United Nations CERD/C/100/3

International Convention on the Elimination of All Forms of Racial Discrimination

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Committee on the Elimination of Racial Discrimination

Inter-State communication submitted by the State of Palestine against Israel: preliminary procedural issues and referral to the Committee*, **

Applicant:	State of Palestine
Respondent:	Israel
Date of communication:	23 April 2018 (initial submission)
Date of adoption of decision (jurisdiction):	12 December 2019 (see CERD/C/100/5)
Subject matter:	Transmission of the inter-State communication to the concerned States; referral of the matter to the Committee; question of treaty relations between the parties
Procedural issue:	Jurisdiction of the Committee
Substantive issue:	Discrimination on the ground of national or ethnic origin
Articles of the Convention:	11 (1) and (2)

1. The present document has been prepared pursuant to article 11 of the International Convention on the Elimination of All Forms of Racial Discrimination.

2. The State of Palestine (the applicant) acceded to the Convention on 2 April 2014. Israel (the respondent) ratified the Convention on 3 January 1979. The applicant claims that the respondent has violated articles 2, 3 and 5 of the Convention with regard to Palestinian citizens living in the Occupied Palestinian Territory, including East Jerusalem.

3. The present document should be read in conjunction with CERD/C/100/4 and CERD/C/100/5.

I. Communication submitted by the applicant

4. On 23 April 2018, the applicant submitted a communication against the respondent under article 11 of the Convention. The applicant claims that multiple violations of the

* The present document was adopted by the Committee at its 100th session (25 November–13 December 2019).

** The following members of the Committee participated in the consideration of the preliminary procedural issues regarding the communication: Noureddine Amir, Marc Bossuyt, Chinsung Chung, Fatimata-Binta Victoire Dah, Bakari Sidiki Diaby, Rita Izák-Ndiaye, Ko Keiko, Gun Kut, Yanduan Li, Gay McDougall, Yemhelhe Mint Mohamed Taleb, Pastor Elías Murillo Martínez, Verene Albertha Shepherd, María Teresa Verdugo Moreno and Yeung Kam John Yeung Sik Yuen.

Convention have been perpetrated by the occupying Power, Israel, since the occupation in 1967, and continue to take place.

A. Contracting party status

5. Upon ratification of the Convention, Israel made a reservation to article 22, according to which it does not consider itself bound by that article. It has made no reservations to articles 11 to 13 of the Convention.

6. As a full member of the United Nations Educational, Scientific and Cultural Organization (UNESCO), since 23 November 2011, the applicant is eligible to become a contracting party of the Convention. The Convention came into force in the State of Palestine on 2 May 2014. The applicant therefore became a contracting party to the Convention on that date.

7. The status of the applicant as a contracting party to the Convention is confirmed by the practice of several human rights treaty bodies. For instance, the Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination itself have requested the State of Palestine to submit periodic reports,[1] thereby demonstrating that they consider that it has become a contracting party to the relevant treaties.[2]

8. The applicant considers that it would be unfair to subject a State to the supervision of a treaty body while at the same time denying such State the possibility of bringing a communication against another State on the grounds that it is allegedly not a party to the Convention. In this regard, the applicant affirms that Committees play a decisive role in determining whether and to what extent an entity is bound by the treaty for the supervision of which they are responsible. Therefore, they can decide whether a State is a contracting party to the treaty they supervise, or whether a State is bound by the relevant treaty, despite a reservation made by the State in question, by considering the reservation invalid.[3] By requesting the applicant to submit a report under article 9 of the Convention, the Committee on the Elimination of Racial Discrimination has taken a clear position, considering the State of Palestine as a party to the Convention.

B. Competence of the Committee

1. *Ratione materiae*

9. The applicant indicates that the respondent does not comply with its obligations under article 2 (1) of the Convention, as it has committed and continues to commit acts of racial discrimination, including, but not limited to, violations of article 3, concerning policies of racial segregation and apartheid, and article 5, concerning policies regulating the life of Palestinians in the Occupied Palestinian Territory.

10. In addition to the violations referred to in the communication, Israel, as the occupying Power, has committed and continues to commit other violations of human rights, international humanitarian law and customary law and has failed to comply with Security Council resolutions. It must therefore provide a *restitutio in integrum* under the rules of State responsibility, including the resettlement into Israel of all its nationals whom it has illegally transferred into the Occupied Palestinian Territory since 1967.

[1] See https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=PSE&Lang=EN.

[2] The applicant also refers to article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination.

[3] See Human Rights Committee, general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant.

2. *Ratione loci*

11. In the communication, the applicant refers to violations committed in the Occupied Palestinian Territory. However, it reserves its right to submit a supplementary communication regarding the violations against ethnic Palestinians living in "Israel proper". The issue of standing does not arise, as the victims of the violations are nationals of the State of Palestine, and the State of Palestine is therefore the injured State, in accordance with article 42 of the articles on responsibility of States for internationally wrongful acts adopted by the International Law Commission.

12. The communication submitted by the applicant concerns the violations committed by Israel in the Occupied Palestinian Territory. In that context, Israel is bound by the Convention, which applies extraterritorially, as confirmed by the Committee.[4] The respondent State has an obligation to comply with the Convention with respect to the Occupied Palestinian Territory. In its concluding observations on the fourteenth to sixteenth periodic reports of Israel, the Committee expressed deep concern at the position of the State party to the effect that the Convention did not apply to all the territories under the State party's effective control, which not only included Israel proper but also the West Bank, including East Jerusalem, the Gaza Strip and the occupied Syrian Golan. The Committee reiterated that such a position was not in accordance with the letter and spirit of the Convention, and international law, as also affirmed by the International Court of Justice and by other international bodies.[5] The applicant points out that the Committee considers that the Convention applies in the Occupied Palestinian Territory vis-à-vis Israel.[6]

13. The applicant further affirms that the extraterritorial application of the Convention has also been confirmed by the International Court of Justice.

3. *Ratione temporis*

14. Given that the respondent State became a contracting party to the Convention in 1979, the Committee should deal with any violations that have taken place since then. Articles 11 to 13 of the Convention do not indicate that the use of the mechanism established in those articles is limited to Convention breaches that have occurred after ratification by the State party that decides to make use of those provisions. The Convention contains obligations *erga omnes*, and accepting that a State party could only invoke violations by another State party that were committed after the former has become a contracting party would undercut such obligations.

15. In this connection, according to the jurisprudence of the European Commission of Human Rights, Austria could file an inter-State complaint in relation to alleged violations of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) allegedly committed before its own accession to the Convention.[7]

4. *Ratione personae*

16. The Convention applies to Palestinian citizens, and the discriminatory treatment inflicted upon them is based on several of the elements referred to in article 1 of the Convention, namely, distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin.

