

The Permanent Mission of Israel to the United Nations and other International Organizations in Geneva presents its compliments to the Secretary-General of the United Nations and refers to the Note of the Secretariat of the Office of the United Nations High Commissioner for Human Rights (OHCHR) (ref. ICERD-ISC 2018/3), dated 8 August 2018, and to the “Information Note on Inter-State Communications” released by the Committee on the Elimination of Racial Discrimination (CERD or the Committee), dated 30 August 2018, regarding, *inter alia*, the Palestinian communication purportedly made pursuant to Article 11 of the International Convention on the Elimination of all Forms of Racial Discrimination (the Convention).

The Permanent Mission takes note of the decision by CERD, of 8 August 2018, to transmit the Permanent Mission’s communication relating to the aforementioned Palestinian communication, dated 3 August 2018, to the Palestinian side.

As explained in the Permanent Mission’s communication of 3 August 2018, and in its previous Note dated 30 April 2018 (issued immediately upon receipt of information regarding the Palestinian communication), Israel is firmly of the view that the aforementioned Palestinian communication is legally inadmissible and that the inter-State complaint mechanism envisaged under Article 11 of the Convention is inapplicable as between Israel and the Palestinian entity, owing, *inter alia*, to the manifest absence of treaty relations between Israel and the Palestinian entity under the Convention.

As was confirmed to the Permanent Mission by the OHCHR, and as is evident from the stipulation in the Note issued by the Secretary-General, dated 7 May 2018 (ref. ICER-ISC/2018/3CVE/VL/mg), the transmission of the Palestinian communication to Israel was technical in nature and “without consideration of its substance”, and no decision has yet been made by CERD as to the eligibility of the Palestinian communication.

It is both elementary as a matter of law and consistent with the Rules of Procedure of CERD (as well as the treatment of the Palestinian communication by CERD to date) that the legal admissibility of the Palestinian communication is a preliminary or threshold question that must be determined by CERD *before* the Article 11 mechanism can be activated. Indeed, for the avoidance of any doubt, the Permanent Mission wishes to reiterate that its fundamental objection submitted to CERD as to the validity of the Palestinian communication remains unchanged, as does its position that CERD is required to determine in the present circumstances – as a preliminary matter - that the Article 11 mechanism is inapplicable in this situation.

In this context, it is important to distinguish between the *preliminary* question of the (in)admissibility of the Palestinian communication in light of the absence of treaty relations between Israel and the Palestinian entity, and other “admissibility” issues which arise and must be examined as part of the Article 11 mechanism itself - including those that relate to efforts made by the parties to adjust the situation and to the invocation and exhaustion of local remedies. What is at issue before CERD at this stage is the inability *ab initio* of the Palestinian communication to trigger the Article 11 mechanism at all, given the absence of treaty relations between Israel and the Palestinian entity under the Convention. This is distinct from “admissibility” issues that arise *as part of* the Article 11 process and which would need to be addressed, in accordance with the timeline and procedures established by the Convention, only in circumstances in which this process was applicable and lawfully initiated.

In light of the above, the Permanent Mission wishes to clarify its explicit understanding that the decision by CERD to transmit the Israeli communication to the Palestinian side (like the decision by CERD to transmit the original Palestinian communication to Israel), is without prejudice to the absence of treaty relations between Israel and the Palestinian entity under the Convention and to the question of the legal admissibility of the Palestinian communication - a threshold question which remains pending. That transmission, and any other action by CERD to date, do not, indeed cannot, constitute an activation of the procedures and timeline of the Article 11 mechanism, since the question of the fundamental inadmissibility of the Palestinian communication remains outstanding before the Committee.

The Permanent Mission notes in this regard that while the Palestinian communication purportedly made under Article 11 was addressed by CERD in its abovementioned “Information Note on Inter-State Communications” together with two other communications under Article 11, submitted by the State of Qatar, its procedural status is fundamentally different. As noted above - and as distinct from the other communications referred to in the “Information Note”, - it is the very eligibility of the Palestinian communication that is at issue and that has yet to be determined and, consequently, the Article 11 mechanism cannot have been triggered.

Finally, the Permanent Mission wishes to request, as is only reasonable, that it be provided adequate opportunity by CERD to respond to any Palestinian communication that may be issued in relation to the Israeli communication dated 3 August 2018, and prior to any determination regarding the legal admissibility of the Palestinian communication purportedly made under Article 11 of the Convention.

The Permanent Mission of Israel to the United Nations and other International Organizations in Geneva respectfully requests the Secretary-General to convey this Note to the Chairman and members of CERD. The Permanent Mission avails itself of this opportunity to renew to the Secretary-General the assurances of its highest consideration.