

Middle East - Israel and Palestinian Territories

s47E(d)	s22(1)(a)(ii)	
		s47E(d)

s22(1)(a)(ii)

Allegations of apartheid

- . The Australian Government does not agree with the use of the term “apartheid” in this context
 - FAS MAD met virtually with Amnesty International (National Director) on 10 March 2022 and outlined this position.
- . The term is not helpful in progressing the meaningful dialogue and negotiation necessary to achieve a just and enduring peace.

s47C

s22(1)(a)(ii)

Prepared By:

Name:

Branch: Levant Section, Middle East, Africa, and Afghanistan

Phone: s22(1)(a)(ii)

Cleared By:

Name: Marc Innes-Brown

Position: First Assistant Secretary

Branch/Division: SGG | MAD | Middle East Branch

Phone:

Allegations of apartheid

On 1 February 2022, Amnesty International released its report: 'Israel's Apartheid against Palestinians: Cruel System of Domination and Crime Against Humanity'. The report argues that Israel perpetuates an institutional and systematic discrimination against Palestinians which meets the framework of the definition of apartheid under international law.

The report was rejected by Israel upon release, with Foreign Minister Lapid saying: "the facts that appeared in the report published this week were a delusion divorced from reality". In urging the then-Government not to dismiss the report, Senator Wong said Labor objected to the use of the word "apartheid" arguing the accusation hinders the peace process.

On 21 March 2022, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (Michael Lynk) published a report to the Human Rights Council characterising the Israeli rule over the occupied Palestinian territory as apartheid.

s22(1)(a)(ii)

Prepared By:

Name:

Branch: Levant Section, Middle East, Africa, and Afghanistan

Phone: s22(1)(a)(ii)

Cleared By:

Name: Marc Innes-Brown

Position: First Assistant Secretary

Branch/Division: SGG | MAD | Middle East Branch

Phone:

ALLEGATIONS OF APARTHIED

- The Australian Government does not agree with the use of the term “apartheid”.
- Apartheid’ is a legal characterisation under international law
 - no international court has applied the term to this situation
 - it is not appropriate to provide further legal commentary on this issue.
- The term is not helpful in progressing meaningful dialogue and negotiation necessary to achieve a just and enduring peace.

Prepared By:
Name: s22(1)(a)(ii)
Branch: Levant Section, MEB/MAD
Phone: s22(1)(a)(ii)

Cleared By:
Name: Sarah Maddison
Position: A/g First Assistant Secretary
Branch/Division: SGG | MAD
Phone: ext s22(

16 November 2022

s47E(d)

s22(1)(a)(ii)

Allegations of apartheid

On 1 February 2022, Amnesty International released its report: 'Israel's Apartheid against Palestinians: Cruel System of Domination and Crime Against Humanity'. The report argues that Israel perpetuates an institutional and systematic discrimination against Palestinians which meets the framework of the definition of apartheid under international law.

The report was rejected by Israel upon release, with Foreign Minister Lapid saying: "the facts that appeared in the report published this week were a delusion divorced from reality". In urging the then-Government not to dismiss the report, you [Minister Wong] said Labor objected to the use of the word "apartheid" arguing the accusation hinders the peace process.

s22(1)(a)(ii)

Prepared By:

Name: s22(1)(a)(ii)
Branch: Levant Section, MEB/MAD
Phone: s22(1)(a)

Cleared By:

Name: Sarah Maddison
Position: A/g First Assistant Secretary
Branch/Division: SGG | MAD
Phone: ext s22(1)(a)(

ISRAEL/PALESTINIAN TERRITORIES

ISSUES

s22(1)(a)(ii)

Amnesty

International Report; s22(1)(a)(ii)

s22(1)(a)(ii)

s22(1)(a)(ii)

AMNESTY INTERNATIONAL REPORT – ISRAEL'S APARTHEID AGAINST PALESTINIANS

- Consistent with our approach to other NGO reports alleging violations of international law, it has not been our practice to engage with these legal arguments.

Prepared By:

Name: s22(1)(a)(ii)
Branch: Levant Section, MEB/MAD
Phone: s22(1)(a)(ii)

Cleared By:

Name: Gemma Huggins
Position: A/g Assistant Secretary
Branch/Division: SGG | MAD | Middle East Branch
Phone:

- When we have concerns over human rights we raise these directly with Israeli authorities, both in Canberra and through our Embassy in Tel Aviv.
- The Australian Government has consistently urged all parties to refrain from actions and statements that undermine prospects for peace.
- DFAT officials conveyed Australia's position directly to Amnesty International on 10 March 2022.

If pressed: Do you agree with the Report's conclusion that Israel's policies against the Palestinians amount to apartheid?

