

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

OVERVIEW

HUMAN RIGHTS COUNCIL, 9TH SPECIAL SESSION 'GRAVE VIOLATIONS OF HUMAN RIGHTS IN THE OCCUPIED PALESTINIAN TERRITORY, INCLUDING THE RECENT AGGRESSION OF THE OCCUPIED GAZA STRIP' 9 AND 12 JANUARY 2009, GENEVA

Overview

The Human Rights Council (the Council) convened its 9th special session on 9 and 12 January 2009 in Geneva. The meeting was called for by Egypt, on behalf of the Arab and African Groups, by Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), and by Cuba, on behalf of the Non-Aligned Movement (NAM), to discuss 'the grave violations of human rights in the Occupied Palestinian Territory, including the recent aggression of the occupied Gaza Strip'.¹ The request for the special session was supported by 27 other member States of the Council. This was the fourth special session of the Council dedicated to the Israel-Palestine conflict.²

The interest in the special session was reflected in the high level of attendance by States, United Nations (UN) agencies, and civil society. The long list of speakers, moreover, led to the extension of the session by half a day. The large majority of speakers spoke emotively of the need for urgent action to address the grave humanitarian crisis in the region. While many sought to assign responsibility for the violence to a particular party to the conflict, all were unanimous in their call for a ceasefire as a necessary precursor to a durable solution. The resolution that was adopted by a majority vote reflects many of the points raised during the session.

Background to the session

In June 2008, Egypt brokered a six-month ceasefire between Hamas and Israel. Although the level of violence was reduced, attacks continued on both sides. Tension escalated in late 2008 as a result of an Israeli military incursion into the Gaza Strip; Hamas increased its firing of rockets and Israel tightened its blockade of Gaza. In mid-December 2008, Mr Richard Falk, the Special Rapporteur on the situation of human rights in the

¹ The note verbale requesting the special session is available at www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/index.htm.

² The three previous special sessions on the Israeli-Palestine conflict took place on the following dates: 5-6 July 2006 (on 'the human rights situation in the Occupied Palestinian Territory'), 11 August 2006 (on 'the grave situation of human rights in Lebanon caused by Israeli military operations'), and 15 November 2006 (on 'Israeli military incursions in Occupied Palestinian Territory').

Palestinian territories occupied since 1967, undertook a mission to Gaza. His visit, however, was aborted when Mr Falk was denied entry to Israel, detained for some 15 hours, and subsequently expelled.³

On 27 December 2008, soon after Hamas announced that it would not renew the ceasefire, Israel began a military operation into Gaza aimed at stopping the firing of rockets. On 6 January 2009, three UN-run schools were hit by Israeli fire despite the army having been given precise details of school locations. The response of the UN Security Council came in the form of *Resolution 1860*,⁴ adopted on 8 January 2009, a day before the special session of the Human Rights Council. This resolution calls for ‘an immediate, durable and fully respected ceasefire’ and ‘unimpeded provision and distribution throughout Gaza of humanitarian assistance’. By this time, an estimated 770 Palestinians, among them a large number of civilians, and a 14 Israelis had been killed.⁵

The request for the 9th special session was made on 6 January 2009 with nearly double the required number of States supporting it.⁶ Informal consultations on a draft resolution prepared by Palestine were held on 8 January 2009. Various amendments were proposed, including a call for an impartial inquiry into the situation of human rights in the Gaza Strip. As with previous resolutions on the Israel-Palestine conflict, States were divided over the appropriateness of the disproportionate emphasis on violations committed by Israel. Thus, while some delegations suggested that the resolution should incorporate references to rockets launched by Hamas from the Gaza Strip, others argued that the lack of proportionality in the Israeli response should be reflected in the resolution.

