

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

HUMAN RIGHTS COUNCIL, 4TH SESSION DAILY UPDATE, 22 MARCH 2007

Overview	1
Working Group on enforced disappearances	2
Related debate.....	3
Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967	6
Presentation of High-Level Fact-Finding Mission to Beit Hanoun.....	9
Informal consultations on review of special procedures .	11
International Coordinating Committee of National Human Rights Institutions.....	13
Other issues	14

Overview

The Human Rights Council (the Council) opened today by hearing the remaining statements in response to the presentation of the Chairperson of the Working Group on Enforced Disappearances. The rest of the morning session was dedicated to a general debate on the thematic issues raised by the ten special procedures who have held interactive dialogues with the Council over the last four days. The afternoon meeting of the Council opened with the first of the country mandates. This meant that, as agreed at the second session of the Council, the working methods reverted to hearing the presentations of special procedures on a case-by-case basis, instead of in clusters. NGOs, however, may only speak at the end of the presentations and responses of the group of three special procedures, meaning that they are unable to direct questions to rapporteurs and subsequently cannot receive replies. As time was exhausted at the session, NGOs were therefore unable to speak today.

The afternoon meeting of the Council began with the presentation of Mr John Dugard, **Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967** (OPT). Mr Dugard spoke on two separate themes; first, as the head of the Fact-Finding Mission established pursuant to the first special session of the Council; and second, as Special Rapporteur on the OPT in presenting his annual report

to the Council. Given that Israel failed to provide access to the Fact-Finding Mission, Mr Dugard concentrated the majority of his presentation to his report as Special Rapporteur, and addressed the issue of Israel applying a policy of effective apartheid in the OPT.

The Council then moved to hear the presentation of Ms Chinkin, one of the members of the High Level Fact-Finding Mission to travel to Beit Hanoun, as mandated by *Resolution S-3/1* pursuant to the third special session of the Council. Given that the Mission was refused access to the area, Ms Chinkin could only provide details on their failure to visit, and give an explanation as to why they felt it was not possible to produce a report from secondary sources. There were a number of States left to speak on the question of Beit Hanoun at the end of the meeting. Before the meeting was adjourned, the President noted that the Council was a half-day behind in its work, and encouraged States to keep their statements short so that the Council might be able to take decisions on Friday afternoon.

The Facilitator of the review of special procedures held informal consultations on his non-paper this morning from 8.30 to 10 a.m. Elsewhere, the annual meeting of the International Coordinating Committee of National Human Rights Institutions continued for the second day.

Working Group on enforced disappearances

Conclusion of interactive dialogue

The interactive dialogue with the Working Group on enforced or involuntary disappearances continued this morning with the remaining States and NGO speakers presenting their reactions to the Working Group's report and the Chairperson's presentation. The Chairperson of the Working Group was unable to be present and therefore could not respond to these speakers. Algeria noted that the report of the Working Group claimed that there were 32 new disappearances but that these were actually disappearances from the 90's. The delegate stressed that there was no amnesty in Algeria for disappearances and people who were found guilty would not escape the law. The Philippines also stated that most cases were from the 70's and 80's and that it was working with the International Committee of the Red Cross to find missing persons. The Russian Federation stressed that the number of cases of enforced disappearances in the country has greatly decreased.¹ It also asked the Working Groups on the reasons why, despite the systematic information on cases of disappearances, there is no mention on Iraq and Afghanistan in the report.

Nepal stated that it had considered the recommendations made by the Working Group after its visit in 2004 and the progress reports on the implementation of these recommendations had been sent since then. It explained that the cases that were being reported now were due to a poor registration system in the villages and were not disappearances. It hoped that the improved situation would be reflected in the Working Group's report. The Democratic People's Republic of Korea (DPRK) regretted that the facts that its concerns and efforts were not reflected in the Working Group's report. It emphasised that it had totally resolved the Japanese abduction and this should not be described as outstanding. Yemen underlined that it had worked in a transparent manner with the Working Group, sent extensive information to the Working Group and that it would continue to cooperate. Argentina stated that it was trying to resolve the case concerning intimidation of witnesses that had been referred to in the report. Peru also expressed its willingness to address any cases that the Working Group became aware of. Thailand stressed that each case of suspected disappearance was investigated in transparency, in respect of the rule of law and with no delay, adding that the Government attaches the utmost importance to this issue. It stated that in relation to allegations about intimidation of relatives of disappeared persons, the Government was ready to provide protection.

¹ In 2000, the Working Group analysed 147 cases, whereas in 2006 only 5.

Canada noted that the Working Group's report had stated that amnesty laws were preventing those responsible for disappearances from being held accountable. It requested the Working Group to elaborate on these concerns. It also enquired how the international community could help Sri Lanka deal with cases of disappearances considering that the report documented 5,749 outstanding cases and also referred to an increase in the number of cases in the North-East region of the country.

The Mouvement contre le racisme et pour l'amitié entre les peuples, in a joint statement with 14 other NGOs, pointed out that enforced disappearances of a six-year old boy, who was recognised as the 11th Panchen Lama, had still not been resolved. A number of NGOs drew attention to the situation in Sri Lanka and the unresolved disappearances.² They urged the Government to accept a visit sooner than 2008. The International Commission of Jurists, Colombian Commission of Jurists, and Human Rights Watch in a joint statement also expressed concern about the reports of disappearances in Thailand and also urged a follow-up visit by the Working Group to address past cases of disappearances. They noted that Colombia is plagued with a continuing pattern of disappearances and urged the Government to comply with the recommendations of the Working Group. They also urged all States to ratify the *International Convention on the Protection of All Persons From Enforced Disappearance*. Thailand responded in a right of reply to the concerns raised by the International Commission of Jurists, Colombian Commission of Jurists and Human Rights Watch. Thailand stated that the emergency decree was implemented to allow the Government to deal with the situation and maintain law and order along with containing the necessary safeguards on human rights. Thailand stated that officials are only protected by the decree when they can prove to a court they have complied with the safeguards of the decree.

