



Apartheid or Antisemitism?

The United Nations General Assembly (UNGA) will convene on September 22 for the Durban IV Conference, marking the 20th anniversary of the Durban Declaration and Program of Action. Several countries are boycotting the event due to its antisemitic content.

In 2001, the UNGA held the “World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,” which became known as “the Durban Conference.” The Conference produced the Durban Declaration and Program of Action, purportedly to be a framework for fighting racism. Ironically, the conference and its related events did just the opposite and ended up promoting the very thing they intended to fight against—they engaged in antisemitic bigotry aimed at Israel. Since its inception, “the Durban process has been used to promote racism, intolerance, antisemitism and Holocaust denial, and to erode freedom of speech and Israel’s right to exist.”¹ Speeches at the Durban events included the accusation—among other baseless claims²—that Israel is an “apartheid State.”³

Several States recognize the hypocrisy and are opting out of the Durban IV Conference, citing its antisemitic content.⁴ In a world where Israel is singled out every day (especially at the U.N.) for false accusations and detrimental treatment, the boycott of the conference is significant. But, the boycott alone is insufficient to expose and condemn such hypocrisy.

The accusation that Israel practices apartheid is not new. Many international legal scholars have made such claims before.⁵ Other scholars have refuted them,⁶ pointing out the accusers’ misrepresentations and faulty analysis of facts and law.⁷ Yet, anti-Israel organizations, Palestinian leaders, and meetings like the Durban Conference continue to falsely accuse Israel of apartheid. Most recently, Human Rights Watch (HRW) published a 217-page report that repeated the same

¹ *Durban IV: Key Facts*, UN WATCH (May 24, 2021), <https://unwatch.org/countries-rejecting-durban-iv-updates-analysis-more/>.

² *Id.*

³ *Pro-Israel Lawyers Urge European Countries to Drop “Antisemitic” UN Conference*, JERUS. POST (Aug. 26, 2021), <https://www.jpost.com/international/pro-israel-lawyers-urge-european-countries-to-drop-antisemitic-un-conference-677741>.

⁴ Lahav Harkov & Haley Cohen, *31 Countries to Boycott Anti-Israel Durban IV Conference Today – FM* (Sept. 21, 2021), <https://www.jpost.com/international/31-countries-to-boycott-anti-israel-durban-iv-conference-today-fm-679966>.

⁵ See e.g., John Dugard & John Reynolds, *Apartheid, International Law, and the Occupied Palestinian Territory*, 24 EUR. J. INT’L L. 867 (2013).

⁶ See e.g., Yaffa Zilbershats, *Apartheid, International Law, and the Occupied Palestinian Territory: A Reply to John Dugard and John Reynolds*, 24 EUR. J. INT’L L. 915 (2013).

⁷ See *id.*

baseless claims in hopes that people will believe the lies if they say them often enough.⁸ Any legally sound and common sense analysis easily exposes the error of such accusations. But impartial application of law seldom exists when it comes to Israel.

What is Apartheid?

According to the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention), the crime of apartheid includes “inhumane acts committed *for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.*”⁹ Note the repeated emphasis on *race*. Apartheid originated in South Africa where it entrenched the country’s widespread and systematic policies of discrimination and segregation on the basis of race. In essence, apartheid requires a government policy that intentionally seeks a racist regime.¹⁰ Due to the gravity of its effects on disfavored racial groups, apartheid continues to be a crime against the law of nations and violates a *jus cogens*¹¹ norm under international law.¹² As Professor Yaffa Zilbershats of the Bar-Ilan University has explained, apartheid is “institutionalized racism of a government against the citizens and residents under its sovereign regime.”¹³ It does not apply to persons in territories beyond a State’s sovereignty.¹⁴

For the purposes of the apartheid claim, a brief historical background is necessary to understand what people groups reside in Israel, the West Bank, and Gaza; the legal status of each territory and the populations therein; and the law governing each territory and its population. After WWI, the League of Nations established the Mandate for Palestine, *inter alia*, on the land that included both sides of the Jordan River to establish a national home for the Jewish people. Soon thereafter Great Britain, the trustee over the Mandate, created an Arab State, called Transjordan (today the Hashemite Kingdom of Jordan) on about 78 percent of the Mandatory land. In November 1947, due to the ongoing conflicts between the Jewish and the Arab populations that resided in the rest of the 22 percent Mandatory land, the newly-created United Nations adopted a non-binding resolution to partition that land into Jewish and Arab states. The Arabs rejected it and the plan was never materialized. In May 1948, Israel declared independence. Because the only State that emerged in that area was Israel, according to the international legal doctrine of *uti possidetis*

⁸ Human Rts. Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (2021).

