

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

COUNCIL UPDATE – ITEM 7 HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES HUMAN RIGHTS COUNCIL, 11TH SESSION 15 AND 16 JUNE 2009

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Overview

On Monday 15 and Tuesday 16 June 2009, the Human Rights Council dealt with the human rights situation in Palestine and other occupied Arab territories, as follow-up to the 9th special session. It also held a general debate on this item. The High Commissioner for Human Rights had not been able to submit her first periodic report for the follow-up as mandated by the special session. Therefore, there was little basis for discussion on substance. States mainly welcomed the Fact Finding Mission and expressed their regrets concerning the absence of a report. With regard to the general debate, the positions of all participants were abundantly clear from past sessions, and no new ideas were added.

Follow-up to the 9th special session

On Monday 15 June 2009, the Human Rights Council (the Council) heard updates from the President of the Council and from the High Commissioner for Human Rights (the High Commissioner) on the International Independent Fact Finding Mission on the Gaza conflict. The Fact Finding Mission was established during the special session on Gaza on 12 January 2009. However, the missions members were only appointed on 3 April 2009.¹

The President of the Council, Mr Uhomoibhi, informed the Council of progress on the Fact Finding Mission, highlighting his appointment of the members of the Fact Finding Mission. It is headed by Justice Richard Goldstone, former member of the South African Constitutional Court and former Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda. The three other members are Professor

¹ The mission's mandate is 'to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after'.

Christine Chinkin,² the former Special Representative of the Secretary-General on human rights defenders Ms Hina Jilani,³ and Colonel Desmond Travers.⁴ President Uhomoibhi summarised the activities undertaken by the Fact Finding Mission since its establishment. The Fact Finding Mission had visited Gaza from 1 to 5 June 2009, conducting site visits and holding meetings and interviews with a wide range of individuals and organisation. He underlined the fact that the members of the Fact Finding Mission were only able to enter Gaza through Egypt, since they were denied access to enter via Israel. He noted that the Fact Finding Mission planned its second visit to Gaza towards the end of June 2009, during which it intends to hold public hearings. The President stressed that the members of the Fact Finding Mission have ‘not lost hope’ of visiting areas of Southern Israel and the West Bank, which has not been possible yet, because they have not received a positive response from the Government of Israel to their repeated requests for cooperation. The Fact Finding Mission’s final report will be presented during the 12th Council session in September of this year.

The High Commissioner for Human Rights, Ms Navanethem Pillay, underscored that OHCHR implemented its mandate under *Resolution S-9/1* relating to strengthening its field presence in the OPT. She regretted that it had not been possible to submit a first periodic report on the implementation of *Resolution S-9/1* in time for 11th session, explaining that ‘its preparation was made more complex by the need to put in place a human rights monitoring framework in the OPT’. Consequently, OHCHR was ‘unable to give the report to the concerned parties, in order for these to provide comments’. She noted that a draft was shared with concerned parties a few days ago, and that a first periodic report will be submitted during the 12th Council session in September. A second report will be presented during the 13th session in March 2010.

Turning to a description of the situation, Ms Pillay in a principled statement highlighted that the human rights situation in the OPT, particularly Gaza, had deteriorated since the 10th session in March 2009, underlining that ‘the ongoing heavy import restrictions and nearly total prohibition of exports have negative cumulative effects’ on the realisation of a wide range of economic and social right, as well as civil and political rights. She reiterated that the human rights of the population of Gaza continue to be severely undermined or violated, and that ultimately the blockade and other restrictions that violate human rights must be lifted. She furthermore emphasised that one of OHCHR’s overarching priorities is combating impunity, stressing that all allegations of breaches of international humanitarian law and human rights violations must be investigated by credible, independent, and transparent accountability mechanisms, respectful of international standards of due process. ‘Equally crucial’, she noted, was upholding the rights of victims to reparation. It is worth noting Ms Pillay’s strong and principled approach to accountability for past violations, an approach she has consistently taken in relation to situations requiring the Council’s attention during both regular and special sessions, including at the recent special session on Sri Lanka.

