



SUBMISSION TO THE INTERNATIONAL FACT-FINDING MISSION ON ISRAELI SETTLEMENTS IN THE OCCUPIED PALESTINIAN TERRITORY

The European Centre for Law and Justice (ECLJ) wishes to express its appreciation for the opportunity to submit relevant information with documentation to assist the Mission in carrying out its mandate. By way of introduction, the European Centre for Law and Justice ("ECLJ") is an international, Non-Governmental Organisation dedicated, *inter alia*, to the promotion and protection of human rights and to the furtherance of the rule of law in international affairs. The ECLJ has held Special Consultative Status before the United Nations/ECOSOC since 2007¹. The ECLJ is concerned that Israel is being unfairly singled out for special scrutiny, despite a significantly better human rights record than the records of many other states which continually elude the attention of the UNHRC².

Introduction

The ECLJ submits the following to the Mission. *First*, the ECLJ will review the basis under international law that permitted, and continues to permit, the establishment of Jewish settlements throughout the territory that comprised the Mandate for Palestine. *Second*, the ECLJ will show that the language of UN Security Council Resolution 242 and follow-on resolutions anticipated adjustment of the 1949–67 armistice lines to achieve defensible borders for the State of Israel. Until such adjustment is accomplished, however, one simply cannot legally, or logically, assert which territory in the West Bank and Gaza Strip "belongs" to whom. *Third*, the ECLJ will show that Arab Palestinians benefited immensely in the areas of health, education, and economic advancement during the period of Israeli administration and settlement from 1967 into the late 1980s, after which the Palestinian Authority (PA) assumed responsibility for the social well-being of Palestinians under its control. *Fourth*, the ECLJ will present evidence that a significant portion of Arab Palestinians living in east Jerusalem are supportive of Israeli rule and apprehensive of potential Palestinian rule.

¹U.N. Department of Economics and Social Affairs, NGO Branch, Consultative Status for the European Centre for Law and Justice (2007). <http://esango.un.org/civilsociety/displayAdvancedSearch.do?ngoFlag=>

²Since 2006, for example, the UNHRC has adopted no fewer than *forty-three* resolutions alleging human rights violations against Israel. Such anti-Israel bias has even been noted and condemned by two UN Secretaries-General. For example, shortly after the UNHRC's creation, then-UN Secretary-General Kofi Annan complained: "Since the beginning of [the UNHRC's] work, they have focused almost entirely on Israel, and there are other crisis situations, like Sudan, where they have not been able to say a word." Benny Avni, *Annan Criticizes Human Rights Council's Resolutions on Israel, Darfur Crisis*, N.Y. SUN (29 Nov. 2006), <http://www.nysun.com/foreign/annan-criticizes-human-rights-councils/44260/> (emphasis added). More recently, UN Secretary General Ban Ki-moon also criticized the UNHRC for singling out Israel: "The Secretary-General is disappointed at the [UNHRC's] decision to single out only one specific regional item, given the range and scope of allegations of human rights violations throughout the world." U.N. Secretary-General, Secretary-General Urges Human Rights Council to Take Responsibilities Seriously, Stresses Importance of Considering All Violations Equally, U.N. Doc. SG/SM/11053 (20 June 2007).

Legal Justification for Israeli Settlements under International Law

*West Bank Settlements*³

The issue of Israeli settlements in the West Bank is hardly new—in fact, it is over forty years old. Further, the underlying premise of the UNHRC mission whereby Israeli settlements are in “occupied Palestinian territory” is both factually inaccurate and legally unsound. The main argument repeatedly raised against Israeli “settlements” is that they violate Article 49(6) of the Fourth Geneva Convention of 1949, which states: “The occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies”⁴. The cited provision presupposes an “occupation”. However, Israel claims that the Convention is not applicable, since Israel has legitimate claims to such territory and, thus, is not and cannot be an “occupier”. The Israeli view is that the territories in question are not “occupied”, but rather “disputed”—a position Israel has continuously asserted since 1967. This position remains unaffected by the Israeli government’s decision, *as a matter of legal policy*, to use the humanitarian provisions of the Fourth Geneva Convention as its guide to governing the West Bank following its capture in the Six-Day War. The following brief historical analysis buttresses the Israeli position further.

