

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

REPORTS IN SHORT ISHR'S SUMMARIES OF DOCUMENTS 7TH SESSION OF THE HUMAN RIGHTS COUNCIL 3 TO 28 MARCH 2008

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967¹

Mandate Holder

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Mandate

The mandate of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 was established in 1993² in response to the human rights violations in the territory. The aim of the mandate is to investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, in the Palestinian territories occupied by Israel since 1967; to receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate; and to report, with his conclusions and recommendations, to the Human Rights Council at its future sessions, until the end of the Israeli occupation of those territories.

Activities

- The Special Rapporteur presented his report to the Human Rights Council on 21 January 2008.
- The Special Rapporteur visited the Occupied Palestinian Territories (OPT) from 25 September to 1 October 2007. He visited Gaza, Jerusalem, Ramallah, Bethlehem, Jericho and Nablus. He met with Palestinian and Israeli non-governmental organizations (NGOs), United Nations (UN) agencies, Palestinian officials, academics, businessmen and independent interlocutors.
- The Special Rapporteur also visited Jordan before and after his visit to the OPT, and met with Jordanian officials to obtain a Jordanian perspective on the human rights situation in the OPT.

¹ Summary prepared by Elena Gaino, Intern, ISHR, edited by Rosa Sanz, Geneva Program, ISHR.

² Commission on Human Rights *Resolution 1993/2 A*.

Annual Report³

Scope

- The report focuses on the occupation of Gaza, Israel's actions against Gaza, the human rights situation in the West Bank and Jerusalem, the treatment of arrested persons and convicted prisoners, the right to self-determination of the Palestinian people, the international jurisprudence on the OPT, and the peace talks.
- The Special Rapporteur examines how Israel's military incursions in the OPT, the closure of crossings, the reduction of fuel, and the threat to the banking system have produced a humanitarian crisis in Gaza.
- The special Rapporteur illustrates how the wall that Israel is building in the OPT, the expansion of settlements, the restrictions on freedom of movement, house demolitions, and military incursions have had a bad impact on the economy, health, education, and family life of the Palestinians in the West Bank.

Summary and key conclusions

- The International Court of Justice (ICJ) reaffirmed in 2004 that Israel is carrying out a military occupation of the OPT⁴.
- In September 2007, Israel announced that it would reduce the supply of fuel and electricity to Gaza, which Israeli and Palestinian NGOs denounced as a collective punishment. Furthermore, the only two Israeli commercial banks in Gaza decided to cut ties with Gaza.
- Israel's actions in Gaza violate the prohibition on collective punishment of an occupied people contained in the Fourth Geneva Convention.
- There have been regular military incursions by the Israel Defence Forces (IDF) into Gaza during 2007. In the past two years, 668 Palestinians have been killed by the Israeli security forces in Gaza. Military incursions in the West Bank have intensified since June 2007.
- All the crossings into and out of Gaza are controlled by Israel, and most of them are closed or scheduled to close.
- Regular military incursions, closure of crossings, the reduction of fuel, and the threat to the banking system have produced a humanitarian crisis in Gaza. Only 41% of Gaza's food import needs are being met. Over 80% of the population live below the official poverty line. Since June 2007, 44 people have died as a result of denial or delay of access to medical care by the Israeli authorities. In addition, people can only access drinking water for 1-2 hours a day, as there is not sufficient power for water pumps.
- Checkpoints and roadblocks in the West Bank seriously obstruct the freedom of movement of Palestinians, with serious consequences for both personal life and the economy.
- More than 38% of the West Bank consists of settlements, outposts, military areas, and Israeli nature reserves that Palestinians cannot access. Settlements constitute a form of colonialism and violate international law.⁵
- Israel is under an obligation to discontinue the construction of the wall, as it violates international law, including the right to self-determination of the Palestinian people.⁶ The wall has serious humanitarian consequences for Palestinians living within the closed zone in the West Bank, as they do not have access to places of employment, schools, universities and specialized medical care.

³ A/HRC/7/17.

⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion (2004).

⁵ *General Assembly Resolution 1514 (XV)*.

⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ Advisory Opinion (2004) paras. 24 and 25.

- Houses in the West Bank are frequently demolished on the grounds that no permit has been obtained to build. This violates the Fourth Geneva Convention, and cannot be justified on grounds of military necessity or national security.⁷
- Since 1967, over 700,000 Palestinians have been imprisoned. Following arrest, persons are frequently beaten and stripped in a humiliating manner, and interrogation of subjects is carried out in a degrading and inhuman manner, sometimes amounting to torture.
- The detention of most Palestinian prisoners in jails in Israel violates the Fourth Geneva Convention, which requires persons from an occupied territory to be detained in the occupied country, and if convicted, to serve their sentences therein.
- The right to self-determination of the Palestinian people has been recognised by the Security Council, the General Assembly, the ICJ and Israel itself. However, it has been denied and obstructed by Israel for nearly 60 years.
- Since 2004, the Security Council has ignored the ICJ Advisory Opinion, even though the General Assembly and the Human Rights Council have passed various resolutions reaffirming the Opinion.⁸ The reason for this is the US refusal to accept this Opinion.

Key recommendations

- The Special Rapporteur is concerned that the current peace talks may fail to pay adequate attention to international law and to the human rights dimension, as the joint statement issued by Quartet⁹ in November 2007 referred to the roadmap of 2003¹⁰ rather than to the ICJ Advisory Opinion on the construction of the wall.
- The Special Rapporteur is of the opinion that the roadmap is an inappropriate and unhelpful framework for negotiations, as it is outdated and Israel has attached 14 reservations.
- The Special Rapporteur is of the opinion that negotiations should take place within a normative framework based on international humanitarian law and human rights law, the ICJ Advisory Opinion, and Security Council resolutions.
- The ICJ is the judicial organ of the UN, and therefore, its Advisory Opinion is now part of the law of the UN. On this basis, the Special Rapporteur argues that the UN cannot ignore the ICJ Advisory Opinion in the deliberations of the Quartet.
- The UN should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall.
- All States are under a legal obligation not to recognize the illegal situation resulting from the wall.
- The Special Rapporteur is concerned about the little prospects for reconciliation between the two Palestinian factions, Fatah and Hamas, in views to achieving the right to self-determination. The Special Rapporteur is unhappy with the little attempts that the Quartet is making to promote Palestinian national unity.
- For the achievement of peace and security, the Special Rapporteur suggests the establishment of a Truth and Reconciliation Commission to hear the stories of the sufferings of both people.

⁷ *Ibid.* 04) paras. 132, 135 and 137.

⁸ General Assembly *Resolution A/62/L.21/Rev.1* and Human Rights Council *Resolution 2/4*.

⁹ United Nations, Russian Federation, United States and European Union.

¹⁰ Plan to resolve the Israeli-Palestinian conflict proposed by the Quartet. Available at <http://www.state.gov/r/pa/prs/ps/2003/20062.htm>.

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