

THE COUNCIL OF EUROPE AND ISRAEL

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I

Israel has enjoyed the status of an Observing State at the Parliamentary Assembly of the Council of Europe since 1957. The delegation from its Knesset is an active participant in parliamentary proceedings, sitting on various steering and ad hoc committees.¹ The state has signed up to various agreements, including the European Convention on Action Against Trafficking in Human Beings which became effective within Israel on 1 September 2021.² The country's observers 'participate in the Middle-East Sub-Committee of the Committee on Political Affairs and Democracy, where questions of relevance to the conflict in the Middle-East are debated.'³ Delegations from the Assembly have visited Israel.⁴ It has its own Ambassador to the Council of Europe, and gave nearly EURO 300,000 to the Council in the

¹ Detailed in a document accessible at <https://rm.coe.int/participation-of-non-member-states-in-council-of-europe-bodies/168077d725#page=21> [accessed 19 January 2024]. See Directorate of External Relations DER/Inf (2017) 2 (9 May 2017): <https://rm.coe.int/cooperation-with-israel-2017-en/168071127c> [accessed 19 January 2024].

² 'Israel accedes to Council of Europe's anti Human-Trafficking Convention' Council of Europe Newsroom 28 May 2021: <https://www.coe.int/en/web/portal/-/israel-accedes-to-council-of-europe-s-anti-human-trafficking-convention> [accessed 19 January 2024]. This is permitted under article 43: Council of Europe Convention on Action Against Trafficking in Human Beings (16 May 2005): <https://rm.coe.int/168008371d> [accessed 19 January 2024].

³ Directorate of External Relations DER/Inf (2017) 2 (9 May 2017): <https://rm.coe.int/cooperation-with-israel-2017-en/168071127c> [accessed 19 January 2024].

⁴ Ibid.

twelve years to 2016.⁵ Israel is also a member of the European (Venice) Commission for Democracy Through Law⁶ and enjoys observer status with the Congress of Local and Regional Authorities (the latter since June 1994).⁷

This short essay asks the following three questions. What is ‘observer status’ at the Council of Europe? How if at all have the various wars conducted by Israel against the Palestinian territories they control, most recently the attack on Gaza in 2023-24 that has given rise to concerns about genocide so serious as to warrant an intervention by the International Court of Justice,⁸ affected Israel’s relationships within the Council of Europe? If there is a plausible argument for seeing Israel as a case of settler-colonialism, how has the Council engaged with colonialism where it has been member states who have engaged, or sought to engage, in the practice?

II

In 1961, the Parliamentary Assembly of the Council of Europe instituted an observer status for delegations of national parliamentarians from outside the Council family, by then already informally enjoyed as we have seen by Israel for some four years. In the current iteration of the rules, in order to be such an observer, the candidate state must ‘meet the conditions set

⁵ Ibid.

⁶ See Council of Europe Venice Commission:

<https://www.venice.coe.int/WebForms/members/countries.aspx?lang=EN> (last visited 19 January 2024) and also Directorate of External Relations DER/Inf (2017) 2 (9 May 2017), n 3 above.

⁷ See <https://www.coe.int/en/web/congress/partenaires> [accessed 19 January 2024].

⁸ *South Africa v Israel* Order 26 January 2024: <https://www.icj-cij.org/sites/default/files/case-related/192/192-20240126-ord-01-00-en.pdf> [accessed 9 February 2024].

out in paragraph 1 of Statutory Resolution (93) 26 of the Committee of Ministers'.⁹ That paragraph is in the following terms:

'Any state willing to accept the principles of democracy. the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms. and wishing to co-operate with the Council oi Europe may be granted by the Committee of Ministers. after consulting the Parliamentary Assembly, observer status with the Organisation.'¹⁰

Rule 63.4 of the rules of procedure of the Assembly says the following about an observer state's privileges:

'Members of observer delegations may participate in committee meetings They may submit to the committee chairperson proposals concerning the draft agenda of committee meetings and proposals for amendments to draft texts examined in these meetings. The committee chairperson shall decide on any further action. They may sign motions for resolutions and recommendations and written declarations. However, they shall not be taken into account for the number of signatures required. Members of observer delegations may participate in the work of political groups according to the conditions established by the groups.'¹¹

⁹ Rules of Procedure of the Assembly RESOLUTION 1202/99: https://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp?id=ENToc_N0A29C3B0N13F9A178#Format-It [accessed 21 January 2024].

