

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

COUNCIL UPDATE – SPECIAL SESSION HUMAN RIGHTS COUNCIL, 12TH SPECIAL SESSION ON HUMAN RIGHTS SITUATION IN OCCUPIED PALESTINIAN TERRITORIES AND EAST JERUSALEM 15-16 OCTOBER 2009

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Overview

The Human Rights Council (the Council) convened its 12th special session on 15 and 16 October 2009 at the request of Palestine and several other States.¹ The special session was called by members of the Council that are also members of the Organisation of the Islamic Conference as well as the Philippines, South Africa, Cuba, Bolivia, China, Nicaragua to discuss the human rights situation in the ‘Occupied Palestinian Territories and East Jerusalem’ and the recommendations of the UN Fact-Finding Mission on the Gaza Conflict headed by justice Goldstone. In light of the 12th regular Council session, which ended just two weeks prior, where it was decided that the vote on the resolution on follow up to the Fact Finding Mission would be postponed until March 2010, there were differing opinions on the necessity and appropriateness of the special session.

Almost all States called for independent investigations to bring those responsible for violations of human rights law and international humanitarian law to justice. The vast majority of States, with the exception of the US and Israel, characterised the Goldstone report as serious and meriting careful consideration. The majority of States and NGOs also stated that the Goldstone report was balanced and provided evidence that both of the parties concerned had committed violations during the Gaza conflict in late Dec 2008 and early January 2009 and. However, most of the discussion was focused on Israel’s aggression against Palestine, and issues of concern regarding the overall situation in the OPT, including the continuing **blockade on Gaza**, the restrictions on the **freedom of movement** for Palestinians, prevention of **access to holy sites**, digging and excavation under and around the **al-Aqsa Mosque**, Israel’s alleged attempt to change the demographic and geographic features of **East Jerusalem**, continued **settlement expansion**, and the **erection of the wall**.

The draft resolution presented by Palestine, Pakistan (on behalf of the OIC), Egypt (on behalf of the Non-Aligned Movement), and Nigeria (on behalf of the African Group) was adopted by a vote at the end of the session (25 in

¹ <http://portal.ohchr.org>

favour, six against and 11 abstentions). The resolution has three parts dealing with the situation in the OPT, follow up to the Goldstone report, and follow up to the periodic report on the occupied Palestinian territories by the High Commissioner. Many States believed that there should have been more time to discuss follow up to the Goldstone report as originally agreed at the regular Council session in September, and the resolution. Despite the Russian Federation and China's reservations regarding the reports' recommendations, they both voted in favour of the resolution as it also dealt with the situation in the occupied Palestinian territories. The European Union members of the Council were divided with the majority abstaining, the Netherlands and Italy voting against and France and the UK not casting a vote. It is expected that the Goldstone report will be debated by the General Assembly and that the Secretary-General will report to the Council in March 2010 on the implementation of its recommendations.

Opening statement by the High Commissioner

The High Commissioner for Human Rights, Ms Naventham Pillay, opened the meeting by stressing that the situation in the occupied Palestinian territories continued to be of grave concern, in particular in East Jerusalem and Gaza. She said there was evidence that both parties to the conflict had and continued to commit serious violations of human rights law and international humanitarian law (IHL), but focused primarily on Israel's actions. Ms Pillay called on Israel to end the restrictions imposed on the Palestinians wishing to enter the Al Aqsa Mosque to worship. She condemned the continuation of home demolitions and evictions of Palestinians in the occupied territory and called for an immediate halt to such practices. She also expressed her 'dismay' at the continued blockade on Gaza, saying that it severely undermined the 'rights and welfare' of the people there and constituted 'collective punishment' violating international law. Ms Pillay told Israel that it needed to allow the free movement of goods and people into and out of the occupied territories.

Ms Pillay criticised the culture of impunity that prevails in the occupied territories and in Israel regarding violations of human rights and IHL, as pointed out in her report² and in the report of the Fact Finding mission, popularly known as the 'Goldstone report'.³ She gave her full support to the recommendations of the Fact Finding Mission, and called on both parties involved to conduct 'independent, prompt, and effective investigations' into the violations outlined in both reports. The High Commissioner underlined that 'accountability for breaches of international humanitarian law and for human rights violations, as well as respect for human rights, are not obstacles to peace, but rather the preconditions on which trust and, ultimately, a durable peace can be built.' She continued by reminding those present that 'human rights are equal for all human beings and no party can claim that, in defending or supporting its own population, it is allowed to disavow the rights of others.' In conclusion she reiterated that respecting human rights was essential 'in building a solid foundation for both justice and peace.'

