



CERD Ad hoc “Conciliation Commission” Report - Response by Israel

The report issued by the CERD “Conciliation Commission” levels at Israel absurd and distorted accusations of racial discrimination. This report is the outcome of a fundamentally flawed, discriminatory process, devoid of minimal legal basis, and in contradiction to basic principles of international law.

The process that began as a tool to promote a specific agenda by one of the parties, inevitably rendered a one-sided result, which frames a complex decades-long conflict within the misguided and narrow prism of racial discrimination. It completely ignores fundamental facts that lie at the basis of the conflict, and that inform the actions and policies of the State of Israel, mainly the grave security threats Israel faces - which were put on display on October 7, 2023.

Moreover, the Commission openly states that it did not apply even the minimal standard of proof normally employed in UN reports. It is therefore difficult to understand how the report can be taken seriously, when its drafters acknowledge that they were not able to verify the factual “findings” that formulated its conclusion.

Finally, the same treaty body, whose member labeled Israel a “true terrorist State”, in the weeks following October 7, the worst massacre against the Jewish people since the Holocaust, cannot be considered impartial, let alone establish and head a “conciliation mechanism”.

A. The Committee acts in a discriminatory manner where Israel is concerned

1. The Committee had no grounds to exercise jurisdiction over the Palestinian complaint

In 2018, the Palestinians submitted a complaint to the Committee for the Elimination of Racial Discrimination regarding Israel’s compliance with the Convention for the Elimination of all forms of Racial Discrimination (“the Convention”). Israel then formally objected to the jurisdiction of the Committee in this case. Israel’s objection was based on Israel’s formal communication, duly submitted to the UN Secretary-General, shortly after the Palestinians purportedly acceded to the Convention, in which it stated its position that “‘Palestine’ does not satisfy the criteria for statehood under international law and lacks the legal capacity to join the aforesaid Convention both under general international law and in accordance with the terms of bilateral Israeli-Palestinian agreements.” The communication further stated that “[t]he Government of Israel does not recognize ‘Palestine’ as a State, and wishes to place on record, for the sake of clarity, its position that it does not consider ‘Palestine’ a party to the Convention and regards the Palestinian request for accession as being without legal validity and without effect upon Israel’s treaty relations under the Convention.”

Israel further demonstrated in several detailed submissions to the Committee that under international law, communications such as the one Israel had submitted had the effect of



precluding the Palestinians from triggering the inter-State mechanism of the Convention against Israel. Such objections are well established in State practice and are based on the fundamental principle that a State is only bound by a treaty to the extent to which it has agreed to be bound.

Understanding the complexity of the matter, the Committee requested the legal advice of the UN Office of Legal Affairs (“the OLA”). **In a Memorandum dated 23 July 2019, the OLA reaffirmed Israel’s position that, by its formal objection, had validly excluded treaty relations with the Palestinian entity under the Convention, and determined, therefore, that the Committee was precluded from examining the Palestinian complaint.**

Israel also recalled a past instance in which CERD had already decided that the inter-State complaint mechanism requires treaty relations. In that case, the Committee declared that given Syria’s objection to treaty relations with Israel, the conciliation mechanism could not be triggered.

The Committee decided to proceed contrary to the clear legal advice of the UN, and to its own precedent. The Committee conducted itself in a discriminatory manner, and decided to engage in an exercise of legal acrobatics in order to seize an opportunity to single out Israel.

After this baseless and erroneous decision was adopted, meaning the **proceedings would be instituted without jurisdiction and without mandate**, it became clear for Israel that it could not expect fair and impartial treatment from this Committee. The UN body created to combat racial discrimination became itself a tool of politicization and discrimination against Israel.

2. The report ignores Israel’s grave security concerns, and does not give due consideration to the role of generations of terrorism and incitement against Israelis.

Any attempt to address the Israeli-Palestinian conflict, indeed attempts to address *any* conflict, must begin with the recognition of the relevant actors and of the relevant issues at the heart of the conflict. The report, which greatly diminishes the role of terrorism against Israelis in this regard, is therefore futile and irrelevant.

Needless to say, the Commission’s report does not address State-sponsored terrorism in the Middle East, or countries that openly reject the Jewish people’s right to self-determination in their homeland, and support and fund terrorism, spreading destruction in the region through their proxies. The Committee does not recognize that for nearly 20 years, Hamas has turned Gaza into a terrorist stronghold and in doing so, redirected resources meant for welfare of the Palestinian people.

The Commission completely disregards Israel’s legitimate security concerns that stand at the core of its policies in the West Bank and Gaza. Tragically, these security concerns materialized in one of the bloodiest terrorist attacks of modern history. The Commission



also ignores the exacerbation of the conflict by incitement to violence and terrorism, and the glorification of martyrdom, on the part of the Palestinians.