Related debate

Enforced disappearance

Germany, on behalf of the EU, stressed the urgency for the Working Group to organise a mission to Sri Lanka. Colombia stated that the Government had set up a register for all missing persons, including funds from the national bodies for the victims of enforced disappearances. It also referred to the activities of the National Commission on Missing Persons in this regard.

The Asian Legal Resource Centre, FORUM-ASIA, International NGO Forum on Indonesian Development and the Asian Federation Against Disappearances, in a joint statement, highlighted their concern about the scale of disappearances in Asia and the lack of cooperation by many Asian States with special procedures. They highlighted that the lack of: disclosure of whereabouts of disappeared persons; credible, impartial and effective investigations; laws criminalising disappearance; successful prosecution of perpetrators; and reparation for the victims and/or their families were barriers found throughout Asia. They highlighted concerns in particular about disappearances in Pakistan, Sri Lanka, Nepal, Indonesia, and the Philippines. They stated that these States, as members of the Council, must immediately cease their practices and denial of disappearances and take other necessary national measures to prohibit, prosecute and ensure effective remedies and compensation; ratify the *Convention on Enforced Disappearance*, and extend standing invitations to all special procedures. The Council should also take a serious look at its membership and seek to correct the presence of gross violators amongst its ranks or risk a collapse of credibility. The International Human Rights Association of American Minorities denounced illegal detentions and the disappearances of civilians in Kashmir. L'Union de l'action féminine provided a direct testimony of a disappearance/abduction occurred in 1975 during the Spanish occupation of Western Sahara.

² The International Commission of Jurists, Colombian Commission of Jurists, and Human Rights Watch in a joint statement, Amnesty International and Interfaith International.

Internal displacement

A number of delegations spoke on issues related to internal displacement.³ Germany (on behalf of the EU) called upon Sri Lanka to accept a visit from the Special Representative on Internally Displaced Persons. The International Buddhist Foundation supported this sentiment. Algeria expressed its concern that translations of the Special Representative's report were inconsistent and the French term used to translate "internal displacement" only meant "displacement". Algeria suggested that this might lead to an extension of the Representative's mandate into refugees. It also raised a number of concerns about comments the Representative had made on the role of UNHCR in his report. It specifically asked for clarification on recommendations for the strengthening UNHCR's role in field activities and description of UNCHR as the "lead agency in complex emergency situations." Dominicans for Justice and Peace expressed concern about IDPs in Iraq and called upon Western nations to open their doors to those in need. Both Franciscans International and Amnesty International spoke about the situation of IDPs in Colombia and the inadequate legal machinery available to deal with them.

Minorities

Regarding issues related to the mandate on minorities, Germany (on behalf of the EU) stated that members of the Baha'i community in Iran were being systematically identified and monitored. The Baha'i International community also reiterated concern about the treatment they received referring to the Egyptian Government's denial of identification cards to Baha'i Egyptians. The Netherlands expressed concern about increasing intolerance against lesbian, gay, bisexual and transgendered people. It pointed to a Nigerian draft law, which is likely to be adopted, that aims to criminalise homosexuality. The Netherlands stressed that for the principles of non-discrimination and universality of human rights to upheld, this gap in protection must be addressed. Armenia discussed the situation of the Armenian minority in Turkey, in particular the recent high-profile murder of an Armenian journalist. In a right of reply, Turkey responded that this was isolated incident and the perpetrator was captured within 36 hours.

Violence against women

Violence against women was discussed throughout the related debate. Many delegations praised the report of the Special Rapporteur on the relationship between culture and violence against women.⁴ Germany (on behalf of the EU) condemned honour killings and the use of culture to justify them. It also raised concerns about the situation of women's rights activists in Iran and referred to the recent arrests of women who were taking part in peaceful demonstrations on 4 and 8 March. Human Rights Watch reiterated these concerns. In a right of reply, Iran stated that these women had been arrested because they had not applied for a permit to protest, and that they had all been released.

The Netherlands highlighted the situation of women in Afghanistan, particularly with regard to "continuing traditional practices" such as early and forced marriages. It called upon Afghanistan to implement the recommendations of the Special Rapporteur on Violence against Women after her mission to Afghanistan last year. The Order of Malta talked about attacks on women in Darfur and the Democratic Republic of Congo (DRC), and incidences of Palestinian women giving birth at Israeli check points. The Cairo Institute of Human Rights Studies, presenting a joint statement on behalf of 23 NGOs, condemned the use of sexual violence as a weapon of war in the Sudan and stressed the imperative for the international community to act there. In particular, it called upon the Council to adopt a strong recommendation on the Sudan that takes note of the report of the High Level Mission. The Indian Movement Tupaj Amaru raised the issue of military

³ Germany (on behalf of the EU), Australia, Algeria, Dominicans for Justice and Peace, Franciscans International, Amnesty International.

