



STATE OF PALESTINE
PALESTINE LIBERATION ORGANIZATION
NEGOTIATIONS AFFAIRS DEPARTMENT

RECOGNIZING APARTHEID

A CALL FOR INTERNATIONAL ACTION



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At St. Joseph Hospital in occupied Jerusalem on 13 May 2022, the Israeli occupation forces attack Palestinian mourners carrying the casket of veteran journalist Shireen Abu Akleh who was shot by the Israeli occupation forces while on assignment in Jenin. © AP/ Maya Levin/ Alamy



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Introduction



RECOGNIZING APARTHEID

Since 2020, there has been a steady release of Palestinian, Israeli, and international reports condemning Israel's regime of systematic racial discrimination and domination over the Palestinian people as amounting to apartheid. The PLO's Negotiations Affairs Department published its inaugural report on the subject titled, "It Is Apartheid: The Reality of Israel's Colonial Occupation of Palestine."¹ The report presents a full explanation of Israel as an apartheid system, defining the ongoing acts of apartheid by the State of Israel in the land of Palestine, occupied since 1967, and how it maintains systematic racial oppression and domination over the Palestinian people as a whole to ensure that their continued fragmentation into separated groups prevents their collective right of self-determination and to consolidate its illegal settler-colonial enterprise. It highlights that the apartheid system was premised on the segregation of the Palestinian population and settler Israeli Jewish population, along with the fragmentation and segregation of the Palestinian people and territory, which is evidenced in the forced displacement of Palestinians since the Nakba of 1947-1949 and the legislative measures implemented to systematically prevent their return.

As Palestine surpasses the 75th anniversary of the Nakba, much can be written substantively about Israel's continued discriminatory laws, policies and practices, demographic engineering, and ethnic cleansing. These apartheid measures have been expedited by the inauguration in December 2022 of a fanatical far-right government, which has already brought occupied Palestine to the brink of full annexation in denial of the inalienable Palestinian right to self-determination. This report takes a step back to review the impact of the myriad of reports published on apartheid over the last three years. In doing so, it examines the international and Third State practices toward recognizing the situation as apartheid and Israel's countermeasures and attempts to suppress the growing apartheid call.



H.E. President Mahmoud Abbas at the 66th Session of the United Nations General Assembly.
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Palestinian President Mahmoud Abbas to UNGA77 on Apartheid



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With apartheid discourse now centred in the diplomacy of the Palestinian leadership, Palestinian President Mahmoud Abbas, in his address to the UN General Assembly on 23 September 2022, challenged the direct interference of Israel, the occupying Power, in the Palestinian presidential and legislative elections, the overreaching of its competence in imposing an educational curriculum in Jerusalem, and its imposition of an apartheid regime. Questioning the double standards behind the veil of Israeli impunity, President Abbas asserted:

Israel [...] enacts racist laws that perpetuate a system of racial discrimination, an apartheid against our people in front of the international community, and evades accountability and punishment, so why not hold Israel accountable for violating international law? Who is protecting Israel from being held accountable? Why these double standards when it comes to Israel?²

It is crucial that, as a first step, Israel's apartheid regime is recognized as an internationally wrongful act. This paper will take stock of the current state of play of the international recognition of apartheid in the aftermath of the apartheid reports. It will examine impediments to the recognition of apartheid and recommendations for circumventing any blocks.



Apartheid Reports of Palestinian, Israeli, and International Organizations



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Palestinian human rights organizations have been researching apartheid for decades, with the current discourse being influenced by earlier intellectual endeavours. In 2009, Adalah and Al-Haq contributed to a study on Israel's practices in the 1967 occupied Palestinian territory under International Law. The study's territorial limitations limited its analysis to the occupation only, but it influenced Palestinian human rights organizations for the next decade. UN Special Rapporteurs emphasized Israel's apartheid³, and ESCWA launched its seminal report on "Israeli Practices towards the Palestinian People and the Question of Apartheid."⁴

In 2017, a coalition of Palestinian NGOs submitted a file on apartheid and persecution for preliminary examination at the International Criminal Court.⁵ In 2019, a joint shadow report on apartheid by Palestinian and regional human rights organizations ahead of Israel's review before the (CERD)⁶ urged Israel to eradicate segregation between Jewish and non-Jewish communities.⁷

Two seminal apartheid reports published in 2021 and 2022 by Human Rights Watch⁸, and Amnesty International⁹ respectively, catapulted the apartheid framing into the international arena.

