



**SUBMISSION TO UNHRC SPECIAL RAPPORTEUR
MS FRANCESCA ALBANESE
ON THE RIGHT TO SELF-DETERMINATION**

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1. This submission is made by UK Lawyers for Israel, an association of lawyers who support Israel and seek the proper application of laws in matters relating to Israel. Our Patrons and members include some of the most distinguished lawyers in the UK.
2. A basic difficulty in addressing self-determination for inhabitants of the former territory of the Palestine Mandate west of the Jordan river/Arava valley is establishing what Arab inhabitants of this area actually want.
3. Unfounded assumptions and false statements are regularly made in this regard, possibly influenced by saviourism.¹ This is strikingly illustrated by a recent opinion poll which found that 93% of Arabs in East Jerusalem would prefer a continuation of Israeli rule.² It may be noted that the poll was reasonably large, with 1200 respondents; the 95% confidence limits are +/- 1.5%. This empirical result is clearly at odds with assumptions regularly made in the international community.
4. Jerusalem has been regarded as a distinct area requiring special treatment in attempts to find a permanent solution to issues arising out of the League of Nations Mandate for Palestine. UNGA Resolution 181(II) of 29 November 1947 recommended a special international regime for Greater Jerusalem, to last initially for 10 years, with the residents of the City then being free to express by means of a referendum their wishes as to the future regime.³ Bearing in mind that the City has had a Jewish majority at all times since 1948 and such evidence as there is as to the wishes of Arab residents, it is highly likely that a referendum at any time would have returned a majority in favour of Israeli rule.
5. More recently, the Oslo II Accord treated Jerusalem as a distinct issue to be addressed in permanent status negotiations.⁴
6. In these circumstances, the principle of self-determination would appear to favour continuation of Israeli rule over the whole of Jerusalem in accordance with the wishes of overwhelming majorities of its major ethnic communities.
7. It should further be noted that the Palestinian Authority has not held elections for its President or Legislative Council since 2005 and 2006 respectively. Those representing the Palestinian Authority do not have any legitimate authority to

¹ See the comments of Yoseph Haddad to the Irish Parliament on 25 February 2022:

<https://www.irelandisrael.ie/blog/yoseph-haddad-002/>

² <https://www.shfanews.net/post/102082>

³ Part III D

⁴ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip of 28 September 1995, Arts. XVII.1.a and XXXI.5

express supposed views of Arab inhabitants of the West Bank or the Gaza Strip. Application of a right of self-determination requires that the will of the peoples concerned be fully established.⁵ As matters stand, it cannot be said that this has been achieved in relation to Arab inhabitants of these areas.

8. Self-determination is properly regarded as a relative right, which needs to be accommodated with other rights and requirements.⁶ These other rights and requirements include existing international boundaries established in accordance with the doctrine of *uti possidetis juris*. As the Badinter Commission observed,

*“whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (uti possidetis juris) except where the States concerned agree otherwise.”*⁷
9. As shown by Bell and Kontorovich, in accordance with *uti possidetis juris*, the State of Israel inherited the boundaries of the Mandate of Palestine as they existed in May 1948, including the eastern boundary along the Jordan river and Arava valley.⁸ The position was not altered by the armistice agreements of 1949 which delineated *“the lines beyond which the armed forces of the respective Parties shall not move”*. These agreements explicitly stated that that these lines, which became known as the “Green Lines”, were without prejudice to any rights, claims or positions of the parties.⁹
10. New borders can be created by agreement, and it was envisaged by the Oslo II Accord that borders would be the subject of final status negotiations.¹⁰ However, the correct starting point for these negotiations is that Israel’s borders are those of the Mandate of Palestine as at May 1948 and that relinquishing part of that territory would constitute a concession by Israel.
11. Other rights which must be accommodated include the self-determination and security of Israeli citizens. The very small distances, particularly in the West-East dimension, make it difficult to safeguard these rights in conjunction with the

⁵ See para 4 of Opinion No. 4 of the Arbitration Commission of the Conference on Yugoslavia (Badinter Commission), English translation published by the University of Ljubljani at https://www.pf.uni-lj.si/media/skrk_mnenja.badinterjeve.arbitrazne.komisije.1_10.pdf

⁶ Tal Becker, “Self-Determination in Perspective: Palestinian Claims to Statehood and the Relativity of the Right to Self-Determination”, *Is.L.R* Vol 32 (1998) 301

⁷ Para 1 of Opinion No. 2 of the Badinter Commission (see note 5 above), and see also Opinion No.3

⁸ Abraham Bell and Eugene Kontorovich, “Palestine, Uti Possidetis Juris and the Borders of Israel”, *Arizona Law Review*, vol 58 (2016) p633

⁹ Israel-Jordan Armistice Agreement Arts. II.2, IV.2, VI.9; Israel-Egypt Armistice Agreement, Arts. IV.3, V.2, V.3 and XI

¹⁰ Art. XXXI.5

creation of an additional Arab State, particularly given the unfortunate developments described below.