Overview of the proceedings

Opening statements

The United Nations (UN) High Commissioner for Human Rights, Ms Navanetham Pillay, expressed her deep concern for the escalation of the conflict.⁷ Ms Pillay underscored the need to adhere to the fundamental tenets of human rights law, namely proportionality, distinction between civilian and military targets, and taking all feasible precautions to minimise the loss of civilian life. Notably, Ms Pillay deplored the Israeli attacks against clearly marked UN facilities. She pointed out that the conflict has been exacerbated by the Israeli blockade and called for unhindered humanitarian assistance to the wounded and safe passage to evacuate civilians seeking to leave. To conclude, the High Commissioner made a number of recommendations. She called for credible, independent, and transparent investigations to be carried out to ensure accountability for violations of international law. She pointed out that ‘violations of international humanitarian law may constitute war crimes for which individual criminal responsibility may be invoked’. Ms Pillay furthermore stressed the need to deploy human rights monitors in both Israel and the Occupied Palestinian Territory, and urged that the special procedures mandate-holders, the press, and NGOs be granted access to the affected areas.

A statement was also delivered on behalf of Mr Falk. Making direct reference to his aborted mission in December 2008, Mr Falk commented that ‘such treatment of a UN expert on mission would seem to raise serious issues for the Organisation as a whole’, and expressed his hope that ‘the Government of Israel can be persuaded to reconsider its policy of exclusion that has hampered the work of this mandate’. On the escalation of violence in Gaza, Mr Falk stressed that though ‘there is no legal or moral justification’ for Hamas’ rocket attacks on civilians, the scale of the Israeli military response was manifestly disproportionate. Further, Mr Falk accused the Israeli Defence Forces (IDF) of relying on legally dubious targets and weaponry. In addition,

³ A press release on this incident is available at www.ohchr.org/EN/NewsEvents/Pages/Media.aspx.

⁴ S/RES/1860, 8 January 2009.

⁵ ‘UN backs ceasefire call for Gaza’, BBC News, available at http://news.bbc.co.uk/2/hi/middle_east/7819188.stm.

⁶ According to Council *Resolution 5/1*, the support of one-third of the membership of the body (i.e. at least 16 members) is required. This request was supported by 30 member States.

⁷ Most statements delivered during the session are available on the OHCHR extranet. The OHCHR extranet can be accessed (fill out the form on the page to receive the user name and password) at www.ohchr.org/english/bodies/hrcouncil/form.htm.

Mr Falk characterised the Israeli blockade as collective punishment, which is prohibited under international humanitarian law. To conclude, Mr Falk made four recommendations. First, he urged Israel to allow him access to the Occupied Palestinian Territory. Second, he called for General Assembly initiatives to investigate war crimes allegations. Third, he called for a ceasefire and an unconditional lifting of the Israeli blockade. Finally, Mr Falk recommended that the Council ‘request an Advisory Opinion from the International Court of Justice to assess the legal status of Israeli control in Gaza subsequent to Israeli “disengagement” in 2005’.

Concerned countries

Israel, as a concerned country, explained that it undertook its latest military operation as a ‘necessary measure’ to ‘end the nightmare for its civilians’. It accused Iran, Syria, and Hezbollah of providing weapons to Hamas, who in turn ‘has cast terror on the Palestinian population and Israeli civilians alike’. Israel highlighted the threat posed by Hamas to ‘any other moderate society in the region and beyond’, stressing that ‘this is not only Israel’s war’. At the same time, Israel insisted that it is doing its utmost to minimise Palestinian civilian casualties, including by phoning individual Palestinians to warn them of attacks nearby, running a humanitarian coordination centre, and facilitating the entry of humanitarian supplies into Gaza. It concluded by reiterating its commitment to the renewal of the peace process.

As a concerned party, Palestine described the present Israeli military operation in Gaza as ‘a new *naqba*’⁸ and recounted the devastating consequences that it was having on the Palestinian people. It asserted that in spite of Israel’s flagrant breach of international humanitarian law, Palestine will ‘continue abiding by international legitimacy’. Palestine also stressed the importance of stopping the launching of rockets from Gaza. The sincerity of this assertion, however, was undermined by the tongue-in-cheek reference to the great difference in the number of victims on each side.⁹ In short, Palestine welcomed initiatives that had been taken so far to halt the violence in Gaza, while urging further action by the international community.