⁹ International Convention on the Suppression and Punishment of the Crime of Apartheid art. II, 30 Nov. 1973, 1015 U.N.T.S. 243 [hereinafter *Apartheid Convention*].

¹⁰ Joshua Kern, *Uncomfortable Truths: How HRW Errs in Its Definition of Israeli Apartheid, What is Missing, and What Are the Implications*, EJIL: TALK! (7 July 2021), <https://www.ejiltalk.org/uncomfortable-truths-how-hrw-errs-in-its-definition-of-israeli-apartheid-what-is-missing-and-what-are-the-implications/>.

¹¹ A peremptory norm of international law from which no derogation is allowed.

¹² Zilbershats, *supra* note 6, at 915, 928 (citing Karen Parker, *Jus Cogens: Compelling the Law of Human Rights*, 12 HASTINGS INT’L & COMP L REV. 411, 413–414 (1989); A. DE HOOGH, OBLIGATIONS ERGA OMNES AND INTERNATIONAL CRIMES 53–56, 91 (1996); M. RAGAZZI, THE CONCEPT OF INTERNATIONAL OBLIGATIONS ERGA OMNES 182, 190 (1997)).

¹³ *Id.* at 916.

¹⁴ *Id.*

juris—which states that emerging states presumptively inherit their pre-independence administrative borders—the State of Israel was formed on the remaining 22 percent of the land.¹⁵

Soon thereafter, five Arab armies attacked Israel in violation of the prohibition against wars of aggression. At the end of the conflict, Egypt occupied the Gaza Strip and Jordan the West Bank, including East Jerusalem. Both countries unlawfully occupied the respective territories until 1967 when Israel regained control over them in a defensive war. Yet, due to the ongoing military conflict between Israel and the populations residing in Gaza and the West Bank and Israel’s desire to come to a peaceful resolution, Israel has chosen to govern the population of the Gaza Strip and the West Bank under the Law of Armed Conflict (LOAC). As such, the legal status of the West Bank and Gaza can at best be described as disputed, and the Arabs (Palestinians) in those territories are not citizens of Israel. Whereas, the Arabs residing in Israel have Israeli citizenship and are treated equally to Israel’s Jewish citizens.

Proponents of the apartheid claim argue that Israel’s treatment of “Palestinians” constitutes apartheid. They define “Palestinians” to include Arabs who are Israeli citizens; Arabs residing in the Gaza Strip, the West Bank, including East Jerusalem; and Arabs who left or were expelled as a result of conflicts in 1948 and 1967 from what is now the State of Israel, the West Bank, and the Gaza Strip. If Israel were committing apartheid against all of them as one group on the basis of their race, Israel would treat all of them in the same manner. This is not the case. Israel treats all of its citizens, including the Arab citizens, equally before the law. Israel treats the Arab population of the West Bank and the Gaza Strip as the non-citizens they are, many of whom are engaged in an ongoing military conflict with Israel and are, thus, undisputedly governed by the LOAC. Israel also treats the Arabs who left or were expelled as a result of conflicts in 1948 and 1967 as non-citizens. Israel’s treatment of these three groups is not based on their race; it is based on their legal status as either citizens, non-citizen foreigners, or enemy combatants.

Four questions must be asked to reveal the absurdity of accusing Israel of practicing apartheid. **First**, how does Israel treat its Arab citizens? **Second**, if the West Bank and Gaza Strip are “occupied Palestinian territories,” as Palestinian Arabs and organizations like HRW repeatedly claim, is Israel required to treat the Palestinians residing in the West Bank and Gaza like its own Arab citizens? **Third**, are Israeli policies toward Palestinians in the West Bank and Gaza racially-motivated or lawful security measures? **Fourth**, do Israeli policies and actions demonstrate an intent to dominate Palestinians?

How does Israel treat its Arab Citizens?

The Israeli Declaration of Independence emphasizes that Israel “will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex,” and “will guarantee freedom of religion, conscience, language, education, and culture.”¹⁶ This is not just on

¹⁵ Rabbi Dr. Moshe Goldfeder, *A Postwar Debriefing*, MISHPACHA (Jun. 1, 2021), <https://mishpacha.com/a-postwar-debriefing/>.

