

ISRAEL

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Statement by
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Check Against Delivery

Mr. Chairman,

The report presented before you today speaks of a "twilight zone ...between human rights and politics, one within which the two interact"¹. I regret to note, however, that such a 'twilight zone' also extends in the report itself to the realm of fact and fiction.

The latest report of the special rapporteur follows its predecessors in letter and tone in the approach it takes to the region. In a chronicle of reports whose outcome is foretold, large segments have been imported from the special rapporteur's previous reports, begging the question why the special rapporteur needs to visit the region on a regular and unlimited basis if his recommendations are already pre-determined.

Regrettably, the report insists on viewing a complex situation through the simplest of prisms, one in which one side has only rights while the other has only obligations; one in which one side has a monopoly over victimhood while the other is only demonized and censured. In the narrow perspective of the report, the terrorism and violence emerging from Palestinian areas simply do not exist, or at most - are lightly dismissed. As a result, any measure undertaken by Israel to protect the inherent right to life and security of its civilians - is categorically condemned as inadmissible or disproportionate.

In order to advance this one-sided perspective, the report presents a collage of misrepresentations and misstatements of both fact and law, which Israel intends to address in a detailed written response at a later stage. Many of these allegations have been made in prior reports -- yet even when these have been clearly shown to be false, either in Israel's responses or by retractions made by those cited as authorities, they continue to be asserted without reservation. For example, the rapporteur cites at length a report published in 2006 by the NGO "Peace Now" regarding land ownership in the West Bank, but fails to note that the report was retracted by the organization itself following an admission that it was rife with factual errors.

Beyond the numerous factual and legal errors, this latest report brings into clear focus the personal agenda of the current rapporteur, which, troublingly, places him at odds with established norms of human rights and International humanitarian law and, in effect, legitimizes some of the gravest violations of international law. In his prior reports, the rapporteur has already demonstrated a reluctance to condemn terrorism, suggesting that there is currently no legal basis for censuring suicide terrorism; but it seems that the current report breaks new ground in legitimizing acts of terrorism against civilians.

In clear opposition to the solid body of UN resolutions which unequivocally declare that terrorism is unjustifiable regardless of cause or grievance, the rapporteur advances the position that terrorism is "a relative concept".

He goes on to compare Palestinian terrorists with resistance fighters throughout history. It is hard to square such a relativistic approach with a condemnation of terrorism in all circumstances. As one jurist wrote: "If the most brutal acts of terrorism directed at innocent civilian targets are permitted when committed by

¹ A/62/275, 17 August 2007, paragraph 1.

members of a "liberation movement", human rights will suffer a severe setback at the hand of international law"². Indeed, this instructive citation is taken from none other than the rapporteur himself in an article of his on international terrorism, dating back to 1977. And yet, in his current incarnation, the rapporteur consistently demonstrates a deliberate blindness to glorification and perpetration of acts of terrorism by groups on the Palestinian side.

A cursory look at the Hamas-Charter calling for the annihilation of the State of Israel might help determine the lack of any relativity in its vision of the right to self-determination. But according to the special rapporteur, the problem is not a terrorist organization dedicated to killing Israelis, but Israel itself. Indeed, it should not come as a surprise then, that the Hamas official spokesman has wholeheartedly welcomed the latest report of the special rapporteur.

Mr. Chairman,

The rapporteur places himself in staunch opposition to the international community and, in particular, the Quartet comprising the UN, the EU, the United States and Russia, which has established clear conditions for granting legitimacy to any Palestinian leadership. Such assessments not only far exceed his mandate, but also undermine any claims of the report to objectivity.

Furthermore, the report's resort to inflammatory language does nothing to contribute to the process of constructive dialogue. Its use of biased terminology is a telling indication of the political agenda behind it. Thus, for example, the abduction and capture of Israeli soldier, Corporal Gilad Shalit, is referred to in the report as a mere [quote] "arrest"³. The report's repeated attempts to depict the Israeli-Palestinian territorial dispute in racial overtones, is another testament to the special rapporteur's personal agenda.

Similarly, the rapporteur determines that the Palestinian prisoners held by Israel are so-called "political prisoners" suggesting that these individuals are detained for their political or ideological views, and not their active involvement in acts of violence and terrorism.

In fact, it is interesting to note: "that from a doctrinal point of view, the international terrorist does not fall within the category of political offender. When a person commits an act which threatens the stability of other states or undermines the international order, he ceases to be a political offender and becomes a criminal under international law, like the pirate or hijacker"⁴. This clear statement of international law is taken from the rapporteur himself, in another article of his dating back to 1973.

Mr. Chairman,

Israel has emphasized for over a decade that there can be no value in a report pursuant to a one-sided and inherently imbalanced mandate which does not conform with the

² John Dugard, "International Terrorism and the Just War", (vol.12), Stanford Journal of International Studies, (1977), p. 21 at p. 32.

³A/62/275 Paragraph 18.

⁴ John Dugard, "Towards a Definition of International Terrorism", American Society of International Law, Volume 67 (1973), p. 94, at p. 98.

new reality on the ground, as well as with principles of equality and impartiality. A mandate, unique and unprecedented in nature, which has not been reviewed since 1993, that prejudices key issues and stands in marked contrast to the current wave of reforms in the United Nations, and supposedly in the Human Rights Council, in particular. Israel and other states have long noted the fundamental inadequacy in the mandate of this special rapporteur, which instructs him to examine alleged human rights violations by Israel, but requires him to ignore those committed by Palestinians.

While in his August 2005 report, the special rapporteur for the first time explained that he felt compelled to address Palestinian violations as well, his current report is silent on this subject except for a short comment in passing.

However, a recent report by the Palestine Center for Human Rights⁵ documents in detail the grave breaches by Palestinians one another in the territories controlled by the Hamas-led government in Gaza, including incidents of abduction, torture and execution of people, including wounded-persons at the end of fighting, attacks against homes and hospitals, as well as attacks against medical and civil-defense crews, attacks against media institutions and the looting of property. However, here, the special rapporteur chooses to maintain a deafening silence.

In conclusion,

At a time when Israeli and Palestinian negotiating-teams are preparing to discuss the complex issues in dispute, the current report paradoxically undermines any such efforts. It reflects an approach which is potentially even more damaging than in previous reports, failing to make any contribution to positive movements in our region. It seeks to undermine core humanitarian principles, including the concept of self defense, and can only be regarded as a major step backwards in the protection of human rights, not just in our region, but throughout the world.

Thank you.

⁵"Black Pages in the Absence of Justice" on the bloody fighting in the Gaza Strip in June 2007.