¹⁰ Para 1, Statutory Resolution No 93(26) on Observer Status: <https://rm.coe.int/168006375d> [accessed 22 January 2024].

¹¹ Rules of Procedure of the Assembly, n 9 above, para 4 [accessed 22 January 2024].

The criteria for observer status were expanded in 1999 so as to include a suggestion, verging on a requirement, that an applicant for observer status ‘share Council of Europe values’.¹² It is clear that money is a factor in the process (‘applicants should also be aware of the possibility to make voluntary contributions of a financial nature to the implementation of specific Council of Europe programmes or activities’¹³). The Holy See (1970), the United States, Canada and Japan (both 1996) and Mexico (1999) have been awarded this privilege. The Committee of Ministers may suspend an observing state and, after consulting the Parliamentary Assembly, withdraw the status altogether.¹⁴ While there is a parliamentary monitoring committee to oversee the compliance of member states with their duties as Council of Europe members,¹⁵ there is no similar system for assessing the compliance of observer states with Resolution (93) 26.

If Israel are well-embedded within the Council of Europe, what about the neighbour whose territory it controls? Palestine’s engagement with the Council is altogether more modest. It is permitted involvement as one of the ‘Partners for Democracy’, a status granted

¹² Criteria for the granting of Observer status within the Council of Europe:

<https://rm.coe.int/0900001680695176> [accessed 22 January 2024].

¹³ *ibid.* See further from 2006

https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805d7845 [accessed 22 January 2024].

¹⁴ Statutory Resolution No 93(26) on Observer Status, n 9 above, para VIII [accessed 22 January 2024].

¹⁵ Honouring of obligations and commitments by Member States of the Council of Europe. Resolution 115

(1997): https://assembly.coe.int/nw/xml/RoP/RoP-XML2HTML-EN.asp?id=EN_CEGGJDIA#Format-It [accessed 22 January 2024].

to it by the Parliamentary Assembly on 4 October 2011.¹⁶ The aim behind the partnership initiative is to deepen 'co-operation with parliaments of non-member States of neighbouring regions as a means of consolidating democratic transformations and promoting stability, good governance, respect for human rights and the rule of law.'¹⁷ To get even this truncated recognition, the Speaker of the Palestinian National Conference at the time seems to have been required to write a letter pledging that the Conference would 'pursue the values upheld by the Council of Europe, hold free and fair elections and work towards abolishing the death penalty, among other commitments.'¹⁸ In a similar way Palestine are also allowed observe the proceedings of the Venice Commission albeit its designation as an observer is expressly declared 'not be construed as recognition of a State of Palestine and is without prejudice to the individual positions of Council of Europe member States on this issue.'¹⁹ (In all this benign democracy-building, there is no mention anywhere of the elections held in Palestine in 2006 which secured Hamas (presenting itself as the party of 'Change and Reform') a majority across both the West Bank and the Gaza Strip but which result was

¹⁶ <https://www.un.org/unispal/document/auto-insert-200232/> [accessed 22 January 2024]. See further <https://www.un.org/unispal/document/the-israeli-palestinian-peace-process-the-role-of-the-council-of-europe/> [accessed 24 January 2024]. The debate (in which two members of the Knesset participated in their capacity as Observers) is at <https://www.un.org/unispal/document/auto-insert-197507/> [accessed 24 January 2024].

¹⁷ <https://pace.coe.int/en/pages/observers-partners-guest> [accessed 26 January 2024]. See the relevant resolution: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804e42f6 [accessed 26 January 2024].

¹⁸ <https://www.un.org/unispal/document/auto-insert-200232/> [accessed 26 January 2024].

