



Mission permanente d'Israël  
auprès de l'Office des Nations Unies  
et des Organisations Internationales à Genève

משלחת ישראל  
ליד משרד האומות המאוחדות  
והארגונים הבינלאומיים בג'נבה

Chairperson and Members of the  
Committee on the Elimination of Racial  
Discrimination and the CERD Secretariat  
UNOG – OHCHR

Geneva, 23 April 2019

To the attention of the Chairperson, Committee Members and the Secretariat,

Please find herewith attached a communication submitted by Israel relating to the communication that was forwarded to the Permanent Mission of Israel by the Secretariat of CERD, dated 6 March 2019 (Reference: ICERD-ISC 208/3).

Yours sincerely,

Aviva Raz Shechter  
Ambassador  
Permanent Representative



Mission permanente d'Israël  
auprès de l'Office des Nations Unies  
et des Organisations Internationales à Genève

משלחת ישראל  
ליד משרד האומות המאוחדות  
והארגונים הבינלאומיים בג'נבה

The Permanent Mission of Israel to the United Nations and other International Organizations in Geneva presents its compliments to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) and wishes to refer to the Note, dated 6 March 2019 (Reference: ICERD-ISC 208/3), by which the Secretariat informed the Permanent Mission of the clarifications provided by the Working Group on communications of the Committee on the Elimination of Racial Discrimination (the "Committee") in response to the Permanent's Mission's Note dated 28 February 2019.

The Permanent Mission takes note, with appreciation, of the clarifications provided in the above-mentioned Note with respect to the upcoming proceedings of the Committee, during its 98<sup>th</sup> session, on the question of its jurisdiction over the Palestinian complaint purportedly submitted under Article 11 of the Convention on Elimination of All Forms of Racial Discrimination (the "Convention"). In particular, the Permanent Mission takes note of the willingness to place on record Israel's objection to the presence, in the context of these proceedings, of a Palestinian representative jointly with the Israeli representative and to acknowledge "that this presence shall not be interpreted in any way as a form of recognition of the statehood of the entity represented by the other representative".

Regrettably, however, and despite the respect that Israel holds for the Committee, it is unable to take part in these proceedings jointly with a Palestinian representative (identified by CERD in these proceedings as that of the "Applicant State"). As the Committee is aware, Israel does not recognize the Palestinian entity as a "State Party" to the Convention (or as a State more broadly) and does not consider itself to be in treaty relations with this entity under the Convention. Indeed, it is for this reason that Israel has argued from the outset that the Committee manifestly lacks jurisdiction over the Palestinian so-called "inter-State" complaint. The appearance and participation of an Israeli representative in these proceedings alongside a representative of an entity which Israel does not recognize as a State party to the Convention and with which it is not in treaty relations would be inconsistent with this principled position, and would not, in Israel's view, be adequately addressed by merely acknowledging that such appearance and participation should not be interpreted as recognition of statehood.

The Permanent Mission notes, in this context, that it has treated CERD's consideration of the question of its jurisdiction over the Palestinian complaint with utmost seriousness, including by submitting three extensive written communications to the Committee on this matter. Drawing on well-established treaty law and widespread State practice, as well as the Committee's own past decisions, these communications have explained, *inter alia*:

- That application of the Article 11 inter-State mechanism in the present case would be predicated on the existence of treaty relations between Israel and the Palestinian entity;
- That it is fully recognized in international law and practice – including under the present Convention – that States have the right to exclude treaty relations between themselves and an entity they do not recognize;
- That Israel has in fact explicitly excluded treaty relations between itself and the Palestinian entity under the Convention by a formal communication validly submitted to the United Nations Secretary-General as depositary, as confirmed by the United Nations Office of Legal Affairs;
- That the Committee, in a past instance, has already determined that it lacks jurisdiction under Article 11 in the absence of bilateral treaty relations among parties to the Convention;
- And that, accordingly, the Committee lacks jurisdiction in this instance to consider the Palestinian complaint under Article 11, and that it would be applying its own decisions in a discriminatory manner and disregarding the established law were it to decide differently in this case.

In addition, Israel's communications have elaborated other effective and appropriate avenues that exist for addressing substantive Palestinian allegations, including in the context of Israel's future appearances before the Committee.

The Permanent Mission sincerely regrets that it is not able to appear in proceedings before the Committee under the format currently proposed, which it regards as ill-suited for the present legal position existing between Israel and the Palestinian entity; and it wishes to reiterate that it does so out of no disrespect to the Committee.

Moreover, the Permanent Mission remains willing to engage the Committee directly on the matter of jurisdiction, as it has done through its written communications. Accordingly, it is willing to send a representative to address the Committee separately and reply to any questions that the Committee may have on this preliminary matter, even if it is unable to do so – and considers that it may not be required to do so – in the context of proceedings held before the Committee jointly with a Palestinian representative. Should it be considered necessary, the Permanent Mission is further willing, on the basis of reciprocity, to have its comments before the Committee made available to a Palestinian representative, so as to address the concern raised in the Note of the Working Group on communications that each side should be informed of the views expressed by the other.

If the Committee decides not to allow the separate appearance of an Israeli representative as proposed, the Permanent Mission respectfully asks the Secretariat to ensure that all Committee Members have before them, both in advance of and during the proceedings, Israel's written submissions, including the present Note, when they consider the preliminary and fundamental question of jurisdiction.

The Permanent Mission avails itself of this opportunity to renew to the Secretariat of the United Nations (Office of the High Commissioner for Human Rights) the assurances of its highest consideration.

Geneva, 23 April 2019

