

COUNCIL MONITOR

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Human Rights Monitor Series

COUNCIL UPDATE – ITEM 7 HUMAN RIGHTS SITUATION IN THE OCCUPIED PALESTINIAN TERRITORIES HUMAN RIGHTS COUNCIL, 10TH SESSION 23 AND 24 MARCH 2009

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Overview

On 23 and 24 March 2009, the Human Rights Council (the Council) discussed Item 7 of its agenda, dedicated to the 'human rights situation in Palestine and other occupied Arab territories'. Two separate interactive dialogues were held: first, on the combined report of 'all relevant special procedures mandate-holders' as follow-up to the special session on Gaza held in January 2009, and second, the annual interactive dialogue with the Special Rapporteur on the human rights situation in Palestine and other occupied Arab territories, Mr Richard Falk. Most States, however, addressed issues relevant to both reports at the same time. In addition to the two interactive dialogues, the Council also held a general debate on this item. Unsurprisingly, the issues addressed in all three sets of discussions were very similar. While some States made efforts to focus their interventions on the specific topics for discussion, general comments on the situation in the occupied Palestinian territories (OPT) were mixed with comments on one or both reports during all three debates.

All three discussions were held in the charged atmosphere that is characteristic of the Council's debates on this issue. The political character of the Council's work came to the forefront more than during other discussions at the 10th session. At the same time, and although the fundamental divergences of opinion on this issue was again the dominant factor in the debate, the general atmosphere during the debates seemed slightly less confrontational than during previous sessions. The re-engagement of the US in the Council's work could perhaps have a 'calming' influence on some of the more vocal delegations. In addition, the imminent holding of the Durban Review Conference could also have impacted on the nature of the discussion. In the context of the preparations for the Durban Review Conference, proposals to single out the situation in the OPT in the text of the outcome document (as it is in the Durban Declaration and Programme of Action) have contributed to the decision by the US to withdraw from the conference, and to the threat by some members of the European Union (EU) to do the same. The latest draft outcome does not contain any specific references to the situation in the OPT and States have generally agreed that it is a good basis for reaching a consensual outcome to the Review Conference.

Overall, however, the discussion on this item remains a disappointing part of the Council's work. Too often the possibility of a substantive human rights dialogue in the Council is dismissed in favour of polarised point-scoring. This does no service and offers no support to those in that region whose human rights are being routinely violated, Palestinians, Israelis, and others.

Presentation by the Deputy High Commissioner

The Deputy High Commissioner for Human Rights, Ms Kyung-wha Kang, presented three reports to the Council regarding the human rights situation in the occupied Palestinian territories (OPT).¹ With regard to the report on the follow-up on the fact-finding mission to **Beit Hanoun**, she regretted that none of that mission's recommendations had been implemented. Furthermore, in relation to the report on **Palestinian pregnant women** giving birth at Israeli checkpoints, she underscored her deep concern that the limitations imposed by Israeli checkpoints hamper prenatal, natal, and postnatal care, and thereby undermine the right to the highest level of physical and mental health.

Concerning the **high-level fact-finding mission** to Gaza, authorised by the Council in its *Resolution S-9/1*, she expressed the hope that the Council's President would soon be able to announce the head of the mission, and highlighted that consultations have begun to this effect. Several States responded to this issue during the interactive dialogue. In this context, she also highlighted that following Israel's military operations in Gaza, the UN Secretary-General established a **board of inquiry** which will review and investigate specific incidents, that caused many deaths and injuries as well as damage to UN premises or operations. The board will report to the Secretary-General upon completion of its investigation.

In general, the Deputy High Commissioner stressed that accountability for the reported human rights violations, that include both the rocket attacks by Hamas and the military strikes by Israeli forces, must be ensured. She highlighted that this will require that investigations into the alleged breaches must be conducted to clarify the precise nature and circumstances of reported violations, to hold all violators to account and to ensure that victims receive adequate reparation.

