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Committee on the Elimination of Racial Discrimination**Inter-state communication submitted by the State of
Palestine against Israel* ****

<i>Applicant State:</i>	State of Palestine
<i>Respondent State:</i>	Israel
<i>Date of the communication:</i>	23 April 2018 (initial submission)
<i>Date of the present decision</i>	12 December 2019
<i>Subject matter:</i>	Transmission of the inter-state communication to the concerned States, referral of the matter to the Committee; question of treaty relations between the parties
<i>Substantive issue:</i>	Discrimination on the ground of national or ethnic origin
<i>Procedural issue:</i>	Jurisdiction of the Committee <i>Articles of the Convention</i> 11(2)

* The present document is being issued without formal editing.

** The present decision has been adopted with the participation of the following members: Nourredine Amir, Marc Bossuyt, Chinsung Chung, Fatimata-Binta Victorie Dah, Bakari Sidiki Diaby, Rita Izák-Ndiaye, Keiko Ko, Gun Kut, Yanduan Li, Gay McDougall, Yemhelhe Mint Mohamed Taleb, Pastor Elías Murillo Martínez, Verene Sheperd, María Teresa Verdugo Moreno and Yeung Kam John Yeung Sik Yuen.



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

1.2 The State of Palestine (“the Applicant State” / “the Applicant”) acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter ‘the Convention’) on 2 April 2014. Israel ratified the Convention on 3 January 1979. It claims that Israel has violated Articles 2, 3 and 5 of the Convention with regard to Palestinian citizens living in the Occupied Palestinian Territory (‘OPT’), including East Jerusalem.¹

1.3 This document should be read in conjunction with CERD/C/100/4 and CERD/C/100/5.

I. Allegations of the Applicant State

2.1 On 23 April 2018, the ‘Applicant submitted a communication against Israel (the ‘Respondent State’ / “Respondent”) under Article 11 of the Convention. The Applicant claims that multiple violations of the Convention have taken place since the occupation in 1967, and continue to take place, by the occupying power, Israel.

A. Both States involved are parties to the Convention

2.2 Israel ratified the Convention on 3 January 1979,² and made a reservation to Article 22 of the Convention, according to which it does not consider itself bound by this article.³ The Respondent State made no reservations to Articles 11-13 of the Convention.

2.3 As a member of UNESCO,⁴ since 23 November 2011,⁵ the Applicant is eligible to become a contracting party of the Convention. The Applicant acceded to the Convention on 2 April 2014, and it came into force on 2 May 2014.⁶ It therefore became a contracting party of the Convention on that date.

2.4 The status of the Applicant as a contracting party of the Convention is confirmed by the practice of several Human Rights Treaty Bodies. For instance, the Committee against Torture (CAT), the Human Rights Committee (CCPR), the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee itself, have requested it to submit periodic reports,⁷ thereby demonstrating that they consider that Palestine has validly become a contracting party to each of these treaties.⁸

2.5 The Applicant also 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, because allegedly, it is not party of 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

¹ In reports submitted to both the General Assembly and the Human Rights Council, by the UN Secretary General and the UN High Commissioner for Human Rights, the terminology used is the Occupied Palestinian Territory (OPT) which comprises the West Bank, including East Jerusalem, and Gaza. Example A/HRC/12/37 (Report of the United Nations High Commissioner for Human Rights to the Human Rights Council on the implementation of Human Rights Council resolution S-9/1); A/HRC/31/44 (Report by the Secretary General to the Human Rights Council on Human rights situation in the Occupied Palestinian Territory, including East Jerusalem).

² https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&clang=_en.

³ *Ibid.*

⁴ Article 57 of the United Nations Charter.

⁵ <http://www.unesco.org/new/en/unesco/worldwide/arab-states/palestine/>.

⁶ United Nations, Depository Notification, C.N.179.2014.TREATIES-IV.2 (9 April 2014), available at <https://treaties.un.org/doc/Publication/CN/2014/CN.179.2014-Frn.pdf>.

⁷ https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/MasterCalendar.aspx.

⁸ The Applicant also refers to Article 9 of the Convention.

party of 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.⁹ By requesting the Applicant to submit a report under Article 9 of the Convention, the Committee has taken a clear position, considering it as a party to the Convention.

B. Competence of the Committee

1. Ratione materiae

2.6 The Applicant indicates that the Respondent State 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 (policies of racial segregation and apartheid), and article 5, concerning policies regulating the life of Palestinians in the OPT.

2.7 Besides the violations contained in the communication, Israel, as the occupying power, has committed and continues to commit other violations of human rights, international humanitarian law, customary law and Security Council's resolutions. It must therefore provide a *restitutio in integrum* under the rules of State responsibility, including the resettlement into Israel of all its nationals that it has illegally transferred into the OPT, since 1967.