17. The exception made in article 1 (2), according to which the Convention is not to apply to distinctions, exclusions, restrictions or preferences made by a State party to the Convention between citizens and non-citizens, does not apply to the situation in Palestine. Such a

[4] See CERD/C/ISR/CO/14-16, CERD/C/ISR/CO/13 and CERD/C/304/Add.45. See also A/46/18, para. 258.

[5] CERD/C/ISR/CO/14-16, para. 10.

[6] Ibid. See also CERD/C/ISR/CO/13, para. 32.

[7] European Commission of Human Rights, *Austria v. Italy*, Application No. 788/60, decision on admissibility, 11 January 1961 (often referred to as the Pfunders case). See also *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, I.C.J. Reports 2015*, p. 3, para. 119.

provision was never meant to function as a general exclusion of discriminatory practices that form the basis of claims based on other provisions, such as those in article 5, of the Convention. In paragraph 3 of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee states that although some of the rights contained in article 5 may be confined to citizens, States parties must guarantee equality between citizens and non-citizens in the enjoyment of rights covered in article 5 to the extent recognized under international law.[8] Article 1 (2) of the Convention was established to grant certain privileges to a State's citizens, such as voting rights.[9]

18. In addition, article 1 (2) of the Convention does not allow the establishment of a system distinguishing between citizens and non-citizens, as done by the respondent in the Occupied Palestinian Territory. This is supported by article 1 (3) of the Convention prohibiting discrimination against any particular nationality.

19. In the case of the Occupied Palestinian Territory, Palestinians did not subject themselves to the respondent's jurisdiction, but they are under its effective control. Therefore, the respondent cannot contradict the principle *venire contra factum proprium*.

C. *Compétence de la compétence*

20. Under international law, the Committee can decide all questions regarding its own competence, including issues of admissibility, such as the question of the status of the State of Palestine as a contracting party of the Convention. As it has been a party to the Convention since 2014, the State of Palestine can submit an inter-State communication.

D. Ineffectiveness of local remedies

21. Under article 11 (3) of the Convention, the Committee is to deal with an inter-State communication after it has ascertained that all available domestic remedies have been invoked and exhausted in the case, in conformity with the generally recognized principles of international law. That is not to be the rule where the application of the remedies is unreasonably prolonged. The applicant indicates that the last sentence of the provision has been interpreted by the Committee to exclude fruitless or ineffective remedies. Therefore, when a State alleges that another State is violating its international obligations, and the domestic remedies are ineffective, there is no need for the applicant to prove that individuals resorted to such domestic remedies. The violations committed by the respondent in the Occupied Palestinian Territory have either been considered legal by the Supreme Court of Israel (including while sitting as the High Court of Justice), for instance with regard to the discriminatory planning regime,[10] or constitute a general practice based on the national policy of the respondent.

22. Given that the respondent considers that the Convention does not apply in the Occupied Palestinian Territory, it cannot claim that Palestinian victims of racial discrimination are obliged to exhaust the domestic remedies.

E. Obligation to cooperate

23. In accordance with the object and purpose of the inter-State complaint procedure, the respondent has the obligation to cooperate with the Committee and an ad hoc Conciliation Commission. Becoming a party to a human rights treaty implies the obligation to abide by it, but also a bona fide obligation to cooperate with the body that supervises its implementation.[11] Hence, the respondent State is obliged to provide the Committee with access to all the necessary information regarding the alleged violations. If the respondent

[8] See also paragraph 4 of the general recommendation.

[9] General recommendation No. 30, para. 3.

[10] High Court of Justice, *Deirat-Rafaiya Village Council et al. v. Minister of Defense et al.*, HCJ 5667/11, Judgment, 9 June 2015.

[11] *Kovalev et al. v. Belarus* (CCPR/C/106/D/2120/2011), para. 9.2.

State does not cooperate with the Committee, or hinders the efforts of the Committee or an ad hoc Conciliation Commission to fulfil their mandate, this would constitute a stand-alone violation of the Convention.

24. Unlike the Statute of the International Court of Justice, the Convention does not contain any provision regarding situations of non-appearance by a State. *Argumentum a contrario*, the Convention implies a legal obligation for all States parties to participate in all the steps of the proceedings of an inter-State complaint. When a treaty provides for a mandatory dispute settlement (such as that provided for in articles 11 to 13 of the Convention), and a party does not appear before the settlement body, such party weakens its own position, hampers the other party in its pursuit of its rights and interests and hinders the work of the international tribunal. Regarding States that have consented to a dispute settlement in general, non-appearance is contrary to the object and purpose of the system. The non-appearing State remains party to the proceedings and is bound by the decision taken.[12]

25. The inter-State communication at hand being one of the first submitted to the treaty bodies, no previous related jurisprudence is available. By applying the rules of treaty interpretation established in the Vienna Convention on the Law of Treaties, it can be established that the non-appearance of a State party before the Committee could undercut the raison d'être of article 11 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination. This is confirmed by rule 70 of the Committee's rules of procedure. Article 11 (5) points in the same direction, since were a State party to decide not to send a representative, the Committee would nevertheless consider the matter and continue with the proceedings. Article 12 (1) (b) also contains an indication that the Convention would not permit one of the parties to prevent the proceedings from continuing, as even where the States parties fail to agree on the composition of the ad hoc Conciliation Commission, the Committee can proceed to appoint the members of the Commission by a two-thirds majority vote of the Committee. Article 12 (7) of the Convention further establishes that the experts of the Commission should be paid by the United Nations, even before the reimbursement by the States parties to the dispute. This confirms that the lack of appearance of one State cannot stop the proceedings.

26. The respondent State has the obligation not to take any measure that would escalate the dispute. In particular it is barred from building new settlements in the West Bank that would further violate the rights of Palestinians, as it would render any finding by the Committee redundant, or it would make the respondent's *restitutio in integrum* obligation even more difficult.

F. Contextualization

27. The applicant submits that the respondent is imposing discriminatory policies and practices aimed at the displacement and replacement of Palestinians by Israelis. Between the beginning of the occupation and 2013, some 250 settlements were established in the West Bank, including East Jerusalem.[13] Currently, some 700,000 to 800,000 Israeli settlers remain in the Occupied Palestinian Territory. In addition, Palestinians are discriminated against by the respondent as a result of the annexation wall and through, among other things, the confiscation of large areas of Palestinian land under unlawful pretexts, forced eviction, destruction of Palestinian homes and structures and the use of natural resources. These policies have been repeatedly condemned by the Security Council, the General Assembly and the Human Rights Council.