¹⁹ https://www.venice.coe.int/WebForms/pages/?p=02_Others [accessed 26 January 2024].

denied by both the preexisting authorities in Palestine (headed, as now, by Mahmoud Abbas) and Israel.²⁰)

III

If there is a negative consequence for Council of Europe relations from Israel's successive wars against Palestine (and Lebanon, on occasion as well), then it is hard to spot. The bald answer to the second question posed here appears to be 'no impact at all'. How could the Council of Europe (whose founding charter declares its 'devotion' to 'individual freedom, political liberty and the rule of law'²¹) have so arranged things that it should be so closely – and apparently unproblematically – associated with a state which had expanded itself so lavishly at Palestinian expense in 1948, just nine years before its Knesset secured its informal role within the Council, and whose engagement with the Council has deepened at a time of illegal occupation of the West Bank (since 1967), multiple armed invasions of Lebanon (1978, 1982, 1993, 1996 and 2006) and regular assaults on Gaza since Israeli settlers were removed in 2005? Of course there have been *casus belli*, the most recent being the most serious, involving as it did extensive loss of life, other acts of violence and hostage-taking in the Hamas-led attacks on southern Israel on 7 October 2023. This shocking event has been devastating for the people of Israeli, their insecurity exposed in this most brutal of ways. So slight have been the provocations of the past that have produced the series of startlingly military violence just described that these attacks of 7 October 2023 were bound to – and

²⁰ See Avi Shlaim, 'All That Remains' *Prospect* January/February 2024, 16-21:

<https://www.prospectmagazine.co.uk/world/israel/64132/all-that-remains> [accessed 7 February 2024].

²¹ Preamble to the Statute of the Council of Europe: <https://rm.coe.int/1680306052> [accessed 3 February 2024].

were arguably designed to²² – stimulate a vast Israeli reaction, which has of course duly happened.

To focus on the Council of Europe during this most recent and most brutal bombardment of Gaza, what has the Council of Europe been doing since 7 October 2023? Its Secretary General Marija Pejčinović Burić made clear in a short statement issued on 14 October 2023 that the organisation condemned the ‘terrorist crimes of Hamas’ with the Council’s ‘support and solidarity’ for Israel being ‘full and unreserved’.²³ In the critical months that followed, while Israel’s determination to destroy the infrastructure of its ‘Partner for Democracy’ in Gaza became increasingly apparent, the Council of Europe has remained largely silent, with even its commissioner for human rights Dunja Mijatović limiting herself to a passing comment in a speech on 30 November in Berlin about the spill-over effect into Europe of what she refers to as ‘the conflict in Gaza’.²⁴ As late as 13 December 2023, a resolution by the political committee of its Parliamentary Assembly ‘expressed ... support for Israel in the face of “the most brutal terrorist attack of its history”’, and affirmed ‘its right to self-defence’ while insisting in a non-specific way on ‘the need for the parties to the hostilities to strictly abide by international law and international humanitarian law, in line with the principles of distinction, necessity, proportionality and

²² Adam Shatz, ‘Vengeful Pathologies’ (2023) 45 (21) *London Review of Books*: <https://www.lrb.co.uk/the-paper/v45/n21/adam-shatz/vengeful-pathologies> [accessed 8 February 2024].

²³ <https://www.coe.int/en/web/portal/-/situation-in-israel-statement-by-secretary-general-marija-pej%C4%8Dinovi%C4%87-buri%C4%87> [accessed 26 January 2024].

²⁴ https://search.coe.int/commissioner/Pages/result_details.aspx?ObjectId=0900001680ad823e [accessed 26 January 2024].

precaution.’²⁵ In the aftermath of the 7 October attacks, there have been moves emanating from outside the Council to remove Palestine’s partnership status, on the basis that the relevant parliamentary body, the Conference, is dominated by Hamas (a legacy of the organisation’s de facto victory in 2006).²⁶

The Parliamentary Assembly finally got around to discussing Gaza on 23 January 2024. In the course of a long debate, the Knesset representative Meirav Ben Ari was able to avail of her right to speak to lay out an horrific account of what had occurred on 7 October, asserting how babies and others had been burnt alive, and relaying accounts of torture committed by Hamas and the multiple ‘acts of sexual abuse’ in which they engaged.²⁷ The second Knesset observer present Boaz Bismuth declared that he was setting aside his prepared remarks to attack some of the ‘shameful’ speeches he had been listening to as ‘a disgrace’ to the platform, with representatives ‘staining the place’ by the nature of their remarks. Mr Bismuth focused on the need of Israel to defend itself, while also strongly criticising members of the Assembly for showing ‘zero compassion’ something which Mr Bismuth found ‘disgusting’. Mohammed Hegazi spoke directly after Ms Ben Ari, offering a Palestinian perspective and calling for a ceasefire but with nothing like the passion of the