2. Ratione loci

2.8 The present communication refers to violations committed in the OPT. However, the Applicant 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 compliance with article 42 of the Draft Articles of State Responsibility of the International Law Commission.

2.9 The communication refers to the violations committed by Israel in the OPT. In that context, it is bound by the Convention, which applies extraterritorially, as confirmed by the Committee.^{10,11} The Respondent State has an obligation to comply with the Convention with respect to the OPT. In its concluding observations on Israel (2012), the Committee expressed deep concern "at the position of the State party to the effect that the Convention does not apply to all the territories under the State party's effective control, which not only include Israel proper but also the West Bank, including East Jerusalem, the Gaza Strip and the Occupied Syrian Golan. The Committee reiterates that such a position is 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".¹² The Applicant also points out that the Committee considers that the Convention applies in the OPT vis-à-vis Israel.¹³

2.10 The Applicant further affirms that the extraterritorial application of the Convention has also been confirmed by the International Court of Justice (ICJ).

3. Ratione temporis

2.11 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

⁹ Human Rights Committee, General Comment 24: 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, CCPR/C/21/Rev.1/Add.6.

¹⁰ CERD/C/USA/CO/7-9 (COBs United States of America, 24 September 2014), and Supplement No. 18, UN Doc. A/46/18 (27 February 1992), para. 258.

¹¹ CERD/C/ISR/CO/14-16 (3 April 2012); CERD/C/ISR/CO/13 (14 June 2007); CERD/C/304/Add.45 (30 March 1998).

¹² CERD/C/ISR/CO/14-16, para. 10.

¹³ *Ibid.* and CERD/C/ISR/CO/13, para. 32.

in such provisions, is limited to the Convention's breaches that have occurred after its ratification by the State party which 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 occurred after the former has become a contracting party, would undercut such obligations.

2.12 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 European Convention of Human Rights allegedly occurred before its own accession to it.¹⁴

4. Ratione personae

2.13 The Convention applies to Palestinian citizens, and the discriminatory treatment inflicted upon them is based on several of the elements of Article 1 of the Convention, according to which "(...) the term racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin (...)"

2.14 The exception made by Article 1(2), according to which the Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens, does not apply to the situation in Palestine. This is because such a provision was never meant to function as a general exclusion of discriminatory practices that form the basis of claims based on other provisions of the Convention, such as Article 5. According to the Committee's General Recommendation N^o. 30, 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 these rights.¹⁵ Article 1(2) of the Convention was established to grant certain privileges to a State's citizens, such as voting rights.¹⁶

2.15 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 State in the OPT. This is supported by Article 1(3) of the Convention prohibiting to discriminate against "any particular nationality".

2.16 In the case of the OPT, Palestinians did not subject themselves to the Respondent State's jurisdiction, but they are under its effective control. Therefore, the Respondent State cannot contradict the principle *venire contra factum proprium*.

C. Compétence de la compétence

2.17 Under international law, the Committee can decide all questions regarding its own competence, including issues of admissibility, such as the question of Palestine's status as a contracting party of the Convention. As the Applicant is a party to the Convention since 2014, it can submit an inter-state communication.

D. Ineffectiveness of local remedies

2.18 Under Article 11(3) of the Convention, the Committee shall 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. This shall not be the rule where the application of the remedies is unreasonably prolonged. It indicates that the last sentence of the provision has been interpreted to exclude fruitless or ineffective remedies. Therefore, when a State alleges that another State is violating its international obligations, there is no need for the Applicant to prove that individuals resorted to remedies. The violations committed by the Respondent

¹⁴ European Commission of Human Rights, Application 788/60, *Austria v. Italy*, 11 January 1961. See also ICJ, *Case Concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment of 3 February 2015, para. 119.

¹⁵ General Recommendation N^o 30 on discrimination against non-citizens, Sixty-fifth session (2005), paras. 3 and 4.

¹⁶ General Recommendation No. 30, para. 2..

State in the OPT have either been considered legal by the Israeli Supreme Court, for instance the discriminatory planning regime,¹⁷ or constitute a general practice based on the national policy of the Respondent State.

2.19 Given that the Respondent State considers that the Convention does not apply in the OPT, it cannot claim that Palestinian victims of racial discrimination are obliged to exhaust the domestic remedies while it denies their occurrence.

E. Obligation to cooperate

2.20 According to the object and purpose of the inter-state complaint procedure, the Respondent State has the obligation to cooperate with the Committee and the ad hoc 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.¹⁸ Hence, the Respondent State is obliged to provide the Committee with access to all the necessary information regarding the alleged violations. If the Respondent State does not cooperate with the Committee, or hinder it or the ad hoc Commission from fulfilling their mandate, this would constitute a “stand-alone” violation of the Convention.