28. The differential treatment between Palestinians and Israelis established by the respondent State in the Occupied Palestinian Territory falls within the definition of racial

[12] International Tribunal of the Law of the Sea, *The Arctic Sunrise Case (Kingdom of the Netherlands v. Russian Federation)*, case No. 22, Provisional Measures, order of 22 November 2013, joint separate opinion of Judge Rüdiger Wolfrum and Judge Elsa Kelly, paras. 5–6.

[13] A/HRC/22/63, para. 28. The number of new building starts in settlements increased by 26 per cent in 2015, as compared to 2014. (Office for the Coordination of Humanitarian Affairs, *Fragmented Lives: Humanitarian Overview 2015* (2016), p. 18).

discrimination under article 1 of the Convention.[14] The violations committed by the respondent in Gaza also fall within the definition of racial discrimination, which encompasses forms of restriction and exclusion.[15]

29. As confirmed by the International Court of Justice when it stated that human rights treaties applied even in situations of armed conflict,[16] the occupation of the Occupied Palestinian Territory does not exclude the application of the human rights treaties, including the Convention.

II. Transmission of the communication

30. On 4 May 2018, the Committee transmitted the communication to Israel. In accordance with article 11 (1) of the Convention, Israel was invited to provide written explanations or statements within three months (by 7 August 2018).

III. Submission of the respondent State

31. On 30 April 2018, the respondent State submitted a reply. It states that, in view of the objection by Israel to the Palestinian accession to the Convention, the Committee lacks jurisdiction to examine the communication. In additional submissions, the respondent argues that the communication is inadmissible as the applicant is not a party to the Convention and no treaty relations exist between the applicant and respondent States.

A. Committee's jurisdiction

32. The respondent considers that the transmission of the communication on behalf of the Committee was a technical step in compliance with rule 69 of the rules of procedure, without prejudice to any determination on the admissibility or validity of the communication.

33. The respondent deposited a formal notification with the Secretary-General in objection to the purported Palestinian accession, stating that it did not consider the State of Palestine to be a party to the Convention and that the request for accession was "without effect on Israel's treaty relations under the Convention".[17] In line with established international treaty law and State practice, the Secretary-General fulfils a technical role, and it is for States to make their own determination regarding the legal effects of any instrument of accession.[18]

34. It is well-established in treaty law and State practice that treaty relations need not exist among all the parties to a multilateral treaty. Articles 20 (4) (b) and 76 (2) of the Vienna Convention on the Law of Treaties specifically contemplate such situations. One situation in which treaty relations may be excluded arises where a State party has expressed an objection to entering into treaty relations with an entity which it does not recognize (or has otherwise objected to the validity of a non-recognized entity's instrument of accession). The capacity of an objection to legally exclude the application of a treaty between an objecting State and a non-recognized entity is founded, inter alia, on the fundamental legal principle that a State is bound by a treaty only to the extent it has agreed to be bound.[19] This assertion is supported

[14] CERD/C/ISR/CO/13, paras. 32 and 35.

[15] CERD/C/ISR/CO/14-16, para. 26.

[16] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J Reports 2004*, p. 136, paras. 105 ff.; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Protection Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 353, para. 112.

[17] See depositary notification No. 293 (2014). Depositary notifications are available at https://treaties.un.org/Pages/CNs.aspx?cnTab=tab2&clang=_en.

[18] See www.un.org/unispal/document/auto-insert-205168/.

[19] See *Case of the S.S. "Lotus", (France v. Turkey)*, Judgement No. 9, 7 September 1927, *P.C.I.J. Reports 1928*, Series A; and Anthony Aust, *Modern Treaty Law and Practice* (Cambridge University Press, 2007).

by the negotiating history of the Vienna Convention on the Law of Treaties, the extensive use of such objections in State practice, and the recognition of their legal effect by the International Law Commission. Article 76 (2) of the Vienna Convention on the Law of Treaties contemplates circumstances in which a treaty has not entered into force between certain of the parties and was included in reference to the obligations of the depositary in the absence of treaty relations precisely "for reasons connected, for example, with the problem of recognition".[20] The application of a treaty between an objecting State and the non-recognized entity can be legally excluded by referring to the extensive use of such objections in State practice.[21]

35. The respondent State's objection to the purported Palestinian accession to the Convention, and the respondent's stipulation that no treaty relations exist between Israel and the Palestinian entity, follow standard and accepted law and practice, and exclude the application of the treaty between the respondent and applicants.

36. The correspondence between the Permanent Representative of Israel to the United Nations and the Office of Legal Affairs of the United Nations confirms the deposit and circulation of the Israeli communication in which the respondent objected to the Palestinian instrument of accession to the Convention, taking note that the intended legal effect of that communication was to exclude the application of all provisions of the Convention between the two entities. It confirms that the receipt and circulation by the Secretary-General in his capacity as depositary of an instrument, notification or communication relating to the Convention does not constitute a determination as to the existence of bilateral treaty relations under the Convention between the State or entity that is the author of that instrument, notification or communication, and other States or entities concerned.[22] The official communication of the non-recognition of the Palestinian accession to the Convention and the absence of treaty relations between Israel and Palestine excludes the application of all the provisions of the Convention, including article 11.

37. The mechanism set out in articles 11 to 13 of the Convention presents the means by which one "State party" to the treaty may present to another "State party" allegations regarding the latter's non-compliance with the Convention. Taking into account the wording and procedures referred to, including recourse to negotiation and conciliation, as well as references to an "amicable solution of the dispute" and to "parties to the dispute", these provisions cannot be implemented in the absence of recognition or established treaty relations between the two "States parties".

38. The procedure provided for in article 11 is expressly characterized as a procedure for resolving disputes between States parties.[23]

39. The applicant, by calling the communication an "inter-State complaint", and referring to the applicant and the respondent, concedes that recourse to article 11 of the Convention is predicated upon the existence of treaty relations between the two States concerned.

[20] *Official Records of the United Nations Conference on the Law of Treaties, First Session* (United Nations sales publication, E.68.V.7), p. 485.

[21] See, for example: official communication submitted by Bahrain regarding the International Convention on the Elimination of All Forms of Racial Discrimination (depositary notification No. 102 (1990)); official communication submitted by Canada regarding the United Nations Convention on Contracts for the International Sale of Goods (depositary notification No. 363 (2018)); official communication submitted by Algeria regarding the Vienna Convention on the Law of Treaties (depositary notification No. 251 (1988)).

[22] Letter dated 13 July 2018 from the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel to the Permanent Representative of Israel to the United Nations in New York.

[23] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Protection Measures, Order of 15 October 2008, I.C.J. Reports 2008*, p. 353; and *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates), Provisional Measures, Order of 23 July 2018, I.C.J. Reports 2018*, p. 406.

40. The absence of treaty relations between Israel and the Palestinian entity is legally indistinguishable in its effect from a reservation to article 11, inasmuch as both would exclude the applicability of the article 11 in relations between Israel and the Palestinian entity.

