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И СОЦИАЛЬНЫЙ СОВЕТ

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ЭКОНОМИЧЕСКИЕ, СОЦИАЛЬНЫЕ И КУЛЬТУРНЫЕ ПРАВА

Вербальная нота Постоянного представительства Израиля при Отделении Организации
Объединенных Наций в Женеве от 5 ноября 2003 года на имя Управления Верховного
комиссара Организации Объединенных Наций по правам человека

Постоянное представительство Израиля при Отделении Организации Объединенных Наций и других международных организациях в Женеве свидетельствует свое почтение Управлению Верховного комиссара по правам человека (УВКПЧ) и в связи со своими нотами от 8 и 21 октября 2003 года имеет честь настоящим препроводить пересмотренный вариант ответа правительства Израиля в отношении доклада Специального докладчика по вопросу о праве на питание, г-на Жана Зиглера, относительно осуществленной им 3-12 июля 2003 года миссии в Израиль.

Постоянное представительство Израиля просит распространить вышеупомянутый документ* на шестидесятой сессии Комиссии по правам человека в качестве официального документа по пункту 10 повестки дня.

* Воспроизводится в приложении в полученном виде только на языке представления.

Annex

Israel's Response to the Report Submitted by the Special Rapporteur on the Right to Food

General Comments

1. Israel views the Report submitted by the Special Rapporteur on the Right to Food with serious concern, both in view of its substantive content and the politicized, one-sided tone and manner in which it is written, all of which attests to the conclusion that the report was intended to serve as a purely political exercise.
2. This outcome is particularly striking in light of Israel's sincere efforts to cooperate as fully as possible with the Special Rapporteur, to provide him with all necessary information and to engage in a constructive dialogue on a professional basis. The Report merely provides a platform for unsubstantiated allegations against Israel, presented without question or criticism. It makes no attempt to distinguish between fact and opinion and, rather than basing itself solely on professional investigation, it draws information from selective Israeli media in support of its claims.
3. Sadly, the unprofessional approach described above dominates the entire Report and is inconsistent with the basic concept of bona fides. The Report is rife with political assertions on matters clearly far beyond the mandate of the Special Rapporteur, frequently prejudging issues agreed to be dealt with in direct negotiations between Israel and the Palestinians.
4. All this only adds to the non-professional manner in which the Special Rapporteur has chosen to discharge his duties with regard to the publication of this Report. In clear abuse of basic norms of integrity and proper procedure, not only did he submit an advance copy of the Report to the press and media well before it was presented to the State Party concerned, but he also abused the credentials he possesses as Special Rapporteur, in order to embark, prior to the official presentation of the Report, on a media campaign to defame the State of Israel. He openly admitted for the first time in a television interview on 2 October 2003 to the French Channel LCI, to membership in a politically biased non-governmental organization, representatives of which he also met with during his visit (para. 6, 53). The fact that the Special Rapporteur is a member of such an organization, the objective of which is to discuss and promote political solutions for the Israeli-Palestinian conflict, stands in contradiction to the important quality of impartiality that is part and parcel of the position of any Special Rapporteur.

5. The Report focuses, in a completely one-sided manner, solely on allegations of breaches by Israel and is rife with fundamental inaccuracies and shortcomings in its assessment of Israel's use of imperative security measures. It fails to use the same clear and unequivocal language with regard to the Palestinians as to their responsibility for human rights violations and terrorism during the present outbreak of violence. The Special Rapporteur preferred to overlook the active involvement of the Palestinian leadership in instigating incitement and supporting suicide terrorism and attacks on innocent Israeli civilians, in children's summer camps, in mosques, in their public statements to the media, and in local ceremonies, such as the recent notorious football tournament held by the Palestinians in memorial of their suicide bombers ("shahids").
6. Particularly regretful was the Report's brief mention of the tolls of terrorism on Israeli life to which the Special Rapporteur has paid mere lip-service, without providing more details on these daily horrific terrorist attacks and the context in which they occur. The Report completely ignores Israel's inherent security dilemmas and the basic fact that Israel is at present waging one of its most difficult struggles against Palestinian suicide terrorism. Instead, it depicts the complex situation in the territories in an over-simplified manner, while omitting the systematic pattern of Palestinian violations that trigger the use of imperative defensive security measures.
7. In the guise of citing unidentified sources, the Special Rapporteur makes a number of political assertions and assessments that are not only beyond his mandate, but also undermine any claim the Report may lay to objectivity.