2.21 The Convention does not contain any provision regarding situations of non-appearance by a State, as does article 53 of the ICJ Statute. *Argumentum a contrario*, the Convention implies a legal obligation for all State parties to participate in all the steps of the proceedings of an inter-state complaint. When a treaty provides for a mandatory dispute settlement (as 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.¹⁹

2.22 This interstate complaint 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 (Vienna Convention), 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 Convention. This is confirmed by Rule 70 of the Committee's Rules of Procedure. Article 11(5) points in the same direction, as if a State party decides 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 allow that one of the parties prevents it from continuing the proceedings, as even in the case the States parties fail to agree regarding the composition of the ad hoc Commission, the Committee can proceed to appoint its members by a two-thirds majority. Article 12(7) of the Convention further establishes that the experts of the ad hoc Commission should be paid by the United Nations, even before the reimbursement by the States. This confirms that the lack of appearance of one State cannot stop the proceedings.

2.23 Furthermore, the Respondent State has the obligation not to undertake 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 Palestinians' rights, as it would render any finding by the Committee redundant, or it would make the Respondent State's *restitutio in integrum* obligation even more difficult.²⁰

¹⁷ Israel Supreme Court, *Deirat-Rafaiya Village Council et al.*, HCJ 5667/11, Judgment of 9 June 2015, <https://rhr.org.il/eng/wp-content/uploads/5667-11-final-judgment-in-English.pdf>.

¹⁸ CCPR/C/106/D/2120/2011, *Kovalev v. Belarus*, para. 92.

¹⁹ International Tribunal of the Law of the Sea, *The Arctic Sunrise Case (Kingdom of the Netherlands v. Russian Federation)*, Provisional Measures, 22 November 2013, Separate Opinion Wolfrum and Kelly, paras. 5ss.

²⁰ CCPR/C/106/D2120/2011, para. 9.2.

F. Contextualisation

2.24 The Applicant submits that the Respondent State is imposing discriminatory policies and practices, aimed at the displacement and replacement of Palestinians by Israelis. Since the beginning of the occupation, some 250 settlements have been established in the OPT²¹. Currently, some 700.000 to 800.00 Israeli settlers remain in the OPT. In addition, Palestinians are discriminated by the Respondent State through the annexation wall, the confiscation of large areas of Palestinian land under unlawful pretexts, forced eviction, destruction of Palestinian homes and structures, use of natural resources, etc. These policies have been repeatedly condemned by the UN Security Council, the General Assembly and the Human Rights Council.

2.25 The differential treatment between Palestinians and Israelis established by the Respondent State in the OPT falls within the definition of racial discrimination under Article 1 of the Convention.²² As confirmed by the Committee, the violations committed by the respondent State in Gaza also fall within the definition of racial discrimination as it encompasses forms of restriction and exclusion.²³

2.26 As confirmed by the ICJ when stating that human rights treaties apply even in situations of armed conflict,²⁴ the occupation of the OPT does not exclude the application of the human rights treaties, including the Convention.

II. Transmission of the communication

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

III. Respondent's State reply

4.1 On 30 April 2018, the Respondent State submitted that, in view of its objection to the Palestinian accession to the Convention, the Committee lacks jurisdiction to examine the communication. On 3 August and 8 April 2018, it argued 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

4.2 The Respondent State 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.

4.3 The Respondent State 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 requested accession was "without effect on Israel's treaty relations under the Convention". 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.²⁵

²¹ A/HRC/22/63 (2013), para. 28. The construction of new settlements between 2014 and 2015 expanded at an exponential rate of 26%, OCHA, *Fragmented lives - Settlements: A Key Driver of Humanitarian Vulnerability* (June 2016).

²² CERD/C/ISR/CO/13(2007), paras. 8, 9, 32 and 35.

²³ CERD/C/ISR/CO/14-16 (2012), para. 25.

²⁴ ICJ, *Legal Consequences of the Construction of a Wall in the OPT*, Advisory Opinion, ICJ Rep. 2004, para. 105 et seq.; ICJ, *Application of the Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Order on Provisional Measures, 2008, para. 112.

²⁵ <https://www.un.org/unispal/document/note-to-correspondents-accession-of-palestine-to-multilateral-treaties-office-of-secgen-spokesperson-note/>.

