

HUMAN RIGHTS AND REFUGEES

I.O.C. (71) 182

5 October, 1971

STEERING COMMITTEE ON INTERNATIONAL ORGANISATIONS

26TH SESSION OF THE UNITED NATIONS GENERAL ASSEMBLY

ITEM 43

REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE
ISRAELI PRACTICES AFFECTING THE HUMAN RIGHTS OF
THE POPULATION OF THE OCCUPIED TERRITORIES

NOTE BY THE FOREIGN AND COMMONWEALTH OFFICE

The attached brief has been prepared by the Foreign and Commonwealth Office. Any comments should be addressed to Mr I.K.C. Ellison United Nations (Economic and Social) Department, Foreign and Commonwealth Office (01-930 8440 Ext 4).

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of human rights wherever they occurred. There was a distinction between political issues, which were the responsibility of other United Nations bodies, and humanitarian questions which were the concern of the Commission. HMG would be in favour of an investigation into violations of human rights in the occupied territories if arrangements could be made acceptable to all parties concerned. HMG could not endorse the conclusions and recommendations of the Special Working Group of Experts because the evidence on which they were based was one-sided.

7. By Resolution 10 (XXVI) the Commission noted with dismay the refusal of Israel to cooperate with the Special Working Group of Experts; endorsed its conclusions (particularly those concerning the applicability of the Fourth Geneva Convention to the occupied territories and "the existence of violations of that Convention"); condemned Israel's refusal to apply the Convention; listed a series of violations of the Convention; decided that the Special Working Group of Experts should continue to investigate and report Israeli violations of the Geneva Convention; and drew the attention of ECOSOC, the General Assembly and the Security Council to their resolution. Resolution 10 (XXVI) was adopted by 12 (Arabs, East Europeans, Iran, Turkey, India)-0-16 (UK). The Arabs were clearly disappointed with this result which reflected the distaste of many members of the Commission for the dogmatic assertions and propaganda overtones of the Resolution. Furthermore it did not reflect the judicious impartiality of the Working Group's report. The biggest surprise for the Arabs was the fact that Tanzania under instructions did not participate in the vote despite the fact that their representative had been a member of the Special Working Group of Experts.

RECENT DEVELOPMENTS

8. At ECOSOC (48) in May 1970 the United Kingdom along with the other Western members abstained on a resolution tabled by India, Pakistan and the Sudan which authorised the expenditure required to keep the Working Group in being for a further year. The expenditure of some \$136,000 was approved by 12-0-11 (UK). Although the Human Rights Commission extended the Special Working Group's mandate and ECOSOC authorised the necessary expenditure, the Special Working Group of Experts has not met since the XXVIth Session of the Human Rights Commission in 1970. At the Commission's XXVIIth Session in 1971 allegations of violations of human rights in the occupied territories were again discussed but Resolution 9 (XXVII), which was adopted, did not mention the Special Working Group of Experts and its existence was virtually ignored and no attempt was made to further extend its mandate. Instead the Resolution contained only the predictable and wide-ranging condemnation of alleged Israeli violations of human rights. It must be assumed that the Arab States, disenchanted with the moderation and judicial caution of the Group's first report, are responsible for its virtual demise and that attention is being concentrated on the more extreme Special Committee of Three. The hibernation of Special Working Group strengthens the case of those who wish to renew the mandate of the Special Committee of Three.

THE HUMAN RIGHTS COMMISSION'S SPECIAL WORKING
GROUP OF EXPERTS

THE ESTABLISHMENT OF THE WORKING GROUP

1. Resolution 6 (XXV) of the Human Rights Commission established a Special Working Group of Experts to investigate allegations of the violation of human rights in the occupied territories of the Middle East. Like General Assembly Resolution 2443 the Human Rights Commission Resolution predicated Israeli violations of human rights in the occupied territories and thereby prejudged the outcome of the Special Working Group's deliberations. The Resolution also reaffirmed the "inalienable right of all the inhabitants who have left since the outbreak of hostilities to return"; called upon Israel not only to put an immediate end to destroying homes of the Arab civilian population of the occupied territories but also to stop deporting inhabitants and resorting to violence against inhabitants expressing their resentment of occupation; expressed deep concern about "Israel's refusal to abide by the Geneva Convention of 12 August 1949 relative to the protection of civilian persons in time of war"; and called "once again" on Israel fully to respect and apply the Convention.