Interactive dialogue

Palestine, as a concerned party, expressed its full support for the Fact Finding Mission and for the OHCHR to enhance its field presence in the OPT. It emphasised Israel’s refusal to cooperate with the Fact Finding Mission and reiterated that the ‘occupying power still persists in the violation of human rights in a systematic manner’ and continues to disregard international law, including resolutions of the Council. It reiterated its call to the international community to force Israel to respects it obligations.

Israel, as a concerned country, did not participate in the discussion, presumably based on its principled rejection of the special session. During the 9th special session, it had questioned the utility of yet another resolution on this issue, declaring that ‘in a real world, not the fairytale world of this Council, there can be no meaningful consensus without Israel’. It had asserted that *Resolution S-9/1* did not ‘serve the cause of peace or to the human suffering of

² Professor of International law at the London School of Economics and Political Science, who was a member of the High Level Fact Finding Mission to Beit Hanoun (2008).

³ Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary General on Human Rights Defenders, who was a member of the International Commission of Inquiry on Darfur (2004).

⁴ A former officer in the Irish Armed Forces and member of the Board of Directors of the Institute for International Criminal Investigations (IICI).

the Palestinians in Gaza'. Instead, it had urged support for the call by the Middle East Quartet for 'bilateral and unhindered negotiations'.

Among the States⁵ that took the floor during the discussion on the follow up to the Special Session, several⁶ expressed their regrets regarding the absence of the first periodic report of the High Commissioner. Furthermore, some States⁷ expressed concerns about Israel's refusal to cooperate with the Fact Finding Mission. Egypt, on behalf of the African Group, asked the High Commissioner what steps had been taken to ensure Israel's cooperation with the Fact Finding Mission and even criticised OHCHR for remaining silent in relation to Israeli non-compliance. The Czech Republic, on behalf of the European Union, and Japan called on all parties to cooperate with the Fact Finding Mission.

Cuba (on behalf of NAM), Mauritius, China and Indonesia noted that the general situation in the OPT and in particular Gaza remained of serious concern. They stressed that the violation of international human rights law and humanitarian law by Israeli forces had led to the deterioration of the living conditions of the Palestinians, especially as they continued to have limited access to food, water, healthcare and other basic infrastructure and services.⁸

The Czech Republic (on behalf of the EU) and Cuba, on behalf of the Non-Aligned Movement (NAM), echoed the High Commissioner's calls for accountability mechanisms. Other issues raised included the need for concrete steps to ensure the full implementation of *Resolution S-9/1*,⁹ and the second phase of the work of the Fact Finding Mission as being essential in order to complete the report.¹⁰ The second phase will entail holding public hearings in Gaza and meetings with civil society and officials from the West Bank and Jerusalem.

Five other stakeholders, including four NGOs took the floor during the interactive debate.¹¹ Amnesty International stated that Israel is 'undermining the opportunity to establish the truth through its failure to cooperate'. It also welcomed that even though the mandate of the Fact Finding Mission 'was regrettably limited to investigations of alleged violations by Israeli forces and failed to expressly include those committed by Palestinian armed groups, Justice Goldstone has clearly committed to investigating violations by both the Israeli and Palestinian sides'. Of interest was also the suggestion by the International Commission of Jurists (ICJ) to establish closer links between different UN bodies dealing with the situation. While emphasising that the UN Security Council is 'yet to ensure accountability to break the cycle of impunity' for human rights violations and grave breaches of international humanitarian law in armed conflicts, ICJ suggested that the Human Rights Council requests that the Fact Finding Mission's recommendations be forwarded to the Security Council for it to ensure compliance by Israel and the Palestinian authorities and groups with the recommendations and their general observance of international law.

General Debate on Item 7

On Tuesday 16 June 2009 the Council held a general debate on the human rights situation in Palestine and other occupied Arab territories. The positions of all participants are abundantly clear from past sessions, and little new ideas were added.