²⁵ <https://pace.coe.int/en/news/9326/middle-east-committee-denounces-hamas-terrorist-attack-insists-on-a-ceasefire-and-humanitarian-aid-for-the-population-of-gaza-> [accessed 26 January 2024].

²⁶ See Nicolas Bauer, ‘The CoE’s ‘Partnership’ with Palestine’ *European Centre for Law and Justice* (previously published in French in *Valeurs Actuelles* on 16 October 2024): <https://eclj.org/geopolitics/coe/the-council-of-europes-partnership-with-the-hamas-dominated-palestinian-parliament> [accessed 8 February 2024].

²⁷ The debate is available at <https://vodmanager.coe.int/coe/webcast/coe/2024-01-23-1/en/42> [accessed 8 February 2024].

Knesset speakers, unsurprisingly given the difficult position the Palestinian Authority has found itself in after the 7 October attacks.

The resolution that was passed after the debate laid out in its very first paragraph quite how unequivocal remains the Assembly's support for its longest serving observer:

'The Parliamentary Assembly unequivocally, and in the strongest possible terms, condemns the barbaric attack conducted by Hamas and other militia groups against Israel on 7 October 2023. Not since the Shoah have so many Jews been killed in one day. The actions of the attackers – who slaughtered and maimed hundreds of people, raped women and took 239 hostages, including children, persons with disabilities and the elderly – leave no doubt about the terrorist nature of Hamas and the other affiliated groups who took part in this carnage, and cannot be justified on any grounds whatsoever. The Assembly expresses its support for Israel in the face of the most brutal terrorist attack of its history, affirms its right to self-defence, and conveys its deepest sympathy to all those who have been affected. The Assembly stands firm in its commitment to the protection of Jewish life and in condemning terrorism, islamism, antisemitism and violent extremism in all their forms and manifestations, wherever they occur.'²⁸

The resolution then went on to note that the 'dual objective of annihilating Hamas and liberating the hostages [had] resulted in the loss of thousands of lives, including of children, women, and the elderly, massive displacement and widespread destruction of civilian

²⁸ Recent Developments in the Middle-East: Hamas's Terrorist Attacks on Israel and Israel's Response Resolution 2524 (23 January 2024) (Provisional Version): <https://pace.coe.int/en/files/33326/html> [accessed 3 February 2024].

objects and infrastructure in Gaza.’ But an immediate rider explains why all this post 7 October suffering had happened: the ‘high human toll [was] not only due to military operations being conducted in densely populated areas but also to the use of the Palestinian population as human shields by Hamas, having built a maze of underground tunnels and placed offensive weapons in close proximity of civilian buildings, including schools and hospitals.’²⁹ Only after this series of remarks does the Assembly find the space in a short two line paragraph to voice ‘its sorrow and dismay at the staggering number of innocent casualties in the Gaza Strip. The Assembly also realises that, to many, the displacement of half of Gaza’s population, caused by the present war, has revived memories of the Nakba.’³⁰ There followed the usual vague calls for humanitarian action, a commitment to international law and a political solution before the resolution ended with a call ‘for a permanent ceasefire and for a restart of efforts towards a political solution provided that all hostages are immediately and unconditionally released and the terrorist organisation Hamas is dismantled.’³¹ It would appear from the grammatical construction of this sentence that the Parliamentary Assembly is calling on Israel only to halt its attacks when Hamas are comprehensively defeated. The Knesset could not have put it better.