First, one must note that Article 6 of the British Mandate permitted Jewish settlement throughout the territory of the Mandate for Palestine⁵, territory that encompasses the current State of Israel, a slice of the Golan Heights (ceded by Great Britain to the French Mandate of Syria in 1923)⁶, the West Bank, and the Gaza Strip. As such, Jewish citizens of the territory of the Palestine Mandate have at least as much claim to such territories as anyone else. Moreover, nothing has extinguished the terms of the Mandate for Palestine; *its terms are still valid under international law*⁷. Hence, to label Israel as “occupying” *Palestinian* (by which is meant *Arab*) territory is questionable at best.

Historically, when Great Britain informed the UN in 1947 that it was going to withdraw its forces from Palestine in 1948, the UN decided upon a plan to partition Palestine into an Arab

³Since Israel has completely withdrawn from the Gaza Strip, the issue of settlements there has become moot.

⁴Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 49, para. 6, 12 Aug. 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. It is also questionable whether Article 49 applies when a government takes no action to move its population, but the population moves itself based on individual choices. The words “deport” and “transfer” imply affirmative governmental action, not mere acquiescence.

⁵*Mandate for Palestine*, League of Nations Doc. C.529.M.314.1922.VI (1922) (providing for the facilitation of Jewish settlement of the territory covered by the Mandate).

⁶MARTIN GILBERT, *THE ROUTLEDGE ATLAS OF THE ARAB-ISRAELI CONFLICT* 8 (9th ed. 2008).

⁷This principle is confirmed by the ICJ Advisory Opinion on Namibia of 21 June 1971:

When the League of Nations was dissolved, the *raison d'être* and original object of these obligations remained. Since their fulfillment did not depend on the existence of the League, they could not be brought to an end merely because the supervisory organ had ceased to exist. . . . *The International Court of Justice has consistently recognized that the Mandate survived the demise of the League* [of Nations].

Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), ICJ, Advisory Opinion, paras 42–86 (emphasis added).

Further, Professor Eugene Rostow concurred in the ICJ’s opinion regarding the “sacredness” of trusts like the Mandate for Palestine: “‘A trust’—as in Article 80 of the UN Charter—does not end because the trustee dies. . . . [T]he Jewish right of settlement in the whole of western Palestine—the area west of the Jordan—survived the British withdrawal in 1948. . . .” EUGENE V. ROSTOW, *The Future of Palestine*, adapted from a paper delivered at the American Leadership Conference on Israel and the Middle East on 10 Oct. 1993, in Arlington, Virginia. As such, the British Mandate left intact the right of Jews to settle throughout Palestine.

state, a Jewish state, and an area under international control⁸. Jewish Palestinians accepted the plan, whereas Arab Palestinians rejected it. Following the British withdrawal in 1948, the newly proclaimed Jewish State of Israel was immediately attacked by its Arab neighbours. The war raged into 1949, when a series of armistice agreements was signed⁹.

The resulting 1949 armistice lines which delimit the so-called West Bank and Gaza Strip (often referred to as the pre-'67 lines) have never been regarded as international boundaries. In fact, it was at *Arab* insistence that the 1949 lines be designated as mere armistice lines, *not international boundaries*, because the Arab world did not want to confer any form of international legitimacy on the newly proclaimed Jewish State. From 1949 until 1967, the West Bank and Gaza Strip remained under belligerent occupation by Jordanian and Egyptian armed forces, respectively. No *Arab Palestinian* state has ever existed in these areas although Israel has agreed in principle to the creation of a future Arab Palestinian state in parts of the West Bank and Gaza Strip¹⁰ pursuant to direct negotiations between Israel and Palestinian Arab leaders.

Resolution 242 and its Progeny Foresee Adjustment of the 1949-67 Armistice Lines

As a result of the 1967 Arab-Israeli war, Egyptian forces withdrew from the Gaza Strip, Jordanian forces withdrew from the West Bank, and Israel acquired control of both territories¹¹. Following the 1967 war, the UN Security Council adopted Resolution 242¹². Note, *first*, that the language in that Resolution requires that Israel withdraw “from territories”¹³ it captured—not from “the” territories or “all the” territories it captured. We know from historical record that these were *intentional omissions from the language of the Resolution*. In this regard, Lord Caradon, Permanent Representative of the United Kingdom to the United Nations from 1964–1970 and chief drafter of Resolution 242, has noted the following:

Much play has been made of the fact that we didn't say “the” territories or “all the” territories. *But that was deliberate*. I myself knew very well the 1967 boundaries and if we had put in the “the” or “all the” that could only have

⁸G.A. Res. 181(II), U.N. Doc. A/RES/181 (29 Nov. 1947).