- 'Apartheid' is a legal characterisation under international law
 - including as an element of a crime against humanity under the Rome Statute of the International Criminal Court.
- Australia's practice is to not engage with legal characterisations of this nature in NGO reports.
- [*If pressed*] As with genocide, our position is that it is for competent judicial bodies to determine whether crimes against humanity have been committed.

s22(1)(a)(ii)

Prepared By:

Name: s22(1)(a)(ii)
Branch: Levant Section, MEB/MAD
Phone: s22(1)(a)

Cleared By:

Name: Gemma Huggins
Position: A/g Assistant Secretary
Branch/Division: SGG | MAD | Middle East Branch
Phone:

s22(1)(a)(ii)

Amnesty International Report – Israel's Apartheid Against Palestinians

On 1 February 2022, Amnesty International released its report: 'Israel's Apartheid against Palestinians: Cruel System of Domination and Crime Against Humanity'. The report argues that Israel perpetuates an institutional and systematic discrimination against Palestinians which meets the framework of the definition of apartheid under international law.

The report was rejected by Israel upon release, with Foreign Minister Lapid saying: "the facts that appeared in the report published this week were a delusion divorced from reality". The United States [State Department Spokesperson, Ned Price] rejected the view that Israel's actions constitute apartheid. Germany also rejected the use of the term apartheid. The European Union [Peter Stano, Spokesperson for the EU's Diplomatic Service] noted that it gives "all the due attention" to the report "as we do in the case of all the other stakeholders or NGOs".

In Australia, a Spokesperson for the Foreign Minister released a statement noting Australia does "not agree with the report's characterisations of Israel, and we remain a firm supporter of the State of Israel" [2 February 2022]. The Prime Minister said, in response to a question on the report, that Australia continues "to be a very strong friend of Israel. No country is perfect. There are criticisms made of all countries". In urging the Government not to dismiss the report, the Shadow Foreign Minister Penny Wong said Labor objected to the use of the word "apartheid" arguing the accusation hinders the peace process.

s22(1)(a)(ii)

Prepared By:

Name: s22(1)(a)(ii)
Branch: Levant Section, MEB/MAD
Phone: s22(1)(a)

Cleared By:

Name: Gemma Huggins
Position: A/g Assistant Secretary
Branch/Division: SGG | MAD | Middle East Branch
Phone:

Do you agree with the findings by Amnesty International [published February 2022] and the UN Special Rapporteur [published March 2022] that Israel is committing apartheid? *[FAS MAD led]*

- The Australian Government has not made the determinations contained in the reports of Amnesty International and the Special Rapporteur.
- When we have concerns over human rights we raise these directly with Israeli authorities, both in Canberra and through our Embassy in Tel Aviv.
- The Australian Government has consistently urged all parties to refrain from actions and statements that undermine prospects for peace.

If pressed: Do you agree with the Report's conclusion that Israel's policies against the Palestinians amounts to apartheid?

- 'Apartheid' is a legal characterisation under international law
- It is not appropriate to provide further legal commentary on this issue to the Committee.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

On 1 February 2022, Amnesty International released a 280-page report which characterises Israel’s “system of oppression and domination” over the Palestinians as amounting to apartheid.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Area responsible: LGD/ILB/INT	
Prepared by: s 22(1)(a)(ii)	Cleared by: Marie-Charlotte McKenna, Special Counsel, ILB, LGD
Consultation: OSI, Defence, NSD, HRB, MEB	
PDR: 22/7448#3	Last updated: 8 March 2023

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Tuesday, 27 April 2021 3:53 PM
To: s 22(1)(a)
Cc: s 22(1)(a)(ii); Marie-Charlotte McKenna
Subject: RE: *Urgent media enquiry - for action* [EXTERNAL] [SEC=OFFICIAL]

OFFICIAL

H^s
22(1)

Apologies for the slight delay, see below our suggested edit cleared by our AS – this should carry over to the other TPs as well (apologies that comes late). Feel free to call to discuss.

Thanks,

s
22(1)
(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights
International Law Branch | Legal Division
Department of Foreign Affairs and Trade

T s 22(1)(a)(ii)

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From: s 22(1)(a)(ii)
Sent: Tuesday, 27 April 2021 3:21 PM
To: s 22(1)(a)(ii)
Subject: RE: *Urgent media enquiry - for action* [EXTERNAL] [SEC=OFFICIAL]

OFFICIAL

Hi^{s 22(1)(a)(ii)}

For INT's review, proposed response as follows

s 22(1)(a)(ii)

Regards,

s 22(1)(a)(

s

From: Media <media@dfat.gov.au>
Sent: Tuesday, 27 April 2021 2:36 PM
To: s 22(1)(a)(ii)

Cc: Media <media@dfat.gov.au>; s 22(1)(a)(ii)

; Benjamin Hayes

<Benjamin.Hayes@dfat.gov.au>; s 22(1)(a)(ii)

Subject: *Urgent media enquiry - for action* [EXTERNAL] [SEC=OFFICIAL]

OFFICIAL

Good afternoon INT and LVS

Please see the media enquiry below from SMH. MLS would be grateful if you could review and provide a draft response **by 3.45pm today** to allow for FMO deadlines.