IV

To understand the ease with which the Council of Europe has accommodated Israel within its structures and proceedings we need to remind ourselves of the organisation’s historical origins. The Council was established in 1948, at the height of the US-inspired turn towards

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid [accessed 8 February 2024]. The vote was 111 in favour 22 against with 20 abstentions.

human rights that followed the end of the second world war. That same year saw agreement on a Universal Declaration of Human Rights (UDHR) which had itself flowed out of a newly created United Nations whose 1945 Charter had foregrounded the protection of universal human rights as a central feature of the new era that it was intended to inaugurate. In one respect however this emerging world order contained a relic of the past, an aged relative deep in the cellar of the new building that it had proved impossible to expel: imperialism. The colonial powers that had either been victors in the war, or had re-emerged relatively unscathed at its end, saw no reason not to return to their pre-war business-as-usual, at least so far as the exploitation for their own benefit of territories in what we would now call the Global South was concerned. Among inaugural Council of Europe members this was not just the United Kingdom, albeit its foreign holdings were very much the largest. It was also France, the Netherlands, and Belgium.

The American Anthropological Association (AAA) has been maligned by history for having adopted a critical perspective on human rights in 1947, but its approach deserves rehabilitation.³² The AAA was not resiling from the idea of universal human dignity that is entailed in the human rights ideal; it was on the contrary suffering from a surfeit of human rights ambition when it drew attention to the inconvenient truth that the foreign control of peoples ran counter to the supposed equality of persons that was loudly trumpeted by those continuing colonial powers as essential to human rights. The UDHR resolved the conundrum, and the conscience of its drafters, by largely ignoring it. True the Preamble commits the nations of the world to keep its obligations to the fore of their minds so as to secure their universal and effective recognition and observance 'both among the peoples of

³² See Mark Goodale, *Reinventing Human Rights* (Stanford: Stanford University Press, 2022), esp ch 5.

Member States themselves and *among the peoples of territories under their jurisdiction*.³³

True, article 2 declares that the rights set out shall be enjoyed by all on an equal basis and in particular that 'no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.' But the non-enforcement of the Declaration had the effect of draining these fine words of life.

The UDHR was from a colonial perspective grandiloquent and impotent in equal measure. The European Convention on Human Rights and Fundamental Freedoms (ECHR), agreed in Rome on 4 November 1950 under the aegis of the Council of Europe had as its special selling point the prospect of proper enforceability, of accountability for the states that signed up to it, with not only an executive oversight body (the European Commission) but the promise of a fully-fledged court, the European Court of Human Rights (ECtHR) which true to the Convention's promise opened its doors in Strasbourg in 1959. The colonial question could not, therefore, be easily ignored, as the British had hoped it could be, fighting unsuccessfully to achieve the same level of unenforceability that had denuded the UDHR.³⁴ A second-best option for the colonial powers was simply to refuse when adopting the Convention to apply it to territories under a signatory state's territorial control. Under the 'colonial clause', originally article 63 (1), now article 56 (1), 'Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary

³³ For the UDHR see <https://www.un.org/en/about-us/universal-declaration-of-human-rights> [accessed 24 January 2024] (emphasis added).

³⁴ See generally on this John Reynolds, *Empire, Emergency and International Law* (Cambridge: Cambridge University Press, 2017, esp Part II.

General of the Council of Europe that the present Convention shall extend to all or any of the territories for whose international relations it is responsible.' This meant that territorial reach was not automatic so far as places beyond the homeland were concerned, though what was then article 56(4) permitted the Convention to be extended to places denied its protection in the first instance. Denmark extended the Convention to Greenland, while France simply refused to ratify the whole thing until as late as 1974. Portugal did not even enter the system until 1976, following the collapse of its authoritarian regime in the carnation revolution of 1974. Belgium ratified early but declared the Convention had no application to its colonies. The United Kingdom took the same approach as Belgium to a number of its colonies, eg Hong Kong, Aden, Brunei and Southern Rhodesia. When the Convention was applied to a colony it was invariably without the first protocol with its incendiary article 3 on rights related to elections - this full application had to wait until the 1990s.³⁵

Where application of most of the Convention rights was agreed, there was, thirdly, the option of its tailored disapplication in individual circumstances. Such derogations were attractive both in general terms, 'as a means of strengthening the resistance in all our countries against insidious attempts to undermine our democratic way of life from within or without...' as the British representative at the drafting stage Lord Layton put it.³⁶ Clearly it was dissent in the colonies that was a central concern here. In its final form, article 15 of the Convention permitted departure from the vast majority of the Convention's rights in 'a time of war or other public emergency threatening the life of the nation', albeit this was