Key issues

Virtually all States were united in expressing their deep concern for the escalation of violence in Gaza and urged both sides to cease hostilities. Palestine warned that ‘killing and destruction’ is also occurring in the West Bank. States and non-governmental organisations (NGOs) alike stressed the need to return to the peace process based on a two-State solution. The majority of States condemned Israel for its disproportionate response, its failure to discriminate between civilians and military objectives, and its failure to safeguard humanitarian access routes to Gaza. States and UN agencies deplored the high proportion of women and children victims.¹⁰ Moreover, the Israeli attack on the school run by United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) was widely condemned.¹¹ A few speakers argued that Israeli commanders were responsible for crimes against humanity, war crimes, and collective punishment in violation of international criminal law and international humanitarian law.¹² Others blamed Hamas rocket fire for instigating the recent wave of violence.¹³ A small number of States drew attention to the need to combat arms trafficking to curb rocket fire emanating from Gaza.¹⁴

⁸ *Naqba* literally means ‘catastrophe’. This term is used by Palestinians and Arab States to refer to the exile and expulsion of over 700,000 Palestinians as a result of the creation of the State of Israel in 1948.

⁹ The delegate spoke of over 750 Palestinian ‘martyrs’, of which over 240 were children and over 90 were women, and of over 3000 wounded Palestinians. He then condemned the Hamas rockets attacks which killed 4 Israelis.

¹⁰ Palestine, Pakistan (on behalf of the OIC), Chile, on behalf of the Group of Latin American and Caribbean States (GRULAC), Azerbaijan, Slovenia, Syria, Egypt, United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)/Office for the Coordination of Humanitarian Affairs (OCHA)/United Nations Children’s Fund (UNICEF) (joint statement).

¹¹ Egypt (on behalf of the Arab Group), Czech Republic (on behalf of the EU), Saudi Arabia, Argentina, Bolivia, Syria, Spain, Defence of Children International (DCI).

¹² Bangladesh, Bahrain, Djibouti, Qatar, Angola, Burkina Faso, Mexico, Yemen, Saudi Arabia, Angola, Jordan, Iran, Venezuela, Oman, DPRK, United Arab Emirates (UAE), Libya, Afghanistan, Al-Haq (joint statement), Centre Europe-Tiers Monde (CETIM), Union of Arab Jurists, Nord-Sud XXI.

¹³ Italy, Canada, UN Watch, Women’s International Zionist Organisation, European Union of Jewish Students.

¹⁴ United Kingdom, Australia, Italy.

A large number of States and NGOs also drew attention to the dire humanitarian situation in Gaza. Many speakers called for the lifting of the blockade¹⁵ and the safeguarding of humanitarian access.¹⁶ While the final resolution focuses on the armed operation in Gaza, it also reflects humanitarian concerns. The preambular paragraphs contain a reference to ‘the severe humanitarian crisis in the Occupied Palestinian Territories’. More implicitly, moreover, the list of ‘relevant special rapporteurs’ requested to visit the area include many working on economic, social and cultural rights.¹⁷

States and NGOs were also vocal about the response of the international community to the armed operation in Gaza. Some States took the opportunity to present their financial, humanitarian, and other contributions.¹⁸ While a large number of speakers welcomed the efforts made so far, namely the truce plan announced by the Egyptian and French Presidents and the UN Security Council resolution adopted the previous day, some regretted the sluggishness of international action.¹⁹ Venezuela pointed to the politicisation of this issue in the Security Council to insist on the need to reform this body. Al-Haq, in a joint statement, also criticised the Security Council resolution and called on the Human Rights Council to recommend that the General Assembly address this issue instead. The NGO based its argument on the hitherto unused ‘Uniting for Peace’ resolution of the General Assembly.²⁰ Canada, meanwhile, argued that the ‘appropriate place for discussions on this issue is the Security Council’.