⁹General Armistice Agreement art. 5, para. 1, Isr.-Syria, 20 July 1949, 42 U.N.T.S. 327 (noting that the armistice line does not enshrine an “ultimate territorial arrangement[.]”); General Armistice Agreement art. 6, para. 9, Isr.-Jordan, 3 Apr. 1949, 42 U.N.T.S. 303 (noting that the armistice line is “without prejudice to future territorial settlements or boundary lines”); General Armistice Agreement art. 4, para. 2, Isr.-Leb., 23 March 1949, 42 U.N.T.S. 287 (noting that the “basic purpose” of the armistice line is to “delineate the line beyond which the armed forces of the respective Parties shall not move”); General Armistice Agreement art. 5, para. 2, Isr.-Egypt, 24 Feb. 1949, 42 U.N.T.S. 251 (noting that the armistice line is “not to be construed . . . as a political or territorial boundary” and that the line is “delineated without prejudice” to the “ultimate settlement of the Palestine question”).

¹⁰Note that all Israeli armed forces and settlers were removed from the Gaza Strip in 2005. *Settlers Protest at Gaza Pullout*, BBC (15 Aug. 2005), http://news.bbc.co.uk/2/hi/middle_east/4150028.stm. Hence, the issue of Israeli settlements in the Gaza Strip is now closed.

¹¹Israel also obtained control over the Sinai Peninsula and the Golan Heights. The Sinai Peninsula is not relevant to this discussion; the Golan Heights will be discussed *infra*.

¹²S.C. Res. 242, U.N. Doc. S/RES/242 (22 Nov. 1967).

¹³*Id.* at 1(i).

meant that we wished to see the 1967 boundaries perpetuated in the form of a permanent frontier. This I was certainly not prepared to recommend¹⁴.

Note, *second*, that the Resolution requires “secure . . . boundaries”¹⁵—something that did not exist prior to 1967 as evidenced by the persistent attacks mounted against Israel from Arab-controlled territory and would not exist today if the status quo ante were reinstated.

Note, *third*, that the Resolution calls for the termination of all “states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area . . .”¹⁶—none of which has occurred since 1967 which are a *sine qua non* for any territorial withdrawal.

Following the 1973 Arab-Israeli war, the UN Security Council adopted Resolution 338, which essentially reiterates the call to implement the terms of Resolution 242¹⁷. Given pre-existing Israeli claims to the territory and given that Resolutions 242 and 338 anticipate negotiated territorial adjustments, it is clear that Israel has a valid, internationally-sanctioned claim to (at least) parts of the territories in question. Thus, it cannot be asserted that Jewish settlements in these territories are *a priori* illegal.

Golan Heights Settlements

When discussing the Golan Heights, one must begin by recognizing that historically the Golan Heights was a component part of the Mandate for Palestine, which meant, pursuant to Article 6 of the British Mandate, that Jews had the right to settle there¹⁸. Springing forward to 1967, Security Council Resolution 242 and the issue of “secure and recognized boundaries”¹⁹ apply as much to the “border” between Israel and Syria²⁰ as between Israel and a future Arab Palestinian state carved out of the West Bank. Security needs are a relevant consideration for Israel when negotiating borders with its neighbours, and the Golan Heights have unquestionable strategic importance to Israel’s security vis-à-vis Syria. Moreover, Israel also claims—*reasonably*—that it has the right to retain the Golan Heights as a lawful consequence of a defensive war.

Israel’s legal position is that the Golan Heights are an integral part of the State of Israel. As such, Israel is not—and *cannot be*—a foreign occupying power. Israel bases its position on the fact that it acquired the Golan Heights through legitimate defence against Syria’s unlawful aggression in 1967 and 1973²¹. It is well-settled that international law forbids acquiring territory through an *aggressive* war²². The issue is whether territory can be obtained as a result of *defensive* war. In effect, when a state violates international law by

¹⁴YORAM MEITAL, EGYPT’S STRUGGLE FOR PEACE: CONTINUITY AND CHANGE, 1967–1977 49 (1997) (emphasis added).

¹⁵S.C. Res. 242, *supra* note 13, at 1(ii).