⁴ The order of Malta, Chile, the Cairo Institute of Human Rights Studies (on behalf of a coalition of NGOs), Centre for Women's Global Leadership, Indian Movement Tupaj Amaru, Human Rights Watch, The International Islamic Federation of Students Organisation, Amnesty International.

sexual slavery in Japan in World War II and called upon the Human Rights Council to pass a resolution asking Japan to take clear legal responsibility and compensate victims. In response, Japan reaffirmed that they had repeatedly expressed remorse for past actions. In a right of reply to Japan, the DRPK asked why Japan had not returned the remains of one of the victims to their family. The International Islamic Federation of Students Organisation discussed the plight of women in occupied Jammu and Kashmir.

The Centre for Women's Global Leadership discussed the situation of women human rights defenders who challenge the norms of their culture and are targeted with violence, particularly when they are, or are perceived to be, lesbian.

Indigenous peoples

Many delegations spoke of the importance of the *Declaration on the Rights of Indigenous Peoples* and called on the General Assembly to adopt it.⁵ Many States also praised the work of the Special Rapporteur on this issue and called for this mandate to be strengthened.⁶ However, Tanzania took the opportunity to refute what it called the Special Rapporteur's "misrepresentation" of the situation of indigenous people in areas of Tanzania such as the Ngorongoro conservation area. Finland gave a statement on behalf of the Nordic countries⁷ emphasising the importance of ensuring participation of indigenous people in the work of the Council and praising the work of the OHCHR in this field. Mexico expressed its willingness to implement the recommendations of the Special Rapporteur on the rights of indigenous peoples. The Indian Council of South America called upon Canada to meet its obligations to its indigenous people and condemned the actions of the USA against indigenous people in Alaska. The Netherlands Centre of Indigenous Peoples condemned the abuses of the Government of the Philippines against the indigenous people in that country and called upon the Council to review the membership of the Philippines on the grounds of these abuses.

Other issues

Among those delegations that spoke on the rights of **migrants**,⁸ Mexico called on all States who have not yet done so to ratify the *Convention on the Rights of Migrant Workers and their Families*. Australia welcomed the work of the Special Rapporteur on the **sale of children, child prostitution and child pornography**, and called upon all States to ratify the optional protocol to the *Convention on the Rights of the Child*, and asked for the Special Rapporteur's opinion on how to deal with the problem of sex tourism

Several States spoke on matters that were not directly related to the issues raised by the special procedures reports of the last few days. The representative of the Holy See argued that freedom of expression should extend to freedom of religious expression. Norway spoke on the need to mainstream the rights of the child throughout the UN system and the importance of examining the situation of children affected by war. The Association of World Education discussed the problem of child marriage. The Colombian Commission of Jurists noted that despite issuing an open invitation to all special procedures, Colombia has now failed to respond to several requests for visits. It made an appeal to the Council to urge Colombia to fulfil its commitment to comply with special procedures.

⁵ Finland, Denmark, Iceland, Norway, Sweden, Mexico, Peru, Spain, the Netherlands Centre of Indigenous Peoples, Organisation for Aboriginal and Islander Research Action.

⁶ Finland, Denmark, Iceland, Norway, Sweden, Peru, Tanzania, Indian Council of South America, Netherlands Centre of Indigenous Peoples, Organisation for Aboriginal and Islander Research Action

⁷ Finland, Denmark, Iceland, Norway, Sweden.

⁸ Mexico, Spain.

Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Mr John Dugard, presented both his report on his mission to Israel and the OPT, carried out from 1 to 8 December 2006⁹, and the failed Fact-Finding Mission (the Mission) that he was mandated to carry out, pursuant to *Resolution S-1/1* of the first special session of the Council, on 6 July 2006.

Beginning with the Mission, the Special Rapporteur explained that it was established in order to investigate alleged human rights violations after the commencement of ‘Operation Summer Rains’ by the Israeli Defence Forces (IDF) in Gaza. The Rapporteur explained that the President of the Council had requested the consent of the Government of Israel for the Special Rapporteur to carry out a visit in his capacity as head of the Mission. However, the Government of Israel failed to give its consent.

Mr Dugard was able to visit Israel in December of 2006 in his capacity as the Special Rapporteur on the situation of human rights in the OPT. He explained that he made it very clear that he was not visiting pursuant to *Resolution S-1/1*. Despite the fact that Israeli officials declined to speak to him on the situation relevant to the Mission, he appreciated their cooperation in terms of the access he was granted as Special Rapporteur.

He explained that the scope of his mandate allows him to give detailed information about violations by Israel within the OPT. However, the report makes no attempt to address the violations committed by Palestinians on Israelis, or the factional violence between Hamas and Fatah, despite the fact that this is of serious concern to him. Mr Dugard added that he did not feel that the mandate needed to be changed, but that the Council should persuade the State of Israel to recognise it. The Rapporteur stated that if the Government of Israel feels that the report is one-sided, then it "only has itself to blame" for not cooperating or sharing information.

The Rapporteur reiterated many of the main points of his report. In his presentation, he described the situation in Israel as one that is unlike any other, because it is an instance of the occupation of a developing nation by a developed, western-affiliated regime. He described Gaza as a ‘prison society’ that is under siege by the State of Israel. He stated that between 25 June and the end of November 2006, over 400 Palestinians in Gaza were killed, and approximately 1,500 were injured, most of which were civilians. The IDF also targeted water pipelines, power plants, and roads. The siege resulted in widespread unemployment and poverty, while health, education and family life also suffered.

With regards to the West Bank, the Rapporteur explained that military incursions have increased, and used the example of the February 2007 raid of Nablus as an example. The Separation Wall continues to disrupt lives, and he made it clear that Israel recognises that part of the objective of the Wall is to annex settlement. He also explained that the settlements in the West Bank were increasing, and that the situation in the Jordan Valley resembles that of the closed zone, or ‘seam zone’, between the Wall and the Green Line. According to Mr Dugard, these settlements constituted a form of colonialism.

