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QUESTION DE LA VIOLATION DES DROITS DE L'HOMME DANS LES TERRITOIRES ARABES OCCUPÉS, Y COMPRIS LA PALESTINE

Note verbale datée du 11 mars 2004, adressée au secrétariat de la Commission des droits de l'homme par la Mission permanente d'Israël auprès de l'Office des Nations Unies à Genève

La Mission permanente d'Israël auprès de l'Office des Nations Unies et des autres organisations internationales à Genève présente ses compliments au secrétariat de la Commission des droits de l'homme et a l'honneur de lui communiquer ci-joint la réponse d'Israël* au rapport − document E/CN.4/2004/6 − de M. John Dugard, Rapporteur spécial de la Commission des droits de l'homme, traitant de la situation en Cisjordanie et dans la bande de Gaza, à la soixantième session de la Commission des droits de l'homme, conformément à la résolution 1993/2 A de la Commission.

La Mission permanente d'Israël demande que ce document soit distribué en tant que document officiel de la soixantième session de la Commission des droits de l'homme, au titre du point 8 de l'ordre du jour.

* Reproduite telle quelle, en annexe, uniquement dans la langue dans laquelle elle a été reçue.

Annex

Response of Israel to the Report submitted by Mr. John Dugard, Special Rapporteur of the Commission on Human Rights, pursuant to Commission Resolution 1993/2A

General

The latest Report submitted by the Special Rapporteur is, regrettably, no different from its predecessors, and continues to use the Rapporteur's mission and mandate as a platform for advancing a political agenda.

Perhaps the most revealing glimpse into the world view of the Rapporteur as reflected in this Report is his summary of the causes of the humanitarian hardship in the territories:

> There is a humanitarian crisis in the West Bank and the Gaza. It is not the result of a natural disaster. Instead, it is a crisis imposed by a powerful state on its neighbour.

The world inhabited by the Rapporteur is one in which there can only be one cause of Palestinian suffering: Israel. Not the fact that Palestinian society has been hijacked by terrorist groups hiding behind civilians, not the virulent incitement filling schoolbooks and sermons in mosques, and not the repeated failure of the Palestinian leadership to comply with any of its obligations to prevent terrorist attacks.

Nor, in the worldview of the Rapporteur, is there any relationship between the hardship faced by the Palestinian people and the devastating corruption, highlighted by the International Monetary Fund and in a recent CBS 60 minutes documentary, which has resulted in the diversion of millions of dollars of donor funds specifically designated to alleviate Palestinian hardship into private accounts.

For the Rapporteur none of these factors contribute to Palestinian hardship, which is purely "imposed by a powerful state in its neighbour". Accordingly, his Report focuses solely on the actions Israel has been forced to take in order to defend its citizens.

Many of the allegations raised by the Rapporteur repeat misleading charges made in his earlier Reports. Israel has provided detailed comments and corrections in its Responses to these Reports, but a number of additional points must be made in relation to the current Report.

Basic Principles

As noted in Israel's Response to the Special Rapporteur's previous Report, the Special Rapporteur has, in fact, reconsidered some of the assumptions in his earliest Reports and adopted positions more consistent with international law. He no longer seeks to excuse acts of terrorism, and in the current Report he goes so far as to "reaffirm his opposition to terrorism and his commitment to human rights." He has also come to recognize, in theory at least, the right of Israel to use force to prevent acts of terror. As he states:

> That Israel has legitimate security concerns cannot be denied, that it is entitled to take strong action to prevent suicide bombings and other acts of terror is not disputed..... Israel is entitled to a wide margin of appreciation in its response.

In practice, however, the current Report makes no allowance at all for Israel's "legitimate security concerns" or its entitlement to take "strong action" against terrorists. It pronounces Israel's actions "disproportionate" without giving any consideration whatsoever to the terrorist threat to which they are a response.

Since the outbreak of the latest wave of Palestinian violence in September 2000 there have been over 19,000 separate terrorist attacks – bombings, missiles, stabbings and shootings - directed against Israelis by Palestinian terrorist groups These groups show no regard for the distinction between civilians and combatants, neither within the civilian population they hide behind, nor among the Israelis they target. Yet, in the Report's perverse calculus of proportionality, there is no consideration of these attacks – not even of the 127 terrorist attacks which took place during the very days that the Rapporteur was present in the region preparing his Report (22-29 June 2003).

Even in a section of his Report dealing with "restrictions on freedom of movement", the Rapporteur does not consider the blowing up of buses by Palestinian terrorists worthy of mention.

