

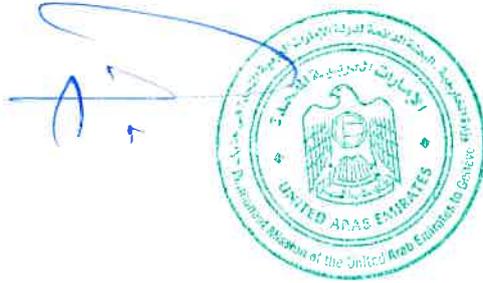


Ref: 2/3/32 - 180

Date: 24 October 2023

The Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Secretariat of the Special Procedures Branch, and with reference to the latter's letter Ref. AL ARE 2/2023, dated 25 August 2023, concerning the Joint Communication from Special Procedures, has the honour to forward herewith the response as received from the relevant authorities in the United Arab Emirates.

The Permanent Mission of the United Arab Emirates to the United Nations Office and Other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the Special Procedures Branch, the assurances of its highest consideration.



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PERMANENT MISSION OF THE UNITED ARAB EMIRATES, GENEVA

SUBJECT: JOINT COMMUNICATION NO. AL ARE 2/2023

RESPONSE OF THE UNITED ARAB EMIRATES

1. The Permanent Mission of the United Arab Emirates (“UAE”) to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) and wishes to provide the following response to joint communication No. AL ARE 2/2023 dated 25 August 2023 (“Joint Communication”) of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the right to education, and the Special Rapporteur on extrajudicial, summary or arbitrary executions (“Mandate Holders”).
2. The UAE has always been deeply concerned about the suffering of the Yemeni people and underscores its ongoing commitment to promoting stability and prosperity in Yemen. The UAE further reiterates its support for all efforts aimed at resolving the Yemeni crisis in a way that serves the interests of the Yemeni people and ensures the stability of their country. The UAE’s unwavering position on the Yemen crisis, from the very beginning, has been to support a political solution, in line with the GCC initiative, its implementation mechanism, the outcomes of the Yemeni comprehensive national dialogue, and UN Security Council Resolutions, including UN Security Council Resolution 2216. The UAE has also provided humanitarian assistance to alleviate the hardships of the Yemeni people, including food, medical supplies, water, infrastructure, and education amounting to over six billion US dollars of aid.
3. In parallel with these humanitarian efforts, the UAE, in its capacity as a coalition member, has operated with full respect for international law, human rights law, and humanitarian law towards the Yemeni population.
4. Against this background, the UAE regrets the methodological and substantive approach adopted by the Mandate Holders in their Joint Communication. More generally, in respect of allegations of “[v]iolations of International Human Rights Law and International Humanitarian Law” described in the Joint Communication, the UAE recalls and reiterates its previous comprehensive responses refuting such allegations.¹

¹ See for instance, *Note Verbale* dated 6 April 2021 from the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva addressed to the Office of the High Commissioner for Human Rights, Ref: 2/3/32-82; *Note Verbale* dated 6 April 2021 from the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva addressed to the Office of the President of Human Rights Council, Ref: 2/3/32-83; *Note Verbale* dated 28 March 2019 from the Permanent Mission of the UAE to the United Nations Office at Geneva addressed to the Office of the UN High Commissioner for Human Rights (A/HRC/40/G/9).

5. The UAE finds it necessary to direct this response primarily towards the following aspects and concerns:
 - a. The Joint Communication is based on non-specific, ambiguous and unsubstantiated allegations of violations of international law;
 - b. The Joint Communication fails to properly assess the relevant rules of international law applicable to the conflict in Yemen; and
 - c. The Joint Communication's allegations related to violations of human rights and international humanitarian law, including the alleged deficiencies concerning the accountability mechanisms, are misplaced.

A. The Joint Communication is based on non-specific, ambiguous and unsubstantiated allegations of international law violations.

6. The UAE wishes to highlight that the Joint Communication is built on methodological flaws that makes it difficult to properly address and respond to all the matters raised therein.
7. *First*, in alleging the UAE's responsibility for insufficient and inadequate accountability and reparation mechanisms in Yemen,² the Joint Communication is predicated on the inapposite assumption that the UAE is effectively responsible for gross violations of human rights and serious violations of international humanitarian law in connection with its involvement in the conflict in Yemen. In doing so, the Joint Communication unreasonably requires the UAE to engage with alternative arguments and hypothetical conclusions concerning its purported responsibility for violations of international law.
8. *Second*, the Joint Communication provides no factual details or legal basis concerning the purported allegations against the UAE. Rather than referring to specific incidents allegedly attributable to the UAE, the Joint Communication – in a broad and generic manner – addresses in the space of a few pages all possible allegations related to a war that lasted years and involved numerous actors. This nullifies the ability of the UAE to: (i) identify the precise contours and parameters of its alleged responsibility; or (ii) provide any effective response to potential violations.
9. The approach adopted by the Joint Communication is also inconsistent with the nature and purpose of the Special Procedures, which should put a State in a position to assess and address in detail the purported allegations of violations of human rights, including in order to eventually remedy when necessary.
10. In this light, and specifically in relation to the JIAT and the Joint Committee, the Joint Communication makes a series of general statements without any concrete information in relation to specific cases or circumstances. The assessment of allegations of violations of human rights or international humanitarian law cannot be conducted in an abstract or hypothetical manner. The Joint Communication does not even get proximate to the level of

² Joint Communication, p. 1.

detail necessary to conduct such an assessment. This curtails the UAE's ability to meaningfully respond to such allegations.