Concerned countries

Israel stated that nothing had changed in the 'real world' to justify the convening of this special session and that the meeting had nothing to do with human rights abuses, but was an 'abuse of the integrity and procedure' of the Council for the benefit of a 'domestic Palestinian audience.' Israel told the Council that special sessions should focus on human rights emergencies. It believed that rather than being held for this purpose it was held for the 'favourite and most infamous subject of some of those in the Council, Israel bashing.'

In response to concerns about the situation in **East Jerusalem**, Israel denied that there were digging and excavations taking place or that people were being denied access to the holy site. Israel also explained that there had been 'violent incitements,' where individuals had thrown rocks and other projectiles from around the Temple Mount and other locations in East Jerusalem and that the police had met these acts with 'extreme restraint'.

Israel criticised the Goldstone report as being 'biased and flawed' because it had not mentioned the actions of Hamas, rather it condemned Israel's actions without regard to its right to defend its security and people in the face of Hamas' attacks. It assured the Council that the relevant authorities were investigating any mistakes made and

² A/HRC/12/37

³ Report of the UN Fact Finding Mission on the Gaza Conflict, A/HRC/12/48.

that Israel's courts remained open to all, including Palestinians and NGOs' seeking redress. Israel claimed that there were members in the Council who used Israel and the report to draw attention away from their own countries because they could never 'imagine any dialogue on human rights or democracy...in their countries.'

Israel claimed that the draft resolution presented at the session would serve as a reward for terror and would constitute a new form of warfare by offering immunity to terrorists because countries would be 'prevented from waging effective responses.' It believed the adoption of the resolution would serve to set back any hopes for peace and that the only beneficiaries would be Hamas and their allies. In conclusion Israel said the 'political weapon purposed here today has nothing to do with human rights' and explained the lack of respect the Council enjoys.

As a concerned party **Palestine** explained the reason it had changed its position on deferring the adoption of the Goldstone report. It noted that since the closing of the Council's 12th regular session, Israel had 'met the positive and constructive process with more violence', imposing a **blockade** on Jerusalem preventing people from going to their homes and places of worship, arresting people, and continuing to impose measures to **change the demographic and geographic features** of East Jerusalem. Furthermore **settlement expansion** by way of eviction and house demolitions continued, a wall was still being erected, and there were **excavations and digging** going on under the Temple Mount threatening its structure. It also referred to the situation in Gaza and stated that those subject to the continued blockade were victims of more 'abject violations. It stressed that there had been numerous fact-finding visits and they had all reached the conclusion that Israel had violated international law, human rights and IHL but that the resulting recommendations had persistently been rejected by Israel.

The special session had been called as the only option that Palestine had in the face of Israel's abuse. Palestine called for all UN bodies to cooperate in helping its people, expressed its support for the High Commissioner and thanked the Council for supporting the rights of Palestinian people.

General debate

States generally expressed concern over the worsening situation in Palestine⁴ with the majority of both States and NGOs supporting holding the special session,⁵ although there were those that felt it unnecessary or inappropriate at this time.⁶ There were several NGOs that endorsed holding the session with the Palestinian Commission for Human Rights affirming that the session was necessary because 'justice delayed was justice denied.'

Most of the debate was focused on Israel's actions with little attention to the violations that the Fact Finding Mission found had been committed by Hamas and other armed Palestinian groups. An overwhelming number of States and NGOs condemned Israel for **violations of IHL**, particularly the **fourth Geneva Convention, human**

⁴ Tunisia (on behalf of the Arab Group), Egypt (on behalf of Non Aligned Movement (NAM)), Pakistan (on behalf of the Organization of the Islamic Conference (OIC)), Sweden (on behalf of the European Union (EU)), Nigeria (on behalf of the African Group), Qatar, Mexico, Brazil, Saudi Arabia, Russian Federation, Indonesia, United Kingdom, France, Mauritius, Cuba, China, Japan, Republic of Korea, Slovenia, Chile, Nicaragua, South Africa, Algeria, Venezuela, Yemen, Democratic People's Republic of Korea (DPRK), Malaysia, Sudan, Turkey, League of Arab States, Iran, Syria, Lebanon, Libya, African Union, OIC, Iceland, Morocco, Afghanistan, Kuwait, and Switzerland.

