

Ambassador Michael Smith  
Chairperson  
60<sup>th</sup> Session, UN Commission on  
Human Rights  
Palais des Nations  
CH-1211 Geneva 10

14 July 2004

**Re: Mr. Jean Ziegler's Abuse of Mandate**

Dear Mr. Chairperson,

United Nations Watch is gravely concerned by the latest in a series of actions taken by Jean Ziegler, the UN Special Rapporteur on the right to food, that, as detailed below, single out Israel for differential and discriminatory treatment and constitute (a) a flagrant abuse of the mandate given him by the United Nations Commission on Human Rights ("Commission"); (b) a blatant violation of the principles of impartiality, non-selectivity and objectivity that govern the work of Special Rapporteurs; and (c) an overt breach of the equality principles of the Charter of the United Nations.

Mr. Ziegler's actions are not only a violation of applicable international law but they also undermine the credibility of the institution of the Special Rapporteur on the right to food, and of the two bodies under which it operates: the Commission and the Office of the High Commissioner for Human Rights. Finally, Mr. Ziegler's pattern and practice of discrimination against the Jewish state directly contravenes UN Secretary General Kofi Annan's 21 June 2004 action plan against anti-Semitism which rejects the demonization of Zionism, stipulates that "Jews everywhere must feel that the United Nations is their home too" and urges particular action from Special Rapporteurs.

We write this letter in fulfillment of our duties as a non-governmental organization in special consultative status with ECOSOC, pursuant to Article 71 of the UN Charter and ECOSOC resolution 1996/31.

./..

## 1. *Rapporteur's Boycott Letter Not About Food and Therefore Ultra Vires His Mandate*

It is an elementary principle of international law that “[the appointment of] a special Rapporteur [...] or the fact that he has been entrusted with a mission by the United Nations does not of itself allow him to operate outside his mandate.”<sup>1</sup> The position of the Special Rapporteur on the right to food was created by the Commission, and its mandate defined, in Commission Resolution 2000/10. This mandate includes seeking and responding to information on the “urgent necessity of eradicating hunger.” The mandate was expanded by Resolution 2001/25 to include specific attention to issues such as drinking water, and renewed by Resolution 2003/25. Mr. Ziegler was appointed to fill the new post in September 2000 by the Commission Chairman, Shambhu Ram Simkhada of Nepal.

Regrettably, Mr. Ziegler has repeatedly abused this mandate. The most recent overreach by Mr. Ziegler, first reported last month (*Associated Press Worldstream*, 16 June 2004), came in a letter that he sent to Caterpillar, Inc. (“Caterpillar”), dated 28 May 2004, cautioning that company against doing business with Israel on the basis of alleged human rights concerns (“the Boycott Letter”). Notwithstanding nominal invocations of the right to food, *the pith and substance of the Boycott Letter is plainly not food*, but rather Mr. Ziegler’s well-known radical political opposition to Israel, whom he has publicly accused of “state terror”, “war crimes” and of acting like Nazi Germany.<sup>2</sup>

---

<sup>1</sup> *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights (Advisory Opinion)* [1999] ICJ 3 (29 April 1999) (Koroma, J., dissenting on other grounds).