4.4 It is well-established in treaty law and State practice that treaty relations need not exist among all the parties to a multilateral treaty. Article 20(4)(b) and 76(2) of the 1969 Vienna Convention specifically contemplate those 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 only bound by a treaty to the extent it has agreed to be bound.²⁶ This assertion is supported by the negotiating history of the Vienna Convention, the extensive use of such objections in State practice, and the recognition of its legal effect by the International Law Commission. Article 76(2) of the Vienna Convention provides for circumstances in which “a treaty has not entered into force as 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”.²⁷ 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”.²⁸

4.5 The Respondent State’s objection to the purported Palestinian accession to the Convention, and its stipulation that no treaty relations exist between Israel and the Palestinian entity, follow standard and accepted law and practice, and excludes the application of the treaty between them.

4.6 The correspondence between its Permanent Mission to the United Nations and the United Nations Office of Legal Affairs,²⁹ confirms the deposit and circulation of the Israeli communication objecting to the Palestinian instrument of accession to the Convention, taking note that the intended legal effect of this communication was to exclude the application of all provisions of the Convention between the two entities. It confirms that “[t]he 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”.³⁰ 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.

4.7 The mechanism set out in articles 11 to 13 of the Convention present the means by which one ‘State party’ to the treaty may present to another ‘State party’ allegations regarding its 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 “amicable solution of the dispute” and to “parties to the dispute”, these provisions cannot be

²⁶ ICJ, *S.S. Lotus, France v. Turkey*, PCIJ Ser A No 10 (7 September 1927), p.18; A. Aust, *Modern Treaty Law and Practice* (2007), p. 143.

²⁷ United Nations Conference on the Law of Treaties, Official Records, First Session, 82nd Meeting of the Committee of the Whole, p 485 A/CONF.39/C.1/SR.82 (23 May 1968).

²⁸ Example: Bahrain’s Official Communication Regarding the International Convention on Elimination of All Forms of Racial Discrimination, March 27, 1990 (United Nations, Depository Notifications, CN Number 102 (1990)); Canada’s Official Communication Regarding the United Nations Convention on Contracts for the International Sale of Goods, July 27, 2018 (United Nations, Depository Notifications, CN Number 363 (2018)); Algerian Official Communication regarding the Vienna Convention on the Law of Treaties, December 21, 1988 (United Nations, Depository Notifications, CN Number 251 (1988))

²⁹ Correspondence between the Permanent Mission of Israel to the United Nations in New York and the United Nations Office of Legal Affairs (12-13 July 2018), Annex V of the submission of the Permanent Mission of Israel dated 3 August 2018.

³⁰ Correspondence between the Permanent Mission of Israel to the United Nations in New York and the United Nations Office of Legal Affairs, dated 12 July 2018.

implemented in the absence of recognition or established treaty relations between the two 'State parties'.³¹

4.8 Article 11 is expressly characterised in Article 22 as a procedure for resolving disputes between State parties.³²

4.9 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.

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

4.11 To allow Article 11 to operate "in a manifestly politicised manner" would compel a State party to apply the provisions of the Convention with respect to an entity which 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 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 this mechanism and of the Convention as a whole.

B. Admissibility

4.12 The Respondent State 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

4.13 The Respondent State 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.

4.14 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 State "rejects out hand the baseless and sweeping Palestinian claim regarding the ineffectiveness of local remedies".³³

4.15 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. Submission by the Applicant State

5.1 In its observations to the Respondent's State submission dated 30 August 2018, 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 jurisprudence on the extraterritorial application of the Convention.³⁴

5.2 Regarding the Respondent's readiness to engage in dialogue, bilaterally or when it presents its periodic report, the Applicant indicates that the Respondent's refusal to accept

³¹ See preparatory works of the Convention, according to which Articles 11-13 regulate disputes between two States parties who are in a treaty relationship.

³² ICJ judgement in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia)* and the ICJ July 2018 order in *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*.

³³ HCJ 2150/07 *Abu Safyeh v. Minister of Defense*, 63(3) IsrLR 331 (29 December 2009); HCJ 2775/11 *el-Arah v. Central Commander of the Israeli Army* (3 February 2013); CHR 8823/07 *Anonymous v. State of Israel*, 63(3) IsrLR 500 (11 February 2010); HCJ 3799/02 *Adalah Legal Centre for Arab Minority Rights in Israel v. IDF Central Commander* [2005] (2) IsrLR 206 (19 June 2005).

³⁴ European Court of Human, Application 6289/73, *Airey v. Ireland*, 9 October 1979, para. 21.

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 OPT. Moreover, it has never shown any willingness to discuss the systematic discrimination of Palestinians in the OPT, as doing so would imply dismantling the Israeli settlements therein.