ITS MEMBERSHIP AND FUNCTIONS

2. The Special Working Group of Experts is composed of members of the Human Rights Commission's ad hoc Working Group of Experts previously established to investigate various aspects of violations of human rights in South Africa and other Southern African territories. The Special Working Group which is composed of the representatives on the Human Rights Commission of Senegal, Yugoslavia, Austria, Peru, India and Tanzania, who serve in their "personal capacity", was given the following terms of reference:

- a. to investigate allegations concerning Israel's violation of the Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949 in the territories occupied by Israel as a result of hostilities in the Middle East;
- b. to receive communications, to hear witnesses and to use such modalities of procedure as it may deem necessary; and
- c. to report with its conclusions and recommendations to the Commission's XXVIth Session (in 1970).

HER MAJESTY'S GOVERNMENT'S ATTITUDE

3. Resolution 6 (XXV) was adopted by 13-1-16, (United Kingdom, United States, France and other Western and Latin American delegations). In a separate vote on the paragraph concerning the

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security of the state, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in favour of such an individual person, be prejudicial to the security of such state". Articles 27 and 64 of the Convention also contain limited exceptions relating to the security of the parties to the conflict or the occupying power.

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THE ISSUE

1. The General Assembly will be considering the second report of the Special Committee to Investigate Israeli Practices Affecting Human Rights of the Population of the Occupied Territories (otherwise known as the Special Committee of Three). The Committee's report is not yet available but comment on it will be set out in Annex D to this brief (to be circulated later). The Special Committee was established by Resolution 2443 (XXIII) of 1968 which asserted that Israeli activities in the occupied territories violate human rights. We abstained on the Resolution which was adopted by 60-22-37 (UK). The three members of the Special Committee come from States not in diplomatic relations with Israel and its first report predictably contained blanket criticisms of Israeli practices. The Special Committee's mandate was renewed by Resolution 2727 (XXV) of 1970, which requested the Committee to continue its work and to report to the Secretary-General "as soon as possible and whenever the need arises thereafter." Detailed background on the Committee is at Annex A.

POLICY AND OBJECTIVES

2. In general, it is Her Majesty's Government's policy to promote a just and lasting political settlement to the Arab/Israel conflict which will be acceptable to all parties. To this end, we are supporting efforts both within the Security Council and outside to promote a settlement in accordance with Security Council Resolution 242 of November 1967. In discussion of matters relating to the conflict, HMG's principal concern is to preserve a position of impartiality and to avoid being drawn into the polemics between the Arab States and Israel which will inevitably arise from the Special Committee's report. (HMG are particularly anxious to avoid discussion of the security methods adopted by the Israeli armed forces in the occupied territories because Israeli operational manuals are believed to be those used by the British army during the Palestine Mandate and the Emergency Regulations, which the Israelis claim are in force in the occupied territories, were promulgated by HMG in 1945).

3. HMG consider that to play a valid role in promoting human rights throughout the world the United Nations must cultivate a reputation for impartial and objective consideration of human rights problems. It must also avoid discussion of essentially political matters while pretending to promote humanitarian causes. The Special Committee does not accord with these objectives; Resolution 2443 (XXIII) which established the Special Committee asserts that Israel has violated human rights in the occupied territories and thus virtually entirely precludes the Committee from impartial investigation of allegations; the membership of the Committee indicates that it is unlikely to be objective; and the motives of those promoting the Committee's activities are essentially political. Moreover, the Committee is

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expensive; the Security Council is already seized of the subject; and the Special Committee's work duplicates to no real purpose that of the Special Working Group of Experts established under Human Rights Commission Resolution 6 (XXV) - see Annex C. HMG's objective is therefore to secure the demise of the Special Committee of Three, provided this can be done without prejudice to our position of impartiality in the Arab/Israel conflict.