I would also appreciate confirmation of receipt of this request.

In terms of format, media responses should be provided in prose (ie. not talking points) and the Minister's office prefers that we keep any "attributable" quote reasonably short – the usual maximum is three lines. We can then provide more detail "on background" (meaning we cannot be quoted on this but the journalist can use the information in reporting). For more guidance and tips, please read [this fact sheet on the intranet](#).

Regards

s
47F

Media Liaison Section
Department of Foreign Affairs and Trade
P: s 22(1)(a)(ii) E: media@dfat.gov.au

From: s 47F
Sent: Tuesday, 27 April 2021 2:25 PM
To: Media <media@dfat.gov.au>
Subject: Re: [EXTERNAL] [SEC=OFFICIAL]

>

CAUTION: This email originated from outside the organisation. Do not click links or open attachments unless you recognise the sender.

Thanks - 6pm today.

On Tue, 27 Apr 2021 at 14:23, Media <media@dfat.gov.au> wrote:

OFFICIAL

Hi s 47F

Thank you for your email. I will look into this for you. Are you working to a particular deadline?

Regards

s 22(1)(a)(ii)

From: Marie-Charlotte McKenna
Sent: Tuesday, 27 April 2021 6:06 PM
To: s 47F
Cc: s 22(1)(a)(ii); Michael Bliss
Subject: FW: re: Points for s 47F handling the HRW report [SEC=OFFICIAL]

OFFICIAL

s 47F

As discussed earlier, please see below some points on the HRW report on the Palestinian Territories and in particular the ICC recommendation.

Let us know if you require anything further – happy to discuss.

Regards,
Marie-Charlotte

- s 47C :
 - noting that, in the context of the overarching Israel-Palestinian relationship, our general approach has been to encourage parties to resolve disputes through peace negotiations, rather than engaging on legal issues
 - more broadly, and consistent with our approach to other reports of NGOs setting out allegations of violations of international law, it has not been our practice to engage with these legal arguments.

s 22(1)(a)(ii)

Marie-Charlotte McKenna
Acting Assistant Secretary
International Law Branch
Tel: s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Monday, 10 May 2021 1:19 PM
To: s 22(1)(a)
Cc: s 22(1)(a)(ii)
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi^s
22(1)
s 47C

Kind regards

s 22(1)(a)
(ii)

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights
International Law Branch | Legal Division
Department of Foreign Affairs and Trade
T s 22(1)(a)(ii)
M: s 22(1)(a)(ii)
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From: s 22(1)(a)(ii) >
Sent: Friday, 7 May 2021 1:49 PM
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

s
22(1)

Further to this, we would be grateful for LGD's views on our proposed HRW section in the Hot Topics brief. Relevant section below.

s 47C

I've also edited the background in my previous email below to incorporate the latest changes.

Thanks,

s
22(1)

s 22(1)(a)
/iii
Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
s 22(1)(a)(ii)

From: s 22(1)(a)
(ii)
Sent: Friday, 7 May 2021 8:25 AM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

Thanks s 22(1)(a)(i)

Yes we have. Below is what we have been using, and will likely go into the hot topics brief (with potentially some adjustments)

s 22(1)(a)(ii)

Trust this assists

s 22(1)(a)(

s 22(1)(a)(ii)

Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 10:02 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks s 22(1)(a)(ii) we'll consider these and get back to you.

Has MEB prepared summary/background of the HRW report? If so, I'd be grateful if we could please have a copy as it may be useful background to provide to our FAS for his estimates brief.

Thanks so much,

s 22(1)(a)(ii)

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From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 2:52 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s 22(1)(a)(ii)

Below is our first draft of SEB lines on the HRW report. Welcome your views.

s 47C

Regards,

s 22(1)(a)(

s 22(1)(a)(ii)

Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 10:34 AM
To: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks for the update Ben, much appreciated.

s 22(1)(a)(ii)

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From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 10:33 AM
To: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi^s
22(1)

We will be updating the TPs for SEB, although we are working through that now. Will get it to you as soon as possible.

s
22(1)

s 22(1)(a)
/iii
Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Wednesday, 5 May 2021 2:38 PM
To: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi^s
22(1)

I'm in the process of updating our SEB on the ICC and will include information about the HRW report. Are you able to advise whether there has been any update on these TPs?