A. Transmittal of the communication to the Respondent State

5.3 The Applicant considers that by transmitting the communication to the Respondent, the Committee decided that it had competence to review it, and that treaty relations exist between the State of Palestine and Israel. This is confirmed by Rule 69 of the Committee's Rules of Procedure which indicates that, when a State party brings a communication under Article 11(1) of the Convention, it "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, including that the Convention was applicable between the relevant States.

5.4 The transmittal of the communication to the Respondent, has already determined that the Applicant could bring a communication against the Respondent.

B. Applicability of the Convention

5.5 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 179 contracting parties of the Convention, only three have objected to the accession by the State of Palestine. The approximately 40 State parties that have not recognized Palestine as a State, have not objected that it becomes a State party. This pattern is repeated in almost all multilateral treaties the Applicant has acceded to. This contradicts the Respondent's argument, as if it was correct, the vast majority, if not all of those States that have so far not yet recognized Palestine's statehood, would expectedly have objected to the Applicant joining such treaties.

5.6 Regarding the Respondent's reference to the 1961 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. This treaty 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 (Article 12) in the 1961 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.

5.7 Regarding the *opinio juris*, the Respondent has stated on previous occasions that objections, as the one made against the Applicant State's ratification of the Convention, are explicitly of a political character.³⁵ 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.

5.8 Regarding the reference made by the Respondent to the Vienna Convention, 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 such Convention exclusively

³⁵ Israel's objection of 25 June 1990 to Bahrain's declaration purporting to limit the bilateral effect of the Convention on the Prevention and Punishment of the Crime of Genocide as between Bahrain and Israel p. 10.

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 reference in Article 76(2) of the Vienna Convention, as to the non-existence of certain treaty relations, can have any effect on whether or not treaty relations have been established or not between two or more contracting parties of a given multilateral treaty. Regarding the reference in Article 76(2) of the Vienna Convention to 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 said 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) of the Vienna Convention by the Respondent runs counter to the idea underlying Article 81 of that Convention, opening the treaty to any State member of one of the specialized agencies of the United Nations.³⁶ Therefore, the correct interpretation is that Article 76(2) of the Vienna Convention refers to Article 20(4)(b) of the same Convention regarding reservations.

C. States parties cannot unilaterally exclude bilateral treaty relations vis-à-vis another State party

5.9 The Applicant indicates that the Respondent does not object that it has validly become a party of the Convention, since it 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 of 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 which it does not recognize as a State becomes a contracting party thereof, such joint treaty membership does not amount to recognition of the acceding State. However, the establishment of treaty relations between them remains intact.

5.10 The Applicant submits that the Convention, as a human rights treaty, has *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 ICJ.³⁷ Accordingly, the obligation of the Respondent not to violate the Convention to the detriment of the OPT population exists vis-à-vis all other contracting parties, including, but not limited to, the Applicant. Bringing an inter-state communication to the Committee merely triggers the procedure foreseen 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.

5.11 The Applicant indicates that this approach has been followed by the European Commission of Human Rights (EComHR) which found that Austria could file an interstate complaint against Italy in relation to alleged violations which occurred prior to its own accession to the European Convention on Human Rights. IT therefore considered that, despite the lack of a treaty relationship between the two countries at the relevant time, Austria could still complain against Italy.³⁸

5.12 Furthermore, 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 to the inter-state complaints under Articles 11-13 of the Convention.³⁹ However, taking into account Article 20(2) of the

³⁶ *Yearbook of the International Law Commission*, 1962, volume II, p. 169: “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 organization of world-wide membership”.

³⁷ ICJ, *Barcelona Traction, Light and Power Company, Limited*, Judgment, I.C.J. Reports 1970, p. 3 et seq., paras. 33-34.

³⁸ EComHR, Application no. 788/60, *Austria v. Italy*, in particular pp. 13 et seq.

³⁹ Israel submission of 3 August 2018, p. 6, in which it stated “the absence of treaty relations between Israel and the Palestinian entity is legally indistinguishable in its effect from a reservation to Article 11, in as much as both would exclude the applicability of the Article 11 mechanism in relations between Israel and the Palestinian entity”.

Convention, a reservation that would aim at precluding the Committee and the *ad hoc* Commission from entertaining an inter-state communication would be impermissible. The same should be applied to an objection, such as the one made by the Respondent, because it 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 Bahrain's objection to Israel's accession to the Genocide Convention, indicating that Bahrain's objection was "(...) incompatible with the purpose and objectives of this Convention and cannot in any way affect whatever obligations are binding upon Bahrain (...)"⁴⁰

D. The Convention's guarantees should be effective and real

5.13 The Applicant submits that the actions by the Respondent, an occupying power in the OPT, prevent the first 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 attempts to shield itself from being held accountable for those violations in accordance with the mechanism foreseen therein. This is complemented by the fact that the Respondent denies any form of extraterritorial applicability of the Convention in the OPT. Such an attempt cannot stand if the Convention is to be understood as an instrument that provides effective and real guarantees. According to the judgement of the European Court of Human Rights (ECHR) in *Loizidou v. Turkey*, the European Convention is "a treaty for the collective enforcement of human rights and fundamental freedoms", and "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".⁴¹ As the ECHR, the Committee should ensure that the rights contained in the Convention are effective and real, taking into account that violations of the Convention, in particular of Article 3, constitute violations of *jus cogens*.