41. To allow article 11 to operate in a manifestly politicized manner would compel a State party to apply the provisions of the Convention with respect to an entity that it does not recognize and in relation to which it does not regard itself as having treaty relations or obligations. Such a course of action would be problematic as the article 11 mechanism has never been initiated before and its application in such controversial circumstances and in disregard of the inadmissibility of the communication would serve only to weaken the legitimacy of the mechanism and of the Convention as a whole.

B. Admissibility

42. The respondent submits that as the communication is inadmissible, it must be concluded that the inter-State complaint mechanism cannot be applied in this case.

C. Alternative mechanisms to address Palestinian allegations

43. The respondent indicates that it is ready to engage in good faith in direct dialogue with the Palestinian Authority on the issues raised in the Palestinian communication in the context of existing bilateral mechanisms.

44. Such allegations are subject to judicial review and numerous domestic remedies are available. Without prejudice to the inadmissibility of the communication, or to its position regarding the substance of the case, the respondent submits that it rejects out of hand the baseless and sweeping Palestinian claim regarding the ineffectiveness of local remedies.[24]

45. The respondent State reports regularly and extensively to the Committee. It is due to appear again and is willing to directly address the allegations raised in the communication on that occasion.

IV. Applicant's observations on the respondent's submissions

46. In its observations, dated 30 August 2018, on the submissions of the respondent State, the applicant considers that the respondent is attempting to avoid the debate on the substance of the allegations on purely formal grounds. This approach runs against the Committee's position on the extraterritorial application of the Convention.[25]

47. Regarding the respondent's readiness to engage in dialogue, bilaterally or when it presents its periodic report, the applicant indicates that the former's refusal to accept the extraterritorial application of the Convention confirms the inadequacy of relying on its reporting obligations under the Convention. The respondent has never fulfilled its reporting obligations with regard to the Occupied Palestinian Territory. Moreover, it has never shown any willingness to discuss the systematic discrimination against Palestinians in the Occupied Palestinian Territory, as doing so would imply dismantling the Israeli settlements therein.

[24] See, for example: High Court of Justice, *Abu Safiyeh et al. v. Minister of Defense et al*., HCJ 2150/07, Judgment, 29 December 2009; *El-Arah et al. v. Central Commander of the Israeli Army and another*, HCJ 2775/11; Supreme Court, *Anonymous v. State of Israel*, CHR 8823/07, Decision, 11 February 2010; and *Adalah Legal Centre for Arab Minority Rights in Israel et al. v. Israel Defence Forces Central Commander*, HCJ 3799/02, Judgment, 6 October 2005.

[25] See CERD/C/SR.1250, 1251 and 1272. See also, on the extraterritorial applicability of human rights treaties, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 106.

A. Transmittal of the communication to the respondent

48. The applicant considers that by transmitting the communication to the respondent, the Committee decided that it had competence to review the communication, and that treaty relations existed between the State of Palestine and Israel. This is confirmed by rule 69 of the Committee's rules of procedure, in which the Committee indicates that when a State party brings a communication under article 11 (1) of the Convention, the Committee "shall examine" the matter in a private meeting, and "shall then" transmit it to the State party concerned. The applicant considers that the words "shall examine" confirm that the Committee has already conducted an assessment of the communication, concluding that the Convention was applicable between the relevant States.

49. The transmittal of the communication to the respondent indicates that the Committee has already determined that the applicant can bring a communication against the respondent.

B. Applicability of the Convention

50. The applicant indicates that States have no right to unilaterally exclude bilateral treaty relations in multilateral treaty systems. The respondent's argument that, under customary international law, for all multilateral treaties every contracting party may unilaterally exclude treaty relations with any other contracting party is incorrect, as it is not supported by State practice and *opinio juris*. The State practice referred to by the respondent is scattered and does not meet the standards necessary for a rule of customary law to exist. For example, out of the contracting parties of the Convention, only three have objected to the accession by the State of Palestine. The approximately 40 States parties that have not recognized the State of Palestine as a State have not objected to the fact that it has become a State party. This pattern is reflected for almost all of the multilateral treaties to which the applicant has acceded. This contradicts the respondent's argument: if the respondent were correct, the vast majority, if not all, of those States that have to date not yet recognized the statehood of the State of Palestine would presumably have objected to the applicant's accession to such treaties.

51. Regarding the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention), the applicant indicates that article 12 of that treaty allows States to exclude bilateral relations between States parties to the Convention. That provision does not support the claim that a right to unilaterally exclude certain bilateral treaty relations within the context of a multilateral treaty under international customary law exists. On the contrary, the fact that States parties saw the need to include a specific provision in that Convention confirms that no such right exists under customary law. Taking into account that other entities whose statehood is debated, such as Kosovo, are not members of specialized agencies and have not even been recognized by the United Nations as observer States, such examples cannot be relied upon to prove the existence of a customary law rule on the exclusion of bilateral treaty relations.

52. Regarding the *opinio juris*, the respondent has indicated on previous occasions that objections such as the one made against the applicant's ratification of the Convention are explicitly of a political character.[26] As the respondent has denied on other occasions that such declarations constitute *opinio juris*, it cannot state that they contribute to the creation or confirmation of a rule of customary law.

53. Regarding the reference made by the respondent to the Vienna Convention on the Law of Treaties, the applicant indicates that Israel is not a contracting party thereof, and that treaty relations between them are therefore not governed by it. Article 76 (2) of that Convention exclusively deals with the position of the depositary, which, as noted by the respondent, fulfils a technical and formal role only. Thus, it is doubtful to maintain that such implicit

[26] Objection by Israel, dated 25 June 1990, to the declaration made by Bahrain purporting to limit the bilateral effect of the Convention on the Prevention and Punishment of the Crime of Genocide between Bahrain and Israel. See https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-1&chapter=4&clang=_en#21.

reference in article 76 (2) to the non-existence of certain treaty relations can have any effect on whether or not treaty relations have been established between two or more contracting parties of a given multilateral treaty. The phrase in article 76 (2) that reads "the fact that a treaty has not entered into force between certain of the parties" may be explained as a mere reference to article 20 (4) (b) of the same Convention, to which the respondent itself made reference, providing for the non-applicability of a treaty in a specific reservation-related scenario only. The interpretation of article 76 (2) by the respondent State runs counter to the idea underlying article 81 of the same Convention, opening the treaty to any member State of one of the specialized agencies of the United Nations.[27] Therefore, the correct interpretation is that article 76 (2) of the Vienna Convention on the Law of Treaties refers to article 20 (4) (b) of the same Convention regarding reservations.