The refusal to recognize terrorism as a threat that justifies defensive action, leads the Rapporteur to impute the basest motives to Israel's actions. He charges Israel with "institutionalization of the humiliation of the Palestinian people", citing, as an example, the delays of ambulances at checkpoints. But he ignores the documented cases of Palestinian terrorist groups using ambulances and humanitarian vehicles to smuggle ammunition, suicide bomber belts and even terrorist themselves (see, for example, the specific instances cited in Israel's response to the Rapporteur's previous Report). Similarly, he concludes that the destruction of houses and orchards in Beit Hanoun in the Gaza Strip was prompted by "a road bomb aimed at an Israeli military vehicle". Far from being a response to a single road bomb, Israel's actions in Beit Hanoun were prompted by the scores of lethal Kassam missiles fired from there on towns in Israel.

The simple truth, evident to any reader of the Rapporteur's Reports, is that neither the issue of proportionality nor the terrorism faced by Israel on a daily basis is a factor in his equation. Notwithstanding his theoretical recognition of Israel's legitimate concerns and right to take strong action, in all the Reports he has submitted to date, there is ***not a single defensive measure*** taken by Israel in order to protect the lives of its civilians that this Rapporteur has been prepared to declare legitimate or

proportionate. Indeed, it is hard to avoid the impression that the "necessary disclaimer of sympathy for terrorism" [the Report's chilling own words] is quite simply that, a pro forma expression, a simple going through the motions, before, as always, laying full blame for any hardship in the territories at Israel's door.

Prejudicial Language

"Language" writes the Special Rapportuer "is a powerful instrument... In politics euphemism is often preferred to accuracy in language." The Special Rapporteur could in fact be speaking about his own Report, which is rife with loaded and misleading terminology. A few of the more striking examples will suffice:

- ***"The Wall":*** The Special Rapporteur chooses to use the deceptive term 'Wall' to describe Israel's security fence, even though the fence takes the form of a wall for less than five percent of its length, and then only in areas in which Palestinian snipers can, and in fact have, shot at Israeli civilians. The Rapporteur also describes the fence as "electric", when it is neither electric nor electrified, though it does have electronic sensors to detect intruders.

- ***"Apartheid Wall":*** Not content with the misleading and politically charged term 'wall', the Rapporteur goes further and asserts that "the term Apartheid Wall is frequently used to describe the Wall", adding that the metaphor is inaccurate "as no wall of this kind was erected between black and white in apartheid South Africa". The Rapporteur chooses to ignore the real reason why the term "apartheid" is entirely inappropriate in this context: that the fence has nothing to do with race or ethnicity, but is, rather, a reluctant response by Israel to stop terrorists reaching Israeli civilians – both Jewish and Arab. This attempt by the Rapporteur to present what is in essence a political and territorial conflict as a racial one, is both improper and dangerous.

- ***"Palestine":*** The use of the term 'Palestine' to describe the territories in question can only be considered a deliberate act of political misdirection when used by a UN Rapporteur, since it contravenes standing UN guidelines on the terminology to be used in this context. General Assembly resolution 43/1777 of 15 December 1988 determined that the designation Palestine should be used "in place of the designation 'Palestinian Liberation Organization' in the United Nations system without prejudice to its observer status". The term has no territorial connotation, and is not an accepted designation for the territories in question. The official guidelines issued by the Division for Palestinian rights of the United Nations published on 25 January 1996 stress that "The term Palestine is not used in the United Nations system to denote a Palestinian State".

- ***"Assassination":*** The use of the term "assassination" to describe Israel's targeting of terrorists as a last resort effort to stop their attacks is similarly unacceptable. "Assassination" is generally used to describe the murder of a prominent person or public official for political ends. The targeting of terrorists, a form of self-defense clearly permitted by international law, focuses not on the public role of the individual, but on the role played by them

in the murder of innocent civilians, and has as its goal not political motives but the saving of lives.

Political agenda

Since the Rapporteur's last Report it has become apparent that he views his position as little more than a platform for broadcasting his personal political views. In August, Mr. Dugard, writing under his title as Special Rapporteur, published a political tirade against Israel in the international media, in violation of Article 100 of the UN Charter which requires UN officials to "refrain from any action which might reflect on their position as international officials responsible only to the organization", and of his mandate which requires him to report his conclusions and recommendations to the Commission that appointed him, and not to the international media.