Thanks,

s
22(1)
s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights
International Law Branch | Legal Division
Department of Foreign Affairs and Trade

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From: s 22(1)(a)(ii) >
Sent: Tuesday, 27 April 2021 1:44 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii)
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks s 22(1)(a)(ii) – we will remove the line as you suggest.

Appreciate the quick turnaround.

s 22(1)(a)(ii)

s 22(1)(a)(ii)
Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Tuesday, 27 April 2021 12:27 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks s 22(1)(a)(ii)

s 47C

I'll be away from my desk now until shortly before 1.30 but call my mobile s 22(1)(a)(ii) if you need anything urgent before then.

Thanks,

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights
International Law Branch | Legal Division
Department of Foreign Affairs and Trade

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From: s 22(1)(a)(ii) >
Sent: Tuesday, 27 April 2021 12:15 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: FW: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi all

For review, proposed TPs to be used following the public release of the Human Rights Watch report alleging Israeli crimes against humanity in Israel and the Palestinian Territories.

Grateful for comments by **1.30pm today**, noting the report will be released at 2pm.

Regards,

s 22(1)(a) s
2

s 47C

s 22(1)(a)(ii)

s 47C

s 22(1)(a)(ii)

Levant Section

Middle East Branch

Department of Foreign Affairs and Trade

+61 s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Monday, 10 May 2021 4:28 PM
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii)
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks ^{s 22(1)(a)(} — s 47C
(below).

We've tinkered with our points slightly

Regards

s 22(1)

s 22(1)(a)(ii)

A/g Director | Levant Section | Middle East Branch
Department of Foreign Affairs and Trade
s 22(1)(a)(ii)

s 47C

From: s 22(1)(a)(ii) >
Sent: Monday, 10 May 2021 9:14 AM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi ^s
22(1)

Director
International Law: Security and Human Rights
Department of Foreign Affairs and Trade
P: s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Monday, 10 May 2021 8:32 AM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii)
>
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks^s
22(1)

Appreciate your review and comments.

s 47C, s47E(d)

Happy to discuss

s 22(1)(a)(

s 22(1)(a)(ii)

Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Sunday, 9 May 2021 9:03 PM
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii)
>
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Dear^{s 22(1)(a)(}

s 47C, s47E(d)

s 47C, s 47E(d)

(I have just seen the further email that you sent with some additional talking points from HRB - we will consider those and be in touch with any further comments)

Thanks,

s 22(1)(a)(i)

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights

International Law Branch | Legal Division

Department of Foreign Affairs and Trade

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Sent: Thursday, 6 May 2021 2:52 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi ^s
 22(1)

Below is our first draft of SEB lines on the HRW report. Welcome your views.

s 47E(d)

Human Rights Watch

s 47C

Regards,

s 22(1)(a)(

s 22(1)(a)

(ii)

Levant Section

Middle East Branch

Department of Foreign Affairs and Trade

+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii)

>

Sent: Thursday, 6 May 2021 10:34 AM

To: s 22(1)(a)(ii)

Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks for the update s 22(1)(a)(i) much appreciated.

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights

International Law Branch | Legal Division

Department of Foreign Affairs and Trade

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Sent: Thursday, 6 May 2021 10:33 AM
To: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

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Hi s 22(1)(a)(ii)

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s 22(1)(a)(

s 22(1)(a)
/ii)
Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Wednesday, 5 May 2021 2:38 PM
To: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

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Hi s 22(1)(a)(

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s
22(1)

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights
International Law Branch | Legal Division
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From: s 22(1)(a)(ii) >
Sent: Tuesday, 27 April 2021 1:44 PM
To: s 22(1)(a)(ii) >

Cc: s 22(1)(a)(ii)

>

Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks ^{s 22(1)(a)(i)} – we will remove the line as you suggest.

Appreciate the quick turnaround.

^{s 22(1)(a)(}

s 22(1)(a)(ii)

Levant Section

Middle East Branch

Department of Foreign Affairs and Trade

+61 ^{s 22(1)(a)(ii)}

From: s 22(1)(a)(ii)

>

Sent: Tuesday, 27 April 2021 12:27 PM

To: s 22(1)(a)(ii)

>

Cc: s 22(1)(a)(ii)

>

Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks ^{s 22(1)(a)(ii)}

s 47C

I'll be away from my desk now until shortly before 1.30 but call my mobile ^{s 22(1)(a)(ii)} if you need anything urgent before then.

Thanks,

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights

International Law Branch | Legal Division

Department of Foreign Affairs and Trade

T +61 ^{s 22(1)(a)(ii)}

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From: s 22(1)(a)(ii)

>

Sent: Tuesday, 27 April 2021 12:15 PM

To: s 22(1)(a)(ii)

Cc: s 22(1)(a)(ii)

Subject: FW: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi all

For review, proposed TPs to be used following the public release of the Human Rights Watch report alleging Israeli crimes against humanity in Israel and the Palestinian Territories.