Presentation of the combined report

The Special Rapporteur on the right to food, Mr Olivier de Schutter, presented the combined report of the relevant special procedure mandate-holders.² Mr de Schutter stated that during the large-scale military operation launched by Israel against Hamas on 27 December 2008, 1440 Palestinians were killed, including 431 children and 114 women, and 13 Israelis were killed. He underlined that, although the report focused on the Israeli military operation in response to rockets fired from the Gaza Strip targeting South Israel and its impact on human rights, the general situation in the Gaza Strip was already of serious concern before these events, following the 20-month-

¹ A/HRC/10/35, Report of the United Nations High Commissioner for Human Rights on the issue of Palestinian pregnant women giving birth at Israeli checkpoints; A/HRC/10/15, Report of the Secretary-General on human rights in the occupied Syrian Golan; A/HRC/10/27; Report of the Secretary-General on the human rights situation in Palestine and other occupied Arab territories – Follow-up on the implementation of the recommendations contained in the report on the high-level fact-finding mission to Beit Hanoun established under HRC resolution S-3/1.

² A/HRC/10/22, combined report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Representative of the Secretary-General for Children and Armed Conflict, the Special Rapporteur on violence against women, its causes and consequences, the Representative of the Secretary-General on the human rights of internally displaced persons, the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the right to food, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on the right to education and the Independent Expert on the question of human rights and extreme poverty. This report was submitted pursuant to Council *Resolution S-9/1* on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza strip, in which the Council requested all relevant special procedures mandate-holders to seek and gather information on violations of human rights of the Palestinian people and submit their reports to the Council.

long blockade since Hamas' electoral victory in June 2007. He emphasised that, in addition to discriminatory legislation and policies by Israel in relation to access to housing, health care, food and water systems over the past decades, this blockade which severely restricted the free movement of people and goods and the delivery of humanitarian and development assistance further aggravated the situation in the Gaza Strip.

The Special Rapporteur stated that Israel's continuing occupation of the Gaza Strip has been confirmed repeatedly in several international fora, despite its 2005 disengagement, and that its obligations as the occupying power are therefore set out in the 1949 Geneva Conventions (especially the Fourth Convention) and the Hague Regulations. He noted the urgent need to ensure an end to the blockade.

He highlighted that the Israeli Defence Force (IDF) had adopted a number of measures destined to shield their officers from potential indictments abroad. He stressed that the primary responsibility for ensuring respect of international humanitarian law lies with the national justice system, and stated that 'should the Israeli military or civilian justice system adequately and transparently investigate allegations of violations of the laws of war and if necessary prosecute those responsible, the IDF has no reason to fear that its officers will face indictments in foreign jurisdictions'.

Mr de Schutter concluded by saying that there is an imperative need for the Israeli authorities and those of Hamas to cooperate fully with international endeavours to establish accountability in relation to this conflict. In addition, he recalled the obligation of all States to ensure respect for international humanitarian law.

Interactive dialogue

Israel, as a concerned country, criticised the combined report for not addressing 'the realities faced by Israel',³ stating that it 'wilfully ignores and downplays the terrorist and other threats we face'. It further stated that the report was not objective and it ignored critical information and selectively manipulated the facts. It stressed that 'the Council should consider promoting genuine peace and reconciliation aimed at fulfilling a two-state solution' and that peace 'will not be achieved by adopting one-sided reports', but 'will only be realised through direct, bilateral negotiations'. It added that 'the Council should use its time and resources to rekindle the peace process without adding fuel to the fire'.

Palestine, as a concerned country, underscored the importance of the report and its recommendations. It stated that a right to self-defence does not exist, since Israel is the occupying power, and that there is a need to uphold international humanitarian law.

The fundamental divergence of opinion on this topic within the Council became clear once again. On the one hand, several States spoke of 'war crimes', 'crimes against humanity', 'terrifying massacres', 'flagrant violations', deliberately attacking and destroying non-military targets, and grave breaches of international humanitarian and human rights law.⁴ These States strongly condemned the Israeli aggression and its explanation of these acts as self-defence. They called for all necessary measures to be taken by the Council and for prosecution (before an international court) of those responsible for the crimes committed.

On the other hand, the United States (US) and the Czech Republic, on behalf of the European Union (EU), focused their statements on the combined report short and took a more moderate position. Although the US underlined its continuing concern about the situation in Gaza, it particularly stressed its concerns about the use of the Council as a platform to single out Israel for criticism. It urged the Council to exercise caution and balance, and to refrain from further unbalanced attacks on Israel. The Czech Republic (on behalf of the EU) expressed its concern regarding the

³ It referred to a Hezbollah statement, in which the group claimed that it would never recognise Israel and a statement made earlier by a representative of Iran 'refusing to pronounce Israel's name, denying our legitimacy – our very right to exist – before the UN'.