¹⁶ DECLARATION OF ESTABLISHMENT OF STATE OF ISRAEL (May 14, 1948), <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/declaration%20of%20establishment%20of%20state%20of%20israel.aspx>.

paper. Israel, in practice, treats all its citizens, regardless of race, equally under the law.¹⁷ 64.7% of Arab citizens of Israel freely voted in the 2020 election.¹⁸ 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.¹⁹ In fact, the United Arab List, an Arab political party, is currently a part of the governing coalition in Israel.²⁰ In addition, Arabs have served in cabinet positions,²¹ and several Arabs have sat on Israel's Supreme Court.²² Israeli law protects the rights of all citizens.²³ Arab citizens of Israel have full and equal voting rights.²⁴ In fact, Israel is one of the few places in the Middle East where Arab women have the right to vote. The facts on the ground 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.

While both Israeli Arabs and Palestinian Arabs (those who reside in the West Bank and Gaza) are racially identical, Israel treats its Arab citizens like all other Israeli citizens (i.e., equal before the law), whereas it treats Palestinian Arabs—i.e., non-Israeli Arabs—differently because they are foreigners who are also engaged in a military conflict with Israel. It has nothing to do with “race.” All countries in the world discriminate between their own citizens and foreigners, let alone foreigners engaged in an active military conflict. If doing that constitutes apartheid, then all States are guilty, which is an idiotic position. Because Israel treats its Arab citizens the way it treats its Jewish citizens, this should be sufficient to establish that Israeli policies for Palestinians in the West Bank and Gaza are not racially-motivated.

¹⁷ *As It Welcomes in 2021, Israel's Population Rises to 9,291,000*, TIMES OF ISRAEL (Dec. 31, 2020), <https://www.timesofisrael.com/as-it-welcomes-in-2021-israels-population-numbers-9291000/>.

¹⁸ Oliver Holmes, *Israel's Arab Parties Make Historic Gains as Election Support Surges*, GUARDIAN (Mar. 4, 2020, 9:50 AM), <https://www.theguardian.com/world/2020/mar/04/israel-arab-parties-make-historic-gains-election-support-surges>.

¹⁹ *Id.*

²⁰ Ari Rabinovitch, *Explainer: Who's Who in Israel's New Patchwork Coalition Government*, REUTERS (June 14, 2021), <https://www.reuters.com/world/middle-east/whos-who-israels-new-patchwork-coalition-government-2021-06-13/>.

²¹ Mansour Abbas is the current deputy minister for Arab affairs. *Who's Who in Israel's New Patchwork Coalition Government*, ALJAZEERA (Jun. 14, 2021), <https://www.aljazeera.com/news/2021/6/14/whos-who-in-israels-new-patchwork-coalition-government>. Raleb Majadele was Israel's “first Arab minister.” Gideon Alon, *Cabinet Okays Appointment of Majadele as First Arab Minister*, HAARETZ (28. Jan. 2007), <https://www.haaretz.com/1.4955414>. Several other Arab-Israeli citizens served in senior positions before Majadele's appointment. *See Nawaf Massalha*, ISR. MINISTRY OF FOREIGN AFFS. (Aug. 15, 2000), <https://mfa.gov.il/MFA/MFA-Archive/2000/Pages/Nawaf%20Massalha.aspx>; *see also Saleh Tarif*, ISR. MINISTRY OF FOREIGN AFFS. (Jan. 29, 2002), <https://mfa.gov.il/MFA/MFA-Archive/2002/Pages/Saleh%20Tarif.aspx>.

²² George Kara, a Christian Arab, currently sits on the Supreme Court of Israel. *Kara, George*, VERSA, <https://versa.cardozo.yu.edu/justices/kara-george> (last visited Jun. 16, 2021). Abdel Zuabi and Salim Jubran were the first Arab-Israelis to serve as Supreme Court justices. *Supreme Court Justice Abdel Rahmman Zuabi Dies*, CTR. FOR ISR. EDUC. (Sept. 14, 2014), <https://israeled.org/supreme-court-justice-abdel-rahman-zuabi-dies/>.

²³ *What to Know About the Arab Citizens of Israel*, COUNCIL ON FOREIGN RELATIONS (Jun. 14, 2021), <https://www.cfr.org/background/what-know-about-arab-citizens-israel>; *Religious Freedom in Israel: A Fundamental Guarantee*, ISR. PROJECT – ISR. 60, https://www.mfa.gov.il/MFA_Graphics/MFA%20Gallery/Israel60/ch6.pdf (last visited Jun. 10, 2021).