The Rapporteur described illegal detention and punitive measures used by the State. He explained that Israel currently holds over 9,000 political prisoners and that since 2000 over 500 have been killed by targeted assassinations. He declared that while Israel prides itself on the abolition of the death penalty, targeted assassinations constitute the application of the death penalty without trial.

The Rapporteur explained that the international community has identified three regimes that are inherently detrimental to human rights: occupation, colonialism, and apartheid. While Mr Dugard stated that the Israeli

⁹ A/HRC/4/17

regime was clearly occupying the OPT, and had some features of colonialism, he had been reluctant to refer to it as having characteristics of an apartheid State. However, he explained that upon reconsideration, Israel shares many clear similarities to apartheid South Africa, as many laws and practices are comparable. By way of example the Rapporteur described the system of 'road apartheid', or of 'separate but unequal roads', where Israeli Jewish citizens have access to better roads prohibited to Palestinians within the West Bank. He also explained that Palestinians are restricted from living with their Arab Israeli spouses in the State of Israel. The Rapporteur was of the view that this constituted an undeniable attempt to establish a system of racial domination. Although the State of Israel does not explicitly speak of apartheid practices, the results remain the same.

The Rapporteur closed by stating that the International Court of Justice (ICJ) should be asked for another advisory opinion, despite its previous ruling on the Wall having had little impact 'thanks to the Quartet'.¹⁰ The Rapporteur ended by reiterating the conclusion of his report, which claimed that the West cannot expect developing nations to address situations like Darfur, Zimbabwe, and Burma if the West does not show a commitment to addressing the human rights situation in the OPT.

Interactive Dialogue

Israel began its intervention as a concerned State by reminding members of the Council that *Resolution S/1-1* was adopted by a vote. Furthermore, the delegation stated that according to the content of Paragraph 9 of Mr Dugard's report, which gives an overview of the Israeli military campaign in Gaza during the summer and fall of 2006,¹¹ the objective of the Resolution had been implemented. The Israeli Ambassador also stated that the Council has more pressing matters before it other than considering this politicised resolution of the first Special Session.

As for the present report, the Ambassador stated that it was one-sided, selective, and unreservedly biased. The report had many inaccuracies, carried over many facts from previous reports, and would have been more substantial had the Rapporteur addressed the context of the military incursions, such as the abduction of Corporal Gilad Shalit. While he acknowledged that the Rapporteur had stated that this fell outside his mandate, the Ambassador explained that other rapporteurs had resigned because of the one-sidedness of the mandate, while Mr Dugard has carried on.

The delegate of Israel continued that the report failed to address the \$100 million (US) that was provided to the Palestinian Government, or the 80,000 Palestinians that have been treated in Israeli hospitals. The Rapporteur responded by saying that while he welcomed the \$100 million that is rightfully owed to the Palestinians, he would appreciate if the State would transfer the remaining \$700 million that is still owed.

Israel also stated that the Rapporteur failed to acknowledge that suicide bombings within Israel have all but ceased since the beginning of the construction of the Wall.

The Ambassador concluded by stating that obsessive accusations under a one-sided mandate do not solve the problems in the region, and that the inflammatory language used by the Rapporteur does nothing to contribute to dialogue and cooperation. He expressed that he had two wishes for the future, which lie at the heart of the Council's credibility. The first was to have this mandate reviewed, while the second was that whoever was immediately appointed to replace Mr Dugard would promote constructive dialogue and a sense of fairness. The Rapporteur felt that the Ambassador's response addressed the messenger rather than the message, and that the issues at hand, such as the humanitarian crisis, the Israeli settlements, and the concerns about the Wall, were being ignored. He also felt that accusing the Rapporteur did not help the situation.

¹⁰ UN, USA, EU and Russian Federation that has mediated negotiations between the Palestinian Authority and Israel.

¹¹ Paragraph 9 reads: "the IDF carried out 364 military incursions...accompanied by persistent artillery shelling and air-to-surface missile attacks...On 27 June 2006, Israel destroyed all six transformers of the only domestic power plant in the Gaza Strip...Thousands of Palestinians were displaced from their homes as a result of Israel's military action."

Also speaking as a concerned country, Palestine welcomed the report of the Rapporteur, and stated that it would consider seeking an advisory opinion of the ICJ in line with the points raised by the Rapporteur. Mr Dugard was pleased that the Palestinian delegation reacted positively to this recommendation.

The Palestinian Ambassador continued by stating that he hoped that the Council would fully implement *Resolution S/1-1*, and that the Mission should still be carried out. He continued by referring to paragraph 54 of the report¹², and stated that Palestinians have paid a dire price for opting for democracy, as economic sanctions had been placed on the victims rather than the perpetrators. The delegate of Palestine was clear in stating that apartheid does in fact exist within the OPT, and that the Council should spearhead the effort to put an end to this practice. The Ambassador said that there had been a lack of determined policies to end the situation, and this seeks to serve one party, at the expense of the region.

The majority of delegations who spoke felt that the report was objective and credible, and expressed support for the Rapporteur's efforts¹³. Many States used their interventions to highlight the human rights violations and conclusions that were outlined in the report. Malaysia reiterated the fact that Israel was an occupying power engaged in practices that contain elements of apartheid and colonialism. Algeria emphasised that these three regimes are incompatible with respect for human rights.¹⁴ The USA countered by stating that the apartheid comparison was not helpful, as it does not add anything to the search for peace.