⁵ Tunisia (Arab Group), Egypt (NAM), Pakistan (OIC), Nigeria (African Group), Qatar, Jordan, Philippines, India, Mauritius, Cuba, China, Republic of Korea, Chile, Nicaragua, South Africa, Algeria, United Arab Emirates, Venezuela, Malaysia, Sudan, Turkey, League of Arab States, Syria, Lebanon, Libya, African Union, Costa Rica, Maldives, OIC, Morocco, Afghanistan, Kuwait, Palestinian Independent Commission for Human Rights, League of Arab States, Palestinian Independent Commission for Human Rights, International Federation of Human Rights Leagues (FIDH) in a joint statement with Palestine Center for Human Rights (PCHR), Al-Haq, Law in the Service of Man (Al-Haq) in a joint statement with Badil Resource Center for Palestinian Residency and Refugee Rights; and Defence for Children International, Human Rights Watch, Amnesty International, ADAHAH-Legal Center for Arab Minority Rights in Israel, Union of Arab Jurists, North South XXI, Palestinian Centre for Human Rights, and Movement Against Racism and for Friendship among Peoples (MRAP).

⁶ Australia, Brazil, Mexico, United Kingdom, Italy, Netherlands, United States, Panama, Canada, and United Nations Watch.

rights law and many international agreements.⁷ There was a large outcry against the activities occurring at holy sites that were preventing Muslims and Christians from accessing their places of worship, the most disturbing being the digging and excavations taking place at and around the **Al Aqsa Mosque**, said to be threatening the very structure of the holy site.⁸ The **settlement activities** in East Jerusalem including an increase in land grabbing, evictions and housing demolition was repeatedly mentioned,⁹ as was the continued **erection of the wall**.¹⁰ Some States commented that these practices contribute to separating Palestine from East Jerusalem and changing the demographic and geographic features of the area, thus '**judiaizing**' the city.¹¹

The majority of States repeatedly condemned the **Gaza blockade** and called for its end,¹² with many deeming the **restrictions on the movement** of goods and people as unacceptable.¹³ Israel's continued 'aggression' against the Palestinian population since its attack on Gaza last December were considered by some States to be **collective punishment**, with the actions occurring during the attack constituting **war crimes and crimes against humanity**.¹⁴

The large majority of States wanted to see 'credible and independent'¹⁵ **investigations** into the violations that occurred on both sides during the Gaza conflict and those responsible to be held accountable.¹⁶ The investigations would not only serve to bring perpetrators of war crimes, crimes against humanity and those in violation of international law to justice, but would also serve to stop the environment of impunity surrounding Israel's actions. A large number of States and NGOs strongly called for an **end to impunity**.¹⁷ Human Rights Watch stressed that impunity was the greatest threat to peace in the Middle East and Libya asserted that Israel's belief that it is above the law and continued protection by some members of the Council needed to stop.

The Goldstone report was cited by many States as providing evidence of serious crimes and several States and NGOs believed it was **balanced and fair** and should be seriously considered.¹⁸ A few States who did not agree with this assessment, with Algeria **criticising the report** for its allegations against Palestinians and said that it could not accept victims being equated with the aggressor. The United Kingdom (UK) and the United States (US) both said that they found the report 'flawed'. The UK stressed that the report did not address **Israel's right to self**

⁷ Egypt (NAM), Pakistan (OIC), Sweden (EU), Qatar, Bahrain, Saudi Arabia, Indonesia, UAE, Sudan, Syria, Libya, Maldives, OIC, Iceland, Afghanistan, Kuwait, Palestinian Independent Commission for Human Rights, League of Arab States, FIDH joint with PCHR, and MRAP.

⁸ Tunisia (Arab Group), Egypt (NAM), Pakistan (OIC), Nigeria (African Group), Egypt, Russian Federation, Indonesia, UAE, Yemen, DPRK, League of Arab States, Iran, Syria, Lebanon, African Union, Morocco, and Switzerland.

⁹ Tunisia (Arab Group), Bahrain, Brazil, Mexico, Indonesia, India, DPRK, Sudan, Turkey, Iran, Lebanon, African Union, Maldives, OIC, Morocco, Afghanistan, and Switzerland.