Grateful for comments by **1.30pm today**, noting the report will be released at 2pm.

Regards,

s 22(1)(a)(

s 47C

s 22(1)(a)(ii)

s 47C

s 22(1)(a)

(ii)

Levant Section

Middle East Branch

Department of Foreign Affairs and Trade

+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Monday, 10 May 2021 8:32 AM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks s 22(1)(a)(ii)

Appreciate your review and comments.

s 47C

Happy to discuss

s 22(1)(a)(ii)

s 22(1)(a)(ii)
Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Sunday, 9 May 2021 9:03 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Dear s 22(1)

s 47C

Thanks,

s 22(1)
s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights
International Law Branch | Legal Division
Department of Foreign Affairs and Trade
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From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 2:52 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii)
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s 22(1)

Below is our first draft of SEB lines on the HRW report. Welcome your views.

s 47E(d)

Human Rights Watch

Regards,

s 22(1)(a)(

s 22(1)(a)(ii)

Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
+61s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 10:34 AM
To: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks for the update ^{s 22(1)(a)(ii)}, much appreciated.

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights

International Law Branch | Legal Division

Department of Foreign Affairs and Trade

T +61 s 22(1)(a)(ii)

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From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 10:33 AM
To: ^s >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi ^{s 22(1)(a)(ii)}

We will be updating the TPs for SEB, although we are working through that now. Will get it to you as soon as possible.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Levant Section

Middle East Branch

Department of Foreign Affairs and Trade

+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Wednesday, 5 May 2021 2:38 PM
To: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi ^{s 22(1)(a)(ii)}

I'm in the process of updating our SEB on the ICC and will include information about the HRW report. Are you able to advise whether there has been any update on these TPs?

Thanks,

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights
International Law Branch | Legal Division
Department of Foreign Affairs and Trade
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From: s 22(1)(a)(ii) >
Sent: Tuesday, 27 April 2021 1:44 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks s 22(1)(a)(ii) – we will remove the line as you suggest.

Appreciate the quick turnaround.

s 22(1)(a)(ii)

s 22(1)(a)(ii)
Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Tuesday, 27 April 2021 12:27 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks s 22(1)(a)(ii)

s 47C

I'll be away from my desk now until shortly before 1.30 but call my mobile s 22(1)(a)(ii)) if you need anything urgent before then.

Thanks,

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights
International Law Branch | Legal Division
Department of Foreign Affairs and Trade
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From: s 22(1)(a)(ii) >
Sent: Tuesday, 27 April 2021 12:15 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: FW: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi all

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Grateful for comments by **1.30pm today**, noting the report will be released at 2pm.

Regards,

s 22(1)(a)(

s 47C

s 22(1)(a)(ii)

If asked: Is Israel an 'apartheid state'?

s 22(1)(a)(ii)

Levant Section

Middle East Branch

Department of Foreign Affairs and Trade

+61 s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Monday, 10 May 2021 1:19 PM
To: s 22(1)(a)
Cc: s 22(1)(a)(ii)
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi^s
22(1)
s 22(1)(a)(ii)

Kind regards

s 22(1)(a)
(ii)

s 22(1)(a)(ii)

Assistant Director, Legal | International Law: Security and Human Rights
International Law Branch | Legal Division
Department of Foreign Affairs and Trade
T +61 s 22(1)(a)(ii)
M: s 22(1)(a)(ii)
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From: s 22(1)(a)(ii) >
Sent: Friday, 7 May 2021 1:49 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

s
22(1)

Further to this, we would be grateful for LGD's views on our proposed HRW section in the Hot Topics brief. Relevant section below.

s 47C

I've also edited the background in my previous email below to incorporate the latest changes.

Thanks,

s
22(1)

s 22(1)(a)
(ii)
Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
+61s 22(1)(a)(ii)

From: s 22(1)(a)
(ii)
Sent: Friday, 7 May 2021 8:25 AM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

Thanks s
22(1)

Yes we have. Below is what we have been using, and will likely go into the hot topics brief (with potentially some adjustments)

s 22(1)(a)(ii)

Trust this assists

s
22(1)

s 22(1)(a)

/iii
Levant Section

Middle East Branch

Department of Foreign Affairs and Trade

+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 10:02 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks^s₂₂₍₁₎, we'll consider these and get back to you.

Has MEB prepared summary/background of the HRW report? If so, I'd be grateful if we could please have a copy as it may be useful background to provide to our FAS for his estimates brief.