<sup>2</sup> Neglecting many of the world’s recognized food emergencies, Jean Ziegler has instead zealously pursued the demonization of Israel in every available medium and forum. See, e.g., *Swiss Info* (*swissinfo.org*), July 8, 2004 (“Mr. Bush – the White House Pinochet – [...] covers for Sharon’s crimes in Palestine [by referring] to the so-called war on terror”); *UN Information Service*, May 28, 2004 (Ziegler issuing joint press release with Special Rapporteur on adequate housing to “urgently” condemn Israel for its “massive military operation” against Palestinian weapons-smuggling tunnels in Rafah, and to “welcome the outpouring of condemnations”); (*Swiss*) *SDA – Basisdienst Deutsch*, May 21, 2004 (citing *Swiss Blick*) (“the Gaza Strip resembles a huge concentration camp”); the Israeli army tortures and kills civilians; Prime Minister Ariel Sharon commits “state terror” supported by the U.S. for strategic reasons; the E.U. must temporarily suspend its free trade agreements with Israel to “impress Sharon”); (*Swiss*) *SDA -Basisdienst Deutsch*, April 15, 2004 (Ziegler coming to UN Palestinian Committee Conference to inveigh against Israel’s barrier, accuse Israel of “Apartheid” and boast of his letter to E.U. that demanded it break trade agreements with Israel); *M2 Presswire*, November 12, 2003 (Ziegler testifying before UN Third Committee that “the most important [2003] country mission was the one conducted to the occupied Palestinian territories,” and denying that Palestinian terrorism plays any role in region’s difficulties); *United Press International*, November 12, 2003 (Israel is responsible for inflicting upon Palestinian children “some form of brain damage”); *Al Siyassa-Al Dawliya* (Egyptian quarterly on international politics) January, 2003 (“[t]he policies of colonial repression followed by Ariel Sharon and other Israeli generals are criminal and classifiable as crimes against humanity”; and “the most pressing task” is for the international community to send armed forces “to protect the people of Palestine against the massacres of the occupying forces”); *Report on Mission to the Occupied Territories*, October 21, 2003 (25-page report excoriating Israel for numerous alleged crimes and exculpating Palestinian terrorist groups from any responsibility); *Voice of America*, July 18, 2003 (announcing that situation in territories is “appalling”); *United Nations Seminar on Assistance to Palestinian People*, July 16, 2003 (condemning Israel’s “violation of the right to food”); *Preliminary Report on the Right to Food to 56<sup>th</sup> Session of the General Assembly, July 23, 2001* (devoting singular scrutiny to Israel and accusing it of policies that “created hunger and threaten starvation of the most destitute”; announcing his intent to embark on special country mission to the region). Other examples of Mr. Ziegler’s irrational obsession with Israel abound.

The Boycott Letter purports to treat Israeli actions that, Mr. Ziegler alleges, “destroy [...] homes and sometimes human lives”, and that concern “homelessness” and “loss of livelihood.” Grave as these allegations are, they are simply *not about food*. That is, not unless one is prepared to argue that the Special Rapporteur’s mandate should be interpreted as extending to, say, the market fluctuation of the Thai Bhat, on grounds that its effects could ripple across the globe and impact consumers in Boston or Burundi. Yet if the Commission’s thematic rights mandates are to have any meaning whatsoever – or any credibility – their interpretation *ad absurdum*, as exemplified by Mr. Ziegler’s actions, cannot be tolerated.

Mr. Ziegler’s actions violate express rules of international law as emphasized in recent jurisprudence. Special Rapporteurs, in the words of Vice President Weeramantry of the International Court of Justice, have a “duty and responsibility [...] to ensure that whatever actions they take or statements they make are always within the limits of the performance of their duties [...] This obligation applies especially in regard to public statements [...]”<sup>3</sup>

Yet not only does the *substance* of Mr. Ziegler’s Boycott Letter testify to its concern with non-food issues, rendering his action outside “the limits and performance of [his] duties,” so too does its *context*. Over the past two years there has been a political campaign orchestrated against Caterpillar demanding that it impose a boycott against Israel. Proponents of this boycott have invoked several grounds – but never the right to food. Mr. Ziegler evidently wishes to enlist in this campaign. Yet he has no legal basis to do so with the full imprint and authority of his specialized UN mandate merely by uttering three magic words, “right to food.”

Mr. Ziegler’s exercise of his right-to-food powers for the purpose of joining a political boycott campaign not concerning a food matter constitutes an *abuse of the power conferred on him by the Commission*, and is illegal under international and generally-recognized principles of administrative law. A recent case by the Inter-American Commission on Human Rights makes this clear: “An administrative act may have been performed by the competent official with all the appearances of legality and yet this discretionary act, which the qualified official had the strict right to perform, may be rendered illegal if its author has used his powers for a purpose other than that for which they were conferred on him [...]”<sup>4</sup> Moreover, as Judge Koroma of the International Court of Justice recently opined, “[h]aving contact with the media cannot be regarded as a licence for a special rapporteur to operate outside his mandate.”<sup>5</sup>

Mr. Ziegler’s demand that Caterpillar boycott Israel in turn precipitated an identical demand to the corporation from the Arab League Boycott Office based in

---

<sup>3</sup> *Advisory Opinion, supra*, note 1 (Weeramantry, V.P., separate opinion).

<sup>4</sup> *Rodolfo Robles Espinoza and Sons v. Peru*, Case 11.317, Report No. 20/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at 787, par. 109 (1998), citing Alibert, “Le contrôle juridictionnel de l’Administration,” Paris 1926, at 236.