The Report's Structure and Terminology

8. A matter of great disappointment was the Special Rapporteur's intentional use of exaggeration and uneven wording. The Report uses terminology that is seemingly objective, but in fact is written in a one-sided and politicized tone. It adopts Palestinian feelings and sentiments at face value, yet refutes Israeli concerns one by one. In this sense, the Report does not provide an objective assessment and study of events as it purported to do. A few cursory examples will suffice.
9. The Special Rapporteur characterizes the humanitarian crisis in the territories as "man-made", thereby insinuating Israel's blame for its occurrence (see para. 58), whereas if one were to speak of a "man-made" factor, it would clearly have to be the suicide terrorists and the institutionalized establishments that fund, encourage and organize their activities. Any objective observer would have to reach the inevitable conclusion, omitted in the Report, that the Palestinian Authority, rather than investing in the welfare of its people, has used its public resources and money to fund terrorist activities, such as the case of the

proven involvement of the Palestinian Authority in the smuggling of lethal heavy weaponry on the Karin A boat, and the systematic firing, by elements under the Palestinian Authority, of mortars and Kassam rockets from Palestinian controlled areas into Israeli territory.

10. Sadly, the Report tells the reader far more about the political bias of its author, than about the issues it was asked to cover. In an effort to defame Israel and to dismiss its legitimate security needs, the Special Rapporteur refers to the security fence in terms taken from a completely different and irrelevant context. Thus, he adopts Palestinian propagandist terminology such as "a strategy of bantunstanization", or an "Apartheid wall", and Palestinian "ghettos". This is unacceptable language that disgraces the office of the Special Rapporteur. In this context, regardless of any differences of opinion one may have with regard to the Israeli-Palestinian conflict, it is, in essence, a political and territorial conflict, and not a racial one. The attempt of the Special Rapporteur to depict it as racial is improper, misguided, and dangerous.
11. The Report charges that, in constructing the security fence, Israel has attempted to alter the character, legal status and composition of the territories. In fact, the opposite is true. The security fence is not intended to establish a political border. It is being built with the sole purpose of providing security for Israeli citizens who, since September 2000 have been subjected to a continuous onslaught of Palestinian terrorism carried out principally by infiltration into Israeli population centers. The decision to establish the security fence area was taken only after other options were tried and did not succeed in preventing Palestinian terrorism, which presents an imminent threat to the lives of Israeli citizens, and since the Palestinian Authority failed time and again to fulfill its obligations to combat terrorism, arrest terrorists, and confiscate illegal weapons. In fact, even the use of the term "the Wall" in this context is, in itself, completely misleading; in fact a "wall" exists only in 8.5 km out of 132 km of the entire fence (consisting only 6.5% of the total area), and only in areas where close proximity to large Israeli cities and major roads has made them vulnerable to Palestinian snipers.
12. Although the topographical path of the security fence area is dictated primarily by security needs, humanitarian considerations also play a crucial role. In deciding the route, Israel has tried to avoid including Palestinian villages on the western side of the security fence area. The use of public lands is also a priority in order to avoid requisition of private lands. Furthermore, Israel's Supreme Court has ordered Israel's security authorities to provide landowners with specific and individualized solutions to issues that arise in connection with the building of the security fence area. In those cases where private land has been requisitioned pursuant to the Hague Regulations of the laws of

armed conflict, the owners are offered full compensation, in accordance with the law, for the use of their land.

