

State of Palestine

*Permanent Observer Mission to the United Nations
Geneva*



دولة فلسطين

البعثة المراقبة الدائمة لدى الأمم المتحدة
جنيف

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The Permanent Mission of the State of Palestine to the United Nations Office at Geneva presents its compliments to the Secretary-General of the United Nations concerning the complaint it has brought against the State of Israel under Article 11 CERD, and has the honor to refer to the Note of the Secretariat of the High Commissioner of 9 October 2018, informing the State of Palestine that "the deadline for referring the matter again to the Committee is 7 November 2018." This reference to such November 7, 2018 deadline seems to take the position that any reference of the matter to the Committee after the said date would be considered inadmissible by the Committee.

The State of Palestine wishes to clarify that it is its understanding of Article 11 (2) CERD, given its very wording and purpose, that November 7, 2018 is the *earliest* date at which the complaint may be referred again to the Committee once the six month period has lapsed, *i.e.* that the matter may be only referred to the Committee *after* 7 November 2018.

The State of Palestine respectfully submits that this is brought out by the very wording Article 11 (2) CERD which provides that:

"[i]f the matter is not adjusted to the satisfaction of both parties (...) within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter again to the Committee by notifying the Committee and also the other State."

Had the drafters of Article 11 (2) CERD really wanted to set a deadline of six months for either party to refer the matter again to the Committee, the text would instead have provided that

""[i]f the matter is not adjusted to the satisfaction of both parties either State shall have the right within six months after the receipt by the receiving State of the initial communication to refer the matter again to the Committee by notifying the Committee and also the other State."

This interpretation of Article 11 (2) CERD is all the more evident in the equally authentic French and Spanish version that provide:

«Si, dans un délai de six mois à compter de la date de réception de la communication originale par l'Etat destinataire, la question n'est pas réglée à la satisfaction des deux

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Etats, par voie de négociations bilatérales ou par toute autre procédure qui serait à leur disposition, l'un comme l'autre auront le droit de la soumettre à nouveau au Comité en adressant une notification au Comité ainsi qu'à l'autre Etat intéressé. »

respectively:

« Si el asunto no se resuelve a satisfacción de ambas partes (...) en un plazo de seis meses a partir del momento en que el Estado destinatario reciba la comunicación inicial, cualquiera de los dos Estados tendrá derecho a someter nuevamente el asunto al Comité mediante la notificación al Comité y al otro Estado. »

The State of Palestine therefore submits that the six months period mentioned in Article 11 (2) CERD relates to the amount of time that is available to the parties to eventually find alternative means to adjust the matter; it does therefore not constitute a deadline for either State to refer the matter again to the Committee. The expiration of the six months period therefore constitutes a starting date rather than a cutoff date for either State to again seize the Committee.

This interpretation of Article 11 (2) CERD is further confirmed by the context of Article 11 CERD, as well by its object and purpose.

The Convention lays out a clear procedure that only allows the Committee to deal with the matter after it has been referred to it a second time. This is specifically to allow, on the one hand, for the receiving State to "submit to the Committee written explanations or statements" within three months from the receipt of the initial communication, pursuant to Article 11 (1) CERD, and on the other hand, within six months, for the States to eventually find alternative means to adjust the matter, should they wish to do so, pursuant to Article 11 (2) CERD.

Interpreting the lapse of the six month period as a *deadline* for the renewed, second referral, rather than as a starting point enabling from that point in time onwards either State to refer the matter again, would lead to the result that the complaining State could refer the matter again to the Committee before the receiving State has even had the chance to submit its explanations or statements, and before the States concerned had been afforded the possibility of finding alternative means of adjustment. Such an interpretation would thus render this part of Article 11 (2) CERD redundant. If this had been the intention of the drafters, the Convention would have simply allowed the Committee to deal with the matter immediately, upon receipt of the initial communication rather than after the second referral.

It is in light of these considerations that the State of Palestine seeks the guidance of the Committee on how to further proceed concerning the issue. In particular, the State of Palestine seeks a confirmation, from the Committee, whether indeed the above mentioned letter is to be understood as indicating that a renewed referral of the matter to the Committee after November

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7, 2018 would be considered by the Committee as being inadmissible. In such case the State of Palestine will duly take note of the Committee's interpretation of Article 11 (2) CERD.

If the Committee were to however interpret its above mentioned letter as indicating that November 7, 2018 is to be considered the *earliest* date at which the matter may again be referred to the Committee the State of Palestine currently plans to refer the matter again to the Committee by the time the Committee meets for its next regular session.

In addition, the State of Palestine also seeks guidance as to how to address the claim, by Israel, that the complaint submitted by the State of Palestine is inadmissible since not all available local remedies have been exhausted. While the burden of proof is on Israel to demonstrate that this is the case the State of Palestine stands ready upon request to provide further arguments on that matter, both in writing and orally, subsequent to its written submission dated 23 April 2018.¹

Finally, the State of Palestine notes Article 11 (5) CERD which, as the Committee is aware, provides that

"[w]hen any matter arising out of this article is being considered by the Committee, the States Parties concerned shall be entitled to send a representative to take part in the proceedings of the Committee, without voting rights, while the matter is under consideration."

Given the wording of Article 11 (5) CERD, which refers "to any matter arising out of this article", it is the considered position of the State of Palestine that also matters relating to the admissibility of the complaint submitted by the State of Palestine are covered by the provision.

The State of Palestine respectfully requests that this letter be circulated to the members of the Committee as soon as possible so as to enable the Committee to take a position on the issues raised in due course.

The Permanent Mission of the State of Palestine to the United Nations Office at Geneva avails itself of this opportunity to renew to the Secretary- General the assurances of its highest consideration.



¹ State of Palestine, Interstate Complaint under Articles 11-13 of the International Convention for the Elimination of All Forms of Racial Discrimination, 23 April 2018, paras 68-72.