



**Submission of the
European Centre for Law and Justice
on the Question Whether Israel’s Conduct
in so-called “Palestinian Territory” Breaches
the Prohibition against Apartheid**

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Does Israel Practice Apartheid?

The United Nations Human Rights Council’s Special Rapporteur, Mr. Michael Lynk, will present a report to the Human Rights Council at its March 2022 session on “whether Israel’s conduct of its occupation of the Palestinian territory is in breach of the prohibition against apartheid in international law”.¹

To inform his report, Mr. Lynk has invited contributions from States, local and regional governments, national human rights institutions, human rights defenders, civil society organisations, academics, UN agencies, and other stakeholders. The European Centre for Law and Justice (ECLJ) submits this report in accordance with that call. The ECLJ has held Special Consultative Status with the United Nations ECOSOC since 2007 and has contributed to several UN bodies, including the Human Rights Council, on many issues via both written and oral submissions.

To begin, the ECLJ condemns the very need of asking the question whether Israel practices apartheid. In a world where Israel is singled out every day (especially at the U.N.) for false accusations and detrimental treatment, it is still shocking but not surprising to see that one nation in the entire world is being asked to defend itself against a baseless accusation and engage in a conversation that legitimises a horribly false narrative. It is especially so when this conversation will take place before a “Human Rights Council” composed of some of the world’s worst human rights abusers. While we do not wish to dignify the question, it is nevertheless necessary for the truth to be told.

The accusation that Israel practices apartheid is not new. Even the entire Zionist enterprise was labelled “racist” by the UN General Assembly.² Such claims have been made repeatedly³ and have been thoroughly refuted.⁴ Nonetheless, this false accusation has been revived from time to time by various organisations and individuals. Most recently, Human Rights Watch (HRW)

¹Special Rapporteur on the Situation of Human Rights in the Palestinian Territory Occupied Since 1967, Call for Submissions: Is the Israeli Conduct of Its Occupation of the Palestinian Territory in Breach of the Prohibition Against Apartheid in International Law? (17 Nov. 2021), <https://www.ohchr.org/EN/HRBodies/SP/CountriesMandates/PS/Pages/apartheid.aspx>.

²See G.A. Res. 3379 (XXX), *Elimination of all Forms of Racial Discrimination* (10 Nov. 1975), <https://unispal.un.org/UNISPAL.NSF/0/761C1063530766A7052566A2005B74D1> (declaring “that Zionism is a form of racism and racial discrimination”).

³See, e.g., John Dugard & John Reynolds, *Apartheid, International Law, and the Occupied Palestinian Territory*, 24 EUR. J. INT’L L. 867, 868–71 (2013).

⁴See, 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).

published a 217-page report that repeated the same baseless claims.⁵ Any legally sound and common-sense analysis easily exposes the error of such accusations.

What is Apartheid?

In 1973, the UN General Assembly adopted the International Convention on the Suppression and Punishment of the Crime of Apartheid (Apartheid Convention), which defined the crime of apartheid to “include similar policies and practices of racial segregation and discrimination as practiced in southern Africa, [and to] apply to . . . 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*”.⁶

In 1998, the Rome Statute adopted a similar definition. It defined apartheid as “*inhumane acts . . . committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime*”.⁷ This definition omits any reference to South Africa and adds a number of other practices to the list of inhumane acts that the Apartheid Convention did not cover. This definition is accepted by the States Parties to the Statute. No matter which definition is used, however, apartheid is an aggravated form of segregation and discrimination based 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 actually imposes and intends to maintain a racist regime.⁸ 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*⁹ norm under international law.¹⁰ 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”.¹¹ It does not apply to persons in territories beyond a State’s sovereignty.¹²

Brief Historical Background

For the purposes of the apartheid claim, a brief historical background is necessary to understand (1) what people groups reside in Israel, the West Bank, and the Gaza Strip; (2) the legal status of each territory and the populations therein; and (3) the law governing each territory and its population. After World War I, the League of Nations established the Mandate for Palestine 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 remaining 22 percent of the Mandatory land, the newly-

⁵HUM. RTS. WATCH, A THRESHOLD CROSSED: ISRAELI AUTHORITIES AND THE CRIMES OF APARTHEID AND PERSECUTION 205 (Apr. 2021) [hereinafter A THRESHOLD CROSSED].

⁶International Convention on the Suppression and Punishment of the Crime of Apartheid, arts. I, II, 30 Nov. 1973, 1015 U.N.T.S. 243 (emphasis added).

⁷Rome Statute of the International Criminal Court, art. 7(h), 17 July 1998, 2187 U.N.T.S. 90 (emphasis added).