³⁵ A W B Simpson, *Human Rights and the End of Empire* (Oxford: Oxford University Press, 2000)

³⁶ Reynolds, n 34 above, p118.

permitted 'only to the extent strictly required by the exigencies of the situation,' and also only when 'such measures were not inconsistent with its other obligations under international law.' The very first case before the Strasbourg court, *Lawless v Ireland*,³⁷ engaging exactly this provision, arising from action by the Republic of Ireland against a subversive group intent on continuing the struggle against continued British control of Northern Ireland. Britain diluted the extension of the Convention to many of the colonies to which it extended the Convention by immediately deploying article 15 derogations to them: Malaya, Singapore, British Guiana; Kenya, Buganda. The same tack was taken later when Cyprus, Northern Rhodesia, Nyasaland, Aden, Zanibar and Mauritius were brought within this convenient, exculpatory fold.³⁸ Legitimation was the win for the authorities, with ongoing imperial abuse being camouflaged by a cloak of legalised emergency within what could be presented as an otherwise functioning human rights system.

The derogation clause did not give signatory states full impunity so far as they colonial actions were concerned: as we have seen derogations needed to be specific and did not in any event cover such absolute rights as the prohibition of torture. Proceedings in the dispute between Greece and the United Kingdom over the latter's treatment of Cyprus dominated the work of the (now superseded) European Commission on Human Rights in the second half of the 1950s. At this stage the UK had not yet exposed itself to possible scrutiny before the then newly established European Court of Human Rights, but the Commission's investigative powers – widely used – together with the nature of the allegations made

³⁷ 1 July 1961: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-57518%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57518%22]}) [accessed 9 February 2024].

³⁸ Reynolds, n 34 above, p 133,

(which included, in a second application, torture) caused great discomfort to the colonial authorities before the case disappeared into the more benign political environment of the Council's political arm, the Committee of Ministers.³⁹ No such diversion was possible twenty years later when the Republic of Ireland, acting like Greece on behalf of a people under British control (on this occasion the Catholic nationalists of Northern Ireland) successfully indicted the United Kingdom for breaches of article 3's prohibition on inhuman and degrading treatment.⁴⁰ Insult was added to quasi-colonial injury not only on account of Northern Ireland being technically part of the United Kingdom (and so not a mere colonial territory) but also because the prosecuting state was not even in this instance a foreign country, section 2 of the UK's Ireland Act 1949 having (somewhat oddly and perhaps ill-temperedly) declared this to be the case when Ireland's decision to opt for full independence as a republic was (reluctantly) recognised.⁴¹

V

In contrast to its silence about Israel, the Council of Europe has been alive to colonial-style acquisition of territory as between member states. Cyprus joined the Council of Europe in 1961, shortly after achieving its independence from Britain. Turkey having been members since 1949, the latter's invasion of the former in July 1974 produced a series of condemnatory judgments from the European Court of Human Rights, including a ruling on

³⁹ Simpson tells the story well, n 35 above: see chs 18 and 19.

⁴⁰ (1978-79) 2 EHRR 25. The Commission had earlier found torture: Report of the Commission 25 January 1976, of which there is a good summary at *Ireland v United Kingdom (No 2)* ECtHR 20 March 2018, paras 9-13.

⁴¹ Ireland Act 1949, s 1.

just satisfaction that was handed down some forty years after the invasion.⁴² The Council has acted with both speed and decisiveness against Russia following its most recent incursion into Ukraine. The first acts of the latest invasion took place on 24 February 2022. Having quickly concluded an exchange of views with the Parliamentary Assembly, the Committee of Ministers decided the following day to suspend with immediate effect Russia's 'rights of representation in the Council of Europe in accordance with Article 8 of the Statute of the Council of Europe'.⁴³ On 15 March the Parliamentary Assembly unanimously adopted the view that the Russian Federation could no longer be a member State of the Organisation.⁴⁴ The Russia state renounced its membership the same day, with the Committee of Ministers formally acknowledging the precise departure date as 16 March.⁴⁵ A host of inter-state proceedings continue despite Russia's departure from the Council.⁴⁶ In one case the Netherlands have joined with Ukraine to pursue redress for specific breaches of the Convention alleged to have been committed.⁴⁷

What has all this got to do with Israel? Whether or not one embraces the language of settler-colonialism, Israel/Palestine does appear non-superficially to

⁴² *Cyprus v Turkey* ECtHR (Grand Chamber) 12 May 2014.

