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Right of peoples to self-determination

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Report of the Secretary-General

Summary

In its resolution 64/149, the General Assembly requested the Secretary-General to report to it at its sixty-fifth session on the question of the universal realization of the right of peoples to self-determination. The present report is submitted in accordance with that request.

The report outlines the relevant jurisprudence of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights on the treaty-based human rights norms relating to the realization of the right of peoples to self-determination and contains a summary of the developments relating to the consideration by the Human Rights Council of the subject matter. A reference to the recent advisory opinion of the International Court of Justice on the legality of the unilateral declaration of independence of Kosovo adopted on 17 February 2008 is also included.

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III. Consideration of the question of realization of the right of peoples to self-determination by the Human Rights Council

33. At its twelfth, thirteenth and fourteenth regular sessions as well as its twelfth special session, the Council addressed issues relating to the right of peoples to self-determination. Below is a summary of these developments in chronological order.

34. The Human Rights Council held its twelfth regular session from 14 September to 2 October 2009. On 29 September 2009, Justice Richard J. Goldstone presented the report of the United Nations Fact-Finding Mission on the Gaza Conflict¹ on behalf of the members of the United Nations Mission, pursuant to Council resolution S-9/1.

35. The Mission fully recognized the Palestinian people's right to self-determination in accordance with the Charter of the United Nations and international human rights conventions, noting the erga omnes character of this right whereby all States have the duty to promote its realization. Self-determination has special prominence in the context of the recent events and military hostilities in the region, according to the Mission, because they represent an episode in the long occupation of the Palestinian territory.²

36. The Mission also addressed the right to self-determination from the perspective of its application to the definition of combatant status and its impact on the principle of distinction. In this regard, the Mission stressed that under international law, notably Additional Protocol I to the Geneva Conventions, any action of resistance against colonialism and occupation pursuant to the right to self-determination should be exercised with full respect for other human rights and international humanitarian law.³

37. In its concluding observations, the Fact-Finding Mission recognized that movement and access restrictions, the settlements and their infrastructure, demographic

policies with regards to Jerusalem and Area C, and the separation of Gaza from the West Bank prevented a viable, contiguous and sovereign Palestinian State from being created, and were in violation of the *jus cogens* right to self-determination.⁴ The Mission further underscored the right of the people of Palestine to freely determine their own political and economic system, including the right to resist forcible deprivation of their right to self-determination and the right to live, in peace and freedom, in their own State.⁵

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39. The twelfth special session of the Human Rights Council was held on 15 and 16 October 2009 to discuss “the human rights situation in the Occupied Palestinian Territory and East Jerusalem”. At the conclusion of the special session, the Council adopted resolution S-12/1, entitled “The human rights situation in the Occupied Palestinian Territory, including East Jerusalem”. Section A of the resolution requested the United Nations High Commissioner for Human Rights, pursuant to resolution S-9/1 and in the context of her periodic reports, to monitor, document and report on the state of implementation by Israel, the occupying Power, of its human rights obligations, including on the right of peoples to self-determination, in and around East Jerusalem.

40. While endorsing the recommendations contained in the report of the Fact-Finding Mission,¹ the Council called upon all concerned parties including United Nations bodies, to ensure their implementation in accordance with their respective mandates and recommended that the General Assembly consider the report of the Fact-Finding Mission during the main part of its sixty-fourth session. Moreover, the Secretary-General was requested to submit to the Council, at its thirteenth session, a report on the status of implementation of these recommendations. In the same resolution, the Council further endorsed the recommendations contained in the first periodic report of the High Commissioner for Human Rights on the implementation of its resolution S-9/1⁶ and called upon all concerned parties including United Nations bodies to ensure their implementation in accordance with their respective mandates. Furthermore, the High Commissioner for Human Rights was requested to submit to the Council, at its thirteenth session, a report on the status of implementation of the resolution.

41. At its thirteenth session held from 1 to 26 March 2010, the Human Rights Council considered the question of realization of the right of peoples to self-determination under agenda item 7 and adopted resolution 13/6 on the right of the Palestinian people to self-determination.⁷ It reaffirmed the inalienable, permanent and unqualified right of the Palestinian people to self-determination, urging all Member States and relevant bodies of the United Nations system to support and assist the Palestinian people in the early realization of this right.

42. Agenda item 7 (Human rights situation in Palestine and other occupied Arab territories) was considered by the Human Rights Council on 14 June 2010. During the interactive dialogue following the introduction of his report, the Special Rapporteur emphasized that the prolonged Israeli occupation of Palestinian territories has seriously impacted the right to self-determination of the Palestinian people, and that the occupation would constitute *de facto* the annexation of Palestinian territories. Under the section entitled “The Israeli national regional priorities plan”, the Special Rapporteur emphasized his grave concern about the implications of the above-mentioned regional priorities plan for the realization of the Palestinian peoples right to self-determination.⁸

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V. Conclusion

46. The right to self-determination is enshrined in article 1 of the International Covenant on Civil and Political Rights and article 1 of the International Covenant on Economic, Social and Cultural Rights. The Human Rights Council as well as the human rights treaty bodies have been working on the implementation of this right. In several advisory opinions, the International Court of Justice has been clarifying the contours of this right.

*A/65/150.

Notes

¹ A/HRC/12/48.

² Ibid., paras. 269-1842.

³ Ibid., para. 308.

⁴ Ibid., para. 1549.

⁵ Ibid., paras. 1875 and 1908.

⁶ A/HRC/12/37.

⁷ A/HRC/RES/13/6.

⁸ A/HRC/13/53/Rev.1, para. 25.