Thanks so much,

s 22(1)(a)(ii)

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Department of Foreign Affairs and Trade

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From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 2:52 PM
To: s 22(1)(a)(ii) >
Cc: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: SensitiveHi^s₂₂₍₁₎

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s 47E(d)

Human Rights Watch

. s 47C

Regards,

s 22(1)(a)(

s 22(1)(a)(ii)

Levant Section
Middle East Branch
Department of Foreign Affairs and Trade
+61 s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Thursday, 6 May 2021 10:34 AM
To: s 22(1)(a)(ii) >
Subject: RE: Updated TPs - Israel/HRW [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks for the update s 22(1)(a)(i) much appreciated.

s 22(1)(a)(ii)

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s 22(1)(a)(ii)

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/ii
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+61 s 22(1)(a)(ii)

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s 22(1)(a)(ii)

s 22(1)(a)(ii)

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International Law Branch | Legal Division
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s 22(1)(a)(ii)

Levant Section
Middle East Branch
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+61 s 22(1)(a)(ii)

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s 47C

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s 22(1)(a)(ii)

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International Law Branch | Legal Division
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Sent: Tuesday, 27 April 2021 12:15 PM
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Regards,

s 22(1)(a)(

s 47C

s 22(1)(a)(ii)

If asked: Is Israel an 'apartheid state'?

s47C

s 22(1)(a)(ii)

Levant Section

Middle East Branch

Department of Foreign Affairs and Trade

+61 s 22(1)(a)(ii)

Human Rights Watch Report

Does Australia agree with the conclusions in the report that Israel is committing crimes of humanity of apartheid and persecution?

- Consistent with our approach to other NGO reports alleging violations of international law, it has not been our practice to engage with these legal arguments.
- Australia's general approach has been to encourage both Israel and Palestine to resolve disputes through peace negotiations, rather than engaging on legal issues.
 - The Government will not prejudge the outcomes of such negotiations
 - It would not be productive in this context for me to provide legal commentary on this issue.

s 22(1)(a)(ii)

Background – Human Rights Watch Report

1. Summary of the Human Rights Watch Report

On 27 April Human Rights Watch released a 213 page report concluding that crimes against humanity – specifically the crimes of apartheid and persecution – were being committed against Palestinian Arabs in Israel and the Palestinian Territories. The report alleged that the intent of these crimes had been to maintain and entrench Jewish demographic and territorial primacy over Palestinian Arabs, pointing to land confiscations, building prohibitions, demolitions, settlements, restrictions on the freedom of movement, restrictions on residency and citizenship rights, and demographic control measures.

Amongst other recommendations, the report urged the international community to re-evaluate its approach to Israel and the Palestinian Territories, including by ceasing to view human rights issues as “temporary symptoms of occupation that the peace process will soon cure.” The report recommended that the ICC Prosecutor “investigate and prosecute individuals credibly implicated in the crimes of humanity of apartheid or persecution”.

2. Reactions to the HRW Report

Australia has so far avoided engaging with the substance of the report and has not commented on the specific allegations. s 22(1)(a)(ii)

s 22(1)(a)(ii)

Area responsible: LGD/ILB/INT	
Prepared by: s 22(1)(a)(ii)	Cleared by: Marie-Charlotte McKenna, A/G AS LGD
Consultation: MAD.	
PDR: 21/5310	Last updated: 8 March 2023

s 22(1)(a)(ii)

Human Rights Watch Report on Israel/Palestine

s s47E(d)

s 22(1)(a)(ii)

Does Australia agree with the conclusions in the report that Israel is committing crimes of humanity of apartheid and persecution?

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s 22(1)(a)(ii)

Human Rights Watch Report on Israel/Palestine and the ICC

Summary of the Human Rights Watch Report

On 27 April Human Rights Watch released a 213 page report concluding that crimes against humanity – specifically the crimes of apartheid and persecution – were being committed against Palestinian Arabs in Israel and the Palestinian Territories. The report alleged that the intent of these crimes had been to maintain and entrench Jewish demographic and territorial primacy over Palestinian Arabs, pointing to land confiscations, building prohibitions, demolitions, settlements, restrictions on the freedom of movement, restrictions on residency and citizenship rights, and demographic control measures.

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Australia has so far avoided engaging with the substance of the report and has not commented on the specific allegations s 22(1)(a)(ii)

s 22(1)(a)(ii)

Area responsible: LGD/ILB/INT	
Prepared by: s 22(1)(a)(ii)	Cleared by: Marie-Charlotte McKenna, A/g AS ILB, s 22(1)(a)(ii)

Consultation: OSI, Defence, NSD, HRB, MEB	
PDR: 21/19397#8	Last updated: 8 March 2023

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Thursday, 3 February 2022 4:24 PM
To: s 22(1)(a)(ii)
Cc: Michael Bliss; s 22(1)(a)(ii) Gemma Huggins
Subject: RE: Amnesty report on Israel [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Dear s 22(1)(a)(ii)

Thank you for consulting INT on this. We have identified three suggestions (changes in red).

s 47C

Does Australia agree with the conclusions in the report that Israel is committing crimes of humanity of apartheid and persecution?

