

SPECIAL SESSION OF THE HUMAN RIGHTS COUNCIL (Geneva, 5 to 6 July 2006)

The President of the Human Rights Council (the Council) convened a special session of the Council on 5 and 6 July 2006 in response to a request from the Arab Group.¹ The special session of the Council was called to react to the serious and escalating situation and the human rights violations in the Occupied Palestinian Territory (OPT) caused by the recent Israeli military operation against Palestinian civilians.

Overview

- ❑ Delegations spent the first meeting of the special session delivering general statements, with the overwhelming majority of speakers expressing concern at the deteriorating situation in the Occupied Palestinian Territories, particularly the humanitarian situation.
- ❑ All delegations, with the exception of Israel, explicitly called for the resumption of dialogue and negotiations between the two parties to the conflict, so as to ensure a peaceful settlement of the current crisis. Most delegations stressed the need to follow the Quartet's road map for peace.
- ❑ The overwhelming majority of States called on both sides of the conflict to exercise self-restraint and comply with their international obligations.
- ❑ The second meeting focused on the consideration and adoption of the draft resolution on the human rights situation in the Occupied Palestinian Territory, with two alternative amendments being proposed.
- ❑ The resolution, while decidedly more focused on Israeli violations of human rights, also reminded all concerned parties of their international obligations, thereby providing a somewhat more balanced treatment of the situation.

Key issues

The Council's mandate

- ❑ All delegations expressed concern at the recent deterioration in the situation in the Occupied Palestinian Territories (OPT) and many delegations saluted the Council's decision to hold a special session, as they argued that this demonstrated its flexibility and responsiveness.
- ❑ Some delegations, such as Zambia and the Russian Federation, saw this occasion as a challenge for the Council to prove itself, by adopting an action-oriented approach in response to situations of violations of human rights, especially gross and systematic violations.
- ❑ Other delegations pointed out that this special session was not only well-founded, but also necessary in view of the Council's mandate, as laid out in General Assembly (GA) *Resolution 60/251*, particularly operative paragraph three and ten.
- ❑ Many States, including Finland, speaking on behalf of the European Union (EU), stressed the importance of holding the special session in the spirit of dialogue and cooperation referred to in *Resolution 60/251*.
- ❑ Other States, such as Israel and the United States of America (USA), did not consider that the special session had valid reasons to be held. Israel in particular argued that the session had been requested for political reasons and was reflective of past Commission on Human Rights practices of politicisation and selectivity.
- ❑ While the USA and Australia stressed the one-sided nature of the session, other States emphasised the need to remind both parties to the conflict of their obligations.

Human rights and humanitarian situation

- ❑ Mr John Duggard, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (the Special Rapporteur) made a comprehensive presentation to the Council, pointing out the acute human rights and humanitarian situation.
- ❑ The Special Rapporteur stressed that despite Israeli withdrawal from the Gaza strip, this territory was still under Israeli occupation, because Israel retained control of the Gazan airspace, as evidenced by artillery fire, sonic booms and targeted assassinations, as well as control of the sea and external borders.
- ❑ Most States thanked the Special Rapporteur for his presentation and many, including Pakistan, Tunisia and the Russian Federation, also referred to reports and press releases by the UN, the EU and humanitarian organisations like the ICRC.
- ❑ Many States referred to the Israeli military operation "Summer Rains", which was undertaken in response to the kidnapping of the Israeli soldier Corporal Galid Shalit. Some delegations, notably Palestine and the Syrian Arab Republic, argued that this operation was used as a pretext to punish the

¹ The request is available at: <http://info.ohchr.org/portal/page/portal/HRCExtranet/SpecialSession/A-HRC-S1-1.doc>. It was supported by 21 Member States.

Palestinians for their democratic choice in the January legislative elections and to undermine the Palestinian Authority (PA) and create an unstable political climate.