Between 2021 and 2022, Palestinian human rights organizations published numerous apartheid reports, adding academic weight to the discourse. Despite not receiving the same international media attention as Human Rights Watch and Amnesty International, these reports demonstrate Israel's intent to separate and divide Palestinians and re-engineer the demographics of the entire population, such as the Al-Haq report,¹⁰ Al-Mezan, and Addameer.¹¹ A joint report by eight leading Palestinian civil society organizations, "Israeli Apartheid: Tool of Zionist Settler Colonialism,"¹² was launched in 2022.



Shu'fat Refugee Camp in occupied Jerusalem.
© AP/ Mahmoud Illean/ Alamy

Israel's Countermeasures Against Apartheid Discourse



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Israel has responded in two main ways to the apartheid reports; first labelling them as antisemitic and second, denouncing them as delegitimizing the State of Israel.

Defamatory reports issued by Israel's Ministry of Strategic Affairs portend that:

Ideologically, both terrorist organizations and NGOs that delegitimize Israel do not accept the right of Israel to exist as a Jewish and democratic state and oppose any normalization between Israel and its neighbours. This shared ideology manifests itself in ties between organizations.¹³

Similarly, Israel has conflated its international legal obligations to rescind discriminatory, racist laws with acts of "DE legitimization" and its right to exist as a State. The rescinding of discriminatory legislation does not in any way affect the existence of a State, nor does it compromise a two-state solution.

In the Money Trail I, the Ministry of Strategic Affairs calls on the European Union to "[s]top funding of organizations promoting boycotts against the State of Israel, and stipulate that any future funding will be contingent on a commitment not to promote such boycotts. In this manner, EU funding will be brought in line with the declared EU policy of opposition to boycotts and the delegitimization of Israel".¹⁴

In October 2021, Israel designated six Palestinian civil society organizations as "terror organizations," thereby outlawing their work under its Counter-Terrorism Law, 2016. The designations are an unveiled attempt to quash human rights work on apartheid, which is for example Al-Haq's primary advocacy work at the UN Human Rights Council.

Meanwhile, in December 2022, a new far-right government in Israel, headed by Prime Minister Netanyahu, promised sweeping legislative reforms, *de facto* annexation, and a myriad of discriminatory measures further entrenching apartheid.¹⁵ This includes the adoption of a bill to levy taxes on foreign donations to Israeli NGOs, which will directly impact the work of Palestinian registered NGOs in illegally annexed East Jerusalem. Regarding

Israeli and international human rights organizations, incoming Finance Minister Smotrich characterized them as an “existential threat” to Israel, indicating that the government must act by “seizing their funds.”¹⁶ This clearly targets Palestinian and Israeli civil society organizations working on apartheid on both sides of the Green Line and is intended to shut down criticism of Israel.

In May 2018, Israel passed Resolution No. 3790, entitled “Reducing Economic and Social Disparities and Promoting Social Development in East Jerusalem,” disbursing funds towards a land title and registration of properties in occupied East Jerusalem. This measure will essentially see a transfer of unregistered Palestinian lands to Israel, and appropriated as Israel State property under Article 22 of the Israeli Land Settlement Ordinance (1969).¹⁷ The measures are targeted directly at the Palestinian community as an annexationist land grab, described by Israel’s Interior Minister, Ayelet Shaked, as “de facto applying sovereignty over East Jerusalem through land registration regulations.”¹⁸

In October 2022, Israel codified its Entry Procedures into occupied Palestine, requiring foreign nationals to declare any familial or romantic relationships with a Palestinian as part of the procedural work visa or special purpose visa renewal.¹⁹ The Procedures grant sweeping powers to the head of COGAT²⁰ to review family relationships, explaining that “in this context the fact that the spouses are married, or are parents of children, shall not in itself be treated as a humanitarian consideration” and threatening the unification of Palestinian families.²¹ Such racial profiling for entry into Palestine feeds into the demographic engineering conducted by Israel to cultivate a majority Israeli Jewish settler community in the occupied territory while reducing the indigenous Palestinian population to a minority population, including through direct forcible transfer.

