



## General Assembly

Distr.  
GENERALA/HRC/5/11  
8 June 2007

Original: ENGLISH

HUMAN RIGHTS COUNCIL  
Fifth session  
Item 2 of the provisional agendaIMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, on the non-implementation of  
Human Rights Council [resolution S-1/1](#)

1. On 6 July 2006 the Human Rights Council adopted resolution S-1/1 in which it decided to "dispatch an urgent fact-finding mission [to the Occupied Palestinian Territory] headed by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967". The resolution failed to provide details of the mandate. In particular, it failed to indicate which facts were to be investigated. The preamble, however, suggests that the purpose was to examine the humanitarian consequences of the Israel Defence Forces' (IDF) "Operation Summer Rains" in Gaza and the arrest of Palestinian legislators in the West Bank. Also, the resolution contained no reporting obligation (unlike Human Rights Council resolution S-3/1, entitled "Human rights violations emanating from Israeli military incursions in the Occupied Palestinian Territory, including the recent one in northern Gaza and the assault on Beit Hanoun".)
2. At the time that the resolution was being debated, I communicated with the proposers of the resolution and suggested to them that someone other than myself be mandated to carry out the mission, as it was unlikely that Israel would consent to such a mission under my direction in the light of my critical reports on Israel's policies and practices in the Occupied Palestinian Territory (OPT). The proposers of the resolution did not heed my suggestion and instead continued with their resolution, directing me to carry out the fact-finding mission.
3. Unperturbed by the flaws in resolution S-1/1, and the likelihood that Israel would refuse to consent to the mission, I went ahead and prepared for the mission, ably assisted by the staff of OHCHR. For this purpose I constituted a mission comprising of myself, a health expert and a security expert, together with interpreters and OHCHR staff. Details of these preparations are contained in my report to the Human Rights Council of 20 December 2006 (see [A/HRC/4/116](#), entitled "Report of the Special Rapporteur on the human rights situation in the Palestinian territories occupied since 1967 pursuant to resolution 3/1 of the Human Rights Council").
4. Under the terms of General Assembly resolution 46/59, no fact-finding mission may be undertaken without the consent of the State to be investigated. The Government of Israel, despite representations from the President of the Human Rights Council, failed to respond positively to requests for the mission to take place, as I had predicted to the proposers of the resolution. On 8 August 2006, I wrote to the President requesting him to inform the Human Rights Council that Israel had failed to consent to the mission and that as far as I was concerned the mission could not proceed (see [A/HRC/4/116](#)).
5. From 1 to 8 December 2006 I visited Israel and the Occupied Palestinian Territory in my capacity as Special Rapporteur. As on previous visits, the Government of Israel placed no obstacles in the way of my visit and indeed on occasion facilitated my visit by issuing me a "To Whom It May Concern" letter instructing Israeli Defense Forces (IDF) officers at crossings and checkpoints to allow me free passage. However, as in the past, the Government of Israel refused to meet with me, as it does not recognize my mandate. In writing to the Government of Israel about my proposed visit in December, as a matter of courtesy, I assured the Government that I intended visiting in my capacity as Special Rapporteur and not in my capacity as head of the fact-finding mission mandated by resolution S-1/1. I am confident that without such an assurance I would not have been permitted to enter Israel.
6. During my December visit to the Occupied Palestinian Territory, I visited Gaza and examined the consequences of both "Operation Summer Rains" and "Operation Autumn Clouds". I also visited the scene of the killing of 19 persons and the wounding of 55 persons in Beit Hanoun on 8 November 2006. (The Human Rights Council later established a mission headed by Archbishop Desmond Tutu to investigate this event. Again, no consent by Israel was forthcoming for such a mission.) I reported to the Human Rights Council on this visit in my report on 22 March 2007 (see [A/HRC/4/17](#)).

7. In this report I examined the consequences of Israeli military action in Gaza between 25 June and the end of November 2006, action that took the names “Operation Summer Rains” and “Operation Autumn Clouds”. I reported that over 400 Palestinians were killed and some 1,500 injured in 364 military incursions which were accompanied by persistent artillery shelling and air-to-surface missile attacks. Missiles, shells and bulldozers destroyed homes, schools, hospitals, mosques, agricultural land, public buildings, bridges, water pipelines and sewage networks. On 27 June the Israeli Air Force (IAF) destroyed the only domestic power plant in Gaza, which deprived half of the population of Gaza of electricity for several months. Thousands of Palestinians were displaced from their homes as a result of Israel’s military actions.

8. The report paid particular attention to IDF action in Beit Hanoun in November 2006. In this action 82 Palestinians were killed and more than 260 injured. I reported on my visit to the home of the Al-Athamnah family, which was shelled on 8 November 2006, killing 19 persons and wounding 55 persons. I expressed the view that there were reasons for doubting that this shelling was the result of a “technical failure”, as maintained by Israel.

9. The report also examined the humanitarian crisis occasioned by the siege of Gaza and Israeli military action. I found that 70 per cent of Gaza’s potential work force was out of work or without pay and that over 80 per cent of the population live below the official poverty line. I considered the effect that the destruction of the Gaza power plant had had on daily life in Gaza and the consequences of the siege for health and education.