INSTRUCTIONS

4. The delegation should work in the corridors for the termination of the Special Committee's mandate on grounds of duplication of effort and unnecessary expenditure, but they should not take the lead in proposing this. The delegation should play no part in the debate on the Special Committee's, as yet unpublished, second report but, in informal discussions, should be guided by the comments which will be circulated as Annex D to this brief.
5. If the Special Committee's second report is as biased as the first, or depends excessively on second-hand i.e. hearsay evidence, the delegation should, if several other Western European countries are prepared to vote with them, vote against its adoption and against any resolution commending the Special Committee's work or extending its mandate for a further period. However, the eventual resolution may also contain criticism of Israeli measures to develop the Jerusalem metropolitan area and to relocate refugees living at Gaza. The delegation should, therefore, report by telegram the text of any resolution arising from the Special Committee's report and request instructions.
6. If the question of the applicability of the Fourth Geneva Convention to the Occupied Territories is raised, the delegation have discretion to make known our views as set out in Annex B to this brief.

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DOCUMENTS

1. Report of the Special Committee to Investigate Israeli Practises Affecting the Human Rights of the population of the occupied territories, 1970 (A 8089)
2. Report of the Special Committee (1971)(not yet available)
3. Conventions for the Protection of War Victims (The Geneva Conventions of 1949) (Cmd 550).
4. General Assembly Resolution 2443 (XXIII).
5. General Assembly Resolution 2727 (XXV).
6. Document A/SPC/L 202.
7. Speech of the Israeli delegate to the 21st International Red Cross Conference, Istanbul, September 1969.

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BACKGROUND INFORMATION ON THE SPECIAL COMMITTEE OF THREE

DEVELOPMENTS IN 1968

1. The Special Committee of Three was established by General Assembly Resolution 2443 (XXIII) of 19 December 1968 with the mandate "to investigate Israeli practices affecting the human rights of the population of the occupied territories". The resolution was adopted by 60-22-37 (UK).

HMG'S INITIAL ATTITUDE TO THE SPECIAL COMMITTEE

2. The United Kingdom played no part in the General Assembly debate and abstained on Resolution 2443 (XXIII) because we considered that the Special Committee would be an essentially political body, lacking the necessary objectivity and impartiality, and because we considered that the terms of the Resolution amounted to an accusation against a particular Member State. The Assembly had no information to support this accusation and should not, therefore, have tried to pass judgment. HMG's general policy is that the United Nations is entitled to investigate allegations which reveal that there are reasonable grounds for suspecting the existence of a consistent and reliably attested pattern of gross violations of human rights and fundamental freedoms. We are not, therefore, opposed in principle to an impartial and properly constituted investigation of Israeli practices in the occupied territories. However, the resolution setting up machinery to investigate Israeli practices was so worded as to make it clear that the outcome was prejudged and was essentially political rather than humanitarian in nature. We also thought that, since the Security Council and the Human Rights Commission were already seized of the subject, a Committee of the General Assembly was not a good way to proceed. Nevertheless, given our concern about refugees and because the refugee situation is related to conditions on the West Bank, we did not feel justified in voting against Resolution 2443 (XXIII).

DEVELOPMENTS IN 1969

3. The resolution stipulated that the Member States of the Special Committee of Three were to be appointed by the President of the General Assembly. The President, however, died before he completed this task and, after the Secretary-General had consulted all United Nations members early in 1969, it was decided that the Committee should be appointed by Dr Alvarado, the Peruvian Vice President of the 23rd Session of the General Assembly (1968). In September 1969, the Secretary-General reported that Dr Alvarado had appointed Ceylon, Somalia and Yugoslavia as members of the Special Committee of Three, and the governments of these states appointed Mr H S Amerasinghe (Chairman), Mr Abdulrahim Abby Farah and Professor Borut Bohte as their respective representatives.

THE WORK OF THE SPECIAL COMMITTEE OF THREE IN 1970.

4. The Committee began its work of gathering information for the

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General Assembly and heard evidence in London from 1-4 April 1970. HMG had no official contact with the members of the Committee but arranged some facilities for them at London Airport. According to press reports, the Committee heard evidence from several British nationals including Mr Christopher Mayhew MP. Mr Mayhew, who paid a five-day visit to the occupied territories in January 1970, said that the atmosphere of "tension and fear" there was unmistakable. However, he paid tribute to the amount of freedom of comment allowed by Israel, considering that it was an occupying power, and he said that at a press conference which he gave in Tel Aviv he had received Israeli cooperation despite the fact that he had expressed views which were obviously unpalatable to the Israeli authorities. Subsequently in 1970, the Committee visited Beirut and Cairo during a tour of the Middle East. Israel refused the Committee's request to permit it to visit the occupied territories.