In January 2023, the Knesset renewed the *Law to Extend the Emergency Regulations (Judea and Samaria—Jurisdiction and Legal Aid 5727-1967)*, a temporary measure, updated every five years since 1967, which entrenches different legal standards that apply to the prosecution of Israelis and Palestinians in occupied Palestine, for criminal offenses.²² Israeli citizens who commit a criminal offense in the occupied territory are prosecuted under Israeli law in Israeli courts, whereas, Palestinians arrested in Israel for criminal offenses carried out in the occupied territory, are transferred back to be prosecuted in the military courts. The law also provides for the direct forcible transfer of Palestinian prisoners from the occupied territory to prisons in Israel to serve out sentences granted in the military courts. The law ensures that “two populations living in the same area—Israelis and Palestinians—are subject to different legal systems, to the benefit of the Israelis.”²³

The Law for Revocation of Citizenship or Residency of a Terrorist who Receives Compensation for Carrying out a Terrorist Act (Amendment to Legislation) 2023-5783, adopted on 15 February 2023, revokes the Israeli citizenship or permanent residencies and deports those who “have been sentenced to actual imprisonment following a conviction for a terrorist act, and have been proven to have received compensation for the act from the Palestinian Authority or on its behalf.” Essentially, the law targets both Palestinian citizens of Israel and Palestinians with permanent residencies in occupied East Jerusalem, specifying in particular “[that the individual is] affiliated with the Palestinian Authority, and its actions [of the Palestinian Authority] suggest that the person is a part of it, and justify the severance of their connection to Israel and their deportation to the territories of the Palestinian Authority.”²⁴

On 8 July 2021, in *Hassoun v. the Knesset*, the Israeli Supreme Court upheld the constitutionality of Israel’s discriminatory Nation-State Law. The latter enshrines the Jewish identity of the State of Israel, limiting “the realization of the right to national self-determination in the State of Israel” exclusively to “the Jewish People.”²⁵

The Basic Law further enshrines Israel's illegal settlement policy into its constitutional law, stating, "The State views the development of Jewish settlement as a national value, and shall act to encourage and promote its establishment and consolidation,"²⁶ Noting that the principle of equality had not been explicitly included in the Basic Law, the court nonetheless clarified that this did not detract from the status and importance of the principle of equality as a foundational principle in the legal system.²⁷ In a dissenting opinion, Justice Karra opined that on a "declarative reading," the constitutional provisions could provide protection for discriminatory decisions and legislation implemented under its auspices.²⁸

On 4 May 2022, Israel's Supreme Court, sitting as the High Court of Justice, ruled that Israel could forcibly transfer Palestinians located in Massafer Yatta for the purpose of a military firing zone under Section 125 of the Defence (Emergency) Regulations – 1945 and Section 318 of the Order regarding Security Provisions and citing Articles 23(g), 52 and 53 of the Hague Regulations of 1907.²⁹ Introducing a new and unwarranted standard of "permanent residency" into the provisions of the Hague Regulations governing private property, the court then concluded "that in the time leading up to the declaration of the firing zone, there was no permanent habitation within its boundaries."³⁰





Palestinian school children walk past a section of Israel's annexation wall.
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International Response to Apartheid Publications



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A concerted effort by Palestinian and regional civil society for the international community to address Israel's discriminatory laws, policies, and practices as comprising an apartheid regime on both sides of the Green Line, saw the submission of a comprehensive joint legal submission to the UN CERD in a shadow report to Israel's periodic review in 2019.³¹ On 27 January 2020, the responding CERD Concluding Observations of Israel was the first time that an international UN treaty body recognized that Israel was obliged to prevent, prohibit, and eradicate policies and practices of racial segregation and apartheid, as proscribed in the general recommendation 19 (1995) on article 3 of the Convention. More specifically, the CERD urged Israel to "give full effect to article 3 of the Convention to eradicate all forms of segregation between Jewish and non-Jewish communities and any such policies or practices that severely and disproportionately affect the Palestinian population in Israel proper and in the Occupied Palestinian Territory."³²

