

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and the Special Rapporteur on the right to privacy

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(Please use this reference in your reply)

25 September 2026

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967 and Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolutions 58/14, 62/10, 1993/2A and 55/3.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council to report and advise on human rights issues from a thematic or country-specific perspective. We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including companies and international organizations) on allegations of abuses of human rights that come within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the actors presumably involved in the allegations, where the facts as reported to us are outlined, the applicable international human rights norms and standards explained, the concerns of the experts highlighted. The letter also contains a list of questions and requests for follow up action. Communications may deal with individual cases, general patterns and trends of human rights violations, cases affecting a particular group or community, or the content of draft or existing legislation and policy considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to the attention of your Excellency's organization information we have received concerning the "Draft Agreement between the European Union, of the one part, and the Government of the State of Israel, of the other part, on the exchange of Personal Data between the European Union Agency for Law Enforcement Cooperation (Europol) and the authorities of Israel competent for fighting serious crime and terrorism" ("Draft Agreement"). We are concerned that the exceptional application of parts of the Draft Agreement to the occupied Palestinian territory and to the occupied Golan Heights of the Syrian Arab Republic appear to contravene the rights of self-determination of the Palestinian people and the Syrian people, the sovereignty of the State of Palestine and of the Syrian Arab Republic, and

Permanent Delegation of the European Union

the duties of the European Union and its Member States not to recognize situations arising from breaches of peremptory norms of international law.

The Draft Agreement

On 4 June 2018, the Council of the European Union authorized the Commission of the European Union to negotiate an agreement between the European Union and Israel on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the Israeli authorities for fighting serious crime and terrorism. The Commission finalized the negotiations on 14 September 2022 and presented the text of the draft Agreement to the Council on 3 October 2022. The Draft Agreement contains many significant human rights safeguards.

Article 32(1) of the draft Agreement states that “this Agreement shall not apply to the geographic areas that came under the administration of the State of Israel after 5 June 1967”. Article 7(1) consequently provides that “Israel shall ensure that Personal Data received under this Agreement is used by its Competent Authorities, or other authorities in Israel to which such Personal Data has been transferred pursuant to Article 8, only in the territory to which this Agreement applies pursuant to Article 32(1)”. However, Article 7(2) is a derogation clause that exceptionally permits Israeli authorities to use personal data received under the Agreement:

in accordance with the conditions and safeguards set out in this Agreement, and solely for the protection of the civilian population, if the use is:

- (a) essential for the prevention of a criminal offence in case of an imminent threat to life; or*
- (b) necessary for the prevention, investigation, detection, or prosecution of Criminal Offences, and Europol has given its prior authorisation for such use following a corresponding request.*

Article 7(3) requires Israel to inform Europol of a use under article 7(2)(a) and an explanation why obtaining prior authorization from Europol was not possible.

Concerns were subsequently raised within the European Union procedures about the conformity of elements of the Draft Agreement with public international law and European Union law. An opinion of the Council Legal Service dated 3 October 2022 found that the Article 7(2)-(3) derogation clauses would be inconsistent with the right of self-determination and the principle of relative effect of treaties reflected in article 34 of the Vienna Convention on the Law of Treaties. The Council decision authorizing the Commission to negotiate the Draft Agreement also specifically required that “this agreement shall not apply to the geographic areas that came under the administration of the State of Israel after 5 June 1967”, in accordance with long-standing European Union policy (para. 7). The Council Legal Service further opined that the duty to maintain law and order in occupied territory “does not imply that other States or international organizations would be allowed to assist it in the fulfilment of that duty, in violation of other principles of international law.”

Article 4(5) of the Draft Agreement requires that:

Each Contracting Party shall ensure that its Competent Authorities do not transfer Personal Data which have been obtained in manifest violation of human rights recognized by the norms of international law binding on the Contracting Parties. Each Contracting Party shall ensure that the Personal Data received are not used to request, hand down or execute a death penalty or any form of cruel or inhuman treatment.