⁸Joshua 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/>.

⁹A peremptory norm of international law from which no derogation is allowed.

¹⁰Zilbershats, *supra* note 4, at 928.

¹¹*Id.* at 916.

¹²*Id.*

created United Nations adopted a non-binding resolution calling for the partition of that land into a Jewish state, an Arab state, and designated territory around Jerusalem to be under international control.¹³ The Arab side rejected the partition plan, and the plan never materialised. In May 1948, Israel declared independence. The State of Israel has been internationally recognised within the 1949 armistice lines; the remainder of the territory of the Mandate for Palestine is disputed to this day.

The day after Israel declared its independence, five Arab armies attacked the nascent state. 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 gained control over them in a defensive war. Since then, despite having its own claims to these territories, Israel has refrained from annexing them and instead has chosen to administer them under the Law of Armed Conflict (LOAC), in the professed hope that the future status of the territories can be determined through good faith, bilateral negotiations. As such, the legal status of the West Bank and the Gaza Strip can best be described as disputed.

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 were displaced as a result of conflicts in 1948 and 1967 from what is now the State of Israel, the West Bank, and the Gaza Strip. Since apartheid is, by definition, underpinned by *racism*, if Israel were indeed perpetrating apartheid against Palestinians, one would expect its "racist" policies to apply to all those claimed to be Palestinians. It is abundantly clear that this is not the case. Israel treats all of its citizens, including its Arab citizens, equally before the law. Israel relates differently to the Arab population of the West Bank and the Gaza Strip because they are not citizens of the State. They are residents of hostile territories governed by the international laws of armed conflict. Israel also relates to the Arabs who were displaced as a result of conflicts in 1948 and 1967 as non-citizens. Israel's differential treatment of these three groups is not based on their race; it is based on their legal status as either citizens, residents of territories under military administration, or non-citizen foreigners.

Four questions must be asked in relation to the apartheid claim: **First**, how does Israel treat its Arab citizens? **Second**, is Israel required to treat the Palestinians residing in the West Bank and the Gaza Strip like its own Arab citizens? **Third**, are Israeli policies toward Palestinians in the West Bank and the Gaza Strip 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 emphasises 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".¹⁴ This is not just on paper. Israel, in practice, treats all of its citizens, regardless of race, equally under the law. 64.7% of Arab citizens of Israel participated in the 2020 general election.¹⁵ As a result, Arab

¹³G.A. Res. 181 (II), *Future Government of Palestine*, Parts II, III (29 Nov. 1947), <https://unispal.un.org/dpa/dpr/unispal.nsf/0/7f0af2bd897689b785256c330061d253>.

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

¹⁵Oliver Holmes, *Israel's Arab Parties Make Historic Gains as Election Support Surges*, GUARDIAN (4 Mar. 2020, 9:50 AM), <https://www.theguardian.com/world/2020/mar/04/israel-arab-parties-make-historic-gains-election-support-surges>.

politicians obtained 15 out of 120 seats in the Knesset, making them the third most powerful bloc in the national legislature.¹⁶ In fact, the United Arab List, an Arab political party, is currently a member of the governing coalition in Israel.¹⁷ In addition, Arabs have served in cabinet positions,¹⁸ and several Arabs have sat on Israel's Supreme Court.¹⁹ Israeli law protects the rights of all citizens.²⁰ Arab citizens of Israel have full and equal voting rights.²¹ 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.

Israeli Arabs have the same ethnic/racial identity as Arabs who reside in the West Bank and the Gaza Strip. The difference in the way Israel treats these two populations has nothing to do with "race". All countries in the world discriminate between their own citizens and foreigners, let alone foreigners from hostile countries or entities. If so doing constitutes apartheid, then *all* States are guilty of apartheid.

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—used in the so-called "occupied Palestinian territories" constitute apartheid. These claims are mutually exclusive as one negates the other. An action cannot be legal and illegal at the same time. If Israel is "occupying" Palestinian territory, then the applicable law is the LOAC. The fact is that the Israeli security measures in the territories repeatedly cited as evidence of apartheid, such as the security barrier, check points, the Gaza blockade, travel restrictions, military tribunals, etc., are all legitimate security measures permitted to any "Occupying Power" under the LOAC.

In order to set the stage for a peaceful resolution, in 1967, Israel chose not to apply domestic Israeli law to the territory regained in the Six-Day War (except for East Jerusalem), but rather to hold the territories "in limbo" and administer them under the 1907 Hague Regulations and

¹⁶*Id.*

¹⁷Ari Rabinovitch, *Explainer: Who's Who in Israel's New Patchwork Coalition Government*, REUTERS (14 June 2021), <https://www.reuters.com/world/middle-east/whos-who-israels-new-patchwork-coalition-government-2021-06-13/>.