Also in 2019, the Committee on Economic, Social and Cultural Rights (CESCR) issued its Concluding Observations on the Fourth Periodic Report of Israel, highlighting the discriminatory effect of Israel's Basic Law the Nation-State of the Jewish People. The Committee urged Israel "to review the Basic Law with a view to bringing it into line with the Covenant or to repealing it and to step up its efforts to eliminate discrimination faced by non-Jews in their enjoyment of Covenant rights, particularly the rights of self-determination and non-discrimination and to cultural rights".³³ It further recommended that Israel adopt anti-discrimination legislation to ensure that it "prohibits all direct, indirect and multiple forms of discrimination, on all grounds, including language, colour, social origin, property, sexual orientation, birth or another status, and provides for effective remedies for victims of discrimination."³⁴ The recommendations were mirrored the following year in 2022, in the Concluding Observations of the UN Human Rights Committee, which:

[R]eiterates the recommendations made by the CERD and the CESCR that the State party review and amend the Basic Law: Israel – The Nation-State of the Jewish People with a view to eliminating its discriminatory effect on non-Jewish people and ensuring the equal treatment of all persons within its territory and subject to its jurisdiction, in conformity with the Covenant.³⁵

Also in 2020, the newly published General Comment No. 26 on Land, Economic, Cultural and Social Rights considered that “[s]ometimes, land conflicts, especially those relating to structural unequal distribution of land tenure coming, for example, from colonial or apartheid systems, can be one of the root causes or a trigger of the conflict,” providing an important insight into apartheid as the root cause of contemporary conflict.³⁶

Following the report³⁷ presented by Michael Lynk, former UN Special Rapporteur, on the situation of Human Rights in the Palestinian territory occupied since 1967 by the UN Human Rights Council on apartheid, the UN Special Rapporteur Francesca Albanese laid out the limitations to examining the crime of apartheid on its own and advanced instead a more contextualized analysis of the situation in Palestine. The report stressed that the Palestinian people must be treated as a whole, including those “displaced, denationalized and dispossessed” between 1947 and 1949.³⁸ Second, that the occupation itself constitutes an illegal occupation, and an analysis of apartheid alone should not evade this finding. Third, there are significant limitations inherent in the apartheid frame, which:

[D]oes not address the “root causes” of the web of racially discriminatory laws, orders, and policies that have regulated daily life in the occupied Palestinian territory since 1967 and Israeli animus (intention) in seizing land while subjugating and displacing its indigenous people and replacing them with its nationals. This is the hallmark of settler-colonialism and a war crime under the Rome Statute.³⁹

In condemning Israel's settler colonial practices denying the Palestinian people the exercise of their right to self-determination, the Special Rapporteur recommends that “[t]he General Assembly develops a plan to end the Israeli settler colonial occupation and apartheid regime.”⁴⁰

The UN Special Rapporteur on Contemporary Forms of Racism, E. Tendayi Achiume, in a report on sustainable development in 2022, which, albeit did not specifically mention apartheid, did highlight racial discrimination against Palestinians. The Special Rapporteur explained that “institutionalized discrimination against Palestinians in the Occupied Palestinian Territories entails the systemic violation of the rights of Palestinians to self-determination, and that, as a result, Palestinians in the Occupied Territories are denied avenues of sustainable development under the 2030 Agenda.”⁴¹ In her subsequent outgoing report, the UN Special Rapporteur further warned against the International Holocaust Remembrance Alliance’s working definition of antisemitism and its illustrative examples. She explained that the definition might be “wielded to prevent or suppress legitimate criticisms of the State of Israel, a State that must, like any other in the United Nations system, be accountable for human rights violations that it perpetrates.”⁴² She further censured that “[t]hose primarily harmed as a result are Palestinians, as well as human rights defenders advocating on their behalf.”⁴³

Between 20 – 22 June 2023, Ban Ki-moon and Mary Robinson visited occupied Palestine on an Elders Mission to the region. They expressed “deep alarm at the growing evidence of a “one-state reality” of permanent occupation and repression of Palestinians, which threatens to become a system of apartheid without a rapid and radical change of course by the Government of Israel.”⁴⁴

It is worth mentioning that there is currently a critical mass of Third States at the UN Human Rights Council contributing to the recognition that the situation in Palestine is one of apartheid. Since 2020, these included references to apartheid in the statements of Algeria, Bolivia, Brunei Darussalam, Indonesia, Iran, Libya, Malaysia, Mauritania, Namibia, Pakistan, South Africa, Syria, and Venezuela, in addition to intergovernmental organizations such as the Organization of Islamic Cooperation, the Arab Group, and the African Group.