<sup>5</sup> *Advisory Opinion, supra*, note 1 (Koroma, J., dissenting on other grounds).

Damascus, Syria.<sup>6</sup> By encouraging the Arab League's boycott of companies that trade with Israel, Mr. Ziegler could be liable not only for encouraging a breach of international law principles prohibiting economic coercion (flowing from Article 2(4) of the UN Charter), but also for inciting the commission of a felony under the law of the United States, specifically, the Export Administration Act's anti-boycott provisions. It is important to note that by acting outside his mandate Mr. Ziegler does not benefit from the immunity granted by the Convention on the Privileges and Immunities of the United Nations.<sup>7</sup>

## ***2. Mr. Ziegler's Latest Action Follows Pattern of Abuse of Mandate***

This is hardly the first time that Mr. Ziegler has illegally abused the proper procedure, mandate and powers of his office to push his personal anti-Israel and anti-U.S. political agenda. Indeed his transgressions caused the U.S. government to request that Mr. Ziegler be reprimanded for his "irresponsible and unfounded statements and for abusing his mandate to generate misleading polemics on issues beyond his competence and expertise."<sup>8</sup>

In the fall of 2001, for example, Mr. Ziegler committed the same type of abuse of mandate as he did in his recent Boycott Letter, by taking a personal, pre-existing political position of his not concerning food, and then appending a food-related pretext to justify employing the prestige of his UN office. Less than two weeks after Al Qaeda's September 11 terrorist attacks against the United States, Mr. Ziegler announced his political opposition to any potential U.S. military response against the Taliban regime that hosted Al Qaeda, saying it would have "apocalyptic" consequences and cause "the end for the Afghan nation."<sup>9</sup> Within weeks Mr. Ziegler's political opposition to the war metamorphosed into a "food" objection, with his claim that food drops by the Allies were prohibited – first on the grounds that they compromised "the key principles of humanitarian organizations and international law" (a fallacious proposition), and then on grounds that they might end up feeding the Taliban. All along, of course, the Special Rapporteur was transparently acting out of his political opposition to the war itself – a matter *entirely outside his competence*.

Similarly, in September 2003, Mr. Ziegler acted in bad faith and breached applicable procedure when he allowed the report from his special mission to Israel and the territories, dated 31 October 2003 (the "Report"), to be leaked to the press before the country concerned could duly exercise its right to review it and provide comments. This violation generated complaints officially, of which you are aware, and among civil society. Nevertheless, the Commission regrettably kept silent, thus giving tacit approval and encouragement to further breaches, which predictably ensued.

The words of Judge Koroma of the International Court of Justice are again apt: "It is one thing to have contact with the media to enable a Special Rapporteur to carry out his mandate, but [...] special rapporteurs, like all agents of the United Nations, must take care not to exceed the scope of their functions, and must express themselves with requisite

---

<sup>6</sup> *Associated Press Worldstream*, June 24, 2004.

<sup>7</sup> *Advisory Opinion*, *supra*, note 1.

<sup>8</sup> *U.S. Explanation of Vote on Commission Resolution on the Right to Food*, 16 April 2004.

<sup>9</sup> *Swiss Radio International's Swissinfo website*, 22 September 2001, cited by *BBC Monitoring Europe*, 23 September 2001.

prudence so as to remain within their mandate.”<sup>10</sup> Mr. Ziegler has persistently violated this obligation of international law.

### **3. *Mr. Ziegler’s Singling Out of Israel for Differential Treatment Radically Distorts Food Situation in the Territories and Violates the UN Charter’s Equality Principle***

As a UN Special Rapporteur, Mr. Ziegler is obliged to act according to principles of “impartiality, non-selectivity and objectivity.”<sup>11</sup> He has failed to do so. On the contrary, Mr. Ziegler has systematically singled out a handful of democracies for demonization, particularly Israel and the United States. In what can only be described as an irrational obsession, Mr. Ziegler’s term has been marked by his zealous pursuit of ever larger audiences for his persecution of Israel through an onslaught of targeted special reports, press releases, media interviews, together with a barrage of appearances at anti-Israel international conferences, symposia and briefings.<sup>12</sup>