¹⁰ Tunisia (Arab Group), Pakistan (OIC), Qatar, Bahrain, Mexico, DPRK, Turkey, African Union, and Afghanistan.

¹¹ Tunisia (Arab Group), Pakistan (OIC), Qatar, Egypt, Bahrain, Brazil, Iran, Syria, Lebanon, and Morocco.

¹² Egypt (NAM), Pakistan, Sweden (EU), Egypt, Norway, Indonesia, Philippines, United Kingdom, France, Mauritius, Republic of Korea, Venezuela, Yemen, Iran, Afghanistan, and Switzerland.

¹³ Egypt, Brazil, Mexico, India, DPRK, Syrian Arab Republic, and Morocco.

¹⁴ Tunisia (Arab Group), Pakistan (OIC), Qatar, Algeria, UAE, Yemen, and Libya.

¹⁵ United Kingdom.

¹⁶ Sweden (EU), United Kingdom, Panama, Brazil, Italy, Netherlands, Slovenia, Chile, Maldives, Switzerland, Libya, Costa Rica, and Iceland.

¹⁷ Sweden (EU), Egypt (NAM), Egypt, Norway, Algeria, Turkey, Iran, Costa Rica, Libya, African Union, Iceland, South Africa, League of Arab States, Palestinian Independent Commission for Human Rights, International, (FIDH) in a joint statement with PCHR, Al-Haq in a joint statement with Badil Resource Center for Palestinian Residency and Refugee Rights; and Defence for Children International, Human Rights Watch, Amnesty International, International Commission of Jurists (ICJ), ADAHAH-Legal Center for Arab Minority Rights in Israel, Union of Arab Jurists, North South XXI, and Palestinian Centre for Human Rights.

¹⁸ Palestine, Switzerland, Afghanistan, Iceland, Maldives, Costa Rica, Iran, Turkey, Sudan, Yemen, UAE, Malaysia, Sudan, Turkey, League of Arab States, Lebanon, Iran, Saudi Arabia, Nigeria (African Group), Sweden (EU), Pakistan (OIC), Egypt (NAM), Tunisia, Palestinian Independent Commission for Human Rights, FIDH, Action Canada for Population and Development, Amnesty International, BADIL Resource Center for Palestinian Residency and Refugee Rights, North South XXI, International Organization for the Elimination of all forms of Racial Discrimination (EAFORD), and Palestinian Center for Human Rights.

defence or include **Hamas' actions**, it also interpreted international law in a way the UK did not agree with and lacked 'an authoritative Israeli perspective' because Israel did not cooperate with the Fact Finding Mission. The US was not as detailed in its reasoning, but said that it had 'serious concerns about the conclusions and recommendations of the report'. India believed that the lack of evidence for a criminal trial weakened the report and was disappointed that the recommendations were not solely presented to the Council but to various UN bodies. Brazil also stated that it was 'counter-productive' for other UN bodies to consider the report. The Russian Federation remarked that some of the recommendations of the Fact Finding Mission, needed to be questioned and that if the approach to them had been more flexible there would have been a greater possibility to gain broader support.

The Council's role regarding the resolution and the situation in the Middle East was widely discussed. Egypt, on behalf of the Non-Aligned Movement (NAM), said that the Council could not turn a blind eye to the situation and that human rights violations can never be justified. Several States wanted the Council to hold Israel accountable for its violations.¹⁹ Norway said it believed that the session was a test of the Council's ability to take decisions aimed at protecting people on the ground and only through sending a clear and credible message could it play a constructive role on the issue. Libya was quite critical of the Council's role and said that the session signalled a cross roads and if no consensus was reached then it would be proof that 'human rights are only a slogan used by some States to mislead their own people and the international community.' Brazil expressed concern over further **politicisation** of the issue within the Council and fear that it could serve to 'jeopardize the prospect of peace'.

