



7 October 2024

H.E. James Larsen
Permanent Representative of Australia
to the United Nations
150 East 42 Street, Level 33
New York, NY 10017

Re: Vote on UN General Assembly Resolution A/ES-10/L.31/Rev.1

Your Excellency:

By way of introduction, the European Centre for Law and Justice (ECLJ) is a non-governmental organisation located in Strasbourg, France, dedicated to protecting human rights and religious freedom in Europe and around the world. The ECLJ also holds Special Consultative status with the United Nations Economic and Social Council.¹

The ECLJ is deeply disappointed by Australia's decision to abstain from voting against the United Nations General Assembly (UNGA) Resolution A/ES-10/L.31/Rev.1, which "demands" that Israel end its "unlawful presence in the Occupied Palestinian Territory . . . no later than 12 months."² The Resolution further calls upon the international community to "ensure full implementation of the advisory opinion" of the International Court of Justice (ICJ), which indicated that Israel's continued presence in the Gaza Strip, the West Bank (Judea and Samaria), and East Jerusalem (all making up the so-called "Occupied Palestinian Territory") is unlawful.

The statement by Australia's representative during the debate shows that your government clearly recognised the serious flaws in the Resolution and yet refrained from casting a "No" vote. Specifically, recognising the need for a two-state solution and abstaining from voting, your representative expressed "great disappointment" in the Resolution.³ However, abstentions show neutrality, at best, and support, at worst. Abstaining from rejecting a one-sided resolution will not support your intended desire for a two-state solution. It will only embolden groups like Hamas in their attacks against Israel. This is the international effect of your government's vote, and it is disappointing for several reasons.

¹ Consultative Status for the European Centre for Law and Justice, U.N. DEP'T OF ECON. & SOC. AFFS: NGO BRANCH, <http://esango.un.org/civilsociety/> (follow "Advanced Search" hyperlink; then search organization's name for "European Centre for Law and Justice").

² <https://documents.un.org/doc/undoc/ltd/n24/266/48/pdf/n2426648.pdf>.

³ Explanation of Vote by Australia (18 Sept. 2024), https://unny.mission.gov.au/unny/240918_UNGA_EOV.html.

As you know, neither UNGA resolutions nor ICJ advisory opinions are legally binding. However, the Resolution uses terminology which portrays the ICJ advisory opinion and the Resolution as if both were legally binding and created legal obligations not only for Israel but for the international community. Thus, even though lacking any legally binding effect, the Resolution's practical effect is to demonise Israel and garner political support for the Palestinian Authority (PA) and Hamas at the expense of Israel's security and legal rights.

In fact, Hamas's attack of 7 October 2023 was designed to garner the kind of support your country has just given. By killing, mutilating, and raping innocent Israeli civilians, Hamas's plan was to invite a strong military response from Israel, put innocent Palestinian civilians in harm's way, get them killed, and then have the international community condemn Israel, or at least remain silent as to Hamas's atrocities.

It is sad that the UNGA Resolution does just that, it does not even mention Hamas, the Palestinian Islamic Jihad, or the vile and brutal attack of 7 October. It does not mention the indiscriminate murders of innocent civilians (including babies), brutal rapes, mutilations, and desecration of bodies by Hamas—all constituting war crimes, crimes against humanity, and genocide. Yet, your country failed to deny support to such a one-sided resolution.

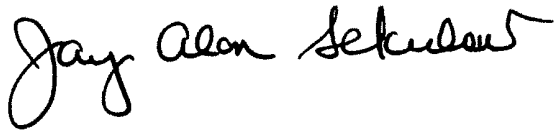
Additionally, the ICJ advisory opinion the UNGA Resolution endorses and the Resolution itself are based on false premises and false presumptions. All the conclusions therein are based on an incorrect presumption that the Gaza Strip, the West Bank, and East Jerusalem constitute a "State of Palestine." Yet, no evidence or legal principles are ever provided to support the claim that such a state exists or that those areas form such a state. Based on this flawed presumption, the ICJ and the UNGA conclude that Israel is unlawfully occupying those areas.

Further, the ICJ advisory opinion, as well as the UNGA resolution, are devoid of any legal analysis regarding the reasons of Israeli presence in the so-called "occupied" territories. Israel has a valid legal claim to those areas based on the League of Nations Mandate for Palestine. The often-cited 1947 UNGA Resolution 181(II) (that suggested a two-state solution) as a basis for the "Palestinian state" was never implemented because the Arabs rejected it. And, thus, no Palestinian state was ever created. As such, Israel is not illegally occupying those areas.

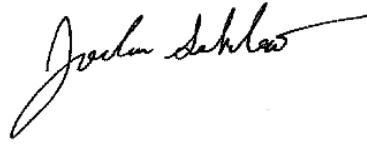
Moreover, the ICJ advisory opinion and the UNGA resolution are also devoid of the threat that Israel faces to its existence from the Gaza Strip and the West Bank. Thousands of rockets indiscriminately fired toward Israel every year, suicide bombings, shootings, mortar fire, and the recent 7 October attack, all show there exists an undeniable military necessity for the security of Israel. As such, under the Law of Armed Conflict also known as International Humanitarian Law, Israel's presence as well as its actions *vis-à-vis* the Gaza Strip and the West Bank are lawful.

We are grateful that your government recognises the serious flaws of the Resolution, but we respectfully urge your government to take corrective action by withdrawing your abstention, and subsequently notifying the secretariat of your intent to vote “no” and fully rejecting the Resolution as a one-sided political tool designed to isolate and demonise Israel.

Respectfully submitted,



Jay Alan Sekulow
Chief Counsel



Jordan Sekulow
Senior Counsel



CeCe Heil
Senior Counsel



Shaheryar Gill
Senior Counsel