



State of Palestine
Ministry of Foreign Affairs and Expatriates

Position of the State of Palestine
on the report of the *ad hoc* Conciliation Commission
concerning the inter-State communication submitted
by the State of Palestine against Israel

Ref. no. CERD/C/112/R.1 and Annex

Ramallah

10 Jun 2024

Introduction

1. The State of Palestine thanks the Committee on the Elimination of Racial Discrimination ('the Committee') for forwarding the report of the AD Hoc Conciliation Commission ('the Commission') dealing with the inter-State communication by the State of Palestine against Israel dated 13 March 2024 and contained in document CERD/C/112/R.1 ('the Report') and the enclosed Annex ('the Annex').

2. In this respect, the State of Palestine has the honor to detail herewith its views regarding the procedure that was adopted by the Commission throughout this interstate complaint as well as the content of the report and the Annex of the Commission in accordance with article 13(2).

Part 1: Procedural and methodological issues

3. The State of Palestine cannot but note with regret that it took both the Committee and the Commission almost six years to proceed given that the State of Palestine had submitted its communication under Art. 11 CERD, as the Committee is aware, on *28 April 2018*, and that the final outcome will accordingly be adopted after more than six years have lapsed since that date.

4. The State of Palestine considers this delay to be unfortunate, to say the least, given the urgency and severity of the dire situation prevailing on the ground, which continued to worsen since 2018. The State of Palestine acknowledges the *bona fide* efforts of both, the Committee and the Commission to have Israel take part in the proceedings. The State of Palestine submits, however, that it was obvious from the very outset that the sole aim of Israel, which displayed a clear lack of cooperation and intention not to engage with the proceedings, consistently reiterating its refusal to participate, was to delay, and if possible, even completely disrupt, the proceedings.

5. Taking into account the extensive delay between the submission of the interstate communication in April 2018 and the Report's release in March 2024, the State of Palestine expected more concrete findings regarding the facts underlying the communication submitted already six years ago by the State of Palestine. While the State of Palestine appreciates the Commission's extensive references, in its Report and the Annex, to reports by various UN agencies and personnel, one could, in particular, have expected more factual findings by the Commission itself, and clearer positions regarding Israeli practices towards the Palestinian population living throughout the occupied territory of the State of Palestine.

6. The State of Palestine welcomes the Commission's reaffirmation, if ever there was need, of certain essential features of the Convention, namely (i) that the State of Palestine is a contracting party of CERD¹; (ii) that the obligations underlying the Convention are of an *erga omnes*² and of a *jus cogens*³ character; and (iii) that the Convention applies in all territories where Israel exercises effective control⁴.

7. The State of Palestine further welcomes the confirmation, by the Commission, of certain specific features of the mechanism established by Arts. 11- 13 CERD, namely (i) that a State party bringing a complaint thereunder can raise any violations of CERD that took place after the respondent State has ratified the Convention⁵; (ii) that both, the applicant and the respondent State, have a legal obligation not only to participate in the proceedings, but also to cooperate in good faith with both, the Committee and the Commission⁶, and that (iii) non-participation by the respondent State cannot hinder the Commission to perform the obligations incumbent

¹ Report, para. 34.

² Ibid.

³ Ibid., para. 40.

⁴ Ibid., para. 5; Annex, para. 47.

⁵ Report, para. 6.

⁶ Ibid., para. 9.

on it.⁷ In light of these confirmations, it is unfortunate that the Report, in its conclusions, does not explicitly state this very violation, by Israel, of these procedural obligations incumbent on it.

8. The State of Palestine welcomes the proposal of the Commission to have the Committee establish a follow-up procedure to its Report⁸, and takes the position that Israel's obligation to cooperate, just referred to above, extends to any such follow-up procedure to be established by the Committee.

9. Finally, the State of Palestine notes the authoritative and imposing character of the Commission's legal *findings* ('*conclusions*' in the equally authentic French text of the Convention) contained in its Report, whose character stands in contrast to 'concluding *observations*' ('*observations finales*') adopted as part of the State reporting mechanism under Art. 9 CERD.

Part 2: Specific substantive issues

A. Art. 2 CERD

10. The State of Palestine welcomes the confirmation, by the Commission, that Israel has the responsibility to investigate all cases of racial discrimination committed in the Occupied Palestinian Territory, including East Jerusalem, and that failing to do so constitutes a violation of Article 2 of the Convention. The State of Palestine reaffirms that Israel has failed to investigate all cases of racial discrimination committed by Israeli settlers living in the Occupied Palestinian Territory, including East Jerusalem.

B. Art. 3 CERD

⁷ Ibid.

⁸ Ibid., para. 55.

11. The State of Palestine similarly welcomes the confirmation, by the Commission, that a system of racial segregation in violation of Art. 3 CERD exists in the Occupied Palestinian Territory, including East Jerusalem⁹. At the same time, the State of Palestine is puzzled, to say the least, that the Commission did not engage with the manifold arguments submitted by the State of Palestine in its application and consider making a finding that a system of apartheid has been firmly established by Israel in the Occupied Palestinian Territory, including East Jerusalem and that meet the preconditions of apartheid. The State of Palestine wishes to know what further steps in the Commission's view Israel must take for the prevailing situation to amount to a system of apartheid. This hesitation on the part of the Commission to take an unequivocal position in this regard, or even to discuss the question whether Israel's policy of racial discrimination amounts to apartheid is particularly surprising considering the fact that four UN Special Rapporteurs on the Situation of Human Rights in the Occupied Palestinian Territory have found that Israel applies apartheid in the Occupied Palestinian Territory and various international and Israeli human rights organizations have taken that very same position. This is also surprising since twenty-one States shared Palestine's legal position in their written and oral statements made as part of the ICJ advisory proceedings dealing with the 'Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem'. Of particular importance is the fact that both South Africa and Namibia, the two States that suffered most under apartheid, had no hesitation in equating Israel's policies in the Occupied Palestinian Territory with the policy of apartheid pursued by South Africa during the apartheid period. This information was available to the Commission as the said ICJ advisory proceedings had been concluded before the Commission submitted its Report. The State of Palestine is inevitably left with the impression that the Commission failed to address this issue for reasons other than

⁹ Annex, para. 53; Report, para. 44.

purely legal ones . Like a court of law, the Commission is surely required to show no fear or favour in its task.