E. The Respondent State cannot deny the Applicant State's statehood under the principle of good faith

5.14 The principle of good faith (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. Article 26 indicates that "Every treaty in force is binding upon the parties to it and must be performed by them in good faith". Article 31(1) 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 ICJ which stated that "one of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith".⁴²

5.15 The Applicant affirms that the Respondent's declaration in response to its accession to the Convention according to which the Applicant does not meet the criteria of statehood, and 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 it lies in the fact that it is determined to annex, either *de jure* or *de facto*, a substantial part of Palestinian territory and does not wish to be obstructed by recognition of Palestine as a State. The following facts confirm this affirmation: i) in 1980 the Respondent unlawfully annexed East Jerusalem, an annexation considered illegal by Security Council in Resolution 478; ii) the Respondent has *de facto* annexed some 10% of Palestinian land in the West Bank by the construction of a wall that incorporates some 80%

⁴⁰ 31 United Nations Treaty Collection, Convention on the Prevention and Punishment of the Crime of Genocide, Paris, 9 December 1948.

⁴¹ ECHR, Application no. 15318/89, *Loizidou v. Turkey* (Preliminary Objection), 23 March 1995, paras. 70 and 72.

⁴² ICJ, *Nuclear Tests (Australia v. France)*, Judgement, ICJ Reports 1974, p. 268, para. 46; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, I.C.J. Reports 2010, p. 14, para. 145.

of Israel's settlements into Israel,⁴³ iii) Respondent's officials have expressed an intention to annex Area C⁴⁴ and to expand Israeli jurisdiction to include settlements beyond the wall in the West Bank, and to build new settlements there. A law was adopted in 2018, indicating that "The State views the development of Jewish settlements as a national value and will act to encourage and promote its establishment and consolidation".

5.16 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 like the Netherlands and Belgium were unable to exercise all the attributes of statehood during World War II, which did not affect their status as States.

5.17 Finally, the Applicant indicates that it will address the exhaustion of local remedies at a later stage, as provided for in Art. 11(3) CERD, if the Committee deems it necessary. Israeli Courts have never addressed the system of racial discrimination established in the OPT. In particular, the Israeli Supreme Court has never dealt with the illegality, under international law,⁴⁵ of the Israeli settlements in the OPT, the establishment of which constitute "the heart of the system of racial discrimination established by Israel in the territory of Palestine".

V. Further submissions by the Respondent State

6.1 On 23 September 2018, the Respondent reiterated 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 dated 3 August 2018 to the Applicant is without prejudice to the absence of treaty relations between them, and to the question of the legal admissibility of the communication.

6.2 The procedural status of the other two inter-state communications submitted to the Committee (*Qatar v. Saudi Arabia* and *Qatar v. UAE*) is fundamentally different from the present communication, in which article 11 mechanism cannot have been triggered.

6.3 On 23 October 2018, after reiterating its position regarding the existence of a *preliminary* question on inadmissibility, the Respondent informed that it will submit a reply to the Applicant's submission of 30 August 2018.

VI. Referral of the matter to the Committee

7. On 7 November 2018, the Applicant referred again the matter to the Committee in accordance with Article 11(2) of the Convention. It indicated that, since the submission of the communication, the Respondent increased and intensified the implementation of its discriminatory policies, in particular the adoption of the Basic Law: Israel as the nation-State of the Jewish people. The Applicant also indicated that the matter is not adjusted to the satisfaction of both parties, either by bilateral negotiations or by any other procedure open to them. It also reiterated its arguments regarding the effect of the transmittal of the

⁴³ Y. Yoaz, "Justice Minister: West Bank Fence is Israel's Future Border", *Haaretz*, December 2005, and Head of the Azzun Municipal Council v. State of Israel, H.C.J., 2733/05.

⁴⁴ Area C is the area that lies under full Israeli security and administrative control, according to the Oslo Accords. Example: A/69/81, para. 7 and seq. Available at <https://unispal.un.org/UNISPAL.NSF/0/99684A2CC6BE4F6F85257CE80051E7E7>.