¹⁶*Id.* Note also that the language does not refer at all to the Palestinians, since there was no Palestinian “state” at the time, and no Palestinian “state” currently exists.

¹⁷S.C. Res. 338, ¶ 2, U.N. Doc. S/RES/338 (22 Oct. 1973).

¹⁸League of Nations, *supra* note 5.

¹⁹S.C. Res. 242, *supra* note 13.

²⁰General Armistice Agreement art. 5, para. 1, Isr.-Syria, 20 July 1949, 42 U.N.T.S. 327 (noting that the armistice line does not enshrine an “ultimate territorial arrangement[.]”).

²¹EYFRIM INBAR, THE BEGIN-SADAT CTR. FOR STRATEGIC STUDIES, ISRAELI CONTROL OF THE GOLAN HEIGHTS: HIGH STRATEGIC AND MORAL GROUND FOR ISRAEL 23–29 (2011).

²²G.A. Res. 3314 (XXIX), U.N. Doc. A/RES/3314(XXIX), Annex (14 Dec. 1974) (“No territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful”).

engaging in aggressive war and that state loses some of its own territory as a result, there is no established requirement in international law that such territory be returned to the violating state. In fact, any such requirement would reward aggression. Israel's position is that territory may indeed be acquired through defensive war, as occurred with the Golan Heights. Consistent with that position, Israel annexed the Golan Heights in 1981²³. On the reasonable assumption that Israel's action accords with international law, there is no basis to call into question the legality of the Israeli communities established in the Golan Heights.

Conclusion Regarding Settlements

In conclusion, Israel's settlements in the West Bank, east Jerusalem, and the Golan Heights are fully consistent with Israel's rights in international law. Each area came under Israeli control as the result of defensive warfare against serial aggressors. Further, under the Palestine Mandate, Israel had internationally recognised rights in the West Bank and east Jerusalem. As such, Israel does not “occupy” the West Bank and east Jerusalem (for one cannot occupy, in the sense of the Fourth Geneva Convention, territory to which one asserts and possesses a legitimate claim of sovereignty). Israel acquired lawful control of the Golan Heights and has retained proper sovereign authority over the region. Thus, the premise of the UNHRC's resolution concerning Israeli settlements—to wit, that they exist on “occupied” territory—wrongly assumes as true what has yet be established under law in light of the facts.

Improvements in Living Standards of Palestinians under Israeli Rule

Although the following information does not deal *directly* with the impact of *individual Israeli settlements* on Arab Palestinians, the cited data clearly demonstrate the benefits to Palestinian residents of Israeli control and administration compared to the previous administrations by Jordan and Egypt. The data will show how living standards for Arab Palestinians in the West Bank and Gaza Strip improved significantly under the Israelis even as Israeli settlements were established and developed during this period. In general, we cite data prior to, or shortly after, the 1967 Israeli takeover (i.e., data reflecting the situation under Egyptian or Jordanian rule) as well as improvements measured at various points between 1967 and the late 1980s (when Israel controlled the Gaza Strip and West Bank). We also cite some data from the 1990s and onward, when the Palestinian Authority was formed and assumed control over, and responsibility for, Palestinian Arabs living in the major population centres of the Gaza Strip and West Bank, data which indicate a noticeable deterioration under PA rule.

Crude Death Rate

When one considers the crude death rate, infant mortality rate, and average life expectancy, the data show remarkable improvement once the Palestinians came under Israeli control. For example, the crude death rate in the West Bank in 1968 was 21.8 per 1,000²⁴. By 1975, it had shrunk to 14.7 per 1,000, and by 1987, it was down to 6.4 per 1,000²⁵. Similarly, the crude death rate in the Gaza Strip progressed as follows: 20.2 per 1,000 in 1968; 13.6 per 1,000 in

²³*Golan Heights*, ISR. MINISTRY FOREIGN AFF., <http://www.mfa.gov.il/MFA/Facts+About+Israel/Israel+in+Maps/Golan+Heights.htm> (last visited 27 Oct. 2012).

²⁴United Nations Conference on Trade and Development, *Population and Demographic Developments in the West Bank and Gaza Strip Until 1990*, ¶ 65. U.N. Doc. UNCTAD/ECDC/SEU/1 (28 June 1994) [hereinafter UNCTAD].

²⁵*Id.*

1975; and 5.9 per 1,000 in 1987²⁶. During the 20 years following Israel's capture of the West Bank and Gaza Strip in 1967, the crude death rate for Palestinians living in the captured territories fell approximately 71%²⁷.

