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**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General**

Written statement* submitted by European Centre for Law and Justice, The / Centre Européen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[17 May 2024]

* Issued as received, in the language of submission only.

Request that the UN Dispense with Its Anti-Israel Bias

1. Introduction

The purpose of this report is to clarify the misinformation about the International Court of Justice (ICJ) 26 January 2024 Order in the South Africa v. Israel case and to request that the Human Rights Council (HRC) address the ongoing anti-Israel bias prevalent within the United Nations (UN). We consider it imperative that the HRC condemn those who falsely accuse Israel of genocide and dispense with the UN's clear anti-Israel bias.

2. Misunderstanding of ICJ Order

In the ICJ 26 January 2024 Order in the South Africa v. Israel case, the Court stated: “the facts and circumstances mentioned above are sufficient to conclude that at least some of the rights claimed by South Africa and for which it is seeking protection are plausible.”⁽¹⁾ This language has been misunderstood to the detriment of Israel.⁽²⁾

Some in the international community, for example, have stated: “it is plausible that there is a case under the Genocide Convention”⁽³⁾; “that South Africa’s claim of a violation of rights under the Genocide Convention is ‘plausible’”⁽⁴⁾; “that South Africa made a plausible case that Israel is violating the Genocide Convention”⁽⁵⁾; and “it was plausible that genocide was being committed in Gaza.”⁽⁶⁾ These statements are not accurate and are damaging to Israel.

Per Dr. Roy Schondorf’s analysis, “the threshold of plausibility is very low, even nominal.”⁽⁷⁾ The ICJ first “merely considers whether there is a plausible link between the claimed rights and the relevant treaty; and second, that alleged facts were brought before the Court with regards to the claimed violation of those rights, regardless of their veracity or strength.”⁽⁸⁾

The ICJ language has been so misunderstood that Joan Donoghue, the President of the ICJ at the time of the decision, clarified the matter in a recent BBC interview:

It did not decide and this is something where I am correcting what’s often said in the media, it didn’t decide that the claim of genocide was plausible. It did emphasize in the Order that there was a risk of irreparable harm to the Palestinian right to be protected from genocide. But the shorthand that often appears which is that there is a plausible case of genocide isn’t what the Court decided.⁽⁹⁾

Despite such clarification, the international response to the false genocide claims has been severely deficient.

3. Biased UN-Appointed Leaders Continue their Quest to Discredit Israel within the International Community

Even UN officials continue to look for ways to attack Israel regardless of the truth of their claims. For example, Ms. Francesca Albanese, the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, shockingly concluded in a 25 March 2024 report “that there are reasonable grounds to believe that the threshold indicating Israel’s commission of genocide is met.”⁽¹⁰⁾ In contrast to Hamas’ 7 October 2023 unprovoked attack against innocent civilians (including women, children, and the elderly), these genocide accusations against Israel have no legal or factual basis.

Among numerous slanderous anti-Israel statements, the Special Rapporteur writes: “Israeli authorities have characterized churches, mosques, schools, UN facilities, universities, hospitals and ambulances as connected with Hamas to reinforce the perception of a population characterized as broadly ‘complicit’ and therefore killable.”⁽¹¹⁾ The Special Rapporteur further stated: “The accusation of using human shields has thus become a

pretext, justifying the killing of civilians under a cloak of purported legality, whose all-enveloping pervasiveness admits only of genocidal intent.”(12) The Special Rapporteur must know that Hamas, not Israel, has used such facilities in intentionally unlawful ways for years.(13)

The Special Rapporteur continues: “Presenting indiscriminate lethal violence against the protected group as a ‘proportionate means’ to pursue the war aims points to an intent to target the Palestinian population as a whole, consistent with the genocidal statements announcing the campaign. . . . Israel appears to represent itself as conducting a ‘proportionate genocide.’”(14) The Special Rapporteur is making “legal” conclusions before all the evidence has been reviewed. She would be much better served acknowledging the 7 October 2023 actual genocide committed by Hamas. Her clear bias against Israel distorts her view of the law and the facts.

The Special Rapporteur’s bias is perhaps most evident when she states: “Israel’s genocide on the Palestinians in Gaza is an escalatory stage of a long-standing settler colonial process of erasure. For over seven decades this process has suffocated the Palestinian people as a group –demographically, culturally, economically and politically”

One of her final recommendations is to “[e]nsure that UNRWA is properly funded to enable it to meet the increased needs of Palestinians in Gaza.” Amazingly, the Special Rapporteur does not address the fact that several UNRWA staffers are under investigation by the UN for taking part in the 7 October 2023 attack.(15)

Unfortunately, Special Rapporteur Albanese is not the only UN-appointed leader who fails to understand her role. Mr. Miloon Kothari, one of three members of the so-called Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, provides us with additional misguided insight.

