



SIXTH COMMITTEE

CHECK AGAINST DELIVERY

Statement by

Ms. Sarah Weiss Ma'udi
Legal Advisor
Permanent Mission of Israel to the United Nations

The Rule of Law at the national and international levels

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Thank you Mr. Chairperson,

As always, we welcome the opportunity to discuss the Rule of Law, as it is a topic of extreme relevance and importance for Israel. Due to the current circumstances, we will keep our remarks on this subject shorter than usual. That said, we wish to reference for the record our past official statements on this topic, and in particular our overview of Israel's commitment to democracy and equality, as enshrined in our Declaration of Independence and in our Basic Laws. We also recall our past descriptions of the active role that Israeli courts on all levels play to uphold law and justice, and to review legislation and administrative measures -- all main features of our independent judiciary.

Mr. Chairperson,

In the interest of time, I will highlight two achievements in the area of rule of law from this past year on the domestic plane. The first is our ability to continue to provide access to justice to all of our citizens, despite the challenges posed by the ongoing COVID-19 pandemic. For example, throughout the COVID-19 outbreak, Israeli domestic courts continue to operate and provide services for all citizens, while taking the necessary precautions to ensure the safety of all. Court hearings continued for all cases regarding arrested persons, and the High Court of Justice allowed urgent appeals. Petitions were filed allowing the emergency regulations adopted for COVID to be challenged and under judicial review, and exigent injunctions for civil cases were ordered.

The second highlight of this year in Israel that I wish to touch upon is our ongoing efforts to promote diversity and equality. While a thorough overview of all of the Government of Israel's efforts in this domain are beyond the scope of this speech, I wish to touch briefly upon certain milestones: Israel's Unit for the Coordination of the Fight Against Racism, which was established as a specialized division within our Ministry of Justice in 2016, trained and appointed 60 new officers this year for the prevention of racism throughout the various Government Ministries and auxiliary units. These officers are tasked with addressing complaints from workers and citizens receiving a given Ministry's services. They also have been appointed to promote awareness, tolerance and diversity, and to eliminate discriminatory practices and craft new, anti-racist practices and policies in their place. Also worth noting in this vein is the recent establishment of the Special Unit for Gender Equality and Cultural Diversity that was established in Israel's Police. The Unit was developed to help foster tolerance and address discriminatory practices, both within the organization and vis-à-vis Israel's diverse

citizenry. The Unit was also tasked with recruiting a more diverse police force, and has set minimum recruitment goals for Israel's various minority groups. In addition, an intern-ministerial committee was established under the auspices of the President of Israel in order to improve encounters between the law enforcement forces and people with disabilities.

Mr. Chairperson,

Turning to the international level, we would like to flag a new concerning trend, which very much influences and shapes the rule of law on the international plane. As we all know, State practice lies at the heart of the development and identification of customary law, as enshrined in the Statute of the International Court of Justice¹, and as set forth in the ILC's draft conclusions on the Identification of Customary Law. However, we have witnessed in recent years a troubling trend in court decisions, both on the national and international level, whereby State practice is not given due weight, and at times even completely overlooked. This is particularly troubling in the case of international courts and tribunals, which often have an explicit **obligation** to consider and apply State practice.² Some recent decisions of international tribunals reflected attempts of individual judges to mold what, in their view, "should be", rather than what *is*, international law. We reiterate our consistent position that the development of international law should be driven by **State practice**, looking at the norms established broadly by States that are "sufficiently widespread and representative, as well as consistent"³. Our position on this matter finds also support in the ILC draft conclusions on the identification of customary international law. Conclusion 4 holds that State practice should be the primary element -- in addition to *opinio juris* -- when determining customary international law. The commentary goes on to add that, in many cases, State practice may, indeed, be the **only** relevant consideration in determining customary international law.⁴

We believe that including more practitioners in the work of international legal institutions, who may place greater emphasis on the examination of

¹ Article 38(1)(b) of the Statute of the International Court of Justice.

² For example, Article 38(1) of the Statute of the International Court of Justice, instructs the court to apply, "...a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; [and] d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

³ ILC Conclusions on CIL, Conclusion 8, p.135.

⁴ Draft conclusions on identification of CIL, with commentaries, Conclusion 4, p.130.

State practice, would contribute to counter the current trend and ensure the proper development of international law. Indeed, as one scholar recently wrote, international courts and tribunals “...are charged with identifying and applying, not making” customary international law.⁵ Israel attributes great importance that decisions of international courts and tribunals will be grounded on solid legal principles when identifying and applying the law.

Mr. Chairperson,

On a final note, we would be remiss not to mention during this debate on the Rule of Law, our great sorrow at the passing of a true giant in the field of law, Justice Ruth Bader Ginsburg, who embodied the Jewish principle of “justice, justice thou shalt pursue.”⁶ In the words of Israel’s first female President of the Israeli Supreme Court, Justice Dorit Beinisch, who recently wrote an article in the Israeli press eulogizing her friend, Justice Bader Ginsburg made an “enormous legal contribution to advancing the protection of women’s rights, the right to equality,” and -- most importantly -- to “the rights of all human beings”. May her memory be a blessing.

Thank you Mr. Chairperson

⁵ Hakimi, Monica, Making Sense of Customary International Law, Michigan Law Review. June 2020, Vol. 118, Issue 8 at p.1508.

⁶ Deuteronomy 16:20