Infant Mortality Rate

Similarly, the infant mortality rate shrank dramatically under Israeli rule. In 1967, the infant mortality rate in the West Bank was estimated to be 152 per 1,000 live births²⁸. By 1974, the infant mortality rate in the West Bank fell to approximately 132 per 1,000 live births²⁹. By 1985, the infant mortality rate in the West Bank had fallen to between 53.5 and 63.5 per 1,000 live births³⁰. A similar improvement happened in the Gaza Strip as well. In 1967, the infant mortality rate in the Gaza Strip was estimated to be 162 per 1,000 live births³¹. By 1974, the infant mortality rate in the Gaza Strip was approximately 132 per 1,000 live births³², and by 1985, the infant mortality rate had fallen to between 51.3 and 56.1 per 1,000 live births³³. Overall, the infant mortality rate was more than halved under Israeli rule³⁴.

Life Expectancy

With respect to life expectancy, one also notes vast improvements under Israeli rule. In 1967, the estimated life expectancy for both females and males (in both territories) was 48 years³⁵. By 1975, the life expectancy for females was 56.3 years and for males 55.5 years³⁶. In 1984, female life expectancy was 66.7 years; for males, it was 64.9 years³⁷. Over a period of 17 years under Israeli rule, life expectancy for both males and females had increased by more than 15 years.

Education and Literacy

Another area of remarkable progress under Israeli rule was in the area of education and literacy. Prior to Israeli rule, there were no Palestinian universities in the West Bank. By 1978, five Palestinian universities had been established in the West Bank³⁸. By 1993, the number of Palestinian universities in the West Bank had increased to seven³⁹. In addition, two Palestinian universities were established in the Gaza Strip during the period from 1967-1993⁴⁰. Expanding educational opportunities for women and girls in the West Bank led to the following results: the illiteracy rate in the West Bank declined from 71.4% for females aged

²⁶*Id.*

²⁷*Id.* at ¶ 186.

²⁸*Id.* at ¶ 68.

²⁹*Id.*

³⁰*Id.*

³¹*Id.*

³²*Id.*

³³*Id.* According to the Israel Ministry of Health, the infant mortality rates for the West Bank and the Gaza Strip combined were much lower: "33.6 in 1968, 30.7 in 1974, 28.5 in 1985, and 21.4 per 1,000 in 1989". *Id.* at ¶ 67.

³⁴*Id.* at ¶ 186.

³⁵*Id.* at ¶ 70.

³⁶*Id.*

³⁷*Id.*

³⁸*Palestinian Universities*. ARAB THOUGHT FORUM. <http://www.multaqa.org/access/inside.php?cat=Palestinian%20Universities> (last visited 27 Oct. 2012).

³⁹*Id.*

⁴⁰*Id.*

45–49 to only 1.7% for females aged 15–19⁴¹. A similar result occurred in the Gaza Strip, where the overall illiteracy rate declined from 67.3% prior to Israeli rule to 22.6% in 1985⁴².

National Output per Capita

From 1968 to 1987, under Israeli rule, the national output per capita (measured as trend output per capita) grew at a rate of 4.4% per year⁴³. However, once the Israelis transferred responsibility to the PA, the International Monetary Fund estimated that the national output per capita *decreased* 0.6% per year from 1994 to 2010⁴⁴. By comparison, if the national output per capita growth rate had remained the same as it had been from 1968–87, the projected gross domestic product (GDP) for the West Bank and the Gaza Strip would have been 88% higher than it actually was in 2010⁴⁵.

Employment

The rate of employment in the Palestinian territories also has been negatively affected since Israel turned over responsibility to the PA, beginning in 1993. According to the UN, under Palestinian rule from 1999 to 2004, the unemployment rate in the West Bank and the Gaza Strip increased from 11.8% to 26.7%⁴⁶. At one point during that period, the unemployment rate reached a high of 31.2%⁴⁷. In 2010, Palestinians in the West Bank faced an unemployment rate of 17%, and the youth unemployment rate was at 26%⁴⁸. The unemployment rate in the Gaza Strip for 2010 was 38%⁴⁹. Individuals under the age of 30 in the Gaza Strip have an unemployment rate of 53%⁵⁰.