⁵ Egypt (on behalf of the African Group), United Arab Emirates (on behalf of the Arab Group), Czech Republic (on behalf of the EU), Pakistan (on behalf of the OIC), Cuba (on behalf of NAM), Egypt, Mauritius, China, Indonesia, Japan, Norway, Algeria, and Lebanon.

⁶ Egypt (on behalf of the African Group), Pakistan (on behalf of OIC).

⁷ Egypt (on behalf of the African Group), United Arab Emirates (on behalf of the Arab Group), Pakistan (on behalf of OIC), Cuba (in behalf of NAM), Mauritius, Indonesia, Algeria.

⁸ Mauritius, Indonesia.

⁹ Egypt (on behalf of the African Group), United Arab Emirates (on behalf of the Arab Group)

¹⁰ Palestine, United Arab Emirates (on behalf of the Arab Group), Pakistan (on behalf of OIC)

¹¹ The Organisation of the Islamic Conference, Amnesty International, International Commission of Jurists, United Nations Watch, Arab Commission for Human Rights.

Of note was a somewhat inappropriate remark by Egypt on the absence of the High Commissioner during the general debate. The delegate of Egypt (in its national capacity) severely questioned the High Commissioner's time-management, and suggested that she could not simply decide to not attend the general debate under Item 7. He claimed that, surely, the High Commissioner or her representative would attend when the Council would take up the situation in Sudan later that day. Israel expressed concern that the 'overwhelming consensus is that this conflict seems only to have one party', and that the Council remains silent about the attacks on Israel. It stated that 'ignoring Palestinian violence against Israel and the denial of Israel's legitimate rights detracts from any credibility this Council may have'. It expressed its willingness to enter into bilateral negotiations, but underlined that there is a need to stay 'firmly connected to reality', which is that 'the root of the conflict was and remains the refusal to recognise the right of the Jewish people to a State of their own in their historical home land'. It emphasised that it would be ready in a future peace agreement to reach a two-State solution if there was recognition of Israel as the State of the Jewish people, and demilitarisation of a Palestinian State. Israel also stated its willingness to improve the humanitarian situation in Gaza, while underlining that it is not the only access for humanitarian goods to Gaza.

Palestine said that Prime Minister Netanyahu of Israel had spoken about his vision for peace, but that the conditions he gave ran counter to the spirit of peace and many international standards. It stressed that the right to self-determination was not a right that could be assigned by an occupying force. It also underlined that the continuing expansion of settlements was a 'blatant violation' of international law. Furthermore, it reiterated that it asked for a two-state solution, on the borders of 1967, with East Jerusalem as the capital of the Palestinian State, and called for a decision on the occupation and to stop the blockade of Gaza, a solution for the refugee problem, the release of Palestinian 'prisoners of war', and the ability to rebuild the destruction and health care for victims.

Syria, also speaking as a concerned country, stated that Israel continued to make declarations refusing to make peace, and continued to confiscate Arab territory to build settlements, to refuse a Palestinian State, and to withdraw from the occupied Syrian Golan. It noted that the situation in the occupied Syrian Golan was not much better than in the occupied Palestinian territories. It urged the Council to implement its previous resolutions, and in particular *Resolution 10/17*.

26 other States¹² took the floor during the general debate, which presented the polarised picture, common to debates under Item 7. Several States¹³ stated that Israel continued its 'siege against the Palestinian people', violating international law and human rights, and spoke once again of 'war crimes', 'crimes against humanity', 'flagrant violations of international law', and even 'genocide'.¹⁴ Human rights violations mentioned included extra-judicial and targeted executions, restriction of movement, demolition of houses and infrastructure, arbitrary detentions,¹⁵ persistence and strengthening of the separation wall, abductions and disappearances, and the widespread practice of torture.¹⁶

Several States commented on the role of the Council in discussing the human rights situation in Palestine and other occupied Arab territories. The US cautioned against one-sidedness in the Council and stated that the Council must live up to its responsibilities, remaining balanced and objective. Many States called upon the international community and the Council to take all necessary measures and pressure Israel to conform to its obligations under international law,¹⁷ with Qatar even calling for sanctions. Egypt argued that the international community makes a