A Special Rapporteur for food is mandated to work toward eradicating the scourge of hunger. Because food problems are not limited to one locale, the Special Rapporteur is obliged to allocate his limited time and resources according to some logical criteria. *Yet Mr. Ziegler has failed to respect any objective criteria whatsoever.* For example, at the time that he decided to demand Caterpillar’s boycott of Israel, there were 35 regions or countries judged by the United Nations Food and Agriculture Organization (FAO) to be facing food emergencies. (“Countries Requiring External Food Assistance”, *Foodcrops and Shortages*, May 2004, FAO). These include Angola, Burundi, Chad, Chechnya, Haiti, Lesotho, North Korea and Sudan. *The West Bank and Gaza was never placed on the FAO’s list of regions facing food emergencies.*<sup>13</sup> Absent a credible nexus between Israel’s actions and Palestinian hunger, Mr. Ziegler lacks jurisdiction under his mandate to concern himself with Israel’s actions in Rafah or elsewhere in the West Bank and Gaza.

There was no reasonable basis whatsoever for Mr. Ziegler’s decision on May 28 to select Israel out of 191 states as the target of an unprecedented boycott letter. In the Central African Republic, Chechnya or Liberia, for example, where the FAO attributes the food emergency to civil strife, Mr. Ziegler could have written an identical boycott letter to any of the hundreds of corporations that trade directly or indirectly with those regions. He did not. Rather, scanning the globe, the Special Rapporteur on the right to food chose to look away from any of the regions officially facing food emergencies – Congo, North Korea, Sudan, etc. – and from every other place in the world, save one: where no food emergency exists. That constitutes discrimination on its face. *Mr. Ziegler’s blatant discrimination*

---

<sup>10</sup> *Advisory Opinion, supra*, note 1.

<sup>11</sup> General Assembly Resolution 48/141 of 20 December 1993.

<sup>12</sup> *See, supra*, note 2.

<sup>13</sup> Though the West Bank and Gaza is not an independent state, the FAO confirmed to UN Watch that the territories do fall under its purview, and that the region is not on the Food Emergency list because the FAO did not deem the situation as qualifying. Likewise, East Timor was under the purview of the FAO even prior to its independence in May 2002, and, in fact, the FAO placed pre-state East Timor on its Food Emergency list. *See, e.g.*, “Countries Facing Exceptional Food Emergencies”, *Foodcrops and Shortages No.1*, Feb. 2000 (listing East Timor).

*against Israel constitutes an express violation of the UN Charter's equality principle, as provided under the Preamble, Article 1(2) and Article 2(1).*

Both Mr. Ziegler's Boycott Letter and his Report radically distort the situation of Palestinians concerning food. There is no disputing the fact that Palestinians face significant humanitarian difficulties. With the advent of the terror campaign launched in September 2000 by Palestinian groups such as Hamas, Islamic Jihad and Fatah's Al-Aqsa Martyrs Brigade, followed by the response of Israel's security measures, Palestinians in the West Bank and Gaza face numerous restrictions on their daily lives. Even Israel acknowledges the necessary role of international organizations in assuring a steady food supply. Nevertheless, the situation does not come even remotely close to the "catastrophe" depicted by Mr. Ziegler, and certainly does not rank, as demonstrated above, as one of the world's food emergencies. Jean Ziegler's gross misrepresentation of the problem only serves to undermine the Palestinian cause.

Mr. Ziegler's premise is that "most of the violations of the right to food stem from the occupation," and it is on that basis that he has launched multiple condemnatory attacks against Israel. However, both the Report and the Boycott Letter deliberately ignore the fact that *even Palestinian statistics themselves bely the canard that Israel's occupation in the West and Gaza is the cause of food problems*. According to "The Nutritional Status in Palestine", a report published by the Applied Research Institute, a Palestinian think-tank, "during the first 20 years of the Israeli occupation, it is probably safe to assume that *the nutritional status of Palestinians in terms of caloric intake per capita, improved during that period.*" [Emphasis added] The Palestinian authors of the report cite the following facts: "In 1969, caloric intake was 2344 kcals/capita, by 1980 it was above 2800 Kcals/capita and by 1986 it was above 2900 Kcals/capita. There was also an upward trend in consumption of animal proteins (from 17.1 g/capita/day to 21 g/capita/day) and fats (from 61.4 g/capita/day to 73.4 g/capita/day) during the same period." In other words, *under Israeli administration since 1967, the situation got better, not worse*. While the past four years have certainly seen new problems, this Palestinian report unequivocally refutes Mr. Ziegler's premise that "Israeli occupation" is the root cause of food problems – on the contrary, the food situation markedly improved under Israel's administration.