- ❑ Other delegations simply pointed to the violations of human rights occurring as a result of this and previous military operations. Cuba for example indicated that there had been 52 Palestinian victims in June, including civilians.
- ❑ The majority of delegations stressed the critical humanitarian situation in which people find themselves in the OPT. A number of reasons were given for the rising poverty and unemployment, the shortage of food, water, electricity and medical supplies. These included: the withholding of foreign aid by the Quartet (EU, the Russian Federation, the UN and the USA); the withholding of Palestinian tax revenues by Israel; and the restrictions imposed by Israel on the freedom of movement of both goods and people, notably through the use of checkpoints and the continued existence of the wall.
- ❑ Delegations stressed that the withholding of foreign aid from the PA was in fact punishing the Palestinian people and not the Government and could be described as economic sanctions against an occupied population.
- ❑ Many delegations also mentioned the abduction of Palestinian officials, including elected members of the Legislative Council and the Government; the destruction of Palestinian infrastructure, notably the main power supply in Gaza; and attacks on public institutions, such as the office of the Premier.
- ❑ Pakistan and the Arab League argued that the abduction of elected officials constituted a crime against democracy.
- ❑ Many speakers, such as the EU, the USA, Canada, China, and Japan, referred to the kidnapping of Corporal Gilad Shalit, calling on his immediate and unconditional release, while others, such as the Special Rapporteur, simply stressed the obligation to treat him humanely.
- ❑ Most delegations also expressed concern at the situation of Palestinian prisoners in Israeli jails, with some delegations pointing out that both Palestinian women and children were arbitrarily detained by Israel.
- ❑ Many delegations expressed their fear that this particular crisis would lead to a greater and irreversible cycle of violence and could potentially engulf the whole region.

Violations of international law

- ❑ Many delegations argued that Israel was violating international humanitarian laws, and more particularly the *Fourth Geneva Convention*. Delegations repeatedly mentioned practices of collective punishment, disproportionate use of force and failure to protect civilians on the part of Israel as the most important breaches of international law.
- ❑ Pakistan held that Israel's actions were in violation of the *Charter of the United Nations*, the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights*, and the *Fourth Geneva Convention*.
- ❑ Some speakers, such as Cuba, Saudi Arabia, and the Special Rapporteur also claimed that Israel acted in defiance of the numerous UN resolutions passed over the years. Cuba deplored Israel's "arrogant impunity", which it saw as being a result of the support given to it by the USA.

Resolution of the crisis and the peace process

- ❑ Delegations, such as India, expressed their fear that the indiscriminate use of force against civilians and democratically elected officials would hamper the chances of re-opening negotiations and would therefore make prospects for the resumption of the peace process more difficult.
- ❑ While delegations from the African and Arab Group, as well as from the Organisation of Islamic Conference, stressed the need for Israel to end its military incursions into Gaza, other States, such as Finland, South Africa, the Russian Federation, and China, called on both parties to the conflict to cease all violence and exercise self-restraint.
- ❑ Some States, such as Japan and the Russian Federation, called on Israel not to take any unilateral action that would prejudice the final status negotiations or would present the parties with a fait accompli.
- ❑ Delegations, such as Japan, the Russian Federation, and Finland also called on the Hamas Government to assume its responsibilities, notably to ensure that terrorist activities, such as the launching of Qassam rockets, are not undertaken on Palestinian territory.
- ❑ These states tended to repeat the demands of the Quartet: that Hamas should renounce the use of violence, recognise Israel's right to exist and respect all previous international agreements.
- ❑ The overwhelming majority of States stressed that nothing would be achieved through the use of force and military action and that diplomatic action should take primacy.
- ❑ While Palestine expressed its commitment to a peaceful resolution to the conflict and the current crisis, Israel stressed the necessity of the unconditional release of Corporal Galid Shalit.
- ❑ Most delegations called for a resumption of dialogue between Israel and the Palestinian Authority with a view to returning to the Quartet's road map for peace.
- ❑ While most States referred to the Quartet's road map for peace, some States, such as Algeria, specifically referred to the 2002 Arab Peace initiative. Other States such as South Africa also reminded

parties to the conflict of the need to respect UN resolutions on the conflict, particularly GA *Resolution 194*.