A Significant Portion of Arab Palestinians in East Jerusalem Appear to Prefer Israeli Rule to Potential Palestinian Rule

The social and economic benefits enjoyed by Arab Palestinians during Israeli rule have not gone unnoticed by the Arab Palestinians themselves. A recent survey of Arab Palestinians living in east Jerusalem asked individuals about choices they would make if a peace agreement were to be reached between Israel and the Palestinians⁵¹. When asked if they “[w]ould . . . move in order to be a citizen of whichever side they preferred if that choice became a necessity as part of a peace settlement or as part of a division of the city between Palestinian and Israeli rule”, their answers were quite revealing⁵².

When [Arab residents of east Jerusalem were] asked . . . whether they would move into Palestine, most said no, but when [they were] asked whether they

⁴¹UNCTAD, *supra* note 24, ¶ 69.

⁴²*Id.*

⁴³INT’L MONETARY FUND, MACROECONOMIC AND FISCAL FRAMEWORK FOR THE WEST BANK AND GAZA: SEVENTH REVIEW OF PROGRESS 9 (2011), *available at* <http://www.imf.org/external/country/WBG/RR/2011/041311.pdf>.

⁴⁴*Id.*

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.*

⁴⁸*Id.*

⁴⁹*Id.*

⁵⁰*Id.*

⁵¹David Pollock, *What Do the Arabs of East Jerusalem Really Want?*, JERUSALEM CENTER FOR PUB. AFF. (7 Sept. 2011), <http://jcpa.org/article/what-do-the-arabs-of-east-jerusalem-really-want/>.

⁵²*Id.*

would move in order to become a citizen of Israel if their existing neighbourhood came under Palestinian rule . . . 40 percent of the Palestinians in east Jerusalem said they would probably or definitely move in order to live under Israeli rather than Palestinian rule⁵³.

This statistic reflects the fact that 44% of Palestinians living in east Jerusalem “say they are very, or at least somewhat, satisfied with their standard of living”⁵⁴. 35% of Palestinians residing in east Jerusalem stated they would prefer to become Israeli citizens⁵⁵; 30% would prefer to become citizens of a Palestinian state⁵⁶; and 35% either did not know where they would prefer to become a citizen or did not answer⁵⁷.

Hence, there appears to be a significant percentage of Arab Palestinians living in east Jerusalem who are satisfied with the conditions under Israeli control; furthermore, they would be concerned with the alternative—Palestinian rule. This concern is especially evident in the realm of freedom of speech, as “[t]hree-quarters of east Jerusalem Arabs are at least a little concerned, and more than half are more than a little concerned, that they would lose their ability to write and speak freely if they became citizens of a Palestinian state rather than remaining under Israeli control”⁵⁸.

Once again, this statistic is no surprise, when one compares the human rights record of Israel with those of neighbouring Arab countries. For instance, according to a 2011 U.S. State Department report, in Saudi Arabia, citizens “lack . . . the right and legal means to change their government”⁵⁹; in Jordan, citizens are unable “to peacefully change their government”⁶⁰; and in Syria, the regime denies its citizens the “right to peacefully change the government”⁶¹. By contrast, Israel, “a multiparty parliamentary democracy”, underwent a “*free and fair*” election in 2009⁶². The State Department condemned Egypt for “violence against religious minorities”⁶³; disapproved of Syria’s “denial of civil liberties such as freedom of speech, assembly, and association”⁶⁴; and criticised Saudi Arabia for its overarching “discrimination on the basis of gender, religion, sect, race, and ethnicity . . .”⁶⁵. Israel, on the other hand, has a government that “generally protect[s] religious freedom” and actively works towards solutions to the existing problems. Palestinian Arabs living under Israeli rule are aware of the problems and conditions in areas controlled by the PA. That explains why 75% of the Arab Palestinians in east Jerusalem are concerned about how Palestinian rule might affect their human rights, rights to which they have grown accustomed in Israel⁶⁶.

⁵³*Id.* (emphasis added).

⁵⁴*Id.*

⁵⁵*Id.*

⁵⁶*Id.*

⁵⁷*Id.*

⁵⁸*Id.*

⁵⁹*Country Reports on Human Rights Practices for 2011: Saudi Arabia*, U.S. DEP’T ST., 1 (24 May 2011), <http://www.state.gov/documents/organization/186659.pdf> [hereinafter *Saudi Arabia 2011*].