12. The accommodation should also take into account the rights of the Jewish people recognised by the League of Nations Mandate for Palestine, which remain in force in the West Bank in accordance with Art. 80 of the UN Charter and the Advisory Opinions of the International Court of Justice in relation to South West Africa of 11 July 1950¹¹ and 21 June 1971.¹² These rights include the right of Jews to settle in the Mandate territory west of the Jordan river / Arava valley.¹³
13. It seems that the only practicable way of accommodating the respective rights and requirements will be through agreement, and this appears to have been recognised by the signatories of the Camp David Accords. Unfortunately, we find that international bodies and other actors are actively prejudicing the possibility of reaching such an agreement. We draw attention to the following, non-exhaustive examples:
 - (a) Notorious anti-Israel bias of the UNHRC and other UN bodies.¹⁴ This encourages rejectionism on the part of Palestinian Arabs. It also discourages concessions by Israel, particularly any concessions that make its defence more difficult, including any withdrawal from the West Bank. Because of the rampant bias, Israel has to proceed on the footing that UN bodies will continue to treat it unfairly and inhibit its ability to defend its citizens. In addition, the bias of UN bodies also results in the production and circulation of false allegations and biased narratives, thereby further promoting racism and hostility against Israel and Jews, and making it even more difficult to reach agreements that accommodate relevant rights and requirements.
 - (b) Teaching, teaching materials and extra-curricular activities at UNRWA and other Arab schools in the West Bank and Gaza Strip which promote racism against Jews, denial of Jewish self-determination, incitement and glorification of violence, hate, intolerance and dehumanisation.¹⁵ This

¹¹ Page 133 of the ICJ Report

¹² Paras 55-63.

¹³ Art. 6 of the Mandate, and see Eugene Rostow, “‘*Palestinian Self-Determination*’: *Possible Futures for the Unallocated Territories of the Palestine Mandate*”, Yale Journal of International Law, Vol 5 (1979), p147, section II. This point was overlooked in the ICJ’s (non-binding) Advisory Opinion “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory”, where the Court did not have the benefit of relevant substantive argument. However, it is unassailable and the Court’s decision should be regarded as *per incuriam* in this regard.

¹⁴ See eg UNWatch Database, “Is the UN living up to its founding principles?”
<https://unwatch.org/database/>

¹⁵ See eg IMPACT-se, “Palestinian Authority Ministry of Education Study Cards 2021-22, Grades 1-11 – Selected Examples” and “The 2020-21 Palestinian School Curriculum Grades 1-12 – Selected Examples”, both available at <https://www.impact-se.org/reports-2/>; Arnon Groiss, “Does UNRWA

promotes conflict and hatred, making it increasingly unlikely that any agreement that accepts Israel's legitimacy would be accepted or respected by many Arabs in these areas.

- (c) Promotion of racism against Jews, denial of Jewish self-determination, incitement and glorification of violence, hate, intolerance and dehumanisation in Palestinian media and social media.¹⁶
- (d) The Palestinian Authority's "pay for slay" policy of rewarding terrorists and their families, thereby encouraging terrorism and conflict.¹⁷
- (e) Massive resources devoted to defaming Israel by well-funded NGOs, which further promote hatred and conflict.
- (f) Bias against and defamation of Israel and Jews in media around the world,¹⁸ partly resulting from false information and propaganda produced by UN bodies and NGOs, and partly from gullibility with regard to Palestinian propaganda,¹⁹ as well as various other factors.

14. In conclusion, we regretfully find that the UNHRC and other UN bodies are very much part of the problem. They are an obstacle to a solution accommodating the rights and requirements of the inhabitants of this area, rather than a factor facilitating it. We respectfully urge the Rapporteur to consider critically the conduct of these bodies and their unhelpful contribution to promoting conflict.



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Educational System Prepare the Palestinian Children and Youth for a War against the Jews", Bedein Center for Near East Policy Research, May 2022 <https://israelbehindthenews.com/wp-content/uploads/2022/05/Does-UNRWA-Educational-System-Prepares-Palestinian-Children-and-Youth-for-a-War-against-the-Jew-1.pdf>; Palestinian Media Watch <https://palwatch.org/analysis/1024-1029>

¹⁶ See eg Palestinian Media Watch <https://palwatch.org/analysis/1024> and other examples at <https://palwatch.org/>

¹⁷ See reports prepared by Palestinian Media Watch at <https://palwatch.org/analysis/24-58-220>

¹⁸ For examples of such coverage on the BBC, see <https://camera-uk.org/>

¹⁹ See eg State of Israel, Ministry of International Affairs and Strategy, "The France 2 Al-Durrah Report, its Consequences and Implications" <https://www.gov.il/en/departments/news/spokeadora190513>