So far, there has been resounding opposition by EU States and the European Union towards recognition of the apartheid frame. In January 2023, a parliamentary question posed by Margrethe Auken MEP asked what the EU Commission was doing to guarantee “that no EU engagement with Israel contributes to apartheid” as defined in the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid and the 1998 Rome Statute of the International Criminal Court. Auken further, enquired, “Will the Commission conduct a holistic assessment in the light of these findings and evaluate all of its forms of engagement with Israel, including agreements, cooperation schemes, and trade, to ensure that it is not contributing to the crime against humanity of apartheid and other severe human rights abuses?”⁴⁵ In a response which pivoted on “its commitment to a negotiated two-State solution, based on international law, the 1967 lines, with equivalent land swaps”, High Representative, Vice-President Borrell I Fontelles, rather alarmingly declared without any specific reasoning that, “the Commission considers that it is not appropriate to use the term apartheid in connection with the State of Israel.”⁴⁶ Following the article, twelve Israeli human rights organizations in Israel, issued a joint statement condemning his answers to the European Parliament, which “referenced the IHRA’s definition of antisemitism in a manner suggesting it applies to Amnesty’s report”.⁴⁷ The Israeli organizations called on the EU Commission to “refrain from validating and fuelling such political instrumentalization of antisemitism. Accordingly, we call on the EU Commission to unequivocally withdraw its insinuation that Amnesty’s report has anything to do with antisemitism.”⁴⁸

Nevertheless, there have been punctuations in the political climate, such as the conclusion of the Trump Peace to Prosperity Plan for the Middle East, which saw fifty former foreign ministers and leaders across Europe pen a letter to the Guardian warning:

The plan envisages a formalization of the current reality in the occupied Palestinian territory, where two peoples live side by side without equal rights. Such an outcome has characteristics similar to apartheid – a term we don’t use lightly.⁴⁹



A Palestinian shepherd watches her herd in a field near the Israeli settlement of “Har Homa” [built on confiscated lands of Jabal Abu Ghuneim] to the south of occupied Jerusalem.
© UPI Photo/ Debbie Hill/ Alamy



Palestinian man inspecting his restaurant after one of many Israeli settlers' attacks on Hawara town (south of Nablus) in 2023
© Nasser Ishtayeh/ SOPA Images via ZUMA Press Wire/ Alamy

International Recognition of Apartheid



The case studies on various positions on apartheid by Belgium, Canada, France, Germany, Ireland, Luxembourg, Norway, Spain, Israel, Jordan, South Africa, the United Kingdom, and the United States showed that Jordan, South Africa, and within Spain, Catalunya, have out rightly supported the apartheid frame. South Africa offers a more profound commitment towards taking action and leading at an international level, and Luxemburg appears well placed to lead at a European level. That being said, there is generally a block at the European States, with even traditionally friendly states, such as Belgium, Ireland, and Norway, evading recognition. With Ireland, as with France, this is clearly on political grounds, and no meaningful counterargument has been presented. With Norway, as with other capitals in Europe, the call is for an international ruling on apartheid, with Norway's position singling out the International Criminal Court being even more problematic, given the potentially decades-long proceedings in front of the Court.