13. Furthermore, legal procedures allow every owner to file an objection to the requisition of their land. If the objection is dismissed, the landowner is entitled to petition the Supreme Court sitting as High Court of Justice, and to challenge the legality of the requisition. Such petitions have, in fact, been filed, and each case has been decided upon its own merits. The Report, however, accuses Israel of not providing proper judicial process for requisition of land for the purpose of building the security fence area. This accusation is completely misleading - in fact Israel does provide adequate judicial process for any objection or complaint filed in this regard. Such complaints are carefully examined with a view to reaching a solution in agreement with the appellants. In cases where this is not possible, there always remains the option to directly petition Israel's highest civil instance, its Supreme Court sitting as High Court of Justice.
14. Perhaps among the most puzzling references in the Report is the accusation made with regard to Israel's alleged "provoking [of] hunger" of the inhabitants of these territories (Summary, and para 38). It should be made perfectly clear that, inasmuch as the humanitarian situation in the West Bank and Gaza is one of an armed conflict, there is no food crisis. The completely unsubstantiated and flawed nature of these allegations calls into question the objectivity of the Special Rapporteur and defies a detailed response. During the period of 1996-2000, prior to the outbreak of the terrorism and violence in the West Bank and Gaza, there was literally no food problem in these territories. Furthermore, the so-called "findings" on which the Special Rapporteur focuses from the "USAID study", are seen as highly questionable by other experts and international research institutions in the field of malnutrition, as they overwhelmingly depict exaggerated data and uncorroborated statistics.
15. The Report ignores the importance of the growth of the Palestinian economy prior to the recent riots. Prior to the outbreak of the current hostilities, in summer 2000, approximately 130,000 Palestinian workers from the West Bank and Gaza were regularly employed in Israel, half of them possessed work permits. They constituted approximately 18% of the Palestinian work force and income, and 30% of the total Palestinian income, due to the relatively high wages in Israel. However, since then, as Israel was compelled to tackle the severe security situation, the number of work permits granted has considerably decreased, although the situation is being examined on a regular basis in order to increase the number, if security consideration would permit. The most recent IMF report states that before the Intifada, between 1994 and 1999, the economy grew at a remarkable rate and was able to generate jobs and increase standards of living for its rapidly growing population. With the onset of the Intifada, the Palestinian economy went

into major decline. The Report, however, misses the clear connection between economic growth and cessation of violence.

16. While it is undoubtedly true that there is a direct linkage between the outbreak of Palestinian violence and terrorism and the deterioration of their economic situation, including the level of nutrition, Israel remains committed to doing its utmost in order to ease the living conditions of the civilian population in the territories, subject to security considerations. Israel has been willing throughout the last three years to act together with the Palestinians for the improvement of the Palestinian Economy. Recently, Israel allowed the entry into Israel on a daily basis of 25,000 Palestinian workers in the areas of agriculture, housing, commerce and industry. The activity in the industrial areas of Atarot and Erez has been renewed and there have been continuous efforts to promote industrial parks in Karni, Mukeibaleh and Tulkarem. Unfortunately, continuous efforts on behalf of Israel to open the labour market to Palestinian day labourers have produced only acts of terror.
17. With regard to the economic impact of closures and restrictions on the movement of Palestinians in the territories, the Report goes into great detail in describing their tragic situation. However, it dismisses or fails to acknowledge, that imperative security restrictions solely dictate the imposition of these restrictions, in order to prevent further terrorist attacks and infiltrations emanating from Palestinian controlled areas as much as possible. In the absence of any real and sincere attempt by the Palestinian Authority to stop these crimes, which it even encourages and endorses, Israel has little choice but to act in self-defense and do all that it possibly can to protect its citizens. In spite of the most adverse security circumstances and daily threat of terrorism posed against Israel and its citizens, the Israeli authorities have undertaken and remain committed to easing the humanitarian situation in the territories. This is undertaken in the most impossible circumstances, where terrorists operate from within densely crowded civilian neighborhoods as they hide behind the civilian population, intentionally abusing the civilian lifeline arteries for their terrorist ends. They systematically abuse UN and humanitarian insignia, as well as religious sites, ambulances, and personnel, for smuggling weapons and suicide terrorists, in blatant violation of the most basic norms and principles of international law and humanity.
18. The issue of humanitarian aid is addressed daily at the highest levels of the Israeli political and security establishment, with clear-cut and unequivocal directives given to facilitate and assist the important work of the humanitarian agencies operating in the region. The Israeli authorities, and the special coordinator of activities in the territories, acting on their behalf, continue to maintain intensive and daily contact with the international aid agencies operating there (ICRC, UNRWA, UNSCO, WFP and others),

including through regular meetings with the Civil administration and IDF commanders in the field. To this end, a special designated unit located in the Civil Administration in both the West Bank and the Gaza Strip, is responsible for mediating on behalf of the Palestinian population, directly with the Palestinian counterparts as well as with the international community, in order to facilitate the movement of goods, people and medical facilities throughout the armed conflict and hostilities.