⁶⁰*Country Reports on Human Rights Practices for 2011: Jordan*, U.S. DEP’T ST., 1 (24 May 2011), <http://www.state.gov/documents/organization/186659.pdf>.

⁶¹*Country Reports on Human Rights Practices for 2011: Syria*, U.S. DEP’T ST., 1 (24 May 2011), <http://www.state.gov/documents/organization/186659.pdf> [hereinafter *Syria 2011*].

⁶²*Country Reports on Human Rights Practices for 2011: Israel and the Occupied Territories*, U.S. DEP’T ST., 1 (24 May 2011), <http://www.state.gov/documents/organization/186659.pdf>.

⁶³*Country Reports on Human Rights Practices for 2011: Egypt*, U.S. DEP’T ST., 1 (24 May 2011), <http://www.state.gov/documents/organization/186659.pdf>.

⁶⁴*Syria 2011*, *supra* note 61.

⁶⁵*Saudi Arabia 2011*, *supra* note 59.

⁶⁶*Id.*

Israeli Settlements Have Been Beneficial, and Remain Potentially Beneficial, to the Palestinian Arab Population

We urge the Mission to take the following points into consideration. *First*, Israeli settlements in the West Bank *per se* are not direct causes of hardship among the Palestinian Arab population. On the contrary, the establishment and growth of Jewish towns and villages have brought, and can continue to bring, tangible benefits to their Palestinian Arab neighbours, including employment opportunities and improved services and infrastructure. The hardships, to the extent that they exist, are the result of Israeli imposed security measures necessitated by local hostility towards the settlements and the very real security threat posed by Palestinian Arab terrorist groups to Israeli civilians.

Second, a further problem is violence and acts of vandalism perpetrated by individual residents of Israeli settlements against their Arab neighbours as well as the building of unauthorized outposts on privately owned land. Yet, it is abundantly clear that the perpetrators of such acts are a small minority among the settlement population and that the Israeli government is acting to stamp out these phenomena.

Conclusion

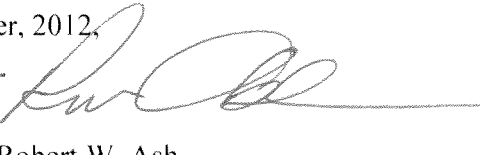
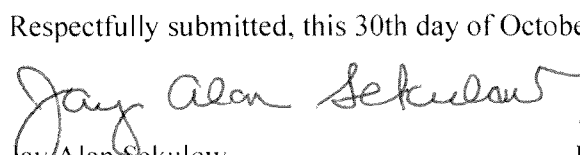
In sum, the presumption in the Mission's mandate that Israel is "occupying" territory that belongs to Arab Palestinians is simply incorrect historically, factually, and legally. The Mandate for Palestine, an internationally-adopted and -sanctioned document enshrining the right of Jews to settle throughout Palestine, constituted a sacred trust that continues to exist. Further, Security Council Resolution 242 and its progeny clearly envisaged that Israel would have to acquire additional territory to attain defensible borders. As such, Israeli settlements in Mandate territory are lawful under international law. The ultimate territorial solution must come via bilateral negotiations between Israeli and Palestinian leaders. Further, because the Golan Heights were acquired through defensive war against serial aggressor Syria, Israel's retaining such territory is compatible with both the letter and spirit of international law. As such, Israeli communities there are also lawful. Regarding other issues of concern to the Mission, the data we have provided demonstrate clearly that during periods of Israeli administration and settlement the lot of Arab Palestinians significantly improved in respect of their standard of living and overall well-being. Notably, the statistics prove that while the Palestinians benefited significantly during Israeli rule, their standard of living and overall well-being have begun to deteriorate significantly under PA rule. We have also pointed out that current hardships and inconveniences borne by the Palestinian Arab population in the West Bank should not be attributed to the settlements *per se*, but rather to the violent opposition to Israeli presence in the territories.

In light of the foregoing, we submit that the Mission should

- (a) amend the premise upon which its mandate is based, namely that Israeli settlements are unlawful, and
- (b) find that Israeli administration and settlement in areas captured by Israel in 1967 have been, and have the potential to remain, beneficial to Arab Palestinians.

Once again, the ECLJ expresses its appreciation for the opportunity to submit information to the Fact-Finding Mission.

Respectfully submitted, this 30th day of October, 2012,



Jay Alan Sekulow
Chief Counsel

Robert W. Ash
Senior Counsel