10. I concluded that Israel had violated a number of rights contained in the two International Covenants and that it had, in addition, violated the most fundamental rules of international humanitarian law by attacking civilian targets, spreading terror among the civilian population, destroying property not justified by military necessity, and using force excessively and disproportionately. In my view such action constituted unlawful collective punishment of the people of Gaza.

11. My report on Gaza (A/HRC/4/17) ran to 10 pages and 17 paragraphs. It presented a full picture of the events of June to November 2006 in Gaza and the consequences of these events.

12. I am the Special Rapporteur on the *situation* of human rights in the occupied Palestinian territories. In this capacity, I report on the overall situation in the Occupied Palestinian Territory without attempting to investigate or resolve any factual dispute. I am not a one-person fact-finding mission. Consequently, the above report raises questions about Israel’s justification for the shelling of the Beit Hanoun home, in which 19 persons died, and states that “it seems clear that the indiscriminate firing of shells into a civilian neighbourhood with no apparent military objective constituted a war crime”, but it makes no attempt to pronounce definitively upon the factual dispute whether the shelling was the result of a “technical failure”, as maintained by Israel. The line between situation-reporting and fact-finding is admittedly not absolutely clear. Thus there is substance in the statement by the Israeli Ambassador, Itzhak Levanon, on 22 March 2007 in the Human Rights Council that I have already reported on the subject covered by resolution S-1/1 and that the Human Rights Council has already considered it. It is difficult not to agree with the Israeli Ambassador that the purpose of resolution S-1/1 “has already been effectively realized”.

13. Despite my report to the Human Rights Council on 22 March 2007, the Human Rights Council on 27 March adopted [resolution 4/2](#) calling for the implementation of resolution S-1/1. By the time I received notice of this resolution I had already made plans to visit the Occupied Palestinian Territory on 27 May in my capacity as Special Rapporteur. For the purpose I had already written to the Israeli Ambassador informing him of my visit, expressing the expectation that no obstacles would be placed in the way of my visit, and assuring him that “I shall not be visiting in pursuance of resolution S-1/1” but in my capacity as Special Rapporteur. In the light of this assurance I informed the President of the Council that “as a man of his word, I cannot renege on this assurance” by going to the OPT under the terms of resolution S-1/1. (Subsequently, I had to cancel this mission as a result of the fact that I suffered a heart attack on 29 April and was placed under doctor’s orders not to travel.)

14. In my view the mission contemplated is obsolete and impractical for the following reasons:

(a) The events that resolution S-1/1 instructed me to investigate have passed into recent history and been overtaken by other events. For instance, the destruction of the Gaza power plant on 27 June was to be a major focus of investigation. Today the power plant has been substantially repaired. Any investigative mission visiting Gaza at present would therefore examine other more pressing problems – such as recent air strikes on Gaza;

(b) The events that I was expected to report on have already been reported on in my report on Gaza. There would be little to add to this report;

(c) Resolution S-1/1 was seriously flawed by reason of its failure to contain a reporting obligation – unlike resolution 3/1 establishing the mission to be led by Archbishop Tutu. Consequently, opponents of resolution S-1/1 might legitimately argue that any report in terms of the resolution was *ultra vires* the resolution;

(d) The present security situation in Gaza precludes the implementation of resolution S-1/1. I have been informed by United Nations Security that no visits to Gaza have been permitted for some time and that it is unlikely that they will be permitted in the foreseeable future;

(e) There is no prospect that the Government of Israel will consent to a mission under resolution S-1/1.

15. For the above reasons, I recommend that the Human Rights Council accept that the mission contemplated by resolution S-1/1 has not been implemented and cannot be implemented. Moreover no purpose would be served by carrying out such a mission a year after the events in question and after a full report has already been made by the Special Rapporteur in his capacity as Special Rapporteur.

16. I urge the Human Rights Council in future to seriously consider the wisdom of sending someone who is already a Special Rapporteur on a fact-finding mission to the State in respect on which he or she is Special Rapporteur. In most circumstances, the Special Rapporteur will have a difficult relationship with that State, which will be exacerbated by requiring him or her to lead a fact-finding mission to the State in question. This may lead the State to place obstacles in the way of future visits by the Special Rapporteur.

17. I regret that my health prevents me from reporting to the Human Rights Council in person. I trust, however, that the present report provides a full explanation why resolution S-1/1 cannot be implemented and why the Human Rights Council should move on and concentrate on more pressing violations of human rights and humanitarian law in the Occupied Palestinian Territory, such as air strikes in Gaza; military incursions into the West Bank and Gaza; the arrest of Palestinian cabinet ministers, mayors and legislators; the continued expansion of settlements; the construction of the Wall; the terrorization of Palestinians in Hebron; the de facto annexation of the Jordan Valley; and the system of checkpoints. There is also the question of what action is to be taken to promote respect for human rights in the OPT. As suggested in my report (A/HRC/4/17), a request for a further Advisory Opinion from the International Court of Justice on the legal consequences for the occupied people, the Occupying Power and third States of 40 years of occupation might be one method of promoting human rights. Another is an appeal to the Quartet (European Union, Russian Federation, United States of America, and the United Nations) to concern itself more with human rights in its quest for a peaceful settlement in the region. Attention to matters of this kind would, in my opinion, best serve the interests and advance the human rights of the Palestinian people.