THE COMMITTEE'S FIRST REPORT

5. In its first report dated 26 October 1970, the Special Committee, predictably, concluded that the Government of Israel was pursuing in the occupied territories policies and practices which were in violation of the human rights of the population. The Committee considered that "in this case the fundamental violation of human rights lies in the very fact of occupation". The report also called on Israel to permit refugees from the occupied territories to return to their homes, to cease all collective punishments (such as destruction of property and harsh curfews), to compensate for property destroyed, to cease "torture" and ill-treatment of prisoners of war, and to take various other measures. The Committee also called for the application to the occupied territories of the Third and Fourth Geneva Conventions which respectively deal with the treatment of prisoners of war and the protection of civilian persons in time of war (see Annex B).

DEBATE AT THE XXVTH GENERAL ASSEMBLY (1970)

6. The Special Political Committee of the General Assembly debated the Special Committee's report between 7 and 11 December 1970. Statements were made by Iraq, Mr Nakhleh (Palestine Arab delegation), Libya, Hungary, Tunisia, India, Syria, Indonesia, Yemen, Algeria, Poland, Senegal, Israel, Lebanon, Kuwait, Belorussian SSR, Albania, Czechoslovakia, USSR, United Arab Republic, Bulgaria, Iran and Turkey.

7. It was immediately clear that the Arabs were intent on making as much propaganda as they could from the conclusions in the Committee's report. All speakers, except the Israeli, devoted their time to relating additional "facts" and "figures" concerning allegations of Israeli atrocities. No speaker, other than the Israeli, questioned the findings of the report. The debate was therefore sterile and much time was devoted to justifying the credentials, integrity and impartiality of the Committee itself (presumably because the Arabs and their supporters thought that the Committee was vulnerable to criticism in these respects). The Israeli delegate questioned the credentials of the Committee in view of the fact that one of its members, Somalia, considered itself in a state of war with Israel. The Israeli delegate dismissed much of the report and

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emphasised the benefits which Israeli occupation had brought to the occupied territories. He expressed the hope that military occupation would one day be unnecessary.

8. The USSR representative spoke about repression in the occupied territories and said that aggression and violations of human rights could not be divorced from each other. He maintained that the slightest disagreement with the Israeli authorities brought about arrest or exile and called for the end of the occupation.

9. The United Kingdom decided to abstain on Resolution 2727 (XXV), and not to vote against, because it was assumed that few delegations would do so. In the event the voting was 52-20-43. Explaining our vote, the United Kingdom delegate (Mr Parsons) said that our delegation had abstained because it considered that the General Assembly should not adopt measures based on circumstantial evidence. His delegation had had doubts at the time of the Special Committee's establishment because its activities appeared to be prejudged by the terms of its mandate and these doubts had not been dispelled by the report prepared by the Special Committee. The financial implications of Resolution 2727 (XXV) which, according to document A/SPC/L 202, would amount to approximately \$90,000, also gave rise to doubts as to the advisability of renewing the Special Committee's mandate.

THE COMMITTEE'S ACTIVITIES IN 1971

10. In July 1971 the Special Committee began a tour of the Middle East and Europe to "consider evidence of any changes in the situation since it was last in the Middle East in 1970." Press releases have been issued covering the Committee's hearing of evidence by Palestinians in Beirut. The Israelis have continued to refuse the Committee's request to permit it to visit the occupied territories.