¹⁸Raleb 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. (15 Aug. 2000), <https://mfa.gov.il/MFA/MFA-Archive/2000/Pages/Nawaf%20Massalha.aspx>; see also Saleh Tarif, ISR. MINISTRY OF FOREIGN AFFS. (29 Jan. 2002), <https://mfa.gov.il/MFA/MFA-Archive/2002/Pages/Saleh%20Tarif.aspx>.

¹⁹George 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 27 Dec. 2021). Abdel Zuabi and Salim Jubran were the first Arab-Israelis to serve as Supreme Court justices. *Supreme Court Justice Abdel Rahman Zuabi Dies*, CTR. FOR ISR. EDUC. (14 Sept. 2014), <https://israeled.org/supreme-court-justice-abdel-rahman-zuabi-dies/>.

²⁰See *What to Know About the Arab Citizens of Israel*, COUNCIL ON FOREIGN RELATIONS (14 Jun. 2021), <https://www.cfr.org/background/what-know-about-arab-citizens-israel> (criticising Israel's government, but nonetheless admitting that "Arab citizens of Israel have had equal rights since Israel's creation"); *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 27 Dec. 2021).

²¹See Shuli Dichter, *Promoting Civil Society between Arab and Jewish Israelis: An NGO's Perspective*, WILSON CTR. (21 Jun. 2002), <https://www.wilsoncenter.org/event/promoting-civil-society-between-arab-and-jewish-israelis-ngos-perspective> ("Arabs in Israel have equal voting rights; in fact, it is one of the few places in the Middle East where Arab women may vote").

the humanitarian provisions set forth in the Fourth Geneva Convention of 1949. Accordingly, Palestinians residing in those territories do not have Israeli citizenship. As such, unlike Palestinian Arabs living in Israel, their status is that of foreigners.

Even if one were to analyse Israeli actions in light of the Apartheid Convention—a treaty that does not apply to this situation—the only question is whether Israeli policies toward Palestinians in the territories are motivated by *racism*. 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”.²²

The phrase “racial discrimination” is not defined in the Apartheid Convention. HRW and its allies argue that the term’s interpretation should be broadened, based on the International Convention on All Forms of Racial Discrimination (ICERD),²³ a widely embraced international treaty which prohibits discrimination based on “race, colour, or national or ethnic origin”.²⁴ Yet, doing so would actually contradict and weaken HRW’s fundamental argument, because, under the ICERD, “distinctions, exclusions, restrictions or preferences . . . between citizens and non-citizens” of a State *do not constitute prohibited racial discrimination*.²⁵

ICERD recognises 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”.²⁶ On the core issue of discrimination, General Recommendation XXX of the Committee for the Elimination of Racial Discrimination (CERD) 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”.²⁷

As the CERD summarised in General Recommendation XXXII: “The term ‘non-discrimination’ does not signify the necessity of uniform treatment when there are significant differences in situation”.²⁸ No State is required to treat non-citizens as it treats its own citizens.

²²HCI 2150/07, *Ali Hussein Mahmoud Abu Safiyeh, Beit Sira Village Council Head v. Minister of Defence* ¶ 6 (2008) (Isr.), <https://versa.cardozo.yu.edu/sites/default/files/upload/opinions/Abu%20Safiyeh%20v.%20Minister%20of%20Defense.pdf>.

²³A THRESHOLD CROSSED, *supra* note 5, at 6.

²⁴International 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 4 Jan. 1969) [hereinafter ICERD] (emphasis added).

²⁵*Id.* 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 HUM. RTS. Q. 74, 75 (1987) (noting “that the Article does not require equality between citizens and non-citizens”).

²⁶CERD, 75th Sess. at ¶ 8, U.N. Doc. CERD/C/GC/32 (2009).

²⁷CERD, *General Recommendation XXX on Discrimination against Non-Citizens*, 65th Sess., ¶ 4, (1 Oct. 2002), <https://www.refworld.org/docid/45139e084.html>; See CERD, *Sefic v. Denmark*, 66th Sess., ¶ 7.2, U.N. Doc. CERD/C/66/D/32/2003 (10 Mar. 2005).