- Consistent with our approach to other NGO reports alleging violations of international law, it has not been our practice to engage with these legal arguments.
- Australia's general approach has been to encourage both Israel and the Palestinians to resolve disputes through peace negotiations, rather than engaging on legal issues.
 - The Government will not prejudge the outcomes of such negotiations
 - It would not be productive in this context for me to provide legal commentary on this issue.

s 47C

Please do not hesitate to contact us further to discuss.

Best

s 22(1)(a)(ii)

Legal Officer, International Law Branch | Legal Division

Department of Foreign Affairs and Trade

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From: s 22(1)(a)(ii) >

Sent: Thursday, 3 February 2022 10:42 AM

To: s 22(1)(a)(ii) >

Cc: Michael Bliss <Michael.Bliss@dfat.gov.au>; s 22(1)(a)(ii) >; Gemma Huggins

<Gemma.Huggins@dfat.gov.au>

Subject: RE: Amnesty report on Israel [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Additional Estimates: 17 February 2022

Allegations of Israel committing apartheid

s 47E(d)

s 22(1)(a)(ii)

Additional Estimates: 17 February 2022

s 22(1)(a)(ii)

Does Australia agree with the conclusions in Amnesty International's report that Israel is committing apartheid and persecution against Palestinians? [FAS MAD lead]

- Consistent with our approach to other NGO reports alleging violations of international law, it has not been our practice to engage with these legal arguments.
- *[If pressed]* We are not in a position to provide legal advice to the Committee.
- Australia's general approach has been to encourage both Israel and the Palestinians to resolve disputes through peace negotiations, rather than engaging on legal issues.
 - The Government will not prejudge the outcomes of such negotiations
 - It would not be productive in this context for me to provide legal commentary on this issue.

If pressed: Do you agree with the Report's conclusion that Israel's policies against the Palestinians amounts to apartheid?

- 'Apartheid' is a legal characterisation under international law
 - including as an element of a crime against humanity under the Rome Statute of the International Criminal Court.
- Australia's practice is to not engage with legal characterisations of this nature arising from NGO reports.
- *[If pressed]* We are not in a position to provide legal advice to the Committee. As with genocide, our position is that it is for competent judicial bodies to determine whether the crime of apartheid or other crimes against humanity have been committed.

s 22(1)(a)(ii)

Additional Estimates: 17 February 2022

s 22(1)(a)(ii)

Background – Amnesty International Report

1. Summary of the Amnesty International Report

On 1 February 2022, Amnesty International released a 280-page report concluding that the crime of apartheid was being committed by Israel against the Palestinians. The Report alleged that Israel has intentionally created and maintained a system of oppression and domination over Palestinians which amounts to the crime of apartheid.

s 22(1)(a)(ii)

2. Australia's response to the Amnesty Report

PM Scott Morrison stated to the media at a press conference on 2 February 2022: "Australia has been one of the closest and strongest friends of Israel...**No country is perfect and there are criticisms made of all countries**, but I can assure you that Australia and my government, in particular, will remain a staunch friend of Israel".

Statement from the Department: "The Australian Government values Amnesty International's role as an important civil society voice on human rights issues. We regularly raise human rights with Israel, particularly settlements and demolitions, and the administrative detention of Palestinian minors, through our Embassy in Tel Aviv and Israel's Embassy in Canberra. **Amnesty's report is a useful source of information, but the Government has not sought to make an assessment on the broader characterisations in the report.** Australia's human rights efforts focuses on immediate issues on the ground, on which we make specific representations to the Israeli authorities."

Additional Estimates: 17 February 2022

~~Amnesty International Report:~~ Allegations of Israel committing apartheid
s 47E(d)

s 47E(d)

s 22(1)(a)(ii)

s 47E(d)

Allegations of Israel committing apartheid

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Does Australia agree with the conclusions in Amnesty International's report that Israel is committing apartheid and persecution against Palestinians? s 47E(d)

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s 22(1)(a)(ii)

Background – Amnesty International Report

s 22(1)(a)(ii)

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s 22(1)(a)(ii)

s 22(1)(a)(ii)

On 1 February 2022, Amnesty International released a 280-page report which characterises Israel's "system of oppression and domination" over the Palestinians as amounting to apartheid.

|
s 22(1)(a)(ii)

s 22(1)(a)(ii)

Do you agree with the findings by Amnesty International [published February 2022] and the UN Special Rapporteur [published March 2022] that Israel is committing apartheid? *[FAS MAD led]*

- The Australian Government has not made the determinations contained in the reports of Amnesty International and the Special Rapporteur.
- When we have concerns over human rights we raise these directly with Israeli authorities, both in Canberra and through our Embassy in Tel Aviv.
- The Australian Government has consistently urged all parties to refrain from actions and statements that undermine prospects for peace.

