



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, 20 August 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 7 August 2019 (Reference: ICERD-ISC 2018/3).

Sincerely,

Aviva Raz Shechter
Ambassador
Permanent Representative



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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 Secretariat's Note, dated 7 August 2019 (Reference: ICERD-ISC 2018/3), by which it informed the Permanent Mission that a representative of the State of Israel will be invited to take part in meetings to be held during the 99th session of the Committee on the Elimination of Racial Discrimination (hereinafter: "the Committee") concerning the purported inter-State communication ICERD-ISC 2018/3 (hereinafter: "the Palestinian communication").

The Permanent Mission recalls that Israel is of the view that the format proposed for such meetings is incompatible with its fundamental position concerning the lack of treaty relations between itself and the Palestinian entity under the Convention on the Elimination of All Forms of Racial Discrimination (hereinafter: "the Convention"). As was previously explained at greater length, the format of joint appearance and participation by Israeli and Palestinian representatives in a formal meeting of the Committee dedicated to the very question of treaty relations does not adequately take account of Israel's non-recognition of the Palestinian entity as a party to the Convention and the absence of treaty relations between the two. Accordingly, the Permanent Mission is once again compelled to inform the Committee that Israel will regrettably not be able to send a representative to participate in meetings having such a format. The Permanent Mission reiterates that this decision is taken with no disrespect to the Committee, with which Israel has continued to engage on this matter through extensive and direct communications.

It is further recalled that the Committee has itself confirmed in writing that the object of the proceedings regarding the Palestinian communication is to "determine whether there is in respect of the Convention a treaty relation between the State of Israel and the State of Palestine, which would allow for the application of the Articles 12 and 13 of the Convention." In this regard, the Permanent Mission notes that Israel has learned that the United Nations Office of Legal Affairs (hereinafter: "the OLA"), upon the request of the Committee, has recently provided the latter with a legal assessment that concludes unequivocally that Israel

had validly excluded treaty relations with the Palestinian entity under the Convention and that no treaty relations therefore exist between Israel and the Palestinian entity. Israel further understands that the OLA memorandum accordingly determines, without ambiguity, that in these circumstances the Committee is indeed precluded from examining the Palestinian communication under Articles 11 to 13 of the Convention.

This pronouncement, by the very organ mandated with discharging the UN Secretary-General's depositary functions under multilateral treaties – including the Convention – provides the Committee with clear and authoritative guidance on the issue before it. Being consistent with the established law of treaties and ample State practice, as well as the Committee's own past decisions, the OLA's conclusion can hardly be regarded as anything other than dispositive for the Committee on the issue of treaty relations and jurisdiction currently before it.

Given the clear legal position, the Permanent Mission trusts and expects that the proceedings relating to the Palestinian communication will be concluded without delay with a finding of no jurisdiction in accordance with the OLA's authoritative legal view, provided at the Committee's request. Any other decision would not only lack legal authority but risks undermining the Committee's legitimacy as a body operating within the mandate provided to it under the Convention. Indeed, Israel is asking no less and no more than that the Committee apply its previous decisions, and guiding legal principle and precedent, in a consistent and non-discriminatory manner.

The Permanent Mission respectfully requests that the Secretariat ensure that all members of the Committee have this Note before them, both in advance and during any meetings concerning the Palestinian communication. Should the Committee require further information, Israel reiterates its willingness to engage with the Committee for such purposes, including by appearing separately before it.

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, 20 August 2019