C. Unilateral exclusion of bilateral treaty relations vis-à-vis another State party

54. The applicant indicates that the respondent does not refute that it has validly become a party to the Convention, since the latter bases its claims on the validity and relevance of its objection to the accession to the Convention by the applicant. The applicant reiterates that, given that it is a member of UNESCO, a United Nations specialized agency, it was eligible to become a contracting party to the Convention, and can enter into treaty relations with all other contracting parties. The applicant accepts that a duty of recognizing other States does not exist under international law. Therefore, a State party to a multilateral treaty may declare that, once an entity that it does not recognize as a State becomes a contracting party to that treaty, such joint treaty membership does not amount to recognition of the acceding State. However, the establishment of treaty relations between them remains intact.

55. The applicant submits that the Convention, as a human rights treaty, has an *erga omnes* character, and excludes the possibility of a State party to unilaterally exclude bilateral treaty relations vis-à-vis another State party. The prohibition of racial discrimination has such a character as well, as confirmed by the International Court of Justice.[28] Accordingly, the obligation of the respondent not to violate the Convention to the detriment of the Occupied Palestinian Territory population exists vis-à-vis all other contracting parties, including, but not limited to, the applicant. Bringing an inter-State communication to the Committee triggers the procedure envisioned in articles 11–13 of the Convention and enables the Committee to consider the matter, but is at the same time meant to enforce the rights of all contracting parties.

56. The applicant indicates that this approach has been followed by the European Court of Human Rights, which found that Austria could file an inter-State complaint against Italy in relation to alleged violations that occurred prior to its own accession to the European Convention on Human Rights. The Court therefore considered that, despite the lack of a treaty relationship between the two countries at the relevant time, Austria could still make a complaint against Italy.[29]

57. Furthermore, the applicant submits that the Convention prohibits objections that would render the inter-State complaint mechanism ineffective. The respondent accepts that the fate of its objection must be the same as that of a reservation made regarding the inter-State complaints procedure under articles 11 to 13 of the Convention.[30] However, taking into

[27] Becoming a contracting party of a treaty containing this formula "hinges upon the decision … being taken by the General Assembly or by the competent organ of some other organization of world-wide membership". *Yearbook of the International Law Commission, 1962*, vol. II (United Nations publication, Sales No. 62.V.5), p. 169.

[28] *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3, paras. 33–34.

[29] *Austria v. Italy*, Application No. 788/60, Decision, 11 January 1961, in particular pp. 13 ff.

[30] Israel, submission of 3 August 2018, in which it states that the absence of treaty relations between Israel and the Palestinian entity is legally indistinguishable in its effect from a reservation to article 11 inasmuch as both would exclude the applicability of the article 11 mechanism in relations between Israel and the Palestinian entity.

account article 20 (2) of the Convention, a reservation aimed at precluding the Committee and the ad hoc Conciliation Commission from turning their attention to an inter-State communication would be impermissible. The same should be applied to an objection such as the one made by the respondent, because such an objection attempts to exclude the Convention's substantive guarantees between the two States. In the same direction, the applicant refers to the reply of Israel to the objection of Bahrain to the accession by Israel to the Convention on the Prevention and Punishment of the Crime of Genocide, indicating that the objection of Bahrain is incompatible with the purpose and objectives of the Convention and "cannot in any way affect whatever obligations are binding upon Bahrain".[31]

D. Guarantees under the Convention

58. The applicant submits that the actions by the respondent, an occupying Power in the Occupied Palestinian Territory, prevent the former from effectively honouring its obligations under the Convention. Therefore, the only effective way to try to ensure that the Convention is being upheld in its territory, given that Israel has entered a reservation to article 22, is to bring an inter-State communication under article 11. At the same time, the respondent's "objection" to the accession of Palestine to the Convention is an attempt by the respondent to shield itself from being held accountable for those violations in accordance with the mechanism provided for therein. This is complemented by the fact that the respondent denies any form of extraterritorial applicability of the Convention in the Occupied Palestinian Territory. Such an attempt cannot stand if the Convention is to be understood as an instrument that provides effective and real guarantees. The European Court of Human Rights, in *Loizidou v. Turkey*, recognized that the European Convention on Human Rights was "a treaty for the collective enforcement of human rights and fundamental freedoms", and that "the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its provisions be interpreted and applied so as to make its safeguards practical and effective".[32] Likewise, the Committee should ensure that the rights contained in the International Convention on the Elimination of Racial Discrimination are effective and real, taking into account that violations of the Convention, in particular of article 3, constitute violations of *jus cogens*.

E. Principle of good faith

59. The principle of good faith referred to in Article 2 (2) of the Charter of the United Nations plays a fundamental role in the interpretation of treaty obligations. This is confirmed by the Vienna Convention on the Law of Treaties. Article 26 of that Convention stipulates that every treaty in force is binding upon the parties to it and must be performed by them in good faith. Article 31 (1) of the same Convention establishes that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. This has been confirmed by the International Court of Justice, which has stated that one of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith.[33]

60. The applicant affirms that the respondent's declaration in response to the former's accession to the Convention, according to which the applicant does not meet the criteria of statehood and thus the respondent does not recognize it, is made in bad faith, and should be disregarded. This serious affirmation is based on the respondent's actions in respect to the applicant. The real reason for the respondent not to recognize the statehood of the applicant lies in the fact that the respondent is determined to annex, either de jure or de facto, a

[31] See https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4#EndDec.

[32] *Loizidou v. Turkey (Preliminary Objections)*, Application No. 15318/89, Judgment, 23 March 1995, paras. 70 and 72.

[33] *Nuclear Tests (Australia v. France), Judgement, I.C.J. Reports 1974*, p. 253, para. 46; and *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 14, para. 145.

substantial part of the Palestinian territory and does not wish to be obstructed by recognition of Palestine as a State. The following facts confirm this affirmation: (a) in 1980 the respondent unlawfully annexed East Jerusalem, an annexation considered by the Security Council to be a violation of international law;[34] (b) the respondent has de facto annexed some 10 per cent of Palestinian land in the West Bank by the construction of a wall that incorporates some 80 per cent of Israeli settlements into Israel;[35] (c) officials of the respondent have expressed an intention to annex Area C[36] and to expand Israeli jurisdiction to include settlements beyond the wall in the West Bank, and to build new settlements there. The basic law on Israel as the nation-State of the Jewish people, adopted in 2018, indicates that "the State views the development of Jewish settlements as a national value and will act to encourage and promote its establishment and consolidation".

61. The applicant further considers that it meets the requirements of statehood, as it has been recognized by 138 States, the General Assembly and other international institutions whose membership is restricted to States. These acts of recognition and admission ensure that Palestine qualifies as a State under the constitutive doctrine of recognition. The fact that it is under belligerent occupation makes it impossible to exercise some of the attributes of statehood in the same way that countries such as Belgium and the Netherlands were unable to exercise all the attributes of statehood during the Second World War, which did not affect their status as States.