Cuba spoke of the policy of collective punishment that was referred to in Mr Dugard's report.¹⁵ Venezuela referred specifically to the practice of targeted assassinations, and the bombing of electricity plants, as well as the fact that the Palestinian Government has been blocked financially. China pointed to the fact that over 80 percent of the population in Gaza lives below the poverty line.

Several delegations, however, felt that the report contained inconsistencies. Canada took exception to the claim in the report that their position on the issue has been inconsistent.¹⁶ The delegation added that they have repeatedly called for an end to violence. Germany (on behalf of the EU) stated that while it welcomed the report, it remained concerned about the scope of the mandate. The USA disagreed with the Rapporteur that the Quartet was party to human rights abuses, and stated that the goal of the Roadmap is the construction of a Palestinian State.¹⁷ The delegate added that his Government has a longstanding commitment to the Palestinians and to peace, and cited that in 2006 the USA was the largest bilateral contributor, donating over \$200 million (US) to the Palestinians. The Rapporteur replied by stating that everyone was aware that the USA provides material aid, but that this policy is somewhat inconsistent when American projects in the OPT are destroyed by US military equipment. While he welcomed the material aid provided, the Rapporteur felt that more support needed to be given to finding a peaceful settlement. He also pointed out that the current US Government has not played as active a role in helping to find a political solution as previous US administrations. With regards to the Quartet, Mr Dugard pointed out that it gives little consideration to human rights concerns, and he felt that many inside the UN are embarrassed by their role in the Quartet. He was of the view that the UN should reconsider and reassess its role, and the Security Council should reconsider to what extent the Quartet is guided by human rights considerations.

¹² Paragraph 54 reads: "In effect, the Palestinian people have been subjected to economic sanctions - the first time an occupied people have been so treated."

¹³ Cuba, Senegal, Russian Federation, Pakistan (on behalf of OIC), Indonesia, Malaysia, Algeria (on behalf of the Arab Group), Morocco, Tunisia, China, Bangladesh, Canada, Mali, Zambia, Jordan, League of Arab Nations, Egypt, Sudan, Yemen, Syrian Arab Republic, United Arab Emirates, Kuwait, Venezuela, Qatar, South Africa

¹⁴ Cuba, Malaysia, Syrian Arab Republic, League of Arab Nations, Palestine, and Qatar also made the allegation that Israel was a modern apartheid regime.

¹⁵ Pakistan (on behalf of OIC), Malaysia, Algeria (on behalf of the Arab Group), the Syrian Arab Republic, United Arab Emirates, also raised the issue of collective punishment.

¹⁶ The Rapporteur cites Canada as one of the countries that has imposed an economic boycott on the Palestinian Government.

¹⁷ Germany (on behalf of the EU) and South Africa also expressed support for the Roadmap.

Some delegations felt that it was desirable to seek another advisory opinion of the ICJ. Qatar stated that an ICJ opinion would be ideal, as it would allow the Council to ensure that the State of Israel is held responsible for its actions.¹⁸ The USA on the other hand, felt that an advisory opinion from the ICJ would not contribute to the cause for peace. Having welcomed Palestine's support of the idea, the Rapporteur nonetheless expressed regret that there were so few comments on the ICJ advisory opinion, as he felt that it could play an important role. This was illustrated by a question put to the Rapporteur by Germany (on behalf of the EU), that asked on what legal basis the 1976 *International Convention on the Suppression and Punishment of the Crime of Apartheid* could be applied to Israel. The Rapporteur responded by explaining that apartheid is seen as a crime against humanity in the *Rome Statute*, yet Israel is not party to the Statute. Therefore it is only applicable under international customary law. However, this is the type of issue that could be addressed by an advisory opinion of the ICJ.

Turning to the Fact-Finding Mission established by the first special session of the Council, several missions expressed regret that Mr Dugard had been unable to undertake the Mission. Pakistan, on behalf of the Organization of the Islamic Conference (OIC), stated that while it was regrettable that he was not able to carry out the Mission,¹⁹ it appreciated that he had included information on Gaza and Beit Hanoun in his report. Germany (on behalf of the EU) expressed that States should fully cooperate with all of the Council's mechanisms. Algeria (on behalf of the Arab Group) stated that it was still waiting for the Mission to be carried out. Indonesia added that if this issue is not tended to, it will weaken the credibility of the Council. Malaysia stated that it was amazed by the speed of the implementation of the resolution from the special session on Darfur, but that the same this could not be said about *Resolution S-1/1*. Iran stated that the lack of cooperation by Israel warrants the serious consideration of the Council.

Similar to the follow-up to the special session on Darfur, many delegations felt that the credibility of the Council was at stake. Malaysia stated that addressing the situation in the OPT was a real test of the Council's commitment, sincerity, and honesty. The Islamic Republic of Iran added that this is the issue upon which the Council's commitment to human rights will be judged. Cuba picked up on the Rapporteur's observation that this is the only situation where a developed nation that is backed by the West is denying the rights of a developing population. Jordan stated that the Council must address the situation and ensure adequate follow-up, as resolutions that are not implemented have little or no value.

The Rapporteur was disappointed that there had been so little response to his report outside of the OIC and the Arab Group. He stated that this is not a regional issue, but one of universal concern, and that he would appreciate if non-Muslim delegations played a more active role.