²⁴ Shuli Dichter, *Promoting Civil Society between Arab and Jewish Israelis: An NGO's Perspective*, WILSON CENTER (Jun. 21, 2002), <https://www.wilsoncenter.org/event/promoting-civil-society-between-arab-and-jewish-israelis-ngos-perspective>.

If the West Bank and Gaza Strip are “occupied Palestinian territories,” is Israel required to treat Palestinians like its Arab citizens?

On the one hand, HRW and others claim that the West Bank and the Gaza Strip are “occupied Palestinian territories” (oPt) and the Hague and the Geneva Conventions *should* govern Israeli actions *vis-à-vis* Palestinians residing in those territories. On the other hand, they claim that Israeli security measures—which are undisputedly permitted under those Conventions—in the so-called “occupied Palestinian territories” constitute apartheid. Both claims are mutually exclusive as one negates the other. An action cannot be legal and illegal at the same time. Since Palestinians repeatedly claim that Israel is “occupying” Palestinian territory, they are conceding that the LOAC applies, thereby justifying the legality of the very Israeli measures they repeatedly cite as evidence of apartheid. Israeli measures such as security fence, check points, Gaza blockade, travel restrictions, military tribunals, etc. in the West Bank and the Gaza Strip are permitted under the LOAC and cannot constitute apartheid at the same time.

In order to set the stage for a peaceful resolution, in 1967, Israel chose to apply the principles set forth in the Fourth Geneva Convention instead of domestic Israeli law to govern the territory regained in the Six-Day War. Accordingly, Israel does not rule the West Bank and Gaza Strip under domestic Israeli law, and the Palestinians do not have Israeli citizenship, thereby making them foreigners.

Even if one were to analyze Israeli actions under the Apartheid Convention—a treaty that does not apply to this situation—the only question is whether Israeli policies toward Palestinians in the West Bank and Gaza are motivated by their *race*. The Israeli Supreme Court has correctly laid out the state of international law on unlawful discrimination: “Not every distinction between persons, under all circumstances, necessarily constitutes improper discrimination, and not every improper discrimination is apartheid.”²⁵

The phrase “racial discrimination” is not defined in the Apartheid Convention. HRW and their allies argue that its interpretation should be broadened, based on the International Convention on All Forms of Racial Discrimination (ICERD),²⁶ a widely embraced international treaty which prohibits distinctions based on “race, colour, descent, or national or ethnic origin.”²⁷ But this fact ultimately disproves and weakens HRW’s argument, rather than strengthening it because, under the ICERD, “distinctions, exclusions, restrictions or preferences . . . between citizens and non-citizens” of a State *do not constitute prohibited racial discrimination*.²⁸

²⁵ Zilbershats, *supra* note 6, at 922–23 (citing HCJ 2150/07, *Ali Hussein Mahmoud Abu Safiyeh, Beit Sira Village Council Head v. Minister of Defence* ¶ 6 (2008), <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Abu%20Safiyeh%20v.%20Minister%20of%20Defence.pdf>).

²⁶ HUMAN RTS. WATCH, A THRESHOLD CROSSED: ISRAELI AUTHORITIES AND THE CRIMES OF APARTHEID AND PERSECUTION 6 (2021).

²⁷ International Convention on the Elimination of All Forms of Racial Discrimination art. 1(3), 21 Dec. 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) (emphasis added) [hereinafter ICERD].

²⁸ ICERD, *supra* note 27, at art. 1(2). *See also*, Drew Mahalic & Joan Gambee Mahalic, *The Limitation Provisions of the International Convention on the Elimination of All Forms of Racial Discrimination*, 9 HUMAN RIGHTS Q. 74, 75 (1987) (citing CERD, 7th Sess., 135th mtg. at 32, U.N. Doc. CERD/C/SR.135 (1973)).

