

Statement to the Human Rights Council by Prof. John Dugard, Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Second Session of the Human Rights Council

29 September 2006

1. I report today in pursuance of decision 2006/106 entitled "Human rights situation in Palestine and other Occupied Arab Territories" adopted during the First Session of the Human Rights Council. My report pursuant to that decision (A/HRC/2/5) is available on the OHCHR website. I have already dwelt on the contents of that report during my comprehensive statement to the Council on 26 September so I will not revert to it now in greater detail. I also report today on resolution S-1/Res.1 entitled "Human rights situation in the Occupied Palestinian Territory" adopted during the First Special Session of the Human Rights Council.
2. On 6 July 2006 the Human Rights Council adopted special session resolution S-1/Res.1 in which it decided "to dispatch an urgent fact-finding mission headed by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967". Although the terms of the fact-finding mission were not spelled out, in context it was clear that the fact-finding mission was established to examine the factual situation in Gaza following the commencement of "Operation Summer Rains" by the Israel Defense Forces (IDF) and to report on violations of human rights in the course of this Operation.
3. On 7 July I met with the President of the Human Rights Council and the High Commissioner for Human Rights and their respective staffs in order to implement this resolution. It was agreed by all that it would be necessary to obtain the consent of the Government of Israel for this mission as required by General Assembly Resolution 46/59 ("Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security", paragraph 6) of 9 December 1991. To this end it was agreed that the President would approach the Ambassador of Israel for such consent on the basis of a memorandum on the proposed mission prepared by the Special Rapporteur.
4. On 10 July I submitted such a memorandum to the President and the High Commissioner setting out the objectives, timing, duration and composition of the mission together with proposals of places to visit and persons to consult. The memorandum proposed that the mission should "visit the OPT as soon as possible and preferably before the end of July".
5. The President of the Human Rights Council met shortly afterwards with the Ambassador of Israel and requested the consent of the Government of Israel for the mission. The President later informed me that the Ambassador had indicated that he would seek instructions on the matter from the Government of Israel and give his reply as soon as possible.
6. I then proceeded to constitute the fact-finding mission. I approached a military security officer and an expert in public health to join the mission under my leadership. Arrangements were made for the assistance of two OHCHR staff members, one security officer and interpreters. The mission was planned to last for 7 to 10 days.
7. As the days passed, I became worried that the President of the Human Rights Council had received no reply from the Government of Israel. On Tuesday 18 July I spoke with the President who told me that he had asked the Ambassador to provide him with a reply by 20 July. Later the President informed me that the Ambassador had told him that the Government of Israel required more time to make its decision.
8. On 21 July the President wrote a letter to the Ambassador in which he requested a reply to his request for consent to the mission by 24 July, failing which he would have to inform the members of the Council. To the best of my knowledge the President received no reply to this letter.
9. The days and weeks passed without any response from the Ambassador of Israel. At least I was not informed of any such response. Consequently, on 8 August I wrote a letter to the President (copied to the High Commissioner and the proposers of resolution S-1/Res.1) in which I stated:

"We have now waited for more than a month to receive a reply from the Government of Israel. I think we have no alternative but to construe its failure to reply as a refusal. In my view you should notify the Government of Israel that this is the position and that you should report accordingly to the Human

Rights Council.

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I request you to kindly inform the Human Rights Council that in my view it is pointless to persist with the fact-finding mission requested on 6 July as the Government of Israel has, by its failure to respond to your request, indicated very clearly that it will not grant permission to the visit of such a fact-finding mission."

10. In the result I was not able to head a fact-finding mission to the OPT as required by the Human Rights Council. I did, however, compile a report on the situation in Gaza, following the start of "Operation Summer Rains", and other issues of concern to the Human Rights Council in its special session of 6 July. This report, based on secondary sources and on my visit to the OPT (including Gaza) from 9 to 17 June 2006, is incorporated in my report A/HRC//5 which was considered by the Human Rights Council on 26 September.
11. Special session resolution S-1/Res.1 expressed particular concern about the following issues:
 - breaches by Israel of human rights law and international humanitarian law in the OPT;
 - the arbitrary arrest of Palestinian Ministers and members of the Legislative Council;
 - the arbitrary arrest of other civilians;
 - military attacks on Palestinian ministries;
 - the destruction of Palestinian infrastructure, including water network, power plants and bridges;
 - collective punishment of Palestinian civilians;
 - the deterioration of the humanitarian conditions of the Palestinian people;
 - violence against the civilian population;
 - the treatment of *detained combatants and civilians*.
12. From my report it is clear that the above concerns are well founded. Since 25 June Israel has been engaged in a brutal military operation in Gaza, characterized by bombings, sonic booms, military incursions and targeted assassinations. Over 260 Palestinians, including 58 children, have been killed and some 800 wounded. Buildings have been destroyed and agricultural lands levelled. There is a humanitarian crisis resulting from the destruction of the major power plant, the closure of borders and poverty. Israeli action has failed to discriminate between militants and civilians. In summary, its action in Gaza constitutes collective punishment of the Palestinian people. Most of the Cabinet Ministers and members of the Legislative Council arrested in June and August remain in custody. On 27 September, however, Mr. Nasser Al-Shaer, Deputy Prime Minister, was released.