In addition, there are over 35 States in the US with state and federal bills and executive orders introduced requiring contractors to pledge not to boycott Israel, and the compilation of public blacklists against entities that have pledged to boycott Israel. Secretary of State Pompeo encouraged President Trump to issue a declaration declaring Amnesty International, Human Rights Watch, and Oxfam as "antisemitic" based on the group's alleged support of BDS and recommending the US and Third States to not financially support and cease their support of the organizations.⁵⁰ Since 26 May 2016, the United States has formally adopted the IHRA definition of antisemitism.⁵¹ On 14 July 2022, US President Biden and Israeli President Minister Lapid adopted the Joint Declaration on the US-Israel Strategic Partnership. They pledged to jointly circumvent judicial and other accountability processes investigating Israel. [The United States and Israel affirm that they will continue to work together to combat all efforts to boycott or delegitimize Israel, to deny its right to self-defence," or to unfairly single it out in any forum, including at the United Nations or the International Criminal Court].⁵²

While traditionally problematic countries, such as Canada, the United Kingdom, and the United States, are staunchly committed to objecting to the apartheid frame, the conclusion of bilateral agreements to circumvent the UN and international accountability mechanisms by the United Kingdom and the United States, is extremely telling and may have impending consequences at the International Criminal Court, the UN Commission of Inquiry and other mechanisms.

Concerning Municipalities of Belgium, Brazil, Ireland, Norway, and Spain, the Trade Unions of Norway, the United Kingdom and Coalitions, there are generally positive offshoots at the municipal level with actions against Israel's apartheid, even where those countries' Ministries are diametrically opposed to the apartheid frame. The municipality in Barcelona, Cork City Council, and the municipality of Liège have been directly influenced by the apartheid reports. However, other countries, potentially Belem in Brazil and the Spanish municipalities, have responded to BDS calls, while Norway has veered away from the apartheid frame even at the municipal level, basing procurement decisions on the illegality of the occupation. Meanwhile, trade unions have been diversely influenced by the BDS call in South Africa and Norway, by the ESCWA report in Ireland, and the UN Special Rapporteurs report on apartheid in the UK. At the civil society level, there is a consistent embrace of support with important calls for sanctions and countermeasures, including trade bans and arms embargoes on Israel.





Conclusion



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There is growing recognition that the situation on the ground is apartheid, and already, there have been 67 recognitions by Third States, including in joint statements at an international level. However, the apartheid framing needs to be entrenched and repeated. While there was a welcome momentary burst of apartheid recognitions following Special Rapporteur Lynk's report on apartheid at the UN Human Rights Council, these State recognitions were noticeably reduced in the interventions in subsequent sessions. Additional Third States that may be more amenable to adopting the apartheid frame in their interventions and statements, include Luxemburg, Portugal, Slovenia, and Brazil. Israeli apartheid and illegal occupation of Palestine must be recognized by all states. It is also important to stress that the situation is not just apartheid, but settler colonialism and apartheid.

As Special Rapporteur Francesca Albanese has outlined, the situational context is broader than apartheid and should be examined holistically as settler colonialism and apartheid, with the denial of the right of return and self-determination. It's crucial for both to be examined before the UN Commission of Inquiry, which to date, has not yet examined the root causes of the situation in Palestine or the crime of apartheid. The Mandate of the Commission of Inquiry should also provide a unique opportunity to examine settler colonialism and the closest related crime to this, in terms of erasure and an intent to destroy a racial group in whole or in part, which is genocide. Notably, the Apartheid Convention observes that under "the Prevention and Punishment of the Crime of Genocide, certain acts which may also be qualified as acts of apartheid constitute a crime under international law."⁵³

Finally, it is necessary to expand the analysis to companies, charities, and institutions contributing to inhumane acts of apartheid in occupied Palestine. Having a UN Fact Finding Mission to answer this question will provide clarity on the role of charities and other organizations that may be complicit in inhumane acts of apartheid, unrelated to the settlement enterprise. These are the necessary preliminary steps towards dismantling Israel's settler colonial apartheid regime, and facilitating the exercise of the inalienable right of the Palestinian people to self-determination and permanent sovereignty, and the collective right of return.

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Murals and sculptures appear amid Palestinian homes destroyed by the recent Israeli aggression on the Gaza Strip (2023).
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STATE OF PALESTINE
PALESTINE LIBERATION ORGANIZATION
NEGOTIATIONS AFFAIRS DEPARTMENT

Negotiations and Support Unit (NSU)

Tel: +970 (0)2 241 1171 - 6

Fax: +970 (0)2 241 1170

www.nad.ps

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