Presentation of High-Level Fact-Finding Mission to Beit Hanoun

Christine Chinkin, member of the High-Level Fact-Finding Mission to Beit Hanoun²⁰ (the Mission), addressed the Council to update it on developments. She recalled that the mandate of the Mission was to assess the situation of the victims, address the needs of survivors, and make recommendations on how to protect Palestinian civilians against any further Israeli assaults. She also referred to a letter of Archbishop Desmond Tutu²¹, the leader of the Mission, setting out the events that led to the impossibility of the mission to carry out its mandate due to the failure of Israel to grant visas. She highlighted that it was a matter of great

¹⁸ Libya also supported seeking the opinion of the ICJ on the matter.

¹⁹ Germany (on behalf of the EU), Indonesia, Malaysia, Algeria (on behalf of the Arab Group), Morocco, Bangladesh, Zambia, Egypt, Venezuela, and Senegal all expressed regret that the Mission was not carried out.

²⁰ Established under Council *Resolution S-3/1*, 14 November 2006, available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/specialsession/A.HRC.S-3.L.1.pdf>

²¹ A/HRC/4/113, 11 December 2006.

concern that a Mission duly mandated by the Human Rights Council was barred from entering the country because of the lack of cooperation of a State.

Ms Chinkin said that the Mission had considered the most appropriate ways to give effect to their mandate. Assessing the situation of victims and survivors by visiting places outside Israel and Gaza was not conceivable because only six victims were hospitalised outside Gaza (in Israel and Egypt). The Mission was not able to enter Gaza and Beit Hanoun (via the Rafah Crossing) for security reasons and because it was not opened to pedestrians, nor via Egypt because it would not have been able to meet with Israeli officials and organisations. Finally, the proposal of Israel that Archbishop Desmond Tutu and Ms Chinkin enter in their personal capacity was immediately rejected because it was a denial of the mandate of the Mission, and a visa was needed to enter Gaza. Ms Chinkin summarised that in light of these factors, the failure by Israel to issue the necessary official visas 'frustrated the very core of our mandate'. The option of interviewing victims in a third country was not worthwhile as only six of the victims were hospitalised outside Gaza and only three outside Israel. Whilst substantial second-hand information existed, this was not what had been envisaged by *Resolution S-3/1*.

She concluded by stating that the information provided nonetheless suggested that Israel's actions in Beit Hanoun amounted to grave violations of human rights, including the so-called 'Autumn Rains' operation and violations of the right to life, as well as violations relating to health, food, housing and education. She finished by stating that the seriousness of these allegations should not be understated, and that an investigation should still be undertaken with a view to formulating recommendations for the protection of the human rights of individuals in the area.

Interactive Dialogue

Israel opened as a concerned country by declaring that it was the subject of unprecedented attention from the United Nations with regard to country visits. Its usual policy for visits is to show political transparency, but this visit was entirely politicised. According to the delegate of Israel, *Resolution S-3/1* is part of new anti-Israeli measures taken by the "new and improved Council". He nonetheless acknowledged that Beit Hanoun was a tragic event.

Palestine thanked Ms Chinkin for her statement and declared that it was unfortunate that the Mission was not able to fulfil its mandate, though it was not surprising as it was not in the interest of Israel. The delegate highlighted that Israel had already impeded two Missions mandated by the Council to fulfil their mandate, without any reaction. Therefore, he had doubts on the effectiveness and credibility of the Council.

Member States of the Council then generally thanked Ms Chinkin for her speech, taking note of the difficulties faced by the Mission and regretting that its mandate had not been carried out. Several States²² acknowledged that what happened in Beit Hanoun was a grave violation of both international human rights law and international humanitarian law, and that Israel should be held accountable. Others²³ declared that the lack of cooperation of a single State should not preclude the implementation of the Council's resolutions on the subject. In order to be credible, the Council should not allow such a situation to continue and therefore should fully implement and follow-up on its resolutions. Some States highlighted the balance of the Mission, constituting a representative each of the North and of the South. Finally, Algeria, Cuba, and Bangladesh welcomed the fact that no report had been written on the basis that it confirmed the integrity of the Mission by not submitting a report based on secondary sources.²⁴

Ms Chinkin had the opportunity to intervene at the end of the session because she was not able to attend the Council the following day. She declared that she would not give any direct replies as there were no questions

²² Algeria (on behalf of the Arab Group), Pakistan (on behalf of the Organization of the Islamic Conference), and Indonesia.

²³ Mexico, Peru and Indonesia.

²⁴ Algeria (on on behalf of the Arab Group), Cuba and Bangladesh.

directed towards her. However, concerning Israel's statement that there were countless visits by various representatives to Israel and that the information was already well documented, she responded that it was precisely to avoid using secondary information that the Mission needed to visit the location of the events in order to produce an independent and balanced report.

Informal consultations on review of special procedures

Ambassador Tomas Husak, the Facilitator of the discussions on the review of mandates (special procedures) held informal consultations today on his non-paper from 8.30 to 10 a.m.

Most States expressed appreciation for the work of the Facilitator and the new non-paper he had circulated. Some States however pointed to some concerns about the non-paper. Argentina stated that it felt that the non-paper was taking the Working Group on review of mechanisms and mandates (the Working Group) backwards rather than forwards and that it had reservations about many of the elements of convergence that had been identified. It suggested that the document should be reviewed to reflect all the positions that were discussed and new proposals that had been introduced in the non-paper needed to be clearly indicated as such. Various States stressed the importance of the Working Group and the Council completing the institution-building process in one year, within the deadline set by the General Assembly.²⁵ South Africa questioned the Facilitator on whether he thought it was possible to complete the work within the timeframe? Belarus also stated that there had been insufficient progress in the discussions.