62. Finally, the applicant indicates that it will address the exhaustion of local remedies at a later stage, as provided for in article 11 (3) of the Convention, if the Committee deems it necessary. Israeli courts have never addressed the system of racial discrimination established in the Occupied Palestinian Territory. In particular, the Supreme Court of Israel has never dealt with the illegality, under international law, of the Israeli settlements in the Occupied Palestinian Territory, the establishment of which constitute the heart of the system of racial discrimination established by Israel in the territory of Palestine.

V. Additional submissions by the respondent

63. In a submission dated 23 September 2018, the respondent reiterates that no treaty relations exist between it and the applicant. The admissibility of the communication is a preliminary question to be determined by the Committee. It is necessary to distinguish between the preliminary question of the (in)admissibility of the communication, and other admissibility issues, including those that relate to efforts made by the parties to adjust the situation and those related to the exhaustion of domestic remedies. The respondent also indicates that transmittal of its reply to the applicant dated 3 August 2018 is without prejudice to the absence of treaty relations between the parties and to the question of the legal admissibility of the communication.

64. The procedural status of the other two inter-State communications submitted to the Committee (*Qatar v. Saudi Arabia* and *Qatar v. United Arab Emirates*) is fundamentally different from that of the communication at hand, in which the article 11 mechanism cannot be triggered.

65. On 23 October 2018, after reiterating its position regarding the existence of a preliminary question on inadmissibility, the respondent informed the Committee that it would submit a reply to the applicant's submission of 30 August 2018.

[34] Security Council resolution 478 (1980).

[35] The applicant refers to Yuval Yoaz, "Justice Minister: West Bank fence is Israel's future border", *Haaretz*, 1 December 2005, and High Court of Justice, *Head of the Azzun Municipal Council et al. v. Government of Israel et al*., HCJ 2733/05, Judgment, 15 June 2006.

[36] Area C is the area that lies under full Israeli security and administrative control, as set out in the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip.

VI. Referral of the matter to the Committee

66. On 7 November 2018, the applicant again referred the matter to the Committee, in accordance with article 11 (2) of the Convention. In its submission, it indicates that, since the submission of the communication, the respondent has increased and intensified the implementation of its discriminatory policies, in particular the adoption of the basic law on Israel as the nation-State of the Jewish people. The applicant also indicates that the matter has not been adjusted to the satisfaction of both parties, either through bilateral negotiations or through any other procedure open to them. The applicant reiterates its arguments regarding the effect of the transmittal of the communication, and indicates that the burden of proof regarding the exhaustion of domestic remedies lies with the respondent.

VII. Committee's decision of 14 December 2018

67. On 14 December 2018, the Committee, after acknowledging the submissions provided by the parties to date, and taking note of the referral of the matter made by the applicant under article 11 (2) of the Convention, decided: (a) to request Israel to inform the Committee as to whether it wished to supply any relevant information on issues of jurisdiction of the Committee or admissibility of the communication, including the exhaustion of all available domestic remedies; (b) to immediately transmit any reply received to all members of the Committee and to the applicant, giving it the opportunity to provide its observations thereon; (c) to give Israel the opportunity to comment on any observations that may be communicated by the applicant pursuant to (b) above, without raising any new issues; (d) to invite both States parties to appoint one representative each to take part in the proceedings before the Committee, without voting rights, while the matter is under consideration, and to inform the Chair of the Committee of that appointment by no later than 1 March 2019; (e) to examine any preliminary question at its ninety-eighth session; and (f) to invite the appointed representatives to present at that session the views of the States parties concerned, for a maximum of 45 minutes, and in rebuttal for a further period of 15 minutes.

VIII. Comments of the respondent State on the Committee's decision of 14 December 2018

68. On 14 January 2019, Israel submitted its comments to the Committee's decision of 14 December 2018. It reiterates that the communication is inadmissible and that the mechanism under article 11 of the Convention is inapplicable, because of the manifest absence of treaty relations between Israel and the Palestinian entity. The respondent further argues that it is both a matter of law and consistent with the rules of procedure of the Committee that the Committee's jurisdiction is a preliminary or threshold question that must be determined by the Committee before activating article 11. By contrast, the issue of admissibility refers to the criteria that must be satisfied, once jurisdiction has been established, in order to proceed with the analysis of the substance. Given the absence of treaty relations between Israel and the Palestinian entity under the Convention, the Committee lacks jurisdiction regarding the present communication and this issue must be settled before article 11 of the Convention is activated and questions of admissibility addressed.

69. The comments are submitted without prejudice to the respondent's position that it does not recognize the Palestinian entity as a State, and that it has no treaty relationship with it under the Convention.

70. The transmission of the communication to Israel was technical in nature and without consideration of its substance. No decision has yet been made by the Committee as to the validity of the communication.

A. Comments on the applicant's claim that the jurisdictional arguments are formalistic

71. The respondent argues that any institution wishing to maintain its legitimacy and operate independently and impartially must take the issue of jurisdiction seriously. Any institution that exceeds the bounds of the authority conferred on it, and that is willing to address substantive matters without a well-founded assessment of its competence to do so, undermines the validity of its own decisions and harms the credibility and integrity of the institution. If the Committee were to determine that it has jurisdiction despite the explicit exclusion by Israel of the application of the Convention between itself and the Palestinian entity, this would require the Committee to ignore an established principle of treaty law of widespread use, with potential implications beyond the Palestinian-Israeli context. The respondent anticipates that the issue of the legal effect of objections to treaty relations is also likely to arise with respect to the application submitted by the applicant to the International Court of Justice on 28 September 2018.[37] In the application before the Court, the applicant has overlooked problems associated with establishing the Court's jurisdiction, including the absence of treaty relations between the United States of America and the Palestinian entity under the Vienna Convention on Diplomatic Relations and the relevant Optional Protocol thereto. This is relevant to the Committee, as it demonstrates that the question of objections to treaty relations is of a fundamental character and because it shows a familiar Palestinian strategy of dismissing jurisdictional requirements as irrelevant. The respondent recalls that the International Court of Justice rejected the applicant's request to simultaneously address the questions of jurisdiction and admissibility with the merits of the application and indicated that the question of jurisdiction must be settled first.

72. The respondent affirms that it takes the provisions of the Convention seriously and reiterates that the article 11 mechanism is predicated on recognition and the existence of treaty relations between both parties. It was not the intention of the drafters of the Convention, nor the intention of the parties to it, that the Committee would disregard the jurisdictional conditions and allow recourse to article 11 in a politicized manner, so as to force a sovereign State to engage with an entity that it does not recognize and with which it has explicitly stipulated it is not in a treaty relationship. The respondent affirms that it is not arguing that substantive issues related to the application of the Convention should not be addressed but that the framework of article 11 of the Convention is not the appropriate forum in which to do so.