THE APPLICABILITY TO THE OCCUPIED TERRITORIES OF THE
FOURTH GENEVA CONVENTION RELATIVE TO THE TREATMENT
OF CIVILIAN PERSONS IN TIME OF WAR

1. Discussion at the 23rd and 25th Sessions of the General Assembly frequently centred on the applicability to the occupied territories of the Fourth Geneva Convention relative to the treatment of civilian persons in time of war. The Israel Government did not regard the Fourth Geneva Convention as applying to the occupied territories.
2. Her Majesty's Government's view is that Israel is to be regarded as an occupying power within the meaning of the Fourth Geneva Convention and therefore is legally bound to accord, in relation to the occupied territories, the treatment required by that Convention. Articles 1, 2, 4 and 6 of the Fourth Geneva Convention are particularly relevant: the second paragraph of Article 2 states that "the Convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance". Our view on the applicability of the Convention, which is similar to that of the United States was made clear at the 27th Session of the Human Rights Commission, when we voted in favour of operative paragraph 4 of Resolution 9 (XXVII) (which called "upon Israel once more to comply fully with its obligations under the Geneva Convention relative to the Protection of Civilian Persons in Time of War"), while abstaining on the Resolution as a whole. We hope that Israel will be able to overcome its formal objections to regarding the Fourth Convention as applying to regulate its conduct in the occupied territories.
3. The Israeli view of the applicability of the Fourth Convention was set out in the Israeli delegate's (Mr Kidron) speech at the 21st International Red Cross Conference in Istanbul in September 1969, a copy of which is available to the delegation in New York. This speech does not, in our view, present a convincing defence of the Israeli contention that the Fourth Geneva Convention does not bind them in their conduct in the occupied territories. If, as Mr Kidron said, the "directives and regulations on which the Military Government operates in the Israel administered area conform to those of the (Fourth) Convention" and there is already close cooperation between the International Committee of the Red Cross and the Israeli authorities, we think that Israel, as a contracting party to the Convention, should accept the applicability of that Convention to the occupied territories.
4. Contrary to the view put forward by Mr Kidron, the terms of the Convention do not conflict with the need to protect the security of the occupying state. Article 5 makes this point clear in laying down inter alia that "where in the territory of a party to the conflict the latter is satisfied that an individual protected person is definitely suspected of, or engaged in, activities hostile to the

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right of all inhabitants who had left the occupied territories to return the voting was 24 (UK)-1-4. The United Kingdom delegate (Sir Keith Unwin) stated, in explanation of his vote, that the Special Working Group of Experts would serve no useful purpose since its terms of reference cut across the action already set in hand by the Security Council and by the General Assembly. He added that HMG had been able to vote in favour of the operative paragraph concerning the rights of refugees to return home because this referred to a specific right defined in the Universal Declaration of Human Rights. He said that HMG hoped that every country would endeavour to ensure exercise of this important right.

THE WORKING GROUP'S REPORT

4. After hearings in August 1969 in Geneva and various countries of the Middle East the Special Working Group of Experts presented their report to the 27th Session of the Human Rights Commission in 1970. In spite of their mandate which attempted to prejudge the situation they were to investigate, the Special Working Group of Experts' conclusions and recommendations were both moderate and judicious. They admitted that they were not in a position to "verify juridically" the allegations which were made to them. But they stated that "from a juridical point of view there appears to be no question as to the applicability of the Fourth Geneva Convention to all the occupied areas including occupied Jerusalem".

DEVELOPMENTS IN 1971

5. Discussion of the Special Working Group of Experts' report at the Human Rights Commission's 27th Session in 1970 was predictably acrimonious. Israel claimed that the United Nations was not competent to interpret the Geneva Conventions; that the Working Group was an illegal body; and that the real problem was oppression of Jews in Arab countries. Arab delegations, the Eastern Europeans and India attacked Israel on customary lines. France said that this complex problem was beyond the competence of the Human Rights Commission but added that strict application of the Geneva Conventions would avoid incidents which had been revealed by the report of the Special Working Group of Experts. The United States, while drawing attention of violation of human rights in areas of the Middle East other than the occupied territories, expressed regret that Israel had not accepted the application of the Fourth Geneva Convention. The United States delegate said that all parties to the conflict should adhere to the Fourth Geneva Convention and that those countries whose territory was occupied should nominate a protecting power as set out in Article 9 of the Convention; appropriate steps should be taken under Article 149 for dealing with complaints about violations; both sides should live up to their responsibilities under the Universal Declaration of Human Rights; and efforts to obtain a lasting settlement must be pursued vigorously in compliance with Security Council resolutions.

6. Sir Keith Unwin, the United Kingdom representative, said that, in HMG's view, the United Nations was competent to consider, and to act on, violations of human rights as set out in Article 55 of the Charter and that the Human Rights Commission should consider violations