B. The Joint Communication fails to properly assess the relevant rules of international law applicable to the conflict in Yemen.

11. The allegations in the Joint Communication are predicated on erroneous considerations of applicable legal standards related to international humanitarian law and human rights law, as specified in its Annex.³ The failure to identify and apply the accurate legal framework applicable to the UAE's conduct in Yemen is indicative of a misapprehension of the relevant factual and legal context and, consequently, of the potential responsibilities.
12. The Joint Communication assesses the UAE's conduct in Yemen through the prism of Article 146 of the Fourth Geneva Convention and Article 105 of the Third Geneva Convention, applicable only to international armed conflicts.⁴ However, contrary to what is implied, the war in Yemen is not an international armed conflict. Indeed, the Coalition did not intervene against the legitimate Government of Yemen, but on the basis of the legitimate Government's direct invitation for support in its fight against a non-state armed group. Given this circumstance, the conflict in Yemen qualifies as a non-international armed conflict within the meaning of Common Article 3 of the Geneva Conventions. Common Article 3 is the only provision of the Geneva Conventions applicable to the war in Yemen and it makes no reference to a duty of reparation. It follows that none of the specific obligations provided in Article 146 of the Fourth Geneva Convention and Article 105 of the Third Geneva Convention apply in the present case.
13. In this regard, the UAE further notes that the existence of an individual's right to reparation under international humanitarian law is controversial and a matter that remains unsettled. There is no indication in the Joint Communication for its legal basis, whether custom, treaty or otherwise.
14. In addition, the Joint Communication inaccurately applies certain principles of international law. For instance, insofar as the allegations contained in the Joint Communication rely on human rights treaties or customary international human rights law, the UAE notes that neither the UAE nor any other member of the Coalition has ever exercised the effective control over any territory in Yemen that would be necessary to trigger extraterritorial application of its human rights obligations.
15. Moreover, the Joint Communication refers to soft law instruments without providing any explanation as to why they would purportedly reflect binding obligations for the UAE in the Yemeni conflict.⁵ Specifically, as the basis for the UAE's purported obligations, the Joint Communication relies on a variety of rules and principles derived from: (1) the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross

³ Joint Communication, Annex, pp. 8-10.

⁴ Joint Communication, Annex, p. 8.

⁵ Joint Communication, Annex, pp. 8-10.

Violations of International Humanitarian Law; and (2) the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.⁶ These instruments are not treaty law and for the most part do not reflect customary international law. As such, the UAE considers that these instruments do not provide a legal basis to assess the violations alleged in the Joint Communication.⁷

C. The Joint Communication’s allegations on violations and deficiencies of accountability mechanisms are misplaced

i. Allegations concerning gross violations of human rights law and serious violations of international humanitarian law

16. The Joint Communication’s allegations of procedural deficiencies in relation to accountability and remedial mechanisms for Yemen are premised on the inapposite assumption that the UAE is responsible for a series of international humanitarian law and human rights law violations.⁸ As such, the UAE considers it necessary to comment on the allegations concerning the underlying violations before addressing the contingent claims raised by the Joint Communication concerning the insufficiency or inadequacy of the JIAT and Joint Committee.
17. In a very broad manner, the Joint Communication alleges that the Saudi/UAE-led coalition is implicated in abstract categories of violations, without identifying any specific incident(s), their legal qualifications, or differentiating between the varying alleged responsibilities of the individual members of the Coalition. The UAE cannot be expected to address in abstract the factual context and rationale for all actions taken during an enduring conflict, nor can it be expected to respond to allegations leveled against the Coalition as a whole. The Joint Communication does not include any specific alleged acts that could be attributed to the UAE, and there is no legal basis to attribute to the UAE responsibility for alleged acts of various armed groups in Yemen.
18. In any event, the UAE rejects any allegations of wrongdoing and refers the Mandate Holders to its submissions to the High Commissioner for Human Rights, the Human Rights Council and the Group of Eminent Experts on Yemen (the “Group”), which set out its detailed position.⁹

⁶ United Nations, General Assembly, Resolution 60/147, A/RES/60/147, 16 December 2005, Annex; United Nations, Economic and Social Council, Commission on Human Rights, E/CN.4/2005/102/Add.1, 8 February 2005.

⁷ In this regard, the UAE notes that while in connection to “a right to a remedy”, the preamble of the Basic principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian Law refers to the Article 3 of the 1907 Hague Regulations and Article 91 of the First Protocol Additional to the Geneva Conventions, these instruments: (1) do not apply to non-international armed conflicts in general; and/or (2) do not establish an individual right to a reparation.