⁴⁵ Resolution 68/235, adopted by the General Assembly on 7 February 2014, para. 7.

communication, and indicated that the burden of the proof regarding the exhaustion of domestic remedies lies with the Respondent.

VII. Committee's decision of 14 December 2018

8. On 14 December 2018, the Committee, after acknowledging the submissions of the parties so far, and taking note of the referral of the matter made by the Applicant under Article 11(2) of the Convention, decided: i) to request Israel to inform the Committee 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; ii) 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; iii) to give Israel the opportunity to comment on any observations that may be communicated by the Applicant pursuant to (ii) above, without raising any new issues; iv) to invite both States parties to appoint one representative to take part in the proceedings before the Committee, without voting rights, while the matter is under consideration, and to inform the Chairperson of the Committee of that appointment not later than 1 March 2019; v) to examine any preliminary question at its 98th session; and vi) to invite the appointed representative to present at that session the views of the State party concerned, for a maximum of 45 minutes, and in rebuttal for a further period of 15 minutes.

VIII. Reply of the Respondent State

9.1 On 14 January 2019, Israel submitted its reply 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 Convention 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 the admissibility refers to the criteria that must be satisfied, once the 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.

9.2 This reply is 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.

9.3 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 edibility of the communication.

A. On the Applicant State's claim that the jurisdictional arguments are "formalistic"

9.4 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 Israel's explicit exclusion of the application of the Convention between itself and the Palestinian entity, this would require it 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 2018.⁴⁶ Within this application, the Applicant has overlooked problems associated with establishing the Court's jurisdiction including "the absence of treaty relations between the United States and the Palestinian entity under the Vienna Convention on Diplomatic Relations and its Optional Protocol". 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 ICJ declined the Applicant's request to simultaneously address the merits of the application and indicated that the question of jurisdiction be settled first.

9.5 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 recognise 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 to do so.

B. On the Applicant State's claim "that treaty law does not recognize objections to treaty relations in the multilateral treaty system"

9.6 The Respondent argues that this claim 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. It is not making "blanket assertions", but only referring to the present circumstances, namely the validity of objections to treaty relations between a State party and an entity not recognised by that State.

9.7 Furthermore, consent is the basis of treaty obligations, so each party is only bound to the extent to which it has agreed to be bound.⁴⁷ 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 recognise, merely because that entity acceded or purported to accede to a multilateral treaty to which the non-recognising State is a party. The validity of objecting to treaty relations "has been long recognized in the Vienna Convention". This is confirmed by "the practice of a wide range of States".⁴⁸ According to the International Law Commission, such statement "clearly purports to have (and does have) a legal effect on the application of the treaty, which is entirely excluded, but only in relations between the declaring State and the non-recognized entity".⁴⁹ If the possibility to object to treaty relations was prohibited, "a likely result would be a significant disincentive for States to join multilateral conventions as doing so would produce recognition and treaty relations with entities they did not recognize".

9.8 According to the Respondent, the Applicant misunderstands the law governing accession to multilateral treaties. The claim according to which only few States have formally objected to treaty relations with the Palestinian entity under the Convention, 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 recognise.

9.9 The Applicant's claim with respect to the alleged existence of treaty relations with non-recognised 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

⁴⁶ ICJ, *Relocation of the United States Embassy to Jerusalem (Palestine v. United States of America)* Order, No. 156, (15 November 2018).

⁴⁷ *S.S. Lotus (France v. Turkey)*, 1927 PCIJ (Series A) N^o. 10 (September 7), 18.

⁴⁸ See para. 4.4. above.

⁴⁹ Report of the International Law Commission, UN Doc. A/66/10/add.1, 94-95 (2011).

object to the purported accession of an entity that they do not recognize. Nor does it mention a rule that indicates that their omission 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.

9.10 The circulation of an instrument of accession by the depository 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 its Permanent Mission to the United Nations in New York and the United Nations 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 recognise 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 depository. 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.

9.11 The Respondent further asserts that: i) 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;⁵⁰ ii) the Applicant's claims related to the Apostille Convention, refers to objections to treaty relations that have been made under such Convention both in connection to Article 12 and without any reference to it, that is, on the more general basis of non-recognition; iii) as the Hague Conference on Private International Law's guide makes clear, Article 12 of the Apostille 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 this Convention, not to make a suggestion about the general practice of excluding treaty relations between a State party and a non-recognised entity.

9.12 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 that their accession to a treaty should not be regarded as recognition of Israel, even if Israel were party to the same treaty. Such statements are political, since mere accession does not constitute a legal act of recognition of the other States party to a Convention. Regarding the absence of treaty relations asserted by a given Arab State with respect to Israel under a multilateral convention, Israel's communication to the depository 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.

