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被占领的阿拉伯领土、 包括巴勒斯坦境内人权遭受侵犯的问题

以色列常驻联合国日内瓦办事处代表

2002 年 12 月 16 日致人权委员会秘书处的普通照会

以色列常驻联合国日内瓦办事处和其他国际组织代表团向人权委员会秘书处致意，谨随函附上“以色列就 A/57/366 和 A/57/366/Add.1 号文件所载的，人权委员会西岸和加沙问题特别报告员，约翰·杜加德先生提交联合国大会的报告和增编做出的答复 *”。

以色列常驻代表团要求将本文件作为 人权委员会第五十九届会议议程项目 8 下的正式文件分发。

* 附件不译，原文照发。

Annex

**Response of the Government of the State of Israel to the Report of the
Special Rapporteur of the Commission on Human Rights dated August
2002 and Addendum dated September 2002**

I. Introduction

Given the previous reports of the Special Rapporteur, Israel's expectations regarding the value of the current report were not very high. Regrettably, the current report only justifies Israel's concerns. It shows little respect for existing principles of international law, and ignores or misstates facts crucial to a balanced understanding of the current situation, so much so that it raises serious questions regarding the suitability of the current Special Rapporteur for his mission.

Many of Israel's comments on the Special Rapporteur's earlier reports (E/CN.4/2002/129 of 7 December 2001, and E/CN.4/2002/32 of 6 March 2002) remain valid for the current report. In particular, reference is made to these responses with regard to the pre-judgemental and biased mandate of the Rapporteur, the status of the territories and the applicable legal regime, the unconscionable moral equivalence made between occupation and terrorism, and the deliberate blurring of the established distinction between humanitarian and human rights law. Nevertheless, some of the issues raised by the Special Rapporteur in the current report and addendum compel Israel to respond again. These include the Special Rapporteur's justifications for terrorism, his unfounded legal innovations on the legality of occupation, his problematic analysis of Israel's security measures, and his troubling prescriptions for dealing with the threat of terrorism.

II. Justifications for terrorism

The most damaging and irresponsible aspect of the current report is its repeated attempts to justify, or at the very least, mitigate, acts of terror. As regards the cause of terrorist acts, the Special Rapporteur asserts that it is the violation of human rights in the Occupied Palestinian Territory that has produced acts of terrorism in Israel – an astonishing inversion of cause and effect that does not tally with historical fact in light of the fact that Palestinian terror against Israel long predated Israel's entry into the territories in self defence in 1967.

Similarly, the report fails to admit that it is the callous brutality of the terrorist leaders that leads to the blowing up of restaurants and buses, but rather asserts that it is the "hopelessness of despair which leads inexorably to suicide bombings and other acts of violence against Israelis." Such an assertion demonstrates a profound misunderstanding of the motivation of Palestinian terrorist groups, many of which perpetrated their atrocities not to bring about an end to Israeli presence, but rather to frustrate any political progress that may just do that. Moreover, there is nothing inexorable about decisions to massacre women, men and children going about their daily lives. These are deliberate and calculated criminal acts, which the United Nations itself has determined are "in any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious, or any other nature that may be invoked to justify them." (UN Declaration on Measures to

Eliminate International Terrorism, 9 December 1994). Furthermore, the Committee on the Rights of the Child, in its Concluding Observations on Israel's initial report (CRC/C/15/Add.195, 4 October 2002), recognized the "climate of fear" that persists due to these continuing acts of terror, "especially the deliberate and indiscriminate targeting and killing of Israeli civilians, including children, by Palestinian suicide-bombers".

The Special Rapporteur also avoids referring to Palestinian groups conducting acts of terrorism as "terrorists". Even such actions as the murder of civilians riding buses en route to settlements is described as actions by "militants". On the other hand, the Special Rapporteur has no compunction about using the term terrorist to describe Israeli actions in self-defence. IDF actions to stop the activities of Palestinian militants are themselves described as "acts of military terror".

III. Illegality of occupation

In his previous reports, the Special Rapporteur has suggested that a state of occupation may justify acts of terrorism, but has stopped short of actually asserting that a state of occupation is itself inherently illegal. In the current report, however, he goes yet a step further in his attempt to rewrite international law. He states:

"In this situation it serves little purpose to apportion immediate blame. It is far wiser to acknowledge that violations of human rights are a necessary consequence of military occupation..."

The assertion that it serves little purpose to apportion blame is difficult to take seriously in the context of a report that does little else but blame Israel.

But of greater concern is the fatalistic determination that violations of human rights are a necessary consequence of military occupation. The clear implication of the Special Rapporteur is that, while military occupation may not itself be inherently illegal, it necessarily leads to violations of human rights, and so presumably must be illegal, if not directly, then at least indirectly. This remarkable legal thesis contravenes the entire body of humanitarian law dealing with belligerent occupation, which establishes standards to be maintained by States that find themselves in a situation of occupying territory. This body of law takes it as axiomatic that violations of human rights are not a necessary consequence of occupation. The rejection by the Special Rapporteur of this fundamental premise of international humanitarian law is both baffling and troubling in equal measure.

In this context, the report is disingenuous in its reference to the comments of the Secretary General of the United Nations on 12 March 2002 regarding illegal occupation. Notably, the report omits to mention the clarification of this remark issued by the spokesperson for the Secretary General, and published in the New York Times on 21 March 2002, which emphasised that the Secretary General was not entering the debate about the legality of Israel's original action.