B. Comments on the applicant's claim that treaty law does not recognize objections to treaty relations in the multilateral treaty system

73. The respondent argues that the applicant's claim that treaty law does not recognize objections to treaty relations in the multilateral treaty system misrepresents the Israeli argument, by stating that Israel claims that, under customary international law, in any multilateral treaty each and every contracting party may unilaterally exclude treaty relations with any other contracting party. The respondent is not making blanket assertions, it is referring only to the present circumstances, namely, the validity of objections to treaty relations between a State party and an entity not recognized by that State.

74. Furthermore, consent is the basis of treaty obligations, so each party is bound only to the extent to which it has agreed to be bound.[38] Therefore, a State cannot be in a treaty relationship to which it has explicitly objected and with respect to an entity that it does not recognize, merely because that entity has acceded or purported to accede to a multilateral treaty to which the non-recognizing State is a party. The validity of objecting to treaty relations has been long recognized in the Vienna Convention on the Law of Treaties. This is confirmed by the practice of a wide range of States.[39] According to the International Law

[37] *Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America), Order of 15 November 2018, I.C.J. Reports 2018*, p. 708.

[38] *S.S. "Lotus" (France v. Turkey)*, p. 18.

[39] See para. 34. above.

Commission, such a statement of exclusion clearly purports to have (and does have) a legal effect on the application of the treaty, which is entirely excluded, but only in the relations between the declaring State and the non-recognized entity.[40] If the possibility to object to treaty relations were prohibited, a likely result would be a significant disincentive for States to join multilateral conventions as doing so would produce recognition of and treaty relations with entities they did not recognize.

75. According to the respondent, the applicant misunderstands the law governing accession to multilateral treaties. The claim stating that only a few States have formally objected to treaty relations with the Palestinian entity under the Convention and that this serves to show not only that non-recognizing States cannot object to treaty relations, but also that such States must necessarily regard the Palestinian accession as valid and see themselves in a treaty relationship with the Palestinian entity, is unsupported. The present circumstances concern an official notification by a State party, validly deposited with the depositary, regarding the exclusion of treaty relations with an entity that it does not recognize.

76. The applicant's claim with respect to the alleged existence of treaty relations with non-recognizing States that have chosen not to submit a formal objection with the depositary is unsubstantiated, as it does not mention any rule that compels non-recognizing States to object to the purported accession of an entity that they do not recognize. Nor does it mention a rule that indicates that the omission of such an objection is to be regarded as recognition and the affirmation of the existence of treaty relations. Accession alone by the non-recognized entity does not itself give rise to treaty relations in such circumstances.

77. The circulation of an instrument of accession by the depositary of a convention is a technical or administrative act that does not itself imply any determination as to the legal validity or effect of such an instrument. The correspondence between the respondent's Permanent Mission to the United Nations in New York and the Office of Legal Affairs in connection with the purported Palestinian accession to the Convention refutes the applicant's argument that the mere submission and circulation of an instrument gives rise to treaty relations. It is reasonable for a State party that clearly does not recognize an entity to consider that it has no treaty relations with that entity, even in the absence of the submission of a formal communication to that effect with the depositary. While some States choose to specifically indicate that they are not in a treaty relationship with such an entity, there is not necessarily an obligation to do so, and the fact of non-recognition should itself suffice to exclude treaty relations in such cases.

78. The respondent further asserts that: (a) the argument that objections to treaty relations are impermissible ignores the widespread State practice of objections to bilateral treaty relations under a wide range of other multilateral treaties, including in relation to the Convention;[41] (b) the applicant's claims related to the Apostille Convention refer to objections to treaty relations that have been made under that Convention both in connection with article 12 thereof and without any reference to it, that is, on the more general basis of non-recognition; (c) as the guide, published by the Hague Conference on Private International Law, on how to join and implement the Apostille Convention makes clear, article 12 of the Convention provides a basis for excluding treaty relations that relates to concerns about a lack of national competence with regard to authentication of public documents. The intention of this provision was to add a specific ground for objecting to treaty relations that relates to the subject matter of that Convention, not to make a suggestion about the general practice of excluding treaty relations between a State party and a non-recognized entity.

79. The respondent has conceded that no legal rule regarding objections to treaty relations exist. What it had previously described as being of a "political character" were communications by Arab States stating that their accession to a treaty should not be regarded as recognition of Israel, even where Israel was a party to the same treaty. Such statements are political, since mere accession does not constitute a legal act of recognition of the other States

[40] Commentary to guideline 1.5.1 of the Guide to Practice on Reservations to Treaties, para. 5. (*Yearbook of the International Law Commission, 2011*, vol. II, Part Three (United Nations publication, Sales No. E.16.V.3) p. 69).

[41] The respondent provides a list of such objections in its submission to the Committee dated 3 August 2018.

parties to a convention. Regarding the absence of treaty relations asserted by a given Arab State with respect to Israel under a multilateral convention, in a statement to the depositary Israel has indicated that it would apply a principle of reciprocity with respect to such States. In so doing, the respondent has demonstrated its acceptance of the legal effect of such communications as to the exclusion of treaty relations.

80. In its argument that the respondent is not a party to the Vienna Convention on the Law of Treaties, and thus cannot rely on its provisions, the applicant ignores that that Convention is generally recognized as an authoritative guide for current treaty law and practice, with many of its provisions considered as reflective of customary international law. Article 76 (2) of that Convention clearly shows that the applicant's claim that bilateral treaty relations necessarily exist as a result of membership in a multilateral convention is unfounded. The applicant did not refer to the respondent's statement that article 76 (2) contemplated an absence of treaty relations "for reasons connected, for example, with the problem of recognition". Article 81 of the Vienna Convention on the Law of Treaties, also known as the Vienna formula, has nothing to do with the well-established principle that States may object to treaty relations with respect to an entity that they do not recognize.

C. Comments on the applicant's claim that the Convention specifically excludes the possibility of objecting to treaty relations

81. Making reference to State practice,[42] the respondent rejects the argument that, even if States can generally exclude bilateral treaty relations under a multilateral convention, they cannot do so with respect to the Convention. It contests the argument that objections to treaty relations are not possible with respect to multilateral treaties that are open to accession on the basis of the Vienna formula and that the Palestinian entity should be regarded as a State party to the Convention by virtue of its membership in UNESCO. In this regard, it considers that: (a) objections to treaty relations with respect to conventions that adopt the Vienna formula are widespread; (b) as confirmed by the Secretary-General, the legal validity and effect of an instrument of accession is a matter for each State party to determine and is not resolved by the circulation of the instrument of accession by the depositary; (c) the claim that Kosovo is not a member of a specialized agency and that objections to treaty relations related to it have no bearing on the situation of the Palestinian entity is incorrect, as Kosovo has been a full-fledged member of more specialized agencies than the Palestinian entity for almost 10 years;[43] (d) the Vienna formula is about accession and not about treaty relations. The formula may allow treaty relations between an acceding entity and those States parties that recognize its accession as valid, but it does not force treaty relations in cases where a State party has formally objected to treaty relations with an entity that it does not recognize.