C. Art. 5 CERD

12. The State of Palestine welcomes the findings, by the Commission, of the manifold violations, by Israel, of Art. 5 CERD, namely with regard to the right to equal treatment before the tribunals (Article 5 (a) a) CERD)¹⁰, the right to freedom of movement and residence (Article 5(d) (i) CERD)¹¹, the right to marriage and choice of spouse (Article 5(d)(iv) CERD)¹², the right to own property alone as well as in association with others (Article 5(d)(v) CERD)¹³, the right to freedom of thought, conscience and religion (Article 5 (d) (vii) CERD)¹⁴, labour-related rights (Article 5 (e)(i) CERD)¹⁵, the right to housing (Article 5(e)(iii) CERD)¹⁶, the right to public health, medical care, social security, and social services (Article 5(e)(iv) CERD)¹⁷, as well as with regard to the right to education (Article 5 (e) (v) CERD)¹⁸.

Part 3: Overarching issues and recommendations

13. The State of Palestine welcomes and shares the Commission's position that Israel's policies of racial discrimination lie at the very heart of the conflict between the two CERD State parties, Israel and Palestine,¹⁹ and that Israel is under an obligation

¹⁰ Annex, para. 63.

¹¹ Ibid., para. 68.

¹² Ibid., para. 72.

¹³ Ibid., para. 76.

¹⁴ Ibid., para. 79.

¹⁵ Ibid., para. 81.

¹⁶ Ibid., para. 84.

¹⁷ Ibid., para. 88.

¹⁸ Ibid., para. 91.

¹⁹ Report, para. 38.

not to put obstacles to the exercise, by the Palestinian people, of its right of self-determination.²⁰

14. Palestine also welcomes the various detailed recommendations addressed to Israel contained in para. 51 of the Commission's report, which, if implemented by Israel, would greatly contribute to putting an end to the entrenched system of racial discrimination set up throughout the Occupied Palestinian Territory, including East Jerusalem.

15. Notably, the State of Palestine welcomes that the Commission calls for an immediate end to all Israeli settlement activities on Palestinian territory in line with Security Council resolution 2334 (2016)²¹, which in turn had already confirmed that such settlements constitute a flagrant violation of international law, and which also affirms that settlements therefore must be dismantled without delay in line with applicable rules of State responsibility.

16. The State of Palestine is mindful of the references in the Commission's Report to the events of October 7, 2023, but notes that those acts are neither attributable to the State of Palestine nor relevant to the scope of the Report. The State of Palestine further acknowledges that the Commission reiterates in its Report the obligations of Israel under international humanitarian law, including notably Israel's obligation to distinguish between civilians and non-civilians. The State of Palestine however fails to understand why the Commission's Report does not also mention the finding, by the International Court of Justice, in its order on provisional measures ordered on 26 January 2024, *i.e.* again well before the adoption of the Commission's Report, in the Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel),

²⁰ Ibid., para. 41.

²¹ Ibid., para. 51.

where the Court had found that the right of the Palestinians in Gaza to be protected from acts of genocide and related prohibited genocidal acts enumerated in Article III of the Genocide Convention is plausible, and that South Africa has the ensuing right to seek Israel's compliance with the latter's obligations under the Genocide Convention.²²

17. The State of Palestine takes positive note of the recommendations addressed to third States. Notably, the reference in para. 53, lit. f) of the Commission's Report is of particular relevance, namely calling upon such third States to make sure that their resources are not used to enforce or support the Israeli discriminatory practices vis-à-vis the Palestinian population.

18. The State of Palestine reserves its right to call for a meeting of the State parties of CERD in order for the community of State parties of CERD to follow up on the Commission's recommendations addressed to third States.

19. Finally, the State of Palestine understands that the Security Council will be made aware of the Commission's recommendation to also address the findings of racial discrimination made in the Commission's Report so as to bring about a peaceful settlement of the dispute between the two State parties of CERD.

Concluding remarks

20. As a State party of CERD, the State of Palestine remains committed not only to the obligations it has undertaken when ratifying the Convention, but also to implement the recommendations issued by the Commission in its Report.

²² ICJ, Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel), Order of 26 January 2024, para. 54.

21. In this respect, the State of Palestine informs the Chair of the Committee that it accepts the recommendations contained in the Report of the Commission.

22. The State of Palestine emphasizes however, the need for the recommendations addressed to Israel to be enforced so as to bring to an end the Israeli discriminatory policies and the system of apartheid Israel has established in the occupied territory of the State of Palestine. In this regard action by both, third States, as well as by the Security Council, remains indispensable given Israel's intransigence as demonstrated throughout this interstate complaint procedure.

23. The State of Palestine will continue to cooperate with and support CERD Committee and Commission, to ensure the full respect and implementation of CERD in the State of Palestine and reserves its right to seek further action towards that end.