IV. Israeli security measures

While the Special Rapporteur correctly recognises Israel's right and responsibility to protect its citizens, in practice he finds none of the measures used by Israel to protect the lives of its civilians acceptable. With no discernable basis for his assessment, he repeatedly attributes the most base and callous motives to Israel and its defence forces for their actions.

Thus, in the context of the IDF operation to dismantle the "capital of suicide bombing" (as the Palestinians termed it) in the heart of Jenin refugee camp, he asserts that the IDF showed little regard for the principles of distinction and proportionality. This is a shocking assertion in view of the fact that 23 Israeli soldiers lost their lives in that incident precisely because of Israel's refusal to take the safer road and use air power to attack the terrorists holed up in civilian homes. Israel's casualties were a direct result of the fact that Israel placed a greater value on the lives of Palestinian civilians than did the terrorists who hid behind them.

Throughout the report and its addendum, the Special Rapporteur impugns the IDF, asserting that its actions are arbitrary and wanton, reflecting arrogance and a desire to humiliate.

In fact, the measures taken by Israel's forces during the period of the report reflect quite the opposite picture. Notwithstanding the staggering loss of life to brutal terrorist atrocities (over 690 fatalities and thousands of injured since the decision of the Palestinian leadership to leave the negotiating table and resort to violence in September 2000), Israel's measures have been characterised by remarkable restraint. Israel has repeatedly lifted closures and curfews, and increased entry permits for Palestinian workers into Israel, even though these measures have invariably been used by terrorists to perpetrate further bloody massacres.

Another instance in which the Special Rapporteur insists on attributing base motivations to Israel's security measures is in relation to the erection by Israel of a fence to help prevent terrorist infiltrations. Though Israel has clearly stated that this is a purely defensive measure, the Special Rapporteur insists on seeing the Wall of Separation as being "simply a pretext for the illegal annexation of Palestinian territory."

Most of the specific security measures referred to by the Special Rapporteur have been addressed by Israel in its responses to the Rapporteur's previous reports. It should be added, however, that his criticism of house demolitions and the assigned residence of terrorist accomplices as violating the IVth Geneva Convention, ignores the provisions of Articles 53 and 78 that specifically permit these measures in cases of clear military necessity.

V. The Special Rapporteur's prescription: submission to terrorism

More troubling even than the Special Rapporteur's descriptions, are his prescriptions. For Israel, facing an unending onslaught of murderous terrorist attacks by groups dedicated, not to the end of Israel's presence in the territories, but to its total destruction, he has the following advice: "The promotion and protection of human rights is the most effective method of combating terrorism." When virtually every humanitarian gesture implemented by Israel has been abused by terrorists bent on the

murder of civilians, be it through the use of ambulances for transporting terrorists and weapons, or by taking advantage of the lifting of the closures to smuggle explosives, this prescription does not stand up to the test.

In relation to the issue of settlements, the fatalistic defeatism of the Special Rapporteur is even more apparent as he asserts: "Despite threats to the life and security of settlers, the Israeli Government has made no attempt to reduce the number of settlers." The appalling logic of this suggestion is clear: the correct response to terrorism is to cave in to its demands.

As Israel has learned to its cost, the terrible truth is that the cause of the current wave of terrorism against Israeli civilians is not occupation, but rather the success of terrorism elsewhere, and the encouragement provided by such UN reports as that of the Special Rapporteur. It was the perception that Hezbollah terrorism brought about Israel's unilateral withdrawal from South Lebanon fueled Palestinian extremists in adopting strategies of terror to pursue their goals. Were Israel to make concessions in the face of the current terrorist acts, this would only serve to encourage further terrorism, both in the region and elsewhere.

VI. Conclusions

In a period where many in the international community, including the Quartet, a group in which the United Nations plays an active role, is calling for an end to the violence and a return to dialogue, the Special Rapporteur has once again chosen to demonstrate the irrelevance of his mission and mandate. Sadly, his factual distortions, his agenda-based editorializing, his unfounded legal innovations, and his insistence on using terminology contrary to that agreed by the Parties in their agreements (Palestine, Jewish settlements and etc.) will not help the Palestinian people on whose side he so clearly places himself. At a time when many courageous Palestinians are struggling to conduct meaningful reforms that will establish a viable civil society, to counter corruption and incitement, to create transparency in financial areas, and to inculcate a recognition that the conflict can only be resolved through dialogue and not through violence, the Special Rapporteur instead justifies the appalling strategies that have only led, and can only lead, to disaster for Israelis and Palestinians alike.

For its part, Israel will continue to struggle to find the most effective and human means to stop terrorism, and to ensure a balance between the need to protect the lives of its civilians and the rights of the residents in the territories. It will do this because this balance is the essence of being a democracy and society governed by the rule of law.

As Israel's High Court of Justice – to which every Palestinian of the territories has direct access – recently asserted:

"Human rights cannot receive complete protection as if there were no terrorism and State security cannot receive complete protection as if there were not human rights. A delicate and sensitive balance is required. This is the price of democracy. It is costly but worthwhile. It strengthens the State. It provides a reason for its struggle. (HC 7015/02 3 September 2002)