During a 2023 HRC session, we met with Mr. Kothari and asked him why the Commission made legal conclusions in its reports regarding Israeli actions without analyzing the law and the facts. In response, he said, “You know, the Commission is not a legal body.” The Commission, however, continues to state “legal” conclusions.

This year, we met Mr. Kothari again and asked him if the “independent” Commission was doing anything for the release of the Israeli hostages. He said, “No, that’s not the mandate of the Commission.”

We asked, “Isn’t the mandate to investigate all actions on both sides in Israel, Gaza, and the West Bank?”

He answered, “Yes, but we cannot be one-sided.” Then he said the most concerning thing: “Everyone in the Gaza Strip is a hostage, and what about the prisoners Israel is holding as hostage.”

We were dumbfounded and asked him if there was any difference between a “hostage” and a “prisoner.” He said, “Who’s to say who is a hostage or who is a prisoner?”

We said, “The law.”

The loss of innocent lives on both sides is tragic. At the same time, the law cannot be partially applied. As long as the UN special rapporteurs and the commissioners on such Commissions of Inquiry continue to provide one-sided legal conclusions and refuse to hold the perpetrators accountable, there will be no justice for the innocent.

These problems extend to the HRC as well. A recent HRC resolution requested the Commission to analyze the legal consequences of the transfer of arms to Israel.(16) First, the HRC has made no such request regarding the transfer of arms and munitions to Hamas.

Second, while the HRC asked the Commission to analyze the legal consequences of such actions, Mr. Kothari himself acknowledged that the Commission is not even a legal body.

4. Request

Many in the international community wrongly view the ICJ 26 January 2024 Order as a legal determination that Israel essentially committed genocide. Many in the UN also seek to delegitimize Israel. The HRC must unequivocally condemn those who falsely accuse Israel of genocide. It must dispense with its clear anti-Israel bias. It must also speak out against those who use their UN platform to spew anti-Israel hate.

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 2. Roy Schondorf, Implausible Confusion: The Meaning of “Plausibility” in the ICJ’s Provisional Measures, *EJIL:TALK!* (May 6, 2024), <https://www.ejiltalk.org/implausible-confusion-the-meaning-of-plausibility-in-the-icjs-provisional-measures/>.
 3. Antonios Tzanakopoulos, First Reaction to ICJ Provisional Order in South Africa v Israel, *YOUTUBE* (Jan. 27, 2024), <https://www.youtube.com/watch?v=KPN341F49Qg>.
 4. Nico Krisch, Speaking the Law, Plausibly: The International Court of Justice on Gaza, *EJIL:TALK!* (Jan. 27, 2024), <https://www.ejiltalk.org/speaking-the-law-plausibly-the-international-court-of-justice-on-gaza/>.
 5. Oona A Hathaway, Taking Stock of ICJ Decisions in the ‘Ukraine v. Russia’ Cases—and Implications for South Africa’s Case Against Israel, *JUST SECURITY* (Feb. 5, 2024), <https://www.justsecurity.org/91781/taking-stock-of-icj-decisions-in-ukraine-v-russia-cases-and-implications-for-south-africas-case-against-israel/>.
 6. Marko Milanovic, ICJ Indicates Provisional Measures in South Africa v. Israel, *EJIL:TALK!* (Jan. 26, 2024), <https://www.ejiltalk.org/icj-indicates-provisional-measures-in-south-africa-v-israel/>.
 7. Schondorf, *supra* note 2.
 8. *Id.*
 9. Former Head of ICJ Explains Ruling on Genocide Case Against Israel Brought by S Africa, *BBC* (Apr. 26, 2024) (emphasis added), <https://www.bbc.com/news/av/world-middle-east-68906919>.
 10. Francesca Albanese (Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967), *Anatomy of a Genocide*, at 1, U.N. Doc. A/HRC/55/73 (Mar. 25, 2024).
 11. *Id.* at 16.
 12. *Id.* note 10, at 17.
 13. E.g., Peter Beaumont, What Is a Human Shield and How Has Hamas Been Accused of Using Them?, *THE GUARDIAN* (Oct. 30, 2023), <https://www.theguardian.com/world/2023/oct/30/human-shield-israel-claim-hamas-command-centre-under-hospital-palestinian-civilian-gaza-city> (Hamas member admits to using hospitals to hide activities).
 14. *Anatomy of a Genocide*, *supra* note 10, at 19.
 15. Edith M Lederer, UN Investigators Probe 14 Gaza Aid Staffers Israel Had Tied to Hamas’ Oct. 7 Attack, *AP NEWS* (Apr. 26, 2024), <https://apnews.com/article/israel-hamas-gaza-unrwa-4132812d15758c3b53b4059cbd2066d6>.
 16. U.N. Doc. A/HRD/55/L.30 (Mar. 26, 2024).