82. In response to the argument that the Convention excludes the possibility of objections to treaty relations, given its *erga omnes* character, the respondent submits that this claim is belied by State practice regarding objections to treaty relations under this and other human rights conventions. Even if the obligations under the Convention are considered to be *erga omnes*, this does not mean that the inter-State mechanism provided for in article 11 is available to address compliance issues in the absence of treaty relations, as that mechanism is regulated by treaty law.[44] The respondent submits that on a previous occasion, the Committee concluded that States parties may object to treaty relations under the Convention; that article 11 requires the existence of treaty relations; and that where a State party has objected to treaty relations, the article 11 mechanism cannot be activated.[45]

[42] Submission of Israel to the Committee dated 3 August 2018, annex III, entitled "Non-exhaustive list of official communications objecting to the validity of an instrument of accession or otherwise stipulating the absence of treaty relations as between a State party and a non-recognized entity".

[43] Kosovo is a member of the World Bank and the International Monetary Fund.

[44] The respondent argues that, while human rights treaties are often distinctive in nature, they do not constitute "self-contained regimes" decoupled from the general law of treaties and of State responsibility.

[45] A/36/18, paras. 169–173.

83. Regarding the argument that objections to treaty relations are excluded in relation to the Convention, as they would render the inter-State complaint mechanism ineffective, the respondent indicates that its submission of 3 August 2018 makes clear that it was not arguing that objections and reservations are equivalent. Their legal effect is similar inasmuch as both would exclude the applicability of the article 11 mechanism in relations between Israel and the Palestinian entity. The respondent's objection to treaty relations between itself and the Palestinian entity does not render the inter-State complaint mechanism ineffective, it simply refers to a situation in which the mechanism is not intended to apply. This is not an attempt to alter or deconstruct the article 11 mechanism, which requires treaty relations and is not applicable if such relations do not exist.

84. Concerning the argument that a reservation that aims at precluding the Committee from analysing an inter-State communication would be impermissible, the respondent submits that such an argument fails to make a distinction between the obligations that are binding on a State party under the Convention and the applicability of a specific inter-State complaint mechanism requiring treaty relations.

D. Comments on the applicant's claim that Israel is precluded from refusing to recognize Palestinian statehood or Palestinian accession to the Convention

85. The applicant believes that it meets the criteria of statehood, but it does not. This claim is considered highly problematic and controversial in the international community and runs counter to the position of many States. A survey of the legal record demonstrates that Palestinian statehood is widely and consistently referred to in the international community as a future aspiration, not as a current legal reality.[46] The applicant misrepresents General Assembly resolution 67/19, by which the Assembly accorded non-Member observer State status to Palestine before the United Nations, as legal recognition of State status, while it was a limited procedural upgrade of the status of the Palestinian representation in the United Nations.[47] This longstanding position of the respondent is based on the failure of the Palestinian entity to satisfy the criteria for statehood under international law and on the Palestinian obligation under existing Israeli-Palestinian agreements to determine the final status of the West Bank and Gaza through bilateral negotiations. Therefore, Israel and other non-recognizing States have every right to withhold recognition from the Palestinian entity and to object to treaty relations with it under the International Convention on the Elimination of All Forms of Racial Discrimination.

86. In response to the argument concerning the alleged "bad faith", the respondent submits that such argument ignores established principles of treaty law and their application to the jurisdiction of the Convention. The applicant does not mention that successive rounds of Israeli-Palestinian negotiations have failed because of Palestinian rejectionism and the repeated dismissal of offers of statehood. The respondent affirms that it is not asking the Committee to adopt a political view of this matter, and that it expects the Committee not to allow its mechanisms to be abused through weight given to a politically motivated Palestinian account. The question before the Committee is whether it has jurisdiction to deal with the present communication.

[46] See, for example, the Secretary-General's message on the International Day of Solidarity with the Palestinian people dated 29 November 2017, in which the Secretary-General noted that while an independent State of Palestine had yet to emerge alongside Israel, a two-State solution was the only premise for a lasting peace. See also other statements that support the future establishment of a State of Palestine, for example, the speech presented by the President of China, Xi Jinping, on 21 January 2016 at the Arab League Headquarters, Cairo; Ministry of Foreign Affairs of the Russian Federation, "Foreign Ministry statement regarding Palestinian-Israeli settlement", 6 April 2017; "King meets with Palestinian President", press statement for King Abdullah II of Jordan, 8 August 2018.

[47] The respondent refers to statements of Belgium, Finland, France, Greece, Italy, New Zealand, Norway and Switzerland, according to which the decision was not to the effect of recognizing a Palestinian State.

87. The respondent considers that it is remarkable that the applicant is seeking to bring a complaint against it under the Convention and even mount a "bad faith" argument in this context, when the applicant's "own racism and discriminatory practices against Jews and Israelis are so endemic and extreme". Expressions of antisemitism and glorification of the murder of Jews and Israeli nationals are prevalent in Palestinian educational, cultural and religious institutions, as well as in the Palestinian media.[48]

E. Comments on the applicant's claim that the matters raised in the communication cannot be addressed in other appropriate forums

88. The respondent states that alternative and more appropriate forums exist for addressing the applicant's allegations and that the allegations raised in the communication can be addressed as part of its appearances before the Committee. The Committee's recommendations are taken seriously, even if they concern the Occupied Palestinian Territory, and they have had some impact on the ground.[49] The claims contained in the communication can be addressed in Israeli courts.[50] Direct dialogue should be entrenched between Israel and the Palestinian Authority through existing bilateral mechanisms and in good faith.

[48] Examples provided by the respondent include the demonization of Jews through educational publications of Fatah.

[49] For example, the improvement of the treatment of Palestinian minors in the West Bank through the establishment of a military court for juveniles and the introduction of a statute of limitations particular to minors. See Israel, Ministry of Justice, "Re: Palestinian minors in military juvenile justice system – June 2018" (13 June 2018). Available from https://www.justice.gov.il/Units/YeutzVehakika/InternationalLaw/MainDocs1/PalestinianMinors2018.pdf.

[50] Claims can be made as petitions to the Supreme Court, civil claims before civil courts and courts of administrative affairs, and complaints to the police and to the Coordinator of Government Activities in the Territories.