²⁸CERD, *General Recommendation XXXII on The Meaning and Scope of Special Measures in the International Convention on the Elimination of All Forms of Racial Discrimination*, 75th Sess., ¶ 8, (24 Sep. 2009), <https://www.refworld.org/docid/4adc30382.html>; See PATRICK THORNBERRY, THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION: A COMMENTARY 112 (2016). The UN Human Rights 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* (10 Nov. 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 (2000). 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),

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 or her entry into its territory and will not violate any “legal right” of the foreigner because no such right exists. Here, Palestinians are not citizens of Israel and, hence, do not enjoy rights under Israeli law. Further, Israeli policies toward them are legitimate security measures allowed under the LOAC. Accordingly, such measures do not constitute unlawful discrimination, let alone apartheid.

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

The security threats facing Israel are numerous and grave. Palestinian groups from both the Gaza Strip and the West Bank carry out repeated attacks against Israeli civilians. These include indiscriminate rocket attacks, suicide bombings, car bombs, incendiary balloons, shootings, knife attacks, etc. A situation of unresolved armed conflict exists between Palestinian armed groups and Israel, and, accordingly, the disputed territories are governed by the LOAC. Not only is Israel *allowed* to take security measures in the face of such attacks, *it is obligated* to take appropriate measures for the security of its citizens. This has nothing to do with racism.

For example, Israel’s security fence and the Gaza blockade, labeled by HRW as apartheid measures, have nothing to do with racial divisions, but instead constitute standard international security protocols.²⁹ Shortly after condemning Israel’s actions in constructing a security fence, the United Nations itself constructed a perimeter fence around its own headquarters.³⁰ 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 by foreigners. Israel’s security barrier has been an operational success, reducing terrorist suicide bombings by 90 percent.³¹

Likewise, the Gaza blockade remains a legitimate security measure as long as it has a “military objective”.³² 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.³³ The blockade must allow relief supplies through, but those supplies are lawfully subject to discretionary search at any time by Israel.³⁴ Moreover, Israel does allow for provision of such supplies *over land*,³⁵ such that the measures in place fully meet the criteria of the LOAC.

<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”).

²⁹Geneva 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.

³⁰UN to Upgrade Security at New York Headquarters, UN NEWS (6 May 2004),

<https://news.un.org/en/story/2004/05/102642-un-upgrade-security-new-york-headquarters>.

³¹Dion Nissenbaum, *Death Toll of Israeli Civilians Killed by Palestinians Hit a Low in 2006*, MCCLATCHY (14 Jun. 2007), <https://www.mcclatchydc.com/latest-news/article24460666.html>.

³²JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, CUSTOMARY INTERNATIONAL HUMANITARIAN LAW, VOLUME I: RULES, ICRC 188–89 (2009).

³³U.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].

³⁴Geneva Convention IV, *supra* note 29, arts. 23, 59.

³⁵Flotilla Report, *supra* note 33, at 5.

Although Israeli travel restrictions in the disputed territories are also claimed to constitute apartheid policies, according to the ICRC 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.³⁶ The claim by HRW that limiting Palestinians’ entry into sovereign Israeli territory constitutes apartheid is ludicrous. All States retain the sovereign right to decide who can enter and remain in their territory.³⁷

Other features of Israeli military administration of the territories such as military tribunals and administrative detention are also lawful under the Geneva Conventions.³⁸ These are grounded in legitimate security considerations, not racial animus. Acts fully sanctioned under the LOAC do not constitute illegitimate discrimination, let alone apartheid.

Do Israeli policies demonstrate an intent to dominate Palestinians?

In addition to guaranteeing equal rights to Israel’s Arab citizens, Israel’s continuous attempts to pursue peace demonstrate that Israel has no intent to dominate Palestinians. 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.³⁹ Palestinian representatives refused to participate in the peace discussions.⁴⁰ In the 1995 Oslo Accords, Israel recognised another possible two-state plan.⁴¹ Under the Oslo Accords, the Palestinian Authority (PA) and Israel agreed on a framework for dividing authority and jurisdiction as steps toward an eventual peace between them.⁴²

During the two-week-long Camp David conference in July 2000, Israel proposed a plan that offered almost all of what the Palestinians had ever demanded, and the PA refused to even consider it.⁴³ 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.⁴⁴ Barak noted regarding Yasser Arafat, the PA leader, that “[h]e did not negotiate in good faith; indeed, he did not

³⁶Geneva 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).

³⁷CERD, 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).

³⁸Geneva Convention relative to the Treatment of Prisoners of War, arts. 82, 84, 75 U.N.T.S. 135 (entered into force 21 Oct. 1950) [hereinafter Geneva Convention III]; Geneva Convention IV, *supra* note 29, arts. 42, 78.

³⁹*Camp David Accords and the Arab-Israeli Peace Process*, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1977-1980/camp-david> (last visited 27 Dec. 2021).