Other issues raised during the session included: accusations that the Israeli Government attacked Gaza to garner electoral support;²¹ the need to safeguard access to Gaza for journalists;²² Palestinian unity as a precursor to a durable peace;²³ destruction of cultural heritage in Gaza²⁴; and reparations for victims.²⁵

Participation of NGOs and national human rights institutions

The great majority of NGOs that took part in the discussions was united in its condemnation of the armed operation and regret for the substantial loss of life, echoing the States’ calls for protection of humanitarian aid corridors and urging both parties to cease hostilities. A few organisations called on the UN to act decisively and depart from the double-standards that it has been accused of.²⁶ Many reiterated the call for an independent investigation of the human rights violations taking place in Gaza with a view to bring those responsible to justice. Notably, the Irish Commission for Human Rights, on of the only two national human

¹⁵ Palestine, Pakistan, on behalf of the Organisation of the Islamic Conference (OIC), Qatar, Indonesia, Nigeria, Mexico, Netherlands, Iran, Jamaica, Norway, Lebanon, Tunisia, UAE, Sudan, Caritas International (joint statement), Franciscans International, Movement Against Racism and for Friendship between Peoples (MRAP), Permanent Assembly for Human Rights. The lifting of the blockade was a recommendation made by Richard Falk in his statement.

¹⁶ Palestine, Egypt (on behalf of the Arab and African Groups, as well as in its national capacity), Pakistan (on behalf of the OIC), Czech Republic, on behalf of the European Union (EU), France, Switzerland, Russian Federation, Bahrain, Azerbaijan, Malaysia, Burkina Faso, United Kingdom, Republic of Korea, China, Japan, Mexico, Philippines, Slovenia, Jordan, Brazil, UNRWA/OCHA/UNICEF (joint statement), Iran, Luxembourg, Belgium, Spain, Jamaica, New Zealand, Lebanon, Austria, Ireland, Vietnam, Thailand, Sudan, Costa Rica, Greece, Australia, Amnesty International, Human Rights Watch. The High Commissioner for Human Rights stressed the need for humanitarian access in her statement.

¹⁷ Para 12, *Resolution HRC/S-9/L.1/Rev.2*.

¹⁸ Egypt, Argentina, China, Morocco, Brazil.

¹⁹ Angola, Iran, Turkey, Venezuela, International Youth and Student Movement for the United Nations (ISMUN), Women’s International Zionist Organisation, International Federation of Human Rights Leagues (FIDH), European Union of Jewish Students.

²⁰ A/RES/Resolution 377(V), 3 November 1950.

²¹ Saudi Arabia, Algeria, Spain, Sri Lanka.

²² Mexico, Amnesty International, Human Rights Watch, International Commission of Jurists (ICJ).

²³ Egypt, Norway.

²⁴ African Union, Arab League.

²⁵ Arab League. This was also mentioned by the High Commissioner for Human Rights in her statement.

²⁶ ISMUN, Tupaj Amaru.

rights institutions to speak, commented on the need to safeguard funding to its counterpart in Palestine.²⁷ There was a low level of State delegations present during the NGO interventions, which may be attributed to last-minute informal consultations on the draft resolution taking place at the same time.

Resolution A/HRC/S-9/L.1

Voting process

A draft resolution was tabled by Cuba (on behalf of NAM), Egypt (on behalf of the African and Arab Groups), and Pakistan (on behalf of the OIC). In introducing the draft resolution, Egypt (on behalf of the African and Arab Groups) reiterated the need for the Council to take action by consensus. It pointed to the proposed dispatch of the fact-finding mission as an integral part of the resolution. Egypt made oral amendments to the text, including changes to soften the language.²⁸ The programme budget implications (PBI) were to be prepared and submitted to the General Assembly when it considers the Council resolution.

Before the vote, Israel questioned the utility of yet another resolution on this issue, declaring that ‘in the real world, not the fairytale world of this Council, there can be no meaningful consensus without Israel’. It asserted that the draft resolution ‘does no service to the cause of peace or to the human suffering of Palestinians in Gaza’. Instead, Israel urged support for the recent call by the Middle East Quartet for bilateral, unhindered negotiations. On the contrary, Palestine welcomed the draft resolution and its depiction of the deprivation and destruction in Gaza. It concluded by reaffirming its commitment to attaining an independent, united State with East Jerusalem as its capital.