Just as Mr. Ziegler had no objective basis to select Israel as the target of his Boycott Letter, he equally lacked any objective basis to choose the West Bank and Gaza as one of the handful of places in the world to highlight with a personal mission. Indeed, according to Mr. Ziegler's report to the 60<sup>th</sup> Commission dated 9 February 2004 and his website, he undertook only one country mission in 2003: to the Occupied Palestinian Territory.<sup>14</sup> During, before and after the period he selected the West Bank and Gaza for this visit, the area has never once been placed on the FAO's official food emergency list. (See, e.g., *Foodcrops and Shortages*, June 2003; August 2003; and October 2003.) Accordingly, at a briefing given by Mr. Ziegler during the 60<sup>th</sup> Session of the Commission, a UN Watch representative asked him to elaborate on his criteria for determining which countries merit a special mission and report. He responded that his decision was the product of a lengthy process of his consultation with civil society, "such as the Red Cross." According to a Red

---

<sup>14</sup> See E/CN.4/2004/10; <http://www.righttofood.org/public.htm>.

Cross lawyer who spoke with UN Watch, however, Mr. Ziegler never made any such consultation.

It is not easy to compare country situations. Nevertheless, according to Professor John Mason, a leading expert on nutrition who advises the UN, the prevalence of underweight children is considered the most meaningful cross-country comparable indicator. It is remarkable, then, that Mr. Ziegler deliberately fails to mention in the Report, the Boycott Letter, or any other of his many statements, that according to the Human Development Report 2003 of the United Nations Development Programme (UNDP), *the percentage of children underweight for their age in the Occupied Palestinian Territories is lower than any other country in the Middle East* (tied with Lebanon at 3%). By comparison, Yemen's rate of 46% is more than 15 times higher. India and Ethiopia were both at 47%, while North Korea was at 60%. Of the hundred or so countries listed, the Occupied Palestinian Territories enjoyed the lowest rate compared to any of the Arab states, East Asia and the Pacific, South Asia, Sub-Saharan Africa, and Latin America and the Caribbean (except Chile).<sup>15</sup> By deliberately omitting these and other material facts in the Report, Boycott Letter and other relevant statements, the Special Rapporteur has failed in his duty to be impartial. The goal of the Food and Agriculture Organization is *Fiat Panis* (Let There Be Bread). The goal of Mr. Ziegler's mandate seems to be *Fiat Palestinis*.

***Conclusion: Commission Must Remedy Mr. Ziegler's Abuse of Mandate***

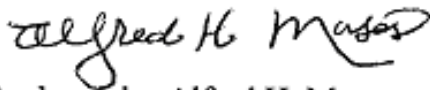
The facts and applicable international law, as demonstrated above, mandate the conclusion that Mr. Ziegler's actions constitute a flagrant abuse of his Commission mandate; a blatant violation of the principles of impartiality, non-selectivity and objectivity; and an overt breach of the equality principles of the Charter of the United Nations. Further, they undermine the credibility of the institution of the Special Rapporteur on the right to food, and subvert the two bodies under which it operates, the Commission and the Office of the High Commissioner for Human Rights. Finally, Mr. Ziegler's pattern and practice of discrimination against the Jewish state directly contravenes Secretary General Kofi Annan's 21 June 2004 action plan against anti-Semitism which rejects the demonization of Zionism, stipulates that "Jews everywhere must feel that the United Nations is their home too" and urges particular action from Special Rapporteurs.

The Commission is obliged to remedy these grave violations. A mere reprimand will not suffice. The degree, dimension and danger of the wrongdoing require that the Commission terminate Mr. Ziegler's mandate. Failing that, the Chairperson should select a new Rapporteur who is prepared to fulfill her or his mandate in good faith. Finally, in the interim, pursuant to Article 11 of Resolution 2003/25, the Commission should request of the High Commissioner to freeze the provision of human and financial resources to Mr. Ziegler that are being used for purposes outside the effective fulfillment of his mandate.

---

<sup>15</sup> See UNDP Human Development Report 2003 at 198-202.

Sincerely,



Ambassador Alfred H. Moses  
Chairman



Hillel C. Neuer  
Executive Director

cc: Kofi Annan, United Nations Secretary General  
Louise Arbour, United Nations High Commissioner for Human Rights  
Jean Ziegler, United Nations Special Rapporteur on the Right to Food