- ❑ Most delegations explicitly stated that a two-state solution would be the only possible outcome to ensure peace and security.

NGO and NHRI participation

- ❑ Towards the end of the first meeting of the special session of the Council and before the list of speakers had been completed, the representative of Pakistan made a point of order, calling on the Council to conclude its general debate and move towards consideration of the draft resolution.
- ❑ As no delegation expressed its opposition to this point of order, the President ended the general debate.
- ❑ This meant that NGOs that had prepared statements for the special session of the Council were not allowed to speak. However, NGOs were informed by the Secretariat at the second meeting of the Special Session that their statements would be published on extranet of the Council and subsequently four oral statements were submitted.²

Resolution

Human rights situation in the Occupied Palestinian Territory (A/HRC/S-1/L.1)

The Resolution:

- Expresses concern at the breaches by Israel of international humanitarian law and human rights law in the OPT.
- Demands that Israel end its military operations in the OPT and abide by the provisions of international humanitarian and human rights law.
- Urges Israel to release arrested Palestinian ministers and other officials, as well as all other arrested Palestinian civilians.
- Urges all concerned parties to respect the rules of international humanitarian law, refrain from violence against civilians and treat all detained combatants and civilians in accordance with the Geneva Conventions.
- Decides to dispatch an urgent fact-finding mission headed by the Special Rapporteur.
- Calls for a negotiated solution to the current crisis.

The amendments:

- The delegation of Switzerland proposed three amendments to the resolution, proposing to add three sub-sections to operative paragraph four: “urges all Palestinians armed groups to respect the rules of international humanitarian law”; “urges also all Palestinians armed groups to refrain from violence against civilian population”; and “urges those who detain the Israeli captures soldier to treat him humanely in all circumstances in conformity with the Geneva conventions”.
- After informal consultations, the Swiss delegation decided to remove the last addition.
- The Pakistani delegation proposed a new language that would incorporate all elements of the Swiss amendments. This is as follows: “urges all concerned parties to respect the rules of international humanitarian law, to refrain from violence against the civilian population, and to treat under all circumstances all detained combatants and civilians in accordance with the Geneva Conventions”.
- A vote was called on the Pakistani sub-amendment.

Voting records: Adopted (28 – 0 – 17)

Voting trends:

The majority of States from the African and Arab Group, as well as from the Organisation of Islamic Conference and the Group of Latin American and Caribbean countries voted in favour of the sub-amendment.

General comments/explanations of vote:

- The delegation of Finland, speaking on behalf of the EU and Romania explained that this sub-amendment did not make the resolution balanced enough in its treatment of both parties to the conflict and therefore did not allow the EU to vote in its favour. As a result, the EU decided to abstain.
- The representative of Canada argued that the special session should work towards consensus, and that this sub-amendment did not allow for that. The Canadian delegation also explained that it would abstain because this sub-amendment would introduce controversial issues of humanitarian law, such as the scope and extent of application of the Geneva Conventions and the definition of a detained combatant.

² Available at: <http://info.ohchr.org/portal/page/portal/HRCExtranet/SpecialSession>.

The delegation argued that a special session of the Council was not the proper forum to discuss these issues.

- The representative of the Russian Federation held that the Pakistani proposal made the resolution more balanced and fair to all parties to the conflict and indicated that it would support the amendment.
- The Cuban delegation also explained that it would be voting in favour of the proposed sub-amendment because the text of the resolution would be more balanced and more consistent with Geneva Conventions as a result.
- The delegation of Switzerland called for a vote on the Pakistani sub-amendment, explaining that it was doing this to present the Council with a real choice between the two amendments. The Swiss representative argued that some elements of the sub-amendment were interesting but that it was not a balanced text.