¹² United Arab Emirates (on behalf of the Arab Group), Egypt (on behalf of the African Group), Czech Republic (on behalf of the EU), Pakistan (on behalf of the OIC), Cuba (on behalf of NAM), Egypt, Qatar, Bahrain, Switzerland, Russian Federation, South Africa, Saudi Arabia, Jordan, Malaysia, Kuwait, Algeria, United Arab Emirates, Yemen, Tunisia, Lebanon, Turkey, Morocco, US, Iceland, Iran, Iraq.

¹³ United Arab Emirates (on behalf of the Arab Group), Egypt (on behalf of the African Group), Egypt, Bahrain, Algeria, Yemen, Iran, Iraq.

¹⁴ Yemen, Iran, Iraq.

¹⁵ Czech Republic (on behalf of the EU).

¹⁶ United Arab Emirates (on behalf of the Arab Group), Pakistan (on behalf of the OIC), Bahrain, Malaysia, Iran.

¹⁷ United Arab Emirates (on behalf of the Arab Group), Egypt (on behalf of the African Group), Pakistan (on behalf of the OIC), Qatar, Saudi Arabia, Kuwait, Yemen.

lot of noise about violations of developing countries, and stressed that if this ‘policy of double standards’ continued many obstacles would remain in the path to peace in the Middle East.

The search for a two State solution to the conflict was highlighted as key by many speakers. The US emphasised that it aligned its own policies with those who pursued a comprehensive peace between Israel and all its neighbours respecting ‘Israel’s rightful place in the community of nations’. The United States and several other States¹⁸ expressed that the only possible solution to establish lasting peace is a two-state solution. Qatar, however, claimed that ‘the arrogance and pretentiousness of the Israeli Government is imposing unachievable conditions for the establishment of two States’.

States also reiterated their concerns about the human rights and humanitarian situation in Gaza.¹⁹ Despite having just discussed the Fact Finding Mission in detail, many welcomed the Fact Finding Mission in this regard and called upon Israel to cooperate with it.²⁰ Some also expressed their concerns about the expansion of settlements, stating that this is illegal under international law.²¹

The League of Arab States also took the floor, as did several NGOs.²² Most of them are well known for presenting either side of the political divide, and thus added little to the debate. However, building on the made comments during the follow-up to the special session, some attempted to highlight the complementary role the Council should play in contributing to resolving the situation. The Cairo Institute for Human Rights Studies recommended to request an advisory opinion from the International Court of Justice on the question whether ‘the policies and practices of Israel within the Occupied Palestinian Territories violate the norms prohibiting apartheid and colonialism’.

¹⁸ Czech Republic (on behalf of the EU), Russian Federation, South Africa, Jordan, Morocco.

¹⁹ Pakistan (on behalf of the OIC), Czech Republic (on behalf of the EU), Switzerland, Russian Federation, Saudi Arabia, Jordan, Turkey, Kuwait, Algeria, United Arab Emirates, Yemen, Iran.

²⁰ Cuba (on behalf of NAM), Russian Federation, South Africa, Iceland, Iran, Iraq.

²¹ Czech Republic (on behalf of the EU), Egypt, Qatar, Switzerland, Saudi Arabia, Jordan, Malaysia, Algeria, Tunisia, Lebanon, Turkey.

²² Union of Arab Jurists, Mouvement contre le racisme et pour l’amitié entre les peuples (MRAP), Arab Commission for Human Rights, Cairo Institute for Human Rights, United Nations Watch, World Union for Progressive Judaism, Coordinating Board of Jewish Organization, Al-Hakim Foundation and Nord-Sud XXI.

Further information

For further information on the Human Rights Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to information@ishr.ch.
- Oral statements made at the Council, as well as other informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 11th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/11session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/11session/reports.htm>.

NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.

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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.

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