The most significant proposal to move the discussions forward was made by Cuba, which stated that it was important to identify what issues needed to be considered as a matter of priority by the Working Group. It felt that some elements that had been discussed by the Working Group could be postponed and discussed and considered by the Council at a later date as part of its regular discussions on special procedures. Cuba identified the discussions on coordination between special procedures as an example of one of the elements that could be postponed. It suggested that the issue of appointment and selection was on the other an important issue that had to be decided right now, as it would determine the future working of the special procedures. It also stated that the review of special procedures was a priority but stated that it was flexible on the issue of review of thematic mandates, where it did not envisage any major changes to the system. Cuba stated that it was willing to extend thematic mandates for another three years and even to extend the terms of the mandate holders. In that case, the review could be done on a case-by-case basis when the Council renewed the resolutions on each of these thematic mandates. It stated that its main concern was the country mandates and it felt that country mandates that were created through a vote and without the consent of the concerned State should be discontinued.²⁶ In the future the issue of country mandates would need to be dealt with by a new approach and it was willing to consider retaining country mandates set up under the former 'Item 19' of the Commission on Human Rights that focused on technical assistance and were set up with the consent of the concerned State. It stated, in a dramatic change of position from its first statement at the first session of the Working Group, that the Working Group could not afford to review mandates individually at the moment.

Priority issues

Many States welcomed the Cuban proposal of identifying priority issues but different views were put forward on what the priority issues should be. Argentina suggested that some issues identified in the Facilitator's Paper such as balanced representation of NGOs during interactive dialogues with special procedures (Para 58) and at the Council's sessions (Para 63), while important issues, may be difficult to resolve and may also be

²⁵ Belarus, South Africa.

²⁶ This was supported by Belarus and the Russian Federation.

outside the mandate of the Working Group. Iran stated that the code of conduct was the most important issues before the Working Group and that the code should be reviewed and finalised. China also questioned the Facilitator on when the Working Group would review the draft manual of special procedures and the African Group draft code of conduct. The UK agreed with the view that the Working Group should focus on priority issues and suggested removing the relationship between the mandate holders and the OHCHR from the ambit of the discussion.²⁷

Ambassador Husak took the view that it was up to States to determine what issues should be cut out of the non-paper and what should be retained. He also stated that he was open to new suggestions. He acknowledged the need to reduce the number of issues but pointed out that he could not do this if the floor remained divided but also unwilling to consider the Facilitator's proposals.

Review of mandates

The Cuban proposal met with positive reactions from a number of States who said that they were willing to consider the idea of extending the thematic mandates and reviewing them periodically when the resolutions came up for renewal.²⁸ Ambassador Husak welcomed the Cuban proposal and suggested that the Council could begin the process of reviewing thematic mandates from the middle of this year and continue doing so at regular intervals. He stated that mandates, once they were reviewed, could be renewed for three years.

The Russian Federation stated that it did not envisage any drastic changes in the number and composition of thematic mandates though it thought some could be merged. It acknowledged that behind every mandate there is a political interest and NGO support for the mandate so States may not be willing to give up the mandates they proposed. It thought it premature however to decide right now on an extension of all mandates and mandate holders and thought this would undermine the goal of the exercise. It stated that the Council should not give the special procedures the privilege that they will stay no matter what happens in the review as this would be the wrong signal, and like any bureaucratic system, would lead to their continuing to work as they currently do. Belarus, India and South Africa also took the view that the Council had been given a mandate to review and rationalise the special procedures and this should not be postponed. They took the view that the Working Group should at least begin this task and then review its progress. The Russian Federation also thought that every special procedure should be asked to address its future in greater detail and considered it disappointing that not many proposals for change had been received by the mandate holders. Germany (on behalf of the EU) responded to the last point to note that the Coordination Committee of special procedures is preparing a written input on thematic mandates that the Working Group should take into account.

On the issue of country mandates, Germany (on behalf of the EU) stated that the mandates needed to be considered as a whole as the Council was building an institution, which would last for many years. It took the view that the Council should not limit itself from the beginning and should retain the instrument of country and thematic mandates.²⁹ While setting up a country mandate with the cooperation and consent of country concerned was best option, it felt that others should not be excluded. China mentioned that the non-paper did not mention the view that country mandates that did not have consensus should only be set up if they were voted through with a substantial margin. Belgium responded to China to state that the General Assembly Rules of Procedure only called for a simple majority for the adoption of resolutions and this was most appropriate to prevent blocking of action by countries.³⁰ Iran stated that its views on country mandates were not reflected in the non-paper. Belarus and the Russian Federation supported the discontinuation of country mandates set up without the consent of the State concerned.

²⁷ This was supported by the Netherlands.

²⁸ Norway, Switzerland, the United Kingdom and the USA.

²⁹ The USA and Terre des Hommes also supported retaining both thematic and country mandates.

³⁰ This was supported by Japan.

Selection of mandate holders

The issue of selection of mandate holders was also taken up by many States. The Russian Federation suggested the Brazilian hybrid model of combining appointment and elections was the best way forward as neither of the other approaches could be adopted by consensus.³¹ Norway expressed its opposition to the hybrid model and re-affirmed its support for appointment. Germany (on behalf of the EU) welcomed the emerging consensus on pre-screening mechanisms and stated it preferred the final step to be appointment of mandate holders.³² It was willing to consider other options if they did not infringe on the competence and independence of mandate holders. Canada expressed its support for a more transparent appointment process with pre-screening by an advisory committee made up of representatives of special procedures, NGOs, victims and input from the future system of expert advice. Cuba stated that it was opposed to a roster and to a pre-screening process. Belarus suggested that the Working Group should stop discussing the option of appointing mandate holders as this did not have sufficient support in the Working Group or the Council. India and Iran emphasised that the Council should have a direct say in the selection of mandate holders.

