegation was in favour of extending the mandate of the Working Group.

30. Ms. ETENSEL (Observer for Turkey) said that her delegation supported the extension of the Working Group's mandate.

31. Mr. JAZAÏRY (Observer for Algeria) said that it was not the extension of the Working Group's mandate that was at issue. The Council's task under General Assembly resolution 60/251 was to improve the mandates of the special procedures. It would have been helpful if the Working Group's report had described problems encountered in discharging its mandate since that would have enabled the Council to consider how such problems could be overcome. The Council should attempt to identify the priorities that mandate-holders should address. In its decisions on mandates of special procedures, the Council should refer to its resolutions 5/1 and 5/2.

32. Mr. CHIHUAILAF (Observer for Chile) said that Chile's own experience had taught it that undemocratic regimes established systems of repression that might culminate in expulsion, exile, disappearance or execution; in the great majority of cases, the first repressive measure was arbitrary detention. His delegation was therefore in favour of extending the mandate of the Working Group on Arbitrary Detention.

33. Mr. MULUGETA ABEBE (Observer for Ethiopia) said that the review of mandates should take place through an interactive dialogue with the mandate-holders. In reviewing mandates, the Council should pay special attention to the challenges and problems faced by the special procedures, including the Working Group on Arbitrary Detention. The Council's resolution on the special procedures should indicate how they would be involved in the universal periodic review and how the Code of Conduct for Special Procedures Mandate-holders would be implemented. The review, rationalization and improvement of mandates should provide the Council with an opportunity to integrate gender issues.

34. Mr. MWAIMU (Observer for the United Republic of Tanzania) said his delegation fully supported the extension of the Working Group's mandate.
35. Ms. RAVAUD (World Organization Against Torture), speaking also on behalf of the International Federation for Human Rights and Human Rights Watch, said that the Working Group on Arbitrary Detention was the only non-treaty-based mechanism whose mandate expressly provided for consideration of individual complaints, which meant that its actions were based on the right of petition of individuals anywhere in the world. Since its inception, the Working Group had endeavoured to clarify whether its mandate covered both pretrial and post-trial detention, and it had developed a comprehensive literature on the issue, including deliberation on house arrest and psychiatric detention. The Working Group should be maintained as a collegiate body, with the participation of experts from different legal backgrounds and with equitable geographical distribution. The Council should extend and strengthen the Working Group's mandate.
36. Ms. D'ALOISIO (Defence for Children International) said that the Working Group on Arbitrary Detention had successfully responded to many urgent appeals and had cooperated with individuals and NGOs in its investigations. The Council must ensure that its mandate was extended and strengthened. The arbitrary detention of children should be given separate treatment within that mandate. It was estimated that 1 million children worldwide were deprived of their liberty and the Working Group had the potential to play a central role in monitoring and exposing the hidden abuses affecting a growing number of the world's children.
37. Mr. MACHON (International Commission of Jurists) said that it was necessary to refine the communications procedure through which the Working Group could take urgent action on alleged cases of arbitrary detention. Governments should be encouraged to submit their reactions to allegations within the 90 days stipulated by the procedure. The non-requirement of exhaustion of domestic remedies must be preserved. Urgent appeals and swift replies by Governments helped to establish facts, permit interim protection measures and even promote the release of persons arbitrarily deprived of their liberty. Country visits were a key mechanism for investigating the legality of detentions and analysing domestic legislation and its application. The Working Group had taken a courageous stance on renditions and arbitrary detentions in the context of counter-terrorism measures. He supported the Working Group's recommendation that detainees must enjoy judicial guarantees before an independent body. He believed that the Council should extend the Working Group's mandate.
38. Ms. TERLIGEN (Amnesty International) said that the Working Group had considered a wide range of cases of alleged arbitrary detention, including high-profile cases, and its opinions on the situations of certain individuals whose detention has been found to be arbitrary had had a positive impact. The Working Group had examined such topical issues as the situation of immigrants and asylum-seekers, detention of persons in Guantánamo Bay and deprivation of liberty linked to Internet use. Amnesty International was therefore in favour of extending the Working Group's mandate.
39. Mr. HTUN (World View International Foundation) said that, since 19 August 2007, peaceful public protests had been taking place almost daily in Burma in response to a sudden increase in the price of fuel. The military response had been heavy-handed: the Government had relied on hired thugs to crush demonstrations. Peaceful protesters, including Buddhist monks,

had been beaten and arrested. The Council should urge the regime to abide by the Standard Minimum Rules for the Treatment of Prisoners and dispatch a commission of inquiry to investigate the grave human rights violations in Burma.

40. Mr. PARY (Indian Movement “Tupaj Amaru”) said that, following the tragic events of 11 September 2001 and the war of aggression against Afghanistan and Iraq, human rights violations, particularly arbitrary detention, torture and ill-treatment, had increased dramatically throughout the world. The hundreds of detainees at Guantánamo Bay, chiefly Muslims and Arabs, were considered to be “enemy combatants”, which meant that they did not benefit from the protection of the Geneva Conventions. They were deprived of the right to a fair trial and subjected to torture. The Central Intelligence Agency had carried out secret flights over European air space to capture and transfer alleged terrorists to secret detention centres and illegal prisons, primarily in Poland and Romania. Old Europe was an accomplice in - and a victim of - the existence of such detention centres. The Council should investigate the crimes that were being committed by the world’s super-Power.

41. Mr. MATTÉI (France) said that the Council seemed to be in agreement on the desirability of renewing the mandate of the Working Group on Arbitrary Detention. Some delegations had suggested that the Working Group’s mandate should be made clearer, particularly through a reference to the obligation of States to comply with the Working Group’s requests. In the course of its deliberations, the Working Group had clarified a number of concepts relating to its mandate. Above all, the Working Group must retain its willingness to listen and take care not to overstep its mandate.

The meeting rose at 1 p.m.