SUBJECT: RESPONSE TO UNHCHR SR REPORT ON YEMEN INCIDENT OF 3 NOV 2002

1. RESPONSE OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA TO THE LETTER FROM SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS ASMA JAHANGIR'S LETTER TO THE SECRETARY OF STATE DATED NOVEMBER 15, 2002 AND TO THE FINDINGS OF THE SPECIAL RAPPORTEUR CONTAINED IN HER REPORT TO THE COMMISSION ON HUMAN RIGHTS (E/CN.4 2003/3).

BEGIN TEXT

THE GOVERNMENT OF THE UNITED STATES WELCOMES THE OPPORTUNITY TO RESPOND TO THE ABOVE-MENTIONED LETTER INQUIRING INTO AN
INCIDENT IN THE REPUBLIC OF YEMEN ON 6 NOVEMBER 2002 AND TO THE SPECIAL RAPPORTEUR'S FINDINGS RELATED TO THIS INCIDENT WHICH ARE FOUND IN HER REPORT TO THE FIFTY-NINTH SESSION OF THE COMMISSION ON HUMAN RIGHTS. THE LETTER ALLEGES THAT A US-CONTROLLED PREDATOR DRONE AIRCRAFT KILLED SIX MEN TRAVELING IN A CAR, INCLUDING AT LEAST ONE INDIVIDUAL WHO WAS A SUSPECTED SENIOR FIGURE OF THE AL QAIDA ORGANIZATION. THE LETTER REFERS TO THE PROTECTIONS OF THE RIGHT TO LIFE AND SECURITY OF THE PERSON AND THE PROTECTION OF THIS RIGHT FROM ARBITRARY DEPRIVATION, AS PROVIDED BY THE UNIVERSAL DECLARATION ON HUMAN RIGHTS AND THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR). IN HER REPORT TO THE COMMISSION, THE SPECIAL RAPPORTEUR "ACKNOWLEDGES THAT GOVERNMENTS HAVE A RESPONSIBILITY TO PROTECT THEIR CITIZENS AGAINST THE EXCESSES OF NON-STATE ACTORS OR OTHER AUTHORITIES, BUT THESE ACTIONS MUST BE TAKEN IN ACCORDANCE WITH INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW. IN THE OPINION OF THE SPECIAL RAPPORTEUR, THE ATTACK IN YEMEN CONSTITUTES A CLEAR CASE OF EXTRAJUDICIAL KILLING."

THE GOVERNMENT OF THE UNITED STATES HAS NO COMMENT ON THE SPECIFIC ALLEGATIONS AND FINDINGS CONCERNING A NOVEMBER 2002 INCIDENT IN YEMEN, OR THE ACCURACY THEREOF. THE GOVERNMENT OF THE UNITED STATES RESPECTFULLY SUBMITS THAT INQUIRIES RELATED TO ALLEGATIONS STEMMING FROM ANY SUCH MILITARY OPERATIONS CONDUCTED DURING THE COURSE OF AN ARMED CONFLICT WITH AL QAIDA DO NOT FALL WITHIN THE MANDATE OF THE SPECIAL RAPPORTEUR.

THE UNITED STATES ALSO DISAGREES WITH THE PREMISE OF THE LETTER AND THE CONCLUSIONS CONTAINED IN THE REPORT THAT MILITARY OPERATIONS AGAINST ENEMY COMBATANTS COULD BE REGARDED AS "EXTRAJUDICIAL EXECUTIONS BY CONSENT OF GOVERNMENTS." THE CONDUCT OF A GOVERNMENT IN LEGITIMATE MILITARY OPERATIONS, WHETHER AGAINST AL QAIDA OPERATIVES OR ANY OTHER LEGITIMATE MILITARY TARGET, WOULD BE GOVERNED BY THE INTERNATIONAL LAW OF ARMED CONFLICT.

IT IS RECALLED THAT IMMEDIATELY FOLLOWING THE ATTACKS OF SEPTEMBER 11, 2001, MOST OF THE WORLD, INCLUDING THE UNITED NATIONS SECURITY COUNCIL IN RESOLUTION 1368 AND NATO, CONDEMNED THESE ATTACKS AS A "THREAT TO INTERNATIONAL PEACE AND SECURITY," RECOGNIZED THE INHERENT RIGHT OF INDIVIDUAL AND COLLECTIVE SELF-DEFENSE, AND EXPRESSED DETERMINATION TO COMBAT BY ALL MEANS THREATS TO INTERNATIONAL PEACE AND SECURITY CAUSED BY TERRORIST ACTS. NATO'S NORTH ATLANTIC COUNCIL DETERMINED ON OCTOBER 2, 2001 THAT THE SEPTEMBER 11TH ATTACK WAS DIRECTED FROM ABROAD BY THE WORLD-WIDE TERRORIST NETWORK OF AL QAIDA AND "SHALL THEREFORE BE REGARDED AS AN ACTION COVERED BY ARTICLE 5 OF THE WASHINGTON TREATY, WHICH
STATES THAT AN ARMED ATTACK ON ONE OR MORE OF THE NATIONS OF EUROPE OR NORTH AMERICA SHALL BE CONSIDERED AN ATTACK AGAINST THEM ALL. FOREIGN MINISTERS OF THE STATES PARTIES TO THE 1947 INTER-AMERICAN TREATY OF RECIPROCAL ASSISTANCE (THE RIO TREATY) LIKewise RESOluTED ON SEPTEMBER 21, 2001 THAT "THESE ATTACKS AGAINST THE UNITED STATES ARE ATTACKS AGAINST ALL AMERICAN STATES AND THAT IN ACCORDANCE WITH ALL THE RELEVANT PROVISIONS OF THE . . .(RIO TREATY) . . .AND THE PRINCIPLE OF CONTINENTAL SOLIDARITY, ALL STATES PARTIES TO THE RIO TREATY SHALL PROVIDE EFFECTIVE RECIPROCAL ASSISTANCE TO ADDRESS SUCH ATTACKS AND THE THREAT OF ANY SIMILAR ATTACKS AGAINST ANY AMERICAN STATE, AND TO MAINTAIN THE PEACE AND SECURITY OF THE CONTINENT."