⁸ Joint Communication, pp. 1-2.

⁹ See for instance, *Note Verbale* dated 6 April 2021 from the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva addressed to the Office of the High Commissioner for Human Rights, Ref: 2/3/32-82; *Note Verbale* dated 6 April 2021 from the Permanent Mission of the United Arab Emirates to the United Nations Office at Geneva addressed to the Office of the President of Human Rights Council, Ref: 2/3/32-83; *Note Verbale*

19. Lastly, to the extent the Joint Communication is premised on the allegations raised by the Group in its reports,¹⁰ the UAE recalls that it has already voiced concerns regarding the methodology adopted by the Group.¹¹ The UAE regrets that, despite its extensive and well-documented concerns in this regard, the Joint Communication appears to assume the findings of the Group to be incontrovertibly true.¹²

ii. Allegations concerning procedural deficiencies in relation to accountability and remedial mechanisms

20. The lack of detail and substantiation in the Joint Communication regarding the insufficiency and inadequacy of the JIAT and Joint Committee only permits the following general response.

21. The Coalition established the JIAT, an independent team of technical experts tasked with assessing potential responsibilities related to the conflict. As recognized by the Joint Communication, the JIAT has investigated several incidents involving civilian casualties, recommending apologies and referrals for prosecution when necessary. The work of JIAT is complemented by the Joint Committee, which has since 2018 provided extensive financial contributions to civilians affected by the conflict in Yemen.

22. In parallel, any claim concerning the alleged responsibility of UAE personnel in Yemen can also be brought before UAE national courts. Its legal framework grants the UAE courts the jurisdiction to ensure full accountability for any violations of international humanitarian law.¹³ With respect to claims within the UAE's jurisdiction, the status or nationality of the complainant is irrelevant for availing the guarantees afforded.

23. The fact that the JIAT recommended further action "in only a small fraction of cases"¹⁴ does not establish a violation on the part of the UAE or any other Coalition member, as it cannot be taken to reflect a State's unwillingness to investigate potential offences.¹⁵ The same applies to the observation that determinations in the Group's or non-governmental organizations' reports differ from the JIAT's conclusions.¹⁶ The UAE fails to see why such determinations should be used as a parameter for the adequacy of the JIAT's work or prevail over its own conclusions. As to the allegations concerning the lack of accessibility to the JIAT, the UAE

dated 28 March 2019 from the Permanent Mission of the UAE to the United Nations Office at Geneva addressed to the Office of the UN High Commissioner for Human Rights (A/HRC/40/G/9).

¹⁰ Joint Communication, p. 3.

¹¹ See, for instance, *Note Verbale* dated 28 March 2019 from the Permanent Mission of the UAE to the United Nations Office at Geneva addressed to the Office of the UN High Commissioner for Human Rights (A/HRC/40/G/9), Annex 1, pp. 2-3.

¹² Joint Communication, pp. 3-4.

¹³ Including through the enactment of the Law No. 12 of 2017 criminalizing international crimes.

¹⁴ Joint Communication, p. 3.

¹⁵ Cf. International Criminal Court, *Situation in Iraq/UK*, Office of the Prosecutor, Final Report, 9 December 2020, para. 371 ("However, the paucity of cases concerning command responsibility that have resulted in referrals for prosecution, and the subsequent fate of those cases cannot, in and of itself, provide a basis for the Office to argue that the UK authorities have sought to shield persons in military command or civilian superior or ministerial roles from criminal responsibility.").

¹⁶ Joint Communication, p. 3.

recalls that the investigations undertaken by JIAT were conducted at the behest of victims and based on claims by international and regional bodies.

24. With respect to the Joint Committee, any concerns that the payments are inconsistent with a purported obligation to offer reparation for serious violations of international humanitarian law appears to have misapprehended the very nature and legal basis for these payments.¹⁷ Contrary to what the Joint Communication appears to suggest, these are not forms of reparation or compensation, but rather instances of *ex gratia* payments that cannot be scrutinized under the parameters of an obligation to provide a remedy for wrongful acts. They are voluntary payments that cover harm caused during conflicts and do not find their rationale or basis in a violation of international humanitarian law. Notably, there is no requirement for *ex gratia* payments to be strictly proportional to the harm suffered, or to be accompanied by any recognition of responsibility. *Ex gratia* payments are often offered by States involved in armed conflicts, regardless of fault, and the Joint Communication cannot rely on instances when such payments have been made, to conclude that the UAE (or other States of the Coalition) are thereby acting in breach of international law.
25. Notwithstanding any of the foregoing, the UAE affirms that it will continue to support international peace efforts in Yemen, and stresses the importance of agreeing on a common framework for resuming a comprehensive political process under the auspices of the UN. The UAE takes this opportunity to underline its continued support for the legitimate Government of Yemen, and for the Kingdom of Saudi Arabia's efforts to end the war in Yemen and to complete the implementation of the Riyadh Agreement of August 2019.

¹⁷ Joint Communication, pp. 3-4.