9.13 In its argument that the Respondent is not a party to the Vienna Convention, and thus cannot rely on its provisions, the Applicant ignores that the Vienna Convention is generally recognised as an authoritative guide to current treaty law and practice, with many of its provisions considered as reflective of customary international law. Article 76(2) of the Vienna 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 the Chairman of the Drafting Committee of this provision "contemplated the absence of treaty relations "connected, for example, with the problem of recognition"". ⁵¹ Article 81 of the Vienna Convention, or "Vienna formula" has nothing to do with the well-established principle that State may object to treaty relations with respect to an entity that they do not recognise.

⁵⁰ Annexes provided along with its submission of 3 August 2018.

⁵¹ Submission of 3 August 2018, pp. 2-3.

C. On the Applicant State's claim that "the Convention specifically excludes the possibility of objecting to treaty relations"

9.14 Making reference to State practice,⁵² 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 contends 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: i) objections to treaty relations with respect to convention that adopt the "Vienna formula" are widespread,⁵³ ii) as confirmed by the UN 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 circulation of the instrument of accession by the depository; iii) the claim that Kosovo is not a member of a specialised 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 ten years;⁵⁴ iv) the "Vienna formula" is about accession and not about treaty relations. The formula may allow treaty relations between an acceding entity and those State parties that recognize its accession as valid, but it does not force treaty relations between a State party that formally objects to treaty relations with an entity that it does not recognize.

9.15 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 of 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 established by Article 11 is available to address compliance issues in the absence of treaty relations, as such mechanism is regulated by treaty law.⁵⁵ It considers that a previous Report of 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, Article 11 mechanism cannot be activated.⁵⁶

9.16 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 it clear that it was not arguing that objections and reservations are equivalent. Their legal effect is similar "in as much 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.

9.17 Concerning the argument that a reservation that aims at precluding the Committee from analyzing an inter-state communication would be impermissible, the Respondent submits that it 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.

⁵² Annex III of its submission of 3 August 2018.

⁵³ *Ibid.*

⁵⁴ It is member of the World Bank and the International Monetary Fund.

⁵⁵ 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.

⁵⁶ Report of the Committee on the Elimination of Racial Discrimination, UN GAOR, 36th Session (1981), Supp No 18, 54 paras. 169-173, A/36/18(SUPP).

D. On the Applicant State’s claim that “Israel is precluded from refusing to recognize Palestinian statehood or Palestinian accession to the Convention”

9.18 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.⁵⁷ The Applicant misrepresents the General Assembly Resolution 67/19, which 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”.⁵⁸ This has been its longstanding position 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 present Convention.

9.19 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 have failed because of “Palestinian rejectionism” and the repeated dismissal of offers of statehood. The Respondent State affirms that it is not asking the Committee to adopt a political view of this matter, and it does expect the Committee not to allow its mechanisms to be abused by giving weight to a “politically motivated Palestinian account”. The question before the Committee is whether it has jurisdiction to deal with the present communication.

9.20 The Respondent State 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 “its own racism and discriminatory practices against Jews and Israelis are so endemic and extreme”. The expressions of anti-Semitism, and the 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.⁵⁹

E. On the Applicant State’s claim that the matters raised in the communication cannot be addressed in other appropriate fora

9.21 Alternative and more appropriate fora exist for addressing the Applicant’s allegations and, “[...] 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 OPT, and they have had some impact on the ground.⁶⁰ The claims contained in the communication can be addressed in Israeli courts.⁶¹ Direct dialogue should

⁵⁷ UN Secretary-General, Message on the International Day of Solidarity with the Palestinian People, 29 November 2017, noting that while an independent State of Palestine has yet to emerge alongside the State of Israel, a two state solution is the only way to establish enduring peace, , and statements by President Xi’s Speech at Arab League Headquarters (21 January 2016); The Ministry of Foreign Affairs of the Russian Federation (6 April 2017); King meets with Palestinian President, His Majesty King Abdullah II (8 August 2018) that support the future establishment of a State of Palestine.

⁵⁸ Statements of New Zealand, Belgium, Italy, Norway, France, Greece, Switzerland and Finland, according to which the decision was not to the effect of recognizing a Palestinian State.

⁵⁹ Examples provided include the demonization of Jews through educational publications of the Fatah movement.

⁶⁰ Example: the improvement of treatment of Palestinian minors in the West Bank through the establishment of a Juvenile Military Court and the introduction of a statute of limitation particular to minors: State of Israel Ministry of Justice, Palestinian Minors in Military Juvenile Justice System – June 2018 (13 June 2018).

⁶¹ 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

be entrenched between Israeli and Palestinian Authority through existing bilateral mechanisms and in good faith.