The Commission also overlooks the robust Israeli legal system, which provides Palestinians with unfettered and effective access to its courts. For decades, Israeli courts have regularly opened their doors to Palestinians asserting their legal rights and have taken a particularly staunch position regarding the justiciability of alleged violations of human rights. This includes claims regarding alleged Israeli violations of the norms embodied in the Convention. Indeed, the Israeli High Court of Justice has heard thousands of cases involving Palestinian assertion of rights over the years and has not hesitated to strike down executive policy and even legislation in appropriate cases.

Freedom of political opinion and of expression of a political nature has also been rigorously defended by Israeli courts. The Supreme Court has consistently upheld the principle that freedom of expression entails the freedom not only to express popular opinions, but also those which the majority despises, as well as the freedom to criticize government action. The Supreme Court has repeatedly held that freedom of political expression is entitled to the highest degree of protection. This freedom is course not unlimited and legislation also sets certain boundaries. In such cases, the legal system can deal with statements exceeding the limits and which abuse this broad freedom.

B. The Committee acted unprofessionally, by not applying even minimal standards for fact-finding, and addressing issues beyond the scope of its mandate and competence.

The report frames a complex conflict in misguided and narrow terms of racial discrimination. It is unprofessional for a treaty body to attempt to address the decades-long Israeli-Palestinian conflict through the narrow prism of racial discrimination. Not only does the Committee incorrectly frame the conflict, it also addresses it through a one-sided lens, entirely omitting the responsibilities of the Palestinians as a party to the conflict.

The Commission does however make reference to the conduct of hostilities in the context of the Gaza conflict. These issues are completely unrelated to racial discrimination and fall squarely outside the mandate of the Committee. The Committee, like other human rights bodies, is mandated to the implementation of the Convention that established it. The Committee can interpret human rights law, but it has no competence to address the conduct of hostilities or apply its legal framework.

As noted above, regarding the Commission's methodology, although claiming that it "applied utmost diligence" in assessing the Palestinian claims, the Commission recognized itself that it would not even apply the minimal standard of proof used in UN reports. It is therefore hard to understand how the report can be taken seriously, when its drafters acknowledge that they were not able to verify the factual "findings" that lead to its conclusion.



Notwithstanding the above, the State of Israel follows applicable international law governing its conduct of military operations during armed conflict, including the Law of Armed Conflict, international humanitarian law, and particularly the rules regulating the conduct of hostilities. Accordingly, Israel applies the rules relating to distinction, precautions and proportionality in carrying out attacks. Israel's Defense Forces have incorporated the laws of armed conflict into all aspects of military operations, including through legal training, operational procedures and plans, ongoing legal advice to different levels of IDF command, and robust and independent mechanisms to investigate allegations of IDF misconduct. In stark contrast, Hamas and other parties to the conflict willfully and systematically violate these rules, by embedding its military assets within heavily populated areas, including from within schools, places of worship, hospitals and UN facilities, and carrying out its military activities amongst, behind, and beneath the civilian population.

Israel remains committed to doing its utmost to minimize harm to civilians even as Hamas and other terrorist organizations, with their utter contempt for life and for the law, attempt to maximize civilian harm. In this vein, Israel is committed to facilitate humanitarian assistance to the civilian population in accordance with the law. This is despite Hamas's persistent efforts to frustrate such assistance, including by stealing and hoarding humanitarian aid and supplies for military purposes. Specifically, Israel closely monitors the humanitarian situation in the Gaza Strip and the needs of the civilian population and is consistently working with third parties to allow for the provision of humanitarian aid to the civilian population and ensure its effective distribution.

3. Conclusion

The Committee's decision to take upon itself the task of addressing the Palestinian's ongoing and baseless attempts to tarnish Israel as a racist apartheid State, in contradiction to the most basic principles of treaty law and devoid of jurisdiction and a mandate, is unfortunate. It undermines the credibility and the professionalism of UN treaty bodies.

If the Committee were indeed concerned with the human rights of the Palestinian population, as a human rights body ought to be, it would recognize, first and foremost, that a people cannot thrive under the brutal grip of a savage terrorist organization.

This entire "inter-State complaint" farce only stresses what should be known from the start – **that the Israeli-Palestinian conflict, in all its complexity, must be addressed in the context of comprehensive bilateral negotiations between the parties, that take into account all its aspects and issues.**

Israel will maintain its enduring commitment to elimination of all forms of racial discrimination, and will ensure that its robust, independent and world-renowned legal system will continue to provide avenues for redress for legitimate grievances in accordance with the rule of law.