A similar tendency to use his position as a springboard for his personal political agenda is apparent in the Rapporteur's current Report, most strikingly in its description of Israel's security fence. On this issue the Rapporteur repeats comments he made in his previous Report, yet ignores the comments and clarifications made by Israel in its response. These include the fact that the fence has no political significance, but was necessitated by the waves of suicide bombings carried out by terrorists infiltrating from the West Bank, as well as significant steps taken by Israel to mitigate the effect on the local population, such as an appeals process before security officials and Israel's High Court of Justice, the inclusion of over 40 agricultural gates to enable farmers continued access to their fields, the payment of full compensation for the use of any land required for the fence and for crops, and the replanting of over 60,000 olive trees to sites designated by their owners.

More fundamentally, the Rapporteur persists in his determination that the construction of the fence is illegal. But in order to do so his argumentation is circular in the extreme. The Rapporteur bases his charge on the fact that the fence, somehow, constitutes an act of annexation – refusing to let the fact that there has been no act of annexation, trouble him. "It may lack an act of annexation" he asserts, "but its effect is the same: annexation". There has indeed been no act of annexation, nor is there any annexation in fact – there has been no change to the status or ownership of the land on which the fence is constructed.

Attempts to prejudice negotiations

Not only does the Rapporteur misrepresent the current situation, but he also seeks to prejudice the outcome of future negotiations between the parties. One notable example is his repeated attempts, without legal basis, to establish the so-called "green line" as an international border. The fence, he charges, "does not follow the Green Line, that is the 1967 boundary which is generally accepted as the border between the two entities. Instead it follows a route that incorporates substantial parts of Palestine within Israel". Beyond numerous other inaccuracies (there is no incorporation of territory into Israel; the fence, determined by topographical and security considerations, also goes into Israel; on the use of the term 'Palestine' see above) the

notion that the so called "Green Line" represents a border is entirely unfounded. It has never been accepted as an international border or boundary, and to the contrary, Security Council resolutions 242 and 338, the Israeli-Palestinian agreements and the Quartet sponsored Road Map all require the parties to determine secure and recognized boundaries through negotiations.

The Rapporteur is similarly careless when it comes to describing other provisions of the Road Map. "The issue of prisoners has become a major obstacle in the implementation of the Road Map" he asserts, blithely ignoring the fact that prisoner releases are not mandated by the Road Map at all. He might, in fact, have mentioned that the hundreds of prisoners released by Israel have been above and beyond the Road Map requirements as a confidence building measure, and one for which Israel has paid a heavy price - in the form of a series of bomb attacks carried out by prisoners released by Israel in response to demands by the Palestinian side.

Such careless reading is evident again in the Rapporteur's description of the issue of settlements. "The Road Map makes it clear that the dismantling of settlements is an important issue in the resolution of the Israeli-Palestinian conflict." In fact, the Road Map makes no reference to the dismantling of settlements. It does refer to the dismantling of unlawful outposts and a settlement freeze, but only after the Palestinians "undertake unconditional cessation of violence" by the Palestinian side – a provision which somehow escaped the Rapporteur's attention.

Conclusion

"The task of the Special Rapporteur is to report on facts", states the Rapporteur correctly. But in practice the Report contains little reporting on facts, and what little there is, is frequently selective quotations from books and newspaper articles. In the rare instances that he does stick to the facts, the Special Rapporteur has no choice but to recognize the efforts made by Israel to ease the hardship of the Palestinians, even while increasing risks to its own civilians, as where he notes that curfews have been eased and that numbers of roadblocks have been removed.

For the most part, however, the Report is less of a factual document than it is a presentation of a virtual reality that conforms to the Rapporteur's political agenda; a reality in which no Israeli action in self-defense is justified, in which the Palestinian leadership is untainted by support for terrorism or corruption, and indeed all Palestinian ills can be laid at Israel's doorstep; a reality in which Palestinian hardship has nothing to do with the rampant corruption of the Palestinian leadership, its shameless embezzlement of donor funds, its sustained violations of agreements, or its brutal suppression of its own people and support for suicidal terrorism against the people of Israel, but simply, in the words of the Rapporteur, "a crisis imposed by a powerful state on its neighbor."

There is clearly a place for serious analysis and debate about humanitarian issues in the territories. But this Report shows no interest in such debate. By placing the entire blame for the hardship facing Palestinians on Israel, it absolves the terrorists that have taken Palestinian society hostage, the corrupt leadership that has incited and abused the Palestinian people, and those Arab states that have deliberately sought to fund and **inflame terrorism in the region. In so doing, this Report is clearly part of the problem and not the solution.**

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