If pressed: Do you agree with the Report's conclusion that Israel's policies against the Palestinians amounts to apartheid?

- 'Apartheid' is a legal characterisation under international law
- It is not appropriate to provide further legal commentary on this issue to the Committee.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

From: s 22(1)(a)(ii)
Sent: Tuesday, 20 September 2022 4:17 PM
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii)
Subject: RE: LGD consultation on Hot Topic Brief [SEC=OFFICIAL]
Attachments: SB22-000292 Hot Topics - Israel-Palestine - INT comments - Director cleared.docx

OFFICIAL

Hi s 22(1)(a)(ii)

Thanks for the opportunity to provide input on LVS' Hot Topic Brief and for your time clarifying a few questions today.

Please see **attached** INT's input on the brief. As discussed with s 22(1)(a)(ii), s 47C
s 47C

If we were to receive a follow up question on the legal characterisation on apartheid, we can provide a defensive point that addresses both the policy and legal angles.

As always, we are happy to discuss further.

Best

s 22(1)(a)(

s 22(1)(a)(ii)

Legal Officer | International Law and Security Section
International Law Branch | Legal Division
Department of Foreign Affairs and Trade
P s 22(1)(a)(ii)

From: s 22(1)(a)(ii) >
Sent: Monday, 19 September 2022 1:54 PM
To: s 22(1)(a)(ii)
Cc: s 47E(d)
Subject: RE: LGD consultation on Hot Topic Brief [SEC=OFFICIAL]

OFFICIAL

Just beat me to it!

With apologies for the tight turnaround, welcome any views by COB tomorrow 20/9.

Cheers,

s 22(1)(a)(ii)

Budget Estimates: November 2022
Last updated: Clearance Date

PDR No: SB23-000015
Israel/PTs

Middle East - Israel and Palestinian Territories

s 22(1)(a)(ii)

|

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Name: Marc Innes-Brown
Position: First Assistant Secretary
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Budget Estimates: November 2022
Last updated: Clearance Date
s 22(1)(a)(ii)

PDR No: SB23-000015
Israel/PTs

s 47C

s 22(1)(a)(ii)

[FAS LGD leads on allegations of apartheid]

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Budget Estimates: November 2022
Last updated: Clearance Date
Allegations of apartheid

PDR No: SB22-000292
Middle East - Israel and Palestinian Territories

s 47C

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Position: First Assistant Secretary
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Phones s 22(1)(a)(ii)

Israel and Palestinian Territories: Allegations of annexations and apartheid, and ICC investigation

s 47E(d)

s 22(1)(a)(ii)

s 22(1)(a)(ii)

HRW/Amnesty allegations of apartheid

Does the Government agree with allegations of apartheid made by Human Rights Watch [27 April 2021], Amnesty International [1 February 2022] and UN Special Rapporteur Michael Lynk [21 March 2022]?

- The Australian Government does not agree with the use of the term “apartheid” in this context.
- The term is not helpful in progressing the meaningful dialogue and negotiation necessary to achieve a just and enduring peace.

If pressed: on legality of allegations of apartheid

- ‘Apartheid’ is a legal characterisation under international law
 - including as an element of a crime against humanity under the Rome Statute of the International Criminal Court.
- Australia’s practice is to not engage with legal characterisations of this nature in NGO or other reports.
- As with genocide, our position is that it is for competent judicial bodies to determine whether crimes against humanity have been committed.

s 47C

Allegations of apartheid

s 22(1)(a)(ii)

On 1 February 2022, Amnesty International released its report: 'Israel's Apartheid against Palestinians: Cruel System of Domination and Crime Against Humanity'. The report argues that Israel perpetuates an institutional and systematic discrimination against Palestinians which meets the framework of the definition of apartheid under international law.

s 22(1)(a)(ii)

s 22(1)(a)(ii)

Division: LGD/ILB/INT	
PDR No: SBXX-XXXXXX	
Prepared by: s 22(1)(a)(ii), INT Mob: s 22(1)(a)(ii) Ext: NA Date: 18 October 2022	Cleared by Branch/Division Head: Marie-Charlotte McKenna Mob: s 22(1)(a)(ii) Ext: 9852 Date: 3 November 2022
Consultation: MAD/MEB Name: s 22(1)(a)(ii)	Date: 1 November 2022 Mob: s 22(1)(a)(ii)