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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006, ENTITLED “HUMAN RIGHTS COUNCIL”

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

1. At its 2nd meeting, on 6 July 2006, the Human Rights Council adopted resolution S-1/1 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 and to report on violations of human rights in the course of this Operation.

2. On 7 July I met with the President of the Human Rights Council and the United Nations High Commissioner for Human Rights and their respective staff 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 the General Assembly in paragraph 6 of its resolution 46/59 entitled: “Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security” 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.

3. On 10 July 2006, 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 Occupied Palestinian Territory as soon as possible and preferably before the end of July”.

4. 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.

5. 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 staff members of the Office of the High Commissioner for Human Rights, one security officer and interpreters. The mission was planned to last for 7 to 10 days.

6. 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 2006, 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.

7. 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.

8. 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 sponsors of resolution S-1/1) 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.

...

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.”

9. I was accordingly not able to head a fact-finding mission to the Occupied Palestinian Territory in July-August 2006 as required by the Human Rights Council in its resolution S-1/1. 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 Occupied Palestinian Territory (including Gaza) from 9 to 17 June 2006, was incorporated in my report (A/HRC/2/5), which was considered by the Human Rights Council on 26 September 2006.

10. I reported to the Human Rights Council on 29 September that I had been unable to carry out the requested fact-finding mission as a result of the failure of the Government of Israel to consent to the mission.

11. I visited the Occupied Palestinian Territory from 1 to 8 December 2006, in my capacity as Special Rapporteur on the situation of human rights in the on the situation of human rights in the Palestinian territories occupied since 1967. I did not require the consent of the Government of Israel for this mission but I did as a matter of courtesy inform the Ambassador of Israel in Geneva of my visit. At the same time I assured him that I did not intend to visit the Occupied Palestinian Territory in pursuance of resolution S-1/1 but in my capacity as Special Rapporteur. The Government of Israel accordingly agreed to facilitate my visit, as it has done in the past, by providing me with a letter which explained the purpose of my visit and requested the relevant Israeli authorities to facilitate my movements in the Occupied Palestinian Territory. Although the Government of Israel refuses to accept my mandate, and consequently to have any contacts with me at governmental level during my visits, it has greatly facilitated my movements by issuing me with the letter described above.

12. On my visit to the Occupied Palestinian Territory from 1 to 8 December, I investigated the human rights situation in East Jerusalem, the West Bank and Gaza. My report on this visit is contained in document (A/HRC/4/17). While I investigated the human rights situation, I did not undertake fact-finding for the following reasons. First, this was not the purpose of my visit. Second, I lacked the expertise on my own to carry out such a task.

13. In the result I have not been able to carry out the fact-finding mission requested by the Council in its resolution S-1/1 as a result of the failure of the Government of Israel to consent to such a mission.