States that spoke agreed on the importance of continuing the **peace process** and expressed a desire to see peace talks and negotiations resumed in order to find a solution.²⁰ Some States did not mention peace negotiations specifically, but called for an immediate **end to the occupation** and the implementation of a **two-state solution**, with East Jerusalem as the Palestinian capital, as the only viable way to achieve peace.²¹

Adoption of the resolution

Pakistan introduced the draft resolution,²² which was divided into three parts. The first, part A, addresses Israel's violations and condemned its policies and asked that the High Commissioner report on the situation, the second, part B, addressed the Goldstone report by calling on all parties to implement the recommendations within it as well as recommending that the General Assembly consider the report at its 64th session and requesting that the Secretary-General report on the implementation of the recommendations from the report at the Council's 13th session in March 2010. The final part, part C, of the resolution addresses the periodic report by the High Commissioner and welcomes the recommendations within it. Pakistan introduced an oral revision, at the request of several States,²³ to the second part of the resolution. The revision emphasised the need for accountability for violations of IHL and human rights law.

Israel took the floor and warned the Council that the Goldstone report was unbalanced and the resulting resolution was also unbalanced. It criticised the report for not condemning Hamas or addressing terrorism and that the real issue at hand was how to move forward and make peace while protecting its people. Israel said that if the international community wanted to see the promotion of peace between it and Palestine then it had to allow for moderates to gain ground, reject extremism and therefore reject the proposed resolution. Palestine countered this statement by underlining that the rule of law should govern the relation between the parties. It said that the adoption of the resolution would consolidate justice for its people, who just wanted to live in peace and have an

¹⁹ Yemen, Switzerland, African Union, Palestine, Turkey, Saudi Arabia, Chile, Egypt, and Nigeria.

²⁰ African Union, Sweden (EU), Brazil, Russian Federation, Mauritius, China, Italy, Republic of Korea, Slovenia, Chile, Morocco, and Switzerland.

²¹ Sweden (EU), Egypt, Bahrain, Russian Federation, Indonesia, India, Malaysia, Syrian Arab Republic, Costa Rica, African Union, Iceland, Saudi Arabia, Philippines, and Yemen.

²² A/HRC/S-12/L.1

²³ States were not named.

independent State. Palestine urged for consensus on the resolution and said it would not forgive the international community for keeping criminals and murders above the law.

As some States explained their vote before the vote, it was clear that the resolution could have gained more support if there had been more time to discuss it. Several States expressed support for the Goldstone report and for the resolution, but abstained on the vote.²⁴ Even Chile that voted in favour of the resolution, said that there was a lack of dialogue and flexibility during the negotiations of the resolution. The US directly stated that it would not support the resolution, that it was ‘disappointed with the outcome,’ and criticised it for being unbalanced. France requested that the meeting be postponed a few hours so that it could have more time to consult within the EU, but due to an objection by Egypt was only given an extra thirty minutes.

The final vote resulted in 25 in favour,²⁵ six against,²⁶ and 11 that abstained.²⁷

It seems that several States had reservations regarding the resolution, despite their supportive vote. The Russian Federation, China and India, all voted in favour of the resolution, but explained afterwards that they were in complete agreement with the details of the text. They had supported it due to a commitment to the Palestinian people and achieving peace in the region. All three countries noted having reservations about the recommendations. Of the States that spoke most of them mentioned the need for investigations,²⁸ but the Russian Federation, Belgium and the Netherlands agreed that the concerned parties should conduct these, not the international community. Belgium also asked that the Council ensure follow-up to any investigations taking place because its priority was fighting impunity. Italy and Slovenia said they had voted no because the attempt to rebalance the text by the EU had been unsuccessful. Algeria, an observer State, criticised the voting pattern of ‘most of the Western European and other States Group,’ and accused them of politicising the issue and rhetorically asked: ‘How could advanced democracies shrink from condemning the targeting of civilians and from stressing accountability for all violations of human rights law and IHL, as stressed in the Goldstone report?’

Further information

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- 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 12th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/12session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/12session/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.

²⁴ Mexico, Norway, Argentina and Uruguay, and Slovenia.

²⁵ Argentina, Bahrain, Bangladesh, Bolivia, Brazil, Chile, China, Cuba, Djibouti, Egypt, Ghana, India, Indonesia, Jordan, Mauritius, Nicaragua, Nigeria, Pakistan, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, South Africa, and Zambia.

²⁶ Hungary, Italy, Netherlands, Slovakia, Ukraine, and United States.

²⁷ Belgium, Bosnia and Herzegovina, Burkina Faso, Cameroon, Gabon, Japan, Mexico, Norway, Republic of Korea, Slovenia, and Uruguay.

²⁸ Slovakia, Belgium, Russian Federation, and the Netherlands.

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