ICERD recognizes the legitimacy of certain kinds of distinctions, such as national origin, when those distinctions are not racially-motivated but are instead legitimate national distinctions that have an “objective and reasonable justification.”²⁹ On the core issue of discrimination, the Committee for the Elimination of Racial Discrimination (CERD)’s General Recommendation XXX observes that differential treatment will only “constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim.”³⁰

As Professor Patrick Thornberry, former member of CERD, summarized: “The term ‘non-discrimination’ does not signify the necessity of uniform treatment when there are significant differences in situation.”³¹ Accordingly, no State is required to treat non-citizens as it treats its own citizens. At the most fundamental level of legal understanding, a “legal right” can only be violated if a “legal right” exists. For example, a U.S. citizen has the right to enter the United States. This right does not exist for a person from, let’s say, the United Kingdom, irrespective of that person’s race. The United States can discriminate against that person and deny him entry into its territory and will not violate any “legal right” of the foreigner because none exists. Here, not only are Palestinians not citizens of Israel and do not enjoy rights under Israeli law, Israeli policies toward them are legitimate security measures allowed under the LOAC. Therefore, Israel’s measures to deal with them cannot constitute unlawful discrimination, let alone apartheid.

Are Israeli Policies vis-à-vis Palestinians racially-motivated or lawful security measures?

Palestinian groups from both Gaza and the West Bank carry out repeated attacks against Israel. These include indiscriminate rocket attacks, suicide bombings, car bombs, incendiary balloons, shootings, knife attacks, etc. A situation of armed conflict exists between Palestinians and Israel and, accordingly, the disputed territories are governed by the LOAC. While almost every Palestinian attack in the categories mentioned above violates the LOAC, every Israeli security measure alleged to be an apartheid policy is allowed under the LOAC. Not only is Israel *allowed* to take these security measures in the face of such attacks, *it is obligated* to take appropriate measures for the security of its territory and its citizens. Palestinian attacks amply demonstrate that Israeli policies are based on real security needs, irrespective of any alleged racial consideration.

²⁹ CERD, 75th Sess. at ¶ 8, U.N. Doc. CERD/C/GC/32 (2009).

³⁰ CERD, *General Recommendation XXX on Discrimination against Non-Citizens*, ¶ 4, (Oct. 1, 2002), <https://tbinternet.ohchr.org/layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCERD%2fGEC%2f7502&Lang=en>; *See Sefic v. Denmark*, CERD, 66th Sess., at ¶ 7.2, U.N. Doc. CERD/C/66/D/32/2003 (Mar. 10, 2005).

³¹ PATRICK THORNBERRY, *THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: A COMMENTARY* 112 (2016). The UN Human Right Committee has likewise observed, “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.” U.N. Hum. Rts. Comm. (HRC), *CCPR General Comment No. 18: Non-discrimination*, (Nov. 10, 1989), <https://www.refworld.org/docid/453883fa8.html>. This principle also appears in the European Court of Human Rights’ judgment in *Thlimmenos v Greece*. *Thlimmenos v. Greece*, 31 Eur. Ct. H. R. 15, ¶ 44 (2001). In *C. v. Belgium*, the European Court of Human Rights justified difference in treatment between EU Citizens and others in deportation cases. *C. v. Belgium*, Eur. Ct. H.R. at ¶ 38 (1996), <http://hudoc.echr.coe.int/fre?i=001-57992>. (“[T]he Court considers that such preferential treatment is based on an objective and reasonable justification, given that the member States of the European Union form a special legal order, which has, in addition, established its own citizenship.”).

For example, Israel's security fence and the Gaza blockade, which the HRW labels as measures based on apartheid, have nothing to do with racial divisions, but instead constitute standard international security protocols.³² Shortly after condemning Israel's actions in constructing a security fence, the United Nations itself constructed a perimeter fence around its own headquarters.³³ If the United Nations, a non-sovereign entity, may take security measures to protect its offices, certainly a sovereign State may not only take, but is required to take, security measures to protect itself from terrorist attacks of foreigners. Israel's fence successfully makes terrorism more difficult, reducing suicide bombings by 90 percent.³⁴

Likewise, the Gaza blockade remains a legitimate security measure as long as it has a "military objective."³⁵ In September 2011, the United Nations Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident determined that the Gaza Naval Blockade was lawful.³⁶ The blockade must allow relief supplies through, but those supplies are lawfully subject to discretionary search at any time by Israel.³⁷ Moreover, Israel does provide such supplies over land,³⁸ such that the measures in place fully meet the criteria of the LOAC.