CONSISTENT WITH THIS WIDELY-HELD INTERNATIONAL VIEW, PRESIDENT BUSH STATED IN MILITARY ORDER NO. 1 OF NOVEMBER 13, 2001 THAT "INTERNATIONAL TERRORISTS, INCLUDING MEMBERS OF AL QAIDA, HAVE CARRIED OUT ATTACKS ON UNITED STATES DIPLOMATIC AND MILITARY PERSONNEL AND FACILITIES ABROAD AND ON CITIZENS AND PROPERTY WITHIN THE UNITED STATES ON A SCALE THAT HAS CREATED A STATE OF ARMED CONFLICT THAT REQUIRES THE USE OF THE UNITED STATES ARMED FORCES."

NEAR-MISS SA-7 MISSILE ATTACK ON A MOMBASSA SHIPHEARTING
MOMBASSA FOR ISRAEL; ON FEBRUARY 28, 2003, ATTACKS BY A
GUNMAN ON POLICE POSTS OUTSIDE THE US CONSULATE IN KARACHI,
KILLING FOUR LOCAL POLICE; AND SEVERAL OTHER ATTACKS SINCE
THE WAR STARTED IN AFGHANISTAN. MOREOVER, NO ONE NEEDS
REMINDING OF THE ATTACKS ON UNITED STATES PERSONS AND
PROPERTY PRIOR TO 9/11 LINKED TO AL QAIDA, INCLUDING THE
EMBASSY BOMBINGS IN KENYA AND TANZANIA AND THE ATTACK ON THE
U.S.S. COLE IN YEMEN.

DESPITE COALITION SUCCESSES IN AFGHANISTAN AND AROUND THE
WORLD, THE WAR IS FAR FROM OVER. THE AL QAIDA NETWORK TODAY
IS A MULTINATIONAL ENTERPRISE WITH OPERATIONS IN MORE THAN 60
COUNTRIES. SOME AL QAIDA OPERATIVES HAVE ESCAPED TO PLAN AND
MOUNT FURTHER TERRORIST ATTACKS AGAINST THE UNITED STATES AND
COALITION PARTNERS. THE CONTINUING MILITARY OPERATIONS
UNDERTAKEN AGAINST THE UNITED STATES AND ITS NATIONALS BY THE
AL QAIDA ORGANIZATION BOTH BEFORE AND AFTER SEPTEMBER 11
NECESSITATE A MILITARY RESPONSE BY THE ARMED FORCES OF THE
UNITED STATES. TO CONCLUDE OTHERWISE IS TO PERMIT AN ARMED
GROUP TO WAGE WAR UNLAWFULLY AGAINST A SOVEREIGN STATE WHILE
PRECLUDING THAT STATE FROM DEFENDING ITSELF.

INTERNATIONAL HUMANITARIAN LAW IS THE APPLICABLE LAW IN ARMED
CONFLICT AND GOVERNS THE USE OF FORCE AGAINST LEGITIMATE
MILITARY TARGETS. ACCORDINGLY, THE LAW TO BE APPLIED IN THE
CONTEXT OF AN ARMED CONFLICT TO DETERMINE WHETHER AN
INDIVIDUAL WAS ARBITRARILY DEPRIVED OF HIS OR HER LIFE IS THE
LAW AND CUSTOMS OF WAR. UNDER THAT BODY OF LAW, ENEMY
COMBATANTS MAY BE ATTACKED UNLESS THEY HAVE SURRENDERED OR
ARE OTHERWISE RENDERED HORS DE COMBAT. AL QAIDA TERRORISTS
WHO CONTINUE TO PLOT ATTACKS AGAINST THE UNITED STATES MAY BE
LAWFUL SUBJECTS OF ARMED ATTACK IN APPROPRIATE CIRCUMSTANCES.

FOR THE FOREGOING REASONS, THE COMMISSION AND SPECIAL
RAPPORTEUR LACKS COMPETENCE TO ADDRESS ISSUES OF THIS NATURE
ARISING UNDER THE LAW OF ARMED CONFLICT.

COMPLEMENTARY CLOSING . .
POWELL

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