Code of conduct

Ambassador Husak noted that the African Group's draft of a code of conduct had been circulated to all and it was well elaborated. He noted that it could however take many months to discuss the draft fully so the task needed to be shortened and that he would put forward some suggestions on how to discuss this issue at the next Working Group session. Belarus stated that the code of conduct must ensure that mandate holders behave the way the Council expects them to. Various NGOs stressed that the independence of special procedures was at the core of the system and the code of conduct should not weaken this.³³ Belgium stated that it had not had an opportunity to give input on the African Group draft. Egypt responded to state the African Group has made it very clear that the next step was to discuss the draft at the Working Group but also expressed its willingness to hold smaller negotiations. Canada stated that the code of conduct has to be fully discussed if the goal is to reach consensus and stressed that it also needs to address cooperation by States. Germany (on behalf of the EU) emphasised that the guiding role of the Council should not become oversight and thought that the Facilitator's proposal for guiding principles was the way to proceed.

Other issues

China stated that the issue of accountability was of particular concern and it should also be mentioned in the first part of the non-paper in the section dealing with cooperation. It also noted that non-paper was missing references to admissibility of communications. In its view, it was important to emphasise that special procedures were accountable to the Council and not just to their peers. It also noted that Philippines' suggestion in the Working Group that the performance of special procedures should be subject to a periodic review by the Council was not reflected in the Working Group. Iran stressed that it views on cultural sensitivity as one of the criteria for selection of mandate holders and the need for rotation of mandates had not been reflected in the non-paper.

International Coordinating Committee of National Human Rights Institutions

At the second day of the nineteenth Annual Meeting of the International Coordinating Committee of National Human Rights Institutions (ICC), member national human rights institutions (NHRIs) decided to establish an

³¹ This was also supported by Brazil.

³² This was also supported by the Netherlands, and UK.

³³ Terre des Hommes presented a joint statement on behalf of a number of NGOs.

ICC permanent representative in Geneva and partially adopted the Report and Recommendation of the ICC Sub-Committee on Accreditation. NHRIs also discussed the role and effective participation of NHRIs within the Human Rights Council.

Based on the proposal submitted by the Commission Nationale Consultative des Droits de l'Homme of France, ICC members decided to establish a permanent representative of the ICC for a period of 6 to 12 months, whose role would be to advocate the position of NHRIs during the institution building process of the Council, and would be a focal point for coordinating the different work of NHRIs within the Council.

The ICC adopted in part the recommendation of the Sub-Committee on Accreditation, based on the Decision Paper on the Review of ICC Accreditation Procedure. The ICC adopted recommendations on accreditation and re-accreditation applications of NHRIs from Bolivia, Indonesia, Malawi, Peru, the Philippines, Portugal, Afghanistan, Burkina Faso, Jordan, Puerto Rico, Romania, Nepal, Fiji, Sri Lanka and Nigeria.³⁴ Adoption of the General Observation (guidelines) of ICC accreditation was postponed to the next ICC session, as member NHRIs demanded further revision.³⁵

A parallel meeting with the International Parliamentary Union (IPU) preceded the daily session. Representatives of the IPU and NHRIs discussed the interactive role and cooperation that Parliamentary Human Rights Committees and NHRIs could foster for the promotion and protection of human rights at the national level.

Other issues

Before adjourning the meeting for the day, the President explained that the Council would carry on with the list of speakers the following morning, yet Ms. Chinkin would not be available to provide responses. He noted that the Council was a half-day behind in its work, and that it was unlikely to be able to take action on most decisions. He stated however, that States would need to look closely at draft decisions that are already prepared and translated, as these may be considered in the afternoon. He requested that if the Council was reasonable, there was a better chance of this occurring. One means to do this was to re-introduce limiting statements to country rapporteurs to 2 minutes, as it was presently 5 minutes for three thematic rapporteurs. This would begin tomorrow morning with Mr. Vitit Muntarhorn, Special Rapporteur on the situation of human rights in the DPRK.

³⁴ Bolivia (Status A re-accredited); Indonesia (Status A re-accredited); Malawi (Status A re-accredited); Peru (Status A re-accredited); The Philippines (Re-accreditation of Status A deferred to October 2007); Portugal (Re-accreditation of Status A deferred to October 2007); Afghanistan (Accreditation to ICC deferred to October 2007); Burkina Faso (Status B remains unchanged); Jordan (Status B remains unchanged); Puerto Rico (Status C accredited), Romania (Status C accredits); Nepal (Status A to be further reviewed on October session); Fiji (Status A suspended); Sri Lanka (Further review); Nigeria (Further review).

³⁵ A more detailed report on the session of the ICC will be published by ISHR in the near future.

COUNCIL MONITOR STAFF

Meghna Abraham, Program Manager, Information Program

Gareth Sweeney, Human Rights Officer, Information Program

Michael Ineichen, Fellow, Information Program

Tony Morris, Information Program

Eléonore Dziurzynski, Communications Officer, Information Program

CONTRIBUTORS

Elodie, Intern

Rami Chalabi, Intern

Hannah Klein, Intern

James Moffat, Volunteer

Francesca Restifo, Volunteer

Seong Ha Eun

Betty Yolanda, Intern

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/hrm/council

SUBSCRIPTION

If you wish to receive the Council Monitor Daily Updates by e-mail during the Council session, please e-mail information@ishr-sidh.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 AND DISTRIBUTION

Copyright © 2007 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.

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-sidh.ch

