



19 April 2023

VIA OVERNIGHT DELIVERY SERVICE

HE António Guterres
Secretary-General of the United Nations
United Nations Headquarters
1st Avenue and 46th Street
New York, New York 10017

RE: The Tweet by Rapporteur Francesca Albanese Regarding Israel's Right to Act in Self-Defence Against Attacks by Palestinian Militants Targeting the State of Israel and Its Citizens

Your Excellency:

By way of re-introduction, the European Centre for Law and Justice (ECLJ) is an international not-for-profit organisation located in Strasbourg, France, dedicated to protecting human rights and religious freedom in Europe and around the world. The ECLJ holds Special Consultative Status as an NGO before the United Nations. The ECLJ has submitted numerous written and oral statements to organs of the United Nations, including the UN Security Council, the UN General Assembly, and the UN Human Rights Council, to name but three, concerning Palestinian-Israeli issues. We are compelled to do so once again in light of the recent tweet by Special Rapporteur, Francesca Albanese.

On 8 April 2023, Special Rapporteur, Francesca Albanese, tweeted the following:

The loss of life in the oPt and Israel is devastating, especially at a time that should be of peace for all, Christians, Jews, Muslims. Israel has a right to defend itself, *but can't claim it when it comes to the people it oppresses/whose lands it colonizes* (emphasis added).

What an astonishing statement by a supposedly unbiased rapporteur! It shows anti-Israel bias in so many ways. First, although it is admittedly *de rigueur* to describe the so-called "West Bank" and the Gaza Strip as "oPt" (occupied Palestinian territory), the conclusion that those areas actually belong to a notional "State" of Palestine is far from settled. Ownership of such territory is more accurately described as "disputed," since Israel has also laid claim to such territory. Further, the so-called "State of Palestine" has never exercised one iota of *sovereignty* over any territory in the former Mandate for Palestine, territory which it now claims as its own. Hence, its claim to statehood within certain designated territory is premature. Possession and control of territory are prerequisites to statehood. The concept of oPt puts the

cart before the horse: “Palestine” must first possess (or have possessed) territory before it can claim its territory is occupied.

Second, the claim of oppression is misplaced. While opponents of Israel’s so-called “occupation” claim that the terms of the Fourth Geneva Convention of 1949 apply to the West Bank and Gaza Strip, they forget that the Geneva Conventions apply in *wartime*, thereby making the Law of Armed Conflict (LOAC) the operative law. Israel faces an ongoing threat from terrorist groups in the West Bank and the Gaza Strip and, as a sovereign nation, has the right and duty to defend its people and territory from such attacks. Among the means employed by Israel to defend itself is the deployment of its security forces on the ground in West Bank territory. Israeli forces carry out arrest operations, patrols, searches, surveillance, identity checks, and other activities in the area as well as operating checkpoints and roadblocks where necessary. The sole purpose of these operations is security, and all such activities are permitted under the LOAC. Moreover, Ms Albanese fails to consider two facts: (1) that “occupation” presumes the existence of another sovereign whose territory is occupied and (2) that Israel has repeatedly stated that its application of the rules set forth in the Fourth Convention was for convenience and not because it was obligated to do so because of the lack of a foreign sovereign to whom such territory belongs. No Palestinian Arab political entity has ever possessed a single square centimetre of the territory it now claims to be “occupied,” and the last foreign sovereign, Turkey (the successor state to the Ottomans), renounced its sovereignty in the 1920s. Regardless of the views one holds regarding the two foregoing facts, Israel’s right to self-defence is inherent and undeniable.

Third, Israel is not a colonising power. That was determined 100 years ago by the international community of nations when they included the verbatim language of the Balfour Declaration in documents meant to restore peace following the First World War. The international community recognised that, even during the Jewish diaspora, there were Jews who remained and lived in the Holy Land. That is why the Mandate for Palestine, an internationally binding legal document, recognised the historic connexion of the Jewish people to Palestine and spoke of *reconstituting* the Jewish national home in Palestine, not establishing it. It was the Jews who had been wrongfully displaced, and the international community was recognising the Jewish people’s right of self-determination to return to their ancient homeland.

Fourth, all UN Member States—in fact, all States—have a legal right to defend themselves from attacks from wherever they originate and by whomever they are executed. To claim otherwise with respect to Israel, as Ms Albanese did, is both astonishing and abhorrent, especially in light of the many times that Israel has sought to negotiate with Palestinian leaders to resolve their differences (to include creating a Palestinian state), only to be rebuffed at every turn. It is the Palestinians who refuse to negotiate in good faith to resolve the issues separating both sides. By her remarks, Ms Albanese only encourages further Palestinian intransigence and justifies indiscriminate attacks against Israel. Her tweet also indicates that she has not seriously considered Israel’s counterclaims and the legal bases for them.

Finally, the issue of “occupation” at this stage is wholly abstract and theoretical. Israel cannot “occupy” territory—as the term “occupation” is understood in the Geneva and Hague Conventions—to which it has a colourable claim of ownership. Until the issue of ownership is ultimately resolved via negotiations between the claimants (as both sides have agreed to do in various bilateral agreements), no one—including, *inter alia*, the UN, the ICC, the ICJ, and Ms Albanese—can know with any degree of certainty what territory will one day make up a state

of Palestine. Until that occurs, claims of occupation are premature, misplaced, misleading, and outright dishonest.

Because Ms Albanese has openly sided with the Palestinians and concluded that the sovereign State of Israel may not defend itself and its people against Palestinian terrorist attacks, she has encouraged further violence and forfeited any claim to impartiality on her part. Her anti-Israel bias is on full display. Accordingly, she must be replaced forthwith.

Respectfully submitted,



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