19. Throughout closures and curfews, even in the most volatile of security circumstances, humanitarian assistance is given preference. Humanitarian supplies are dispatched to the various villages and cities, and the movement of Palestinians is facilitated in order to respond to their humanitarian needs. Thus, for example, in spite of the closing the Karni commercial passage following the terrorist attack at the Erez industrial estate in which 2 Israeli workers were murdered, the movement of humanitarian assistance and supplies were enabled.
20. However, these efforts have been abused by the terrorist operating in the West Bank and Gaza. Regrettably, on every occasion that Israel lifts closures and curfews, it is "rewarded" by acts of brutal terrorism and the murder of Israeli civilians. Remarks made by the Special Rapporteur, such as his call upon Israel to end "the regime of closures and curfews"(para. 62), demonstrate that he is detached from any basic and realistic understanding of the complexities and the daily terrorist threats in these areas.
21. The substantive part of the Report provides an unquestioning platform for partisan political views. The Report makes no attempt to distinguish between fact and opinion and is rife with value judgments and political insinuation. In yet another dubious value judgment, lacking any legal and moral basis, he questions Israel's right to protect its citizens living in the settlements (para. 29). This thesis lacks any basis in law and could be interpreted as suggesting a "green light" and justification for terrorists to launch their attacks against Israelis living in settlements or anywhere outside Israel's borders. Such a statement by the Special Rapporteur of a United Nations Commission implies, in contravention of Security-Council resolutions and United Nations policy in general, that Israelis outside Israel's borders are a "legitimate target" for attacks.
22. Among other issues raised in the Report are repeated allegations of alleged abuse of security measures. Once again, one can only wonder at the irresponsible approach that guided the author of the Report to address these issues, which are clearly beyond his mandate, and to do so without considering that there was any need to mention the terrorist attacks that give rise to the necessity for such preventative or deterrent security measures. Nor did the Report even see fit to consider the agonizing dilemma facing the State of Israel in balancing its duty to protect the lives of its citizens from suicide

terrorism and its obligation to safeguard basic human rights. It appears that on such issues, like many others, Israel once again has been made to pay a price in international fora for its candid, open, and democratic debate over sensitive issues that were also presented to the Special Rapporteur in the various meetings he conducted with senior Israeli officials.

23. Other issues addressed in the Report
24. The Report goes on to provide a platform for every conceivable allegation against Israel, without any substantiation and irrespective of its relation to the task assigned by its mandate. In the same vein, ambiguous statements on matters of cardinal importance are both misleading and lack objectivity. Thus, for instance, the Report treats various delicate matters in a generalized manner, without providing essential contextual background. Those aspects that might have given a more balanced picture are conveniently ignored or otherwise curtailed. Among the more serious allegations presented unchallenged by the Report are the following:
25. The Special Rapporteur goes into great length discussing Israel's position with regard to the inapplicability of human rights treaties to the territories under its control in the West Bank and the Gaza Strip. However, he systematically chooses to ignore the basic fact that this issue remains outside his mandate, and that according to accepted understanding of international law, human rights and the laws of armed conflict are distinct regimes with different origins, codified in different instruments and applicable in different circumstances. While there is a clear connection between these two bodies of law and there may be a convergence between them in some respects as they both share the fundamental notion of humanity and respect for human dignity, the current state of international law and state practice, is that these two legal regimes are nevertheless distinct and apply in differing circumstances.
26. Thus, far from being an invitation to import provisions from treaties protecting human right in times of armed conflict, humanitarian law is the expression of that protection and not a partial arrangement requiring that it be supplemented by human rights treaties concluded for the very different context of protection of citizens from their own government in times of peace.
27. Without prejudice to Israel's jurisprudential position, it is nevertheless committed to upholding human rights and the rule of law in the areas under its jurisdiction and effective control. Israel views with utmost severity any incidents of misconduct by members of its security forces, and investigates any allegation in this regard. Contrary to what has been alleged in the Report, Israel does not have a policy of "impunity of