⁴ Yemen (on behalf of the Arab Group), Venezuela, Tunisia, Pakistan (on behalf of the Organisation for Islamic Countries), Indonesia, Sudan, Egypt, African Union, Cuba (on behalf of the Non-Aligned Movement), Malaysia, Jordan, Qatar, Iraq, Syria, Lebanon, Bangladesh, League of Arab States, Algeria, United Arab Emirates and Kuwait.

serious humanitarian and human rights situation in Gaza and stressed that the Israeli military operations exacerbated all of these concerns. It noted that all efforts should be taken to ensure recovery.

Several States addressed the **high-level fact-finding mission** that the President of the Council was mandated to set up under the terms of *Resolution S-9/I*.⁵ Egypt (on its own behalf and on behalf of the African Group) and the African Union expressed their disappointment that the members of the mission have still not been appointed. Egypt spoke of a ‘flaw in the will of the international community’, suggesting that this prevents the fact-finding mission from taking up its work. Cuba, on behalf of the Non-Aligned Movement (NAM), called on the President of the Council to make all efforts to establish this mission.

In his final comments, Mr de Schutter stressed that the main message from the report was a message about accountability. He underscored the need for full and impartial investigations, and stressed that if Israel’s national justice system is insufficient to provide accountability, international justice systems should be involved.

Presentation of the Special Rapporteur’s report

The Special Rapporteur on the human rights situation in Palestine and other occupied Arab territories, Mr Richard Falk, presented his annual report, which mainly focused on the recent Israeli military operations in Gaza, but also considers the pre-existing blockade of Gaza.⁶ The Special Rapporteur insists that ‘Israeli security and the realization of the Palestinian right of self-determination are fundamentally connected’.

Turning specifically to the military operations in Gaza, the Special Rapporteur reiterated that six times more Palestinian civilians than combatants were killed, which in his view strongly suggests a failure of Israel to respect the fundamental legal obligation to conduct military operations in a way permitting the distinction between civilian and military targets. He added that, since the combat zone was so densely populated there even was ‘no lawful way’ to carry out military operations of this character. The Special Rapporteur claimed that Israel had coercively confined the civilian population of Gaza to the combat zone during the military operations, thereby effectively denying all Palestinians the option of becoming refugees. He insisted that such a ‘war policy’ should be treated as a distinct and new crime against humanity, formally recognised as such and explicitly prohibited. Mr Falk, drawing on recent media reports, also spoke about what he called an ‘anti-Palestinian vindictiveness’ by Israeli soldiers. He expressed particular concern about racist incidents, the killing of innocent civilians, pointless destruction, disregard for human life and a tendency towards ‘overall brutalisation’.

In addition to his comments about the situation in Gaza, the Special Rapporteur highlighted some ‘deeply disturbing’ trends with respect to settlements. He noted that the ongoing expansion of settlements appear to have a ‘serious and perhaps decisive’ negative effect on the prospects of achieving peace between Israel and the Palestinians by deliberately obstructing the exercise of the right of self-determination of the Palestinian people. He drew attention to plans of the Government of Israel to expand existing settlements in the West Bank and in East-Jerusalem. He underscored that all settlement activity is in violation of the Fourth Geneva Convention and inconsistent with repeated pledges by the Government. Commenting on the result of the recent elections in Israel, he said it accentuates concerns about the failure of Israel to freeze the settlements at their present level. In this context, he also highlighted the ‘security wall’ unlawfully constructed by Israel in defiance of the advisory opinion of the International Court of Justice.⁷ Mr Falk emphasised that the combination of the construction of the separation wall, the settlement road network and the settlements themselves greatly diminishes the land available to the Palestinians, making the prospects of a Palestinian state more difficult.

He also drew attention to reports of increasing settler violence against Palestinians, underlining the continuing concerns about the excessive force used by Israeli forces in the West Bank, and referred to concerns about the

⁵ Japan, Senegal, Lebanon, Algeria, Egypt, African Union, Cuba (on behalf of NAM).

⁶ A/HRC/10/20.

⁷ International Court of Justice, Advisory Opinion of 9 July 2004 on the legal consequences of the construction of a wall in the occupied Palestinian territory.