⁴⁰*Id.*

⁴¹*See* The Israeli-Palestinian Interim Agreement, Isr.-Palestinian Liberation Org., art. IX(5), 28 Sep. 1995, 36 I.L.M. 551 (1997) [hereinafter Interim Agreement], <https://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>.

⁴²Eugene Kontorovich, *The Apartheid Accusation Against Israel is Baseless – and Agenda-Driven*, EJIL: TALK! (8 Jul. 2021), <https://www.ejiltalk.org/the-apartheid-accusation-against-israel-lacks-is-baseless-and-agenda-driven/>.

⁴³Benny Morris, *Arafat Didn’t Negotiate – He Just Kept Saying No*, GUARDIAN (22 May 2002), <https://www.theguardian.com/world/2002/may/23/israel3>.

⁴⁴*Id.*

negotiate at all. He just kept saying no”.⁴⁵ Even after the PA’s rejection of the Camp David Accords, Barak reiterated his “readiness to renew peace negotiations”.⁴⁶

In 2005, Israel unilaterally withdrew from the Gaza Strip.⁴⁷ Israel evicted all 8,500 Jewish settlers from the territory and completely withdrew its military forces.⁴⁸ Disengagement cost 11 billion shekels, approximately 3 billion in U.S. dollars.⁴⁹ Rather than use the opportunity to begin building a Palestinian state, the Palestinian terrorist organisation, Hamas, converted the Gaza Strip into a base from which to attack Israel.

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.⁵⁰ Abbas rejected the offer because he wanted a “contiguous Palestinian state with Jerusalem as its capital”.⁵¹ That proposed agreement would also have provided to the new Palestinian state additional territory adjacent to the Gaza Strip.⁵² The deal would have included a link between the Gaza Strip and the West Bank.⁵³ It also would have divided Jerusalem into Israeli and Palestinian-controlled cities and relinquished Israeli sovereignty over the Old City.⁵⁴ Olmert described his offer to give up the Old City as “the hardest day of his life”.⁵⁵ Nonetheless, the Palestinians once again rejected the offer.

In 2020, Israel pushed again for peace.⁵⁶ The PA rejected the plan outright.⁵⁷ 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 utterly destroy any claims that it is motivated by racial animus and desire to dominate the Palestinians.⁵⁸

Conclusion

The sad reality is that the international human rights community—composed of bodies ranging from the United Nations General Assembly to the UN Human Rights Council to various non-governmental organisations like the HRW—has two different legal standards—one for Israel and one for the rest of the world. Such bodies intentionally 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 receives such treatment from these bodies. To call Israel a racist regime is antisemitic nonsense. To accuse Israel of apartheid is a

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷Luke Baker, *Shadow of Israel’s Pullout from Gaza Hangs Heavy 10 Years On*, REUTERS (10 Aug. 2015), <https://www.reuters.com/article/us-israel-gaza-disengagement-insight/shadow-of-israels-pullout-from-gaza-hangs-heavy-10-years-on-idUSKCN0QF1QQ20150810>.

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹*Id.*

⁵²*Id.*

⁵³Lazar Berman, “*Abbas Never Said No*” to 2008 Peace Deal, Says Former PM Olmert, TIMES OF ISRAEL (25 Jun. 2021), <https://www.timesofisrael.com/abbas-never-said-no-to-2008-peace-deal-says-former-pm-olmert/>.

⁵⁴*Id.*

⁵⁵*Id.*

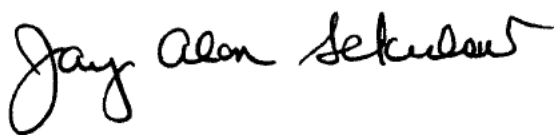
⁵⁶Jeffrey Heller, *Long Line of Israeli-Palestinian Peace Bids Precede Trump Push*, REUTERS (27 Jan. 2020), <https://www.reuters.com/article/us-israel-palestinians-plan-history/long-line-of-israeli-palestinian-peace-bids-precede-trump-push-idUSKBN1ZQ0RQ>.

⁵⁷*Id.*

⁵⁸See Kontorovich, *supra* note 42.

despicable lie. Nonetheless, claiming Israel is an apartheid State has become part and parcel of a long-term strategy to delegitimise Israel's very existence as a Jewish state. That the apartheid allegation is made by States with far worse human rights records than Israel's exposes the allegation as the despicable lie that it truly is and demonstrates that the HRC is a body whose actual interest in human rights is highly suspect.

Respectfully submitted, this 31st day of December 2021, by



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