⁴³ See CM/Del/Dec(2022)1426ter/2.3:

⁴⁴ Opinion 300 adopted on 15 March 2022..

⁴⁵ Resolution CM/Res(2022)2 on the cessation of the membership of the Russian Federation to the Council of Europe (16 March 2022).

⁴⁶ See <https://www.echr.coe.int/w/ukraine-v-russia-re-crimea-nos-20958/14-and-38334/18-> [accessed 6 February 2024].

⁴⁷ See [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22002-13989%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-13989%22]}) [accessed 6 February 2024].

resemble a colonial-type situation.⁴⁸ Yet the Council of Europe does not need the language of ‘settler-colonialism’ to engage with events in Israel/Palestine. Israel’s defence of its position involves (to put it at its mildest) arguably serious infractions of the rule of law and of respect for universal human rights, as the defence of land by colonials/settler-colonials invariably does. (This was something that, as earlier noted, the colonial powers among the Council’s founding states knew well which is why they were so careful about the jurisdictional reach of the Convention they had agreed.)

Article 8 of the Statute, under which the actions against Russia previously discussed have been taken, is in the following terms:

‘Any member of the Council of Europe which has seriously violated Article 3⁴⁹ may be suspended from its rights of representation and requested by the Committee of Ministers to withdraw under Article 7. If such member does not comply with this request, the Committee may decide that it has ceased to be a member of the Council as from such date as the Committee may determine.’

True there is no equivalent to article 8 in the Statute of the Council of Europe covering observers, and there is therefore nothing in that foundational document about any conditionality that might attach to the status. Amendment of the Statute is possible,

⁴⁸ Omar Jabary Salamanca, Mezna Qato, Kareem Rabie and Sobhi Samour ‘Past is Present: Settler Colonialism in Palestine’ (2012) 2 (1) *Settler Colonial Studies* 1-8.

⁴⁹ ‘Every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realisation of the aim of the Council as specified in Chapter I.’

however.⁵⁰ As we have seen there are assumptions made about observers concerning their commitment to Council values. An easy change would be to extend article 8 to observer states. When discussing Russia, the Parliamentary Assembly was unanimous in expressing its members' communal distaste of the actions taken by the Putin-controlled regime.⁵¹ Should it not also be possible to have a similar process as that deployed against Russia for an observer state against whom serious breaches of human rights have been established. Israel is surely worthy of investigation with regard to such potential breaches, at very least since the International Court of Justice has found there to be a plausible risk of genocide as a result of its actions in Gaza?⁵² Palestine is also of course not an entirely foreign entity being as we have already noted one of the Council's Partners for Democracy. Or does the 'partnership' status with Palestine involve only lectures on the value of democracy and have nothing to say about the destruction of a partner by an observing state?

If movement to removal of observer status is impossible why not take the opposite tack? It is possible for conventions agreed at the Council to be open to states beyond the member states. Indeed as already noted there is one to which Israel has already signed up. This was possible because of a provision in the relevant Convention allowed it.⁵³ The same could be done for the European Convention on Human Rights: article 59.2 already expressly allows for accession by the European Union. Something similar could surely be done for

⁵⁰ Article 41 of the Statute.

⁵¹ See the debate at https://pace.coe.int/en/pages/session-20220314?_cf_chl_tk=hkrVEktebq6FB.QZHEHmwb4y.aMhw.xnlhMuck9anS4-1707460868-0-4432 [accessed 9 February 2024].

⁵² *South Africa v Israel*, n 8 above.

⁵³ Article 43 of the Council of Europe Convention on Action Against Trafficking in Human Beings, n 2 above.

Israel. This would be the easiest and most practicable way for this particular observer state to confirm its commitment to European values.