Palestinian future in East-Jerusalem and allegations that Israel is ‘engaged in a subtle, but cumulatively very efficient process to ensure Jewish demographic dominance over the whole of Jerusalem’.

In his presentation, Mr Falk also briefly touched upon his detention after his entry into Israel was denied.⁸ He stated that this precedent should be seriously challenged by the Council, for the sake of both his mandate and more broadly to ensure appropriate respect and cooperation by States with official UN missions and activities.⁹

Interactive dialogue

Unsurprisingly, Israel, as a concerned country, criticised the report and generally the Council’s ‘politicised agenda’. In particular it challenged the definition of the Gaza Strip as an occupied territory, claiming that it had withdrawn its troops and was therefore no longer occupying the territory. In his final comments, Mr Falk also addressed Israel’s suggestions that the Gaza strip is no longer under occupation. He emphasised that Israel sustains its occupation through effective control of the area, and through its total control over border crossings, air space and the sea.

Israel also commented on the actions of Hamas and claimed that, because of these attacks, Israel has a legitimate right to self-defence. In his answers, Mr Falk stressed that the mortar and rocket attacks by Hamas are contrary to international humanitarian law and that they do give Israel a ‘right of response’. He added that this response, however, has to be proportionate. Furthermore, he underlined that he had never denied that Israel, as a sovereign State, has a right of self-defence, but that this right must be exercised in accordance with international law and on the basis of a compelling factual foundation. According to Mr Falk, this ‘compelling factual foundation’ did not exist in the situation preceding the December attacks on Gaza. First, ‘there were diplomatic alternatives that are required to be relied upon in the event that they will avoid the recourse to warfare’ and secondly, there had been a ceasefire which had been more successful in stopping the rocket attacks than the military retaliation.

In the following dialogue, many States agreed with the Special Rapporteur’s account of the situation. However, compared to the detailed presentation by the Special Rapporteur, the interventions by States were merely repeated well-known positions. Pakistan (on behalf of the OIC), Egypt (on behalf of the African Group), Malaysia and Qatar accused Israel of **deliberately targeting civilians**, by not making a distinction between the different targets and thereby violating international humanitarian law.

Many States addressed the issue of **Mr Falk’s detention**, expressing their concerns.¹⁰ Egypt (on behalf of the African Group) and Bangladesh argued that by refusing access to the Special Rapporteur, Israel showed utter disregard for human rights, the Council, the UN and the international community as a whole. In this context, it is interesting to note that the lack of cooperation with relevant special procedures by other States, including the Democratic People’s Republic of Korea (DPRK), which was considered at the same session, was not commented upon by the same States.

Several States expressed their concern regarding the **expansion of Israeli settlements**, underlining their illegality under international law.¹¹ The Czech Republic (on behalf of the EU) expressed its concern regarding the approval for the construction of a new settlement in the West Bank. Iceland commented that without peace, there would be no sustainable way to improve the situation and that therefore the Government of Israel must demonstrate its good

⁸ Mr Falk’s entry was denied in December 2008, after which he was detained in a facility close to Ben Gurion Airport, and expelled from Israel the day after. He was detained in a locked and dirty cell with five other detainees and underwent excessive body search.

⁹ The Special Rapporteur suggested for instance to seek an advisory opinion from the International Court of Justice on the applicability of the Convention on the Privileges and Immunities of the United Nations.

¹⁰ Yemen (on behalf of the Arab Group), Egypt (on behalf of the African Group), Egypt, Czech Republic (on behalf of the EU), Bangladesh, Malaysia, Indonesia, Algeria, United Arab Emirates, Djibouti, Jordan.

¹¹ Pakistan (on behalf of OIC), Czech Republic (on behalf of EU), Cuba (on behalf of NAM), Egypt (on behalf of the African Group), Switzerland, Saudi Arabia, Bahrain, Slovenia, Tunisia, Libya, Jordan.

faith by ending all settlement activities. It added that ‘creating facts on the ground is creating obstacles for peace’ but that ‘the point of departure for the international community must be that such facts are reversible’.

With regard to the **mandate of the Special Rapporteur**, the Czech Republic (on behalf of the EU) asked the Special Rapporteur whether his mandate, as currently defined, allowed him to look into the situation from all angles and present a full picture. It noted that this mandate is the only special procedures mandate of the Council that has not yet been subject to the required ‘review, rationalisation and improvement’ by the Council in the context of its institution-building. The Czech Republic (on behalf of the EU) would welcome such a review.¹² The US regretted that the mandate extended only to reporting on Israel’s responsibilities and expressed its concern about the one-sided focus of the report.

