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**Annual report of the United Nations High Commissioner
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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.

[25 May 2023]

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

FOR AN IMPARTIAL APPROACH TOWARD THE ISRAELI-PALESTINIAN CONFLICT

I. INTRODUCTION

The Commission of Inquiry (COI) has released two reports regarding the Israeli-Palestinian conflict to date.⁽¹⁾ Unfortunately, both reports are premised on false assumptions that lack any legal or factual basis. The reports also disregard or impartially apply international law. For example, both reports assume that a state of Palestine exists, without providing any legal basis for such a claim, as there is none. Both reports presume that the so-called “West Bank,” the Gaza Strip, and East Jerusalem are Palestinian territories, which means that, aside from assuming statehood, the COI has arrogated to itself the authority to determine borders for the notional state of Palestine. The COI has done this even though the relevant parties to the disputed territories have agreed that borders would be decided as part of permanent status negotiations between the parties—which has yet to occur.⁽²⁾ Both reports further presume, without any legal support, that Israel is “unlawfully” occupying the West Bank and Gaza Strip, disregarding the League of Nations Mandate for Palestine.⁽³⁾ Further, the reports accuse Israel of violating the Law of Armed Conflict (LOAC) and human rights law without analyzing the legality of Israel’s responses vis-à-vis thousands of indiscriminate attacks directed at Israel’s civilian population by Palestinian armed groups.

II. LACK OF LEGAL ANALYSIS AND IMPARTIAL APPLICATION OF LAW

The COI did not provide any reference as to how it came to presume that a state of Palestine exists or that the West Bank, the Gaza Strip, and East Jerusalem are within that presumed state’s territorial boundaries under international law. Such a state or its boundaries could not have been established under the U.N. Partition Plan in General Assembly Resolution 181 because it was rejected by the Arabs and thus was never implemented. Such boundaries could not have been based on the Armistice Agreements of 1949, which explicitly included a caveat, at the Arab States’ insistence, that those lines should not be considered borders. Neither could a Palestinian state or its boundaries be based on Security Council Resolution 242, as the Resolution did not consider Arab residents of the West Bank and the Gaza Strip (aka “Palestinians”) as a separate entity, let alone indicate any territorial boundaries.

The COI also disregarded the fact that “Palestine” does not satisfy the customary international law criteria for statehood.⁽⁴⁾ Even Palestinian leaders continue to insist that they are moving toward statehood, which remains aspirational.⁽⁵⁾ When calling East Jerusalem “Palestinian land,”⁽⁶⁾ the COI disregarded that even General Assembly Resolution 181 never designated Jerusalem to be included in the future state of Palestine.⁽⁷⁾ It intended Jerusalem to be *corpus separatum*.⁽⁸⁾

The COI reports are also internally and inherently contradictory. On the one hand, the reports state that Israel must abide by the LOAC. At the same time, however, they allege that Israeli security measures—permitted under the same LOAC—are somehow unlawful. For example, measures such as security barriers,⁽⁹⁾ naval blockades,⁽¹⁰⁾ military tribunals,⁽¹¹⁾ and armed responses in the face of thousands of indiscriminate attacks⁽¹²⁾ are permitted under the LOAC. Further, the COI reports fail to provide any evidence or legal analysis for its false claims that Israeli measures are disproportional or not justified by military necessity.

The reports also failed to provide any legal analysis regarding Israeli claims to the land under the legally binding League of Nations’ Mandate for Palestine, which encouraged close settlement by Jews on the land.⁽¹³⁾ The reports simply assume that Jewish settlements in the West Bank are unlawful occupation.⁽¹⁴⁾ The reports also failed to discuss Israel’s defensive war of 1967 that led to the disputed territories’ recapture after the illegal and offensive eighteen-year occupation by Jordan and Egypt.

Moreover, the COI apparently placed the entire responsibility for Palestinian deaths and the destruction of infrastructure in the disputed territories on Israel,(15) while minimizing the fact that Hamas, PIJ, and other terrorist groups in the disputed territories commit flagrant war crimes when they indiscriminately fire thousands of rockets into Israel; use civilians as human shields; use civilian infrastructure, such as hospitals, schools, and residential buildings for military purposes;(16) and pay salaries and commissions to those who murder innocent Israelis and Americans.(17) In response to such attacks, Israeli security measures are completely lawful acts of self-defense allowed under the Geneva Conventions and the UN Charter. In taking such measures to defend its civilian population (including its Arab citizens) from indiscriminate attacks, Israel also takes every precaution, above and beyond what is required of it legally, to avoid civilian casualties in the disputed territories.(18)

The COI reports also discuss the alleged discriminatory treatment of Israel's Arab citizens by Israel,(19) apparently in a thinly veiled attempt to work up to a charge of apartheid. Contrary to the COI's claims, Israel treats all of its citizens, Arabs, Jews, and others, alike. Israeli law protects the rights of all citizens.(20) Israel's Arab citizens have full and equal voting rights.(21) 64.7% of Arab citizens of Israel voted in the 2020 election.(22) As a result, Arab politicians held 15 out of 120 seats in the Knesset, making them the third most powerful coalition in the legislative branch.(23) In addition, Arabs have served in senior cabinet positions,(24) and several Arabs have sat on Israel's Supreme Court. The facts on the ground unequivocally show that Israel is a model of equality and justice that other countries in the Middle East would do well to imitate and emulate, rather than attack.