A number of other States reiterated their positions before and after the vote.²⁹ Canada, for instance, announced that it would vote against the draft resolution because, in spite of the oral amendments, it ‘fails to clearly recognise that rocket fire on Israel led to the current crisis’ and, moreover, it ‘uses unnecessarily and unhelpful inflammatory language’. Germany (on behalf of the EU) explained the reasons behind the abstention by the regional group. In particular, it regretted that the draft resolution ‘addresses only one side of the conflict’³⁰ and that ‘some paragraphs use legal terms with very specific meanings without full evidence of whether definitions are met’. Conversely, Russia expressed its view that with the incorporation of its proposals such as the change in the title, the resolution achieved a more balanced perspective of the situation.

The resolution was adopted by a roll-call vote, as requested by Canada. It was adopted with 33 States in favour, 1 against,³¹ and 13 abstentions.³² Interestingly, Cameroon was the only State to request the convening of the special session and abstain from voting on the resolution.

Preliminary analysis

The resolution incorporates many of the key issues raised during the session. For instance, it ‘strongly condemns’ Israeli military operations, calls for the return to the peace negotiations based on a two-State solution, and demands an immediate ceasefire and the lifting of the blockade. Similar to the statements made during the session, the resolution is heavily focused on Israeli violations of international law and of Palestinian rights.

²⁷ In addition to the Irish Commission for Human Rights, the National Council on Human Rights of Egypt also delivered a statement.

²⁸ The title of the resolution now refers to ‘attacks against’ the occupied Gaza Strip rather than ‘aggression’, and the perambulatory paragraph ‘recalling the responsibility to protect against genocide and crimes against humanity’ was deleted.

²⁹ Explanation of vote before the vote: Egypt, Canada, Germany (on behalf of the EU), Switzerland. Explanation of vote after the vote: South Africa, Japan, Russia, Uruguay.

³⁰ Echoed by Japan.

³¹ Canada.

³² Republic of Korea, Slovakia, Slovenia, Switzerland, Ukraine, United Kingdom, Bosnia-Herzegovina, Cameroon, France, Germany, Italy, Japan, and Netherlands.

Some of the practical steps requested in the resolution include strengthening the field presence of the Office of the High Commissioner for Human Rights (OHCHR) in the Occupied Palestinian Territory, visits by a large number of special rapporteurs to the area, the dispatch of an urgent independent international fact-finding mission, and an investigation by the UN Secretary-General into the targeting of UNRWA facilities in Gaza. Curiously, the resolution calls for the Secretary-General to report to the General Assembly rather than the Council. This may be indicative of the fact that the issue at hand is difficult to separate from its political context and hence broader than the mandate of the Council.

Next steps

In *Resolution A/HRC/S-9/L.1*, the Council decides to follow up on the implementation of the resolution at its next session in March 2009. This may include an update on the status of the fact-finding mission and the consideration of reports from the High Commissioner for Human Rights and from the special rapporteurs. Considering the defiant statements made by Israel at the special session, however, the implementation of this resolution may be particularly problematic.

COUNCIL MONITOR STAFF

Paul Dziatkowiec, Human Rights Officer
Eléonore Dziurzynski, Communications Officer
Michael Ineichen, Human Rights Officer
Vanessa Jackson, Human Rights Officer
Yuri Saito, Fellow
Gareth Sweeney, Deputy Manager
Katrine Thomasen, Manager

Authors of this report

Surya Gopalan, Intern
Yuri Saito, Fellow

ABOUT THE PUBLICATION

The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at www.ishr.ch

SUBSCRIPTION

If you wish to receive the Council Monitor Daily Updates by e-mail during the Council session, please e-mail information@ishr.ch with 'subscribe' in the subject line. Your e-mail address and personal information will not be shared or sold to any third parties. We may from time to time send you a notification about other publications in the Human Rights Monitor Series that you may be interested in downloading or subscribing to.

COPYRIGHT, DISTRIBUTION AND USE

Copyright © 2009 International Service for Human Rights. Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR is fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR is fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders. ISHR accepts no responsibility for any inaccuracies arising from or connected to unapproved or unofficial translations of its publications or parts thereof.

DISCLAIMER

While every effort has been made to ensure the accuracy and reliability of the information contained in this publication, ISHR does not guarantee, and accepts no legal liability whatsoever arising from any possible mistakes in the information reported on, or any use of this publication. We are however happy to correct any errors you may come across so please notify information@ishr.ch.