In his final comments, Mr Falk addressed the criticisms levelled by the US and Israel about a lack of balance and his alleged selectivity and reiterated that what he reported was ‘as truthful as possible’ and was ‘premised on as reasonable an interpretation of international humanitarian law as it is possible to make’. He also welcomed Israel’s initiative to conduct its own military investigations of alleged misconduct by the Israeli Defence Forces, expressing his hope that these will be carried out in ‘a transparent, credible and independent fashion’. He added, however, that even such an investigation will be insufficient as one ‘cannot fully rely on a country’s self-investigation of this sort of behaviour’. He was of the view that an Israeli investigation does not relieve the international community of its responsibility to conduct an independent investigation. He concluded by expressing his hope that the Council would take all his recommendations seriously.

General Debate on Item 7

In their presentations, both Mr de Schutter and Mr Falk had addressed the **unlawful blockade of Gaza** and the **humanitarian situation** in general, and therefore States commented on both in all three debates. Mr de Schutter had concluded that there is an urgent need to ensure an end to the blockade, including unimpeded and safe passage for humanitarian assistance, unrestricted imports of medical supplies, foodstuffs, agricultural inputs and fuel. He added that prompt permissions for patients with medical referrals for treatment outside Gaza must also be granted and that prompt repair of buildings dedicated to agriculture and of water and pumping stations must be facilitated.

Based on this, many States expressed their concern regarding the humanitarian situation in general, calling for an end to the Gaza blockade. They also underlined their willingness to provide support.¹³ Again, however, given the detailed analysis by the two experts, it was somewhat disappointing to see how little analysis of the actual human rights situation took place. Instead, States played the usual political game of passing around the blame. Pakistan (on behalf of the OIC) stressed that Israel’s ‘illegal actions’ as an occupying power ‘have served a severe blow to the peace initiatives and Palestinian-Israeli negotiations’.

Several States expressed that the only possible solution to establish long-lasting peace is a negotiated **political, non-military, two-state solution**.¹⁴ Egypt (on behalf of the African Group) affirmed its solidarity with the entire Arab population under Israeli occupation and acknowledged the just and legitimate struggle of the Palestinians and their right to establish ‘an independent state on their national soil with East-Jerusalem as its capital’, in accordance with international law and all relevant UN resolutions. It was noteworthy that the US also underscored its continuing commitment to a two-State solution, including an independent, viable, democratic and peaceful Palestinian State.

¹² During the institution-building phase, many States had argued that since the mandate on the OPT was ‘established until the end of occupation’ it would not be subject to review, while others had claimed that while the mandate could not be discontinued, its terms should still be reviewed. See ISHR’ *Human Rights Monitor 2008*, available at [Hwww.ishr.ch](http://www.ishr.ch). At the September 2009 session, the Special Rapporteur himself had argued that the mandate should be extended in substance to include violations of human rights by Palestinian armed actors as well, a suggestions that has not been picked up so far in the Council.

¹³ Yemen (on behalf of the Arab Group), Czech Republic (on behalf of the EU), Switzerland, Brazil, Malaysia, Saudi Arabia, Russian Federation, Slovenia, Japan, China, Djibouti, Iceland

¹⁴ Czech Republic (on behalf of EU), Jordan, Senegal, Brazil (on behalf of India, Brazil and South Africa), US, Egypt (on behalf of African Group),

Yemen (on behalf of the Arab Group), Egypt (on behalf of the African Group), Syria and Qatar all called upon Israel to withdraw from the occupied **Golan Heights**. Pakistan (on behalf of the OIC) stressed that ‘the human rights situation in the Syrian Golan Heights is deteriorating as a result of the Israeli occupation which continues to violate the civil, political, economic, social and cultural rights of the Syrian population’.

Slovenia and Switzerland referred specifically to **vulnerable groups**. Slovenia stated that ‘the future of the Middle East lies in the hands of Palestinian and Israeli youngsters and children’ and that therefore special attention is needed to protect those affected by the armed conflict. Switzerland also stressed that children deserve special attention.

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- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 10th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/10session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.
- More 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’.

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