III. CONCLUSION

Even the most recent conflict of May 2023 shows that Israeli actions are justified by military necessity and national security. The PIJ indiscriminately fired hundreds of rockets toward Israeli civilian population centers (unquestionably a war crime) in retaliation for the death of their member who died in Israeli custody. The PIJ member was indicted for membership in a terrorist organization and incitement to terrorism. He died due to his hunger strike, not because the Israelis refused to provide him food or medical assistance.

Excluding the law, facts, and Palestinian attacks from the analysis when determining the legality of Israeli security measures is not intellectually honest, let alone a valid legal analysis. We respectfully submit that the COI abide by its own stated principle: "International law cannot be selectively applied; it must be implemented in its entirety."

(1) Rep. of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, ¶ 1, U.N. Doc. A/HRC/50/21 (May 9, 2022) [hereinafter CoI Rep. I]; Rep. of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, ¶ 1, U.N. Doc. A/77/328 (Sept. 14, 2022) [hereinafter CoI Rep. II].

(2) Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Isr.-PLO, Sept. 28, 1995, U.N. Doc. A/51/889, Art. XVII(1)(a).

(3) Mandate for Palestine, League of Nations, Doc. C.P.M.466-C.529.M.314.1922.VI.-C.667.M.396.1922.VI. (1922).

(4) Observations with respect to the Situation in the State of Palestine on behalf of the European Centre for Law and Justice, ICC-01/18-70, 16-03-202, ¶¶ 16–21, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_01009.PDF.

(5) Id. ¶ 26.

(6) CoI Rep. II, supra note 1, ¶ 14.

(7) GA Res. 181 (II), Future Government of Palestine, U.N. Doc. A/RES/181 (Nov. 29, 1947).

(8) Id. at 146.

- (9) Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), Aug. 12, 1949, 75 U.N.T.S 287, art. 27 [hereinafter Geneva Convention IV].
- (10) Id. art. 18; ICRC, Commentary on the Fourth Geneva Convention: Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 1958 [hereinafter Commentary of 1958].
- (11) Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), Aug. 12, 1949, 75 U.N.T.S 135, art. 84 [hereinafter Geneva Convention III].
- (12) U.N. Charter, art. 51.
- (13) Mandate for Palestine, League of Nations, supra note 3, Art. 6.
- (14) CoI Rep. II, supra note 1, ¶¶ 26, 75; Contra DR. JAY ALAN SEKULOW & ROBERT WESTON ASH, WHY JEWISH SETTLEMENTS IN THE SO-CALLED “WEST BANK” ARE LAWFUL UNDER INTERNATIONAL LAW 2 (Apr. 19, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4087694.
- (15) CoI Rep. I, supra note 1, ¶ 73.
- (16) Julia Marnin, Owner of Gaza Apartment Building Was Warned by Israeli Military to Evacuate Before Airstrike, NEWSWEEK (May 13, 2021), <https://www.newsweek.com/owner-gaza-apartment-building-was-warned-israeli-military-evacuate-before-airstrike-1591185>.
- (17) Sean Durns, The Palestinian Authority Is Still Paying Terrorists, NEWSWEEK (Jan. 21, 2021), <https://www.newsweek.com/palestinian-authority-still-paying-terrorists-opinion-1563138>; Sander Gerber & Michael Koplow, No More ‘Pay to Slay’, WALL. ST. J. (July 12, 2022), <https://www.wsj.com/articles/no-more-cash-for-terrorists-payments-west-bank-abbas-biden-visit-martyrs-washington-11657656402>.
- (18) See, e.g., Taking Every Measure to Avoid Civilian Casualties, EMBASSY OF ISR. TO THE U.S. (Nov. 19, 2012), <https://embassies.gov.il/washington/NewsAndEvents/Pages/IDF-minimizes-civilian-casualties.aspx>.
- (19) CoI Rpt. I, supra note 1, ¶ 44.
- (20) Kali Robinson, What to Know About the Arab Citizens of Israel, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/backgrounder/what-know-about-arab-citizens-israel> (Oct. 28, 2022).
- (21) Shuli Dichter & Asad Ghanem, Promoting Civic Society Between Arab and Jewish Israelis: An NGO’s Perspective, WILSON CTR. (June 21, 2002), <https://www.wilsoncenter.org/event/promoting-civil-society-between-arab-and-jewish-israelis-ngos-perspective>.
- (22) Oliver Holmes, Israel’s Arab Parties Make Historic Gains as Election Support Surges, GUARDIAN (Mar. 4, 2020), <https://www.theguardian.com/world/2020/mar/04/israel-arab-parties-make-historic-gains-election-support-surges>.
- (23) Id.
- (24) Who’s Who in Israel’s New Patchwork Government, AL JAZEERA (June 14, 2021), <https://www.aljazeera.com/news/2021/6/14/whos-who-in-israels-new-patchwork-coalition-government>.