settlers" who have violated the law. Such cases are investigated by the Israel Police and the State Attorney and in appropriate cases charges are filed against the perpetrators. Only recently, a group of Jewish settlers from Bat-Ayin were convicted by the Israeli court for attacks carried out by them against Palestinian residents.

28. Furthermore, the Report repeatedly makes reference to Israel as "the Occupying Power", while it is widely known that since the signing of the 1995 Interim Agreement between Israel and the PLO, the vast majority of civil and administrative powers and responsibilities have, in fact, been transferred to the Palestinian Authority which was set up for this purpose. Hence, the question as to which authority is obliged to ensure the right to food in the West Bank and Gaza is, by definition since 1995, *sui generis*, and dealt with through coordination between Israel and the Palestinian Authority.
29. The Report makes cursory reference to the water issue, claiming that Israel has vetoed the building of most new water drilling and sewage projects in the West Bank (para. 37). This assertion, which is based, according to the Report, on information from Palestinian officials, is disingenuous to say the least. Even according to Palestinian statistical data, during the years 1996 to 2002, the Joint Water Committee approved 52 wells (an additional 28 wells in the eastern aquifer are not taken into account in the Palestinian data), the yield of which will total 14,000,000 mcm/y. This covers, according to the Palestinian statistical data, the total amount of 42.58 mcm/y, which is a considerably higher quantity than that envisaged as a necessity for the Palestinians during the interim period as agreed by the parties in the Interim Agreement.
30. Conclusion
31. In overview, Israel is left with the distinct impression that its sincere attempts to engage in a constructive and open dialogue with the Special Rapporteur were not met with an open-minded readiness on his part to genuinely consider Israel's point of view. Regretfully, the tenor and content of this Report raises serious doubts as to the utility of allocating its time and resources to special mechanisms of the Commission on Human Rights. This will undoubtedly shade Israel's future decisions with regard to the possibility of engaging in constructive dialogues with other United Nations Special Rapporteurs.
32. In light of the Special Rapporteur's lack of *bona fides* and abuse of the offices on whose behalf he was mandated, Israel requests the relevant UN authorities to dismiss his Report as unworthy of discussion or distribution as any official distribution as a UN document.
33. The Report bears no relation to the task assigned to the Special Rapporteur. It makes no effort to understand or to accurately convey the complexities of the issues it raises. It

merely presents uncorroborated reports and reiterates partisan political views without question or criticism. In a deeply troubling display of irresponsibility, one-sidedness, and lack of integrity, it blames Israel for the entire situation and the difficulties it entails, while absolving the Palestinian side from the overwhelming majority of its responsibilities.

34. Regrettably, the Report makes judgmental and political assertions on issues agreed between Israel and the Palestinians to be dealt with in direct negotiations. By doing so, not only does the Special Rapporteur far exceed his mandate, but he also prejudices issues agreed to be dealt with in a completely different forum. Thus, for instance, the Report's reference to the issues of settlements in the territories is clearly a political statement that undermines the outcome of any future Israeli-Palestinian agreements. Likewise, the Special Rapporteur concludes with the dubious determination that the occupation is the basis for all violations relating to food in the territories, not only ignoring the fact that belligerent occupation may be a legitimate response to violent attack, as in Israel's case, but also that violations of the right to food stem from completely different factors.
35. Far from contributing in any way to the resumption of peaceful negotiations, the Report conveys a clear message to the Palestinian side that the United Nations is a convenient and willing forum for bypassing the peace process. Those actively involved in escalating violence and terrorism, trying to undermine attempts to ease the tragic situation in this region, will draw considerable encouragement from this document. But those who hold out hope for peaceful resolution of differences through negotiations can only be seriously troubled and disappointed.