Although Israeli travel restrictions in the disputed territories are also claimed to constitute apartheid policies, according to the commentary on the Fourth Geneva Convention, the "prohibition on any change in place of residence without permission, prohibition of access to certain areas, [and] restrictions of movement" are all permissible security measures.³⁹ With respect to the HRW claim that Palestinians' entry into undisputed Israeli territory constitutes apartheid, that is nonsense. States retain the sovereign right to decide who can enter and remain in their territory.⁴⁰

In addition, military tribunals and administrative detentions are also lawful under the Geneva Conventions⁴¹ and are based on legitimate security reasons, not racial animus. Surely acts that receive the full sanction of the LOAC cannot constitute illegitimate discrimination, let alone apartheid.

Do Israeli policies demonstrate and intent to dominate Palestinians?

³² Geneva Convention Relative to the Protection of Civilian Persons in Time of War, arts. 23, 27, 35, 48, 49, 78, Aug. 12, 1949, 6 U.S.T. 3516, 75 UNT.S. 287 [hereinafter Geneva Convention IV]; Ben Thein, *Is Israel's Security Barrier Unique*, MIDDLE EAST Q., FALL 2004, at 25, 25.

³³ *UN to Upgrade Security at New York Headquarters*, UN NEWS (May 6, 2004), <https://news.un.org/en/story/2004/05/102642-un-upgrade-security-new-york-headquarters>.

³⁴ Dion Nissenbaum, *Death Toll of Israeli Civilians Killed by Palestinians Hit a Low in 2006*, McCLATCHY (Jun. 14, 2007), <https://www.mcclatchydc.com/latest-news/article24460666.html>.

³⁵ JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOLUME I: RULES, ICRC 188–89 (2009).

³⁶ U.N. Secretary-General, *Report on the 31 May 2010 Flotilla Incident* 4 (Sept. 2011), <https://www.un.org/unispal/document/auto-insert-205969/> [hereinafter Flotilla Report].

³⁷ Geneva Convention IV, *supra* note 32, arts. 23, 59.

³⁸ Flotilla Report, *supra* note 36 at 5.

³⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, comment. Of 1958 on art. 27, 12 Aug. 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 (emphasis added).

⁴⁰ CERD, 22d Sess., 488th mtg. at 85 ¶ 3, U.N. Doc. CERD/C/SR.488 (1980); CERD, 28th Sess., 643d mtg. at 194 ¶ 15, U.N. Doc. CERD/C/SR.643 (1983).

⁴¹ Geneva Convention relative to the Treatment of Prisoners of War, arts. 82, 84, 75 U.N.T.S. 135, entered into force Oct. 21, 1950 [hereinafter Geneva Convention III]; Geneva Convention IV, *supra* note 32, arts. 42, 78.

In addition to equal rights provided to Israel's Arab citizens, with respect to Palestinians in the West Bank and the Gaza Strip, Israel's continuous attempts to pursue peace demonstrate that Israel has no intention to dominate, despite the Palestinian leaders' rejection of those peace attempts. Israel has again and again offered virtually everything the Palestinians have asked for, only to be repeatedly rebuffed. In 1978, when the Camp David Agreement brought peace between Israel and Egypt, Israel proposed Palestinian autonomy during an interim period, leading to an eventual possibility of full sovereignty for a future Palestinian state.⁴² Egypt urged the Palestinian Authority (PA) to join the peace process, but the PA refused.⁴³ In the 1995 Oslo Accords, Israel recognized another possible two-state plan.⁴⁴ Under the Oslo Accords, the PA and Israel agreed on a framework for dividing authority and jurisdiction.⁴⁵ The PA's turning around and rejecting its own agreement does not negate Israel's pursuits for peace.⁴⁶

During the two-week-long Camp David conference in July 2000, Israel proposed a plan that provided the vast majority of what the PA had ever demanded, and the PA refused to even consider it.⁴⁷ Israeli Prime Minister Ehud Barak proposed the dismantling of most settlements in the West Bank, the establishment of a Palestinian state including 92% of the West Bank and all the Gaza Strip, a land bridge between the two regions, a Palestinian capital in East Jerusalem, and Palestinian sovereignty over Jerusalem's Old City.⁴⁸ Barak noted regarding Yasser Arafat, the PA leader, that "[h]e did not negotiate in good faith; indeed, he did not negotiate at all. He just kept saying no."⁴⁹ Even after the PA's rejection of the Camp David Accords, Barak reiterated his "readiness to renew peace negotiations."⁵⁰

In 2005, Israel unilaterally withdrew from the Gaza Strip.⁵¹ Israel ordered all 8,500 Jewish settlers in the territory to withdraw and destroyed all Israeli settlements in the territory.⁵² Disengagement cost 11 billion shekels, approximately 3 billion in U.S. dollars.⁵³ Rather than use that as an opportunity to begin to build a Palestinian state, Palestinians converted the Gaza Strip into a military base from which to attack Israel.