The Resolution in the plenary

Voting records: Adopted (29 – 11 – 5)

Voting trends:

The majority of States from the African and Arab Group, as well as from the Organisation of Islamic Conference voted in favour of the resolution. States from the European Union, as well as Canada, the Czech Republic, Japan, Romania and Ukraine voted against the resolution. The majority of States from the Group of Latin American and Caribbean countries also voted in favour of the resolution.

General comments/explanations of vote:

- The delegation of Israel called on the Council to reject the resolution.
- The delegation of Palestine reminded the Council that tanks were moving into Gaza and killing civilians as the session was taking place. The representative described the resolution as a mild and diluted one, based on the need to respect the Geneva Conventions. The delegation stressed that the Pakistani amendments ensured justice, not only for one side of the conflict, but for both. It assured the Council that Palestine wanted justice for everyone through the application of the Geneva Conventions and for Israel to live in peace.
- The representative of the Philippines explained that the highest priority should be attached to preserving civilian life and applying international humanitarian law, and that it would therefore support the resolution as it reflected this concern.
- The delegation of Guatemala expressed its commitment to the protection of human rights, and its belief that the Council should address situations of serious human rights situations. As a result of these beliefs, it would vote in favour of the resolution.
- The representative of China declared that it would vote in favour of resolution as it reflected its demands that Israel adopt an attitude of restraint, immediately stop its military actions and release captured officials and that the PA actively cooperate with international mediators and release hostages.
- The delegation of Finland, speaking on behalf of the EU and Romania regretted that no consensus had emerged on this resolution and argued that the text should address the situation in more balanced manner. It therefore explained that it would vote against the resolution.
- The delegation of Peru explained that it would vote in favour of the resolution because of its convictions about the need for respect for human rights and a balanced treatment of all situations by the Council. The representative indicated that Peru would have liked a more balanced resolution, but that this resolution was indispensable to stop the escalation of violence.
- The representative of Ecuador argued that situations as the one in the OPT required urgent action and that in this respect, the resolution was the sign that the international community was waiting for from the main UN human rights body. The Ecuadorian delegation would therefore vote in favour of the resolution, as it was representative of the Council's will to act with regard to urgent human rights situations.
- The delegation of Switzerland held that the resolution was not without positive elements, which served as useful reminders to respect human rights and humanitarian law. Despite these merits, the resolution seemed to be following a unilateral approach, even if the amendment offered a slight re-balancing of the text. Switzerland would therefore abstain. Switzerland regretted that it was not possible to rally behind a consensus-based text, because this kind of signal would have consolidated the Council at a crucial stage of its existence.
- The delegation of Canada argued that the Council should play a constructive role and recognise the responsibilities of all parties to the conflict and that the resolution did not go far enough to present a balanced examination of the situation and was not consistent with the spirit of dialogue and cooperation expressed in GA *Resolution 60/251*. The Canadian delegation would therefore vote against the resolution.
- The delegation of Brazil, also speaking on behalf of Argentina and Uruguay explained that it had voted in favour of the resolution because these countries were concerned about the spiral of violence and

increasing deterioration of living conditions of Palestinians. However, the delegation stressed that the Council should provide constructive solution and should not systematically use the same practices as the Commission on Human Rights, such as adopting resolutions under each item.

- The delegation of Japan explained that the resolution was still too one-sided and that much more effort should have been made to achieve consensus. It argued that this way of conducting business does not serve the Council, nor the issue considered in the resolution. It had therefore voted against the resolution.
 - The delegation of Mexico indicated that it would have preferred a more balanced text.
- As an exceptional measure, the President of the Council allowed Pakistan to make a general comment at the end of the vote. As the delegation took more time than was assigned to it, the President had to interrupt the representative during his speech numerous times to ask him to conclude his statement. The Pakistani delegation protested, arguing that there was no rule preventing a delegation from making a general statement after the adoption of a resolution. The President of the Council on the other hand, insisted that this had been an exceptional arrangement.