Article 5 of the Draft Agreement exceptionally permits “further processing” of certain personal data where it is necessary and proportionate to prevent or combat a criminal offence, including data “revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, Genetic Data, Biometric Data processed for the purposes of uniquely identifying a natural person, data concerning health, or data concerning a natural person’s sex life or sexual orientation”, subject to various safeguards.

It is understood that European Union officials have continued to engage with Israeli authorities in relation to the Draft Agreement into 2026.

Human rights concerns

Self-determination

Article 7(2)-(3) of the Draft Agreement propose to allow EU data to be exceptionally used by Israel in territories occupied after 5 June 1967, which appears to contravene the jus cogens right of self-determination of the Palestinian and Syrian peoples, the sovereignty of the State of Palestine over the occupied Palestinian territory and Syrian sovereignty over the occupied Syrian Golan, and the duty of European States not to recognize situations arising from breaches of peremptory norms of international law. We recall that the international law of occupation does not authorize other States to assist in the maintenance of an occupation. We further recall that in a 2024 Advisory Opinion, the International Court of Justice found that Israel must end its unlawful presence in the occupied Palestinian territory, which inter alia violated the right of self-determination of the Palestinian people, as rapidly as possible and that all states and international organizations must not recognize Israel’s unlawful presence as legal or assist in maintaining it. We further recall that the General Assembly, in resolution ES-10/24 of 18 September 2024, demanded that Israel bring to an end without delay its unlawful presence in the occupied Palestinian territory, no later than twelve months from the adoption of the resolution (i.e. 18 September 2025).

Risks of human rights violations

While article 4(5) of the Draft Agreement limits the use of personal data where it is used to request, hand down or execute a death penalty or any form of cruel or inhuman treatment, it does not prohibit data sharing which risks other serious human rights violations, including arbitrary deprivation of life, such as extrajudicial, summary or arbitrary executions, arbitrary detention, discrimination, unlawful surveillance, arbitrary destruction of property and so on. In the context of the occupied Palestinian territory in particular, such violations have been extensively documented by United

Nations human rights mechanisms, including patterns of arbitrary military, security and criminal justice detention, and arbitrary deprivation of life in the context of law enforcement and military operations.

Article 5 exceptionally permits “further processing” of highly sensitive identity- or attribute-based personal data, which carries a high risk of discriminatory profiling in the occupied Palestinian territory. We recall that the International Court of Justice and United Nations human rights mechanisms have frequently expressed concern about discriminatory practices, including racial segregation and apartheid, in the occupied Palestinian territory, and that data processing under article 5 may contribute to profiling in the context of law enforcement, intelligence, and military operations.

The above concerns under articles 4(5) and 5 are heightened by the risk of the use of artificial intelligence and data analytics in detention and targeting operations in the occupied Palestinian territory.

While the Draft Agreement provides for data protection safeguards, we note that concerns have been expressed about the adequacy of Israel’s frameworks, in the light of concerns about the lack of a fully independent data protection authority (Israel’s Privacy Protection Authority is located with the Ministry of Justice), inadequacies in effective independent judicial review of Israeli practices concerning occupation, and well-documented deficiencies in investigations and accountability and the rule of law concerning alleged State violations affecting Palestinians.

We underline that any measures taken to combat terrorism and violent extremism must comply with all obligations under international law, including international human rights law, international humanitarian law, and international refugee law.¹

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please indicate whether article 7(2)-(3) will be deleted.
3. Please explain whether articles 4(5) and 5 will be revised to prohibit data use and further processing where any human right would be violated.

We stand ready to provide your Excellency’s organization with any technical advice it may require in ensuring that its legislation is fully compliant with international law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency’s organization

¹ See, inter alia, Security Council resolutions 1373 (2001), 1456 (2003), 1566 (2004), 1624 (2005), 2178 (2014), 2242 (2015), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); Human Rights Council resolution 35/34; and General Assembly resolution 49/60, 51/210, 72/123 and 72/180.

will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Francesca Albanese

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