⁴² Office of the Historian, *Camp David Accords and the Arab-Israeli Peace Process*, STATE DEPARTMENT, <https://history.state.gov/milestones/1977-1980/camp-david> (last visited Jul. 2, 2021).

⁴³ *Id.*

⁴⁴ See The Israeli-Palestinian Interim Agreement, Isr.-Palestinian Liberation Org., art. IX(5), Sep. 28, 1995, 36 I.L.M. 551 (1997) [hereinafter Interim Agreement], <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT.htm>.

⁴⁵ Eugene Kontorovich, *The Apartheid Accusation Against Israel is Baseless – and Agenda-Driven*, EJIL: TALK! (Jul. 8, 2021), <https://www.ejiltalk.org/the-apartheid-accusation-against-israel-lacks-is-baseless-and-agenda-driven/>.

⁴⁶ *Id.*

⁴⁷ Benny Morris, *Arafat Didn't Negotiate – He Just Kept Saying No*, GUARDIAN (May 22, 2002), <https://www.theguardian.com/world/2002/may/23/israel3>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Luke Baker, *Shadow of Israel's Pullout from Gaza Hangs Heavy 10 Years On*, REUTERS (Aug. 10, 2015), <https://www.reuters.com/article/us-israel-gaza-disengagement-insight/shadow-of-israels-pullout-from-gaza-hangs-heavy-10-years-on-idUSKCN0QF1QQ20150810>.

⁵² *Id.*

⁵³ *Id.*

In 2008, then Israeli Prime Minister Ehud Olmert entered into peace talks, offering to give the Palestinians 93.7 percent of the West Bank, plus the Gaza Strip.⁵⁴ Abbas rejected the offer because he wanted a “contiguous Palestinian state with Jerusalem as its capital.”⁵⁵ That proposed agreement would also have provided to the new Palestinian state additional territory adjacent to the Gaza Strip.⁵⁶ The deal would have included a link between the Gaza Strip and the West Bank.⁵⁷ It also would have divided Jerusalem into Israeli and Palestinian-controlled cities and relinquished Israeli sovereignty over the Old City.⁵⁸ Olmert described his offer to give up the Old City as “the hardest day of his life.”⁵⁹ Nonetheless, the Palestinians once again rejected the offer.

In 2020, Israel pushed again for peace.⁶⁰ The PA rejected the plan.⁶¹ This offer was only the latest in the long history of Israel’s push for peace. For the entirety of its existence, Israel has constantly sought to pursue peace with its Arab neighbors. Israeli leaders have anguished and struggled to offer concessions that would bring an end to hostilities, only to be rebuffed again and again. Israel’s actions subvert any claims that it is motivated by racial animus and wants to dominate the Palestinians on the basis of race.⁶²

Conclusion

The reality is that the international community, from the United Nations and its several bodies like the General Assembly to the Human Rights Council to non-governmental organizations like the HRW have two different legal standards—one for Israel and one for the rest of the world. They bend, misinterpret, misapply, and misquote legal rules to the detriment of the State of Israel. At virtually every opportunity, they seek to subvert Israel’s legitimacy. No other State gets such a treatment before these bodies. To call Israel a racist regime is antisemitic nonsense. The Durban Conference was created to fight one thing—racial discrimination—yet it has turned its attention to only one nation, Israel, one of the least racially biased states in the community of nations. This is called antisemitism!

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Lazar Berman, “*Abbas Never Said No*” to 2008 Peace Deal, Says Former PM Olmert, TIMES OF ISRAEL (Jun. 25, 2021), <https://www.timesofisrael.com/abbas-never-said-no-to-2008-peace-deal-says-former-pm-olmert/>.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Jeffrey Heller, *Long Line of Israeli-Palestinian Peace Bids Precede Trump Push*, REUTERS (Jan. 27, 2020), <https://www.reuters.com/article/us-israel-palestinians-plan-history/long-line-of-israeli-palestinian-peace-bids-precede-trump-push-idUSKBN1ZQ0RQ>.

⁶¹ *Id.*

⁶² See Kontorovich, *supra* note 45.