



Rt Hon Boris Johnson MP  
Foreign Secretary  
Foreign and Commonwealth Office  
King Charles Street  
London  
SW1A 2AH

20 October 2016

Dear Secretary of State,

**Re: Requesting the UK government reconsiders its support of the Gaza Reconstruction Mechanism due to its breach of fundamental international law obligations**

We write to request that the UK government carefully reconsiders its current position of supporting the Gaza Reconstruction Mechanism agreement made in September 2014 between the government of Israel, the Palestinian Authority and the United Nations. We are deeply concerned that the GRM agreement effectively perpetuates and gives tacit approval to the nearly decade old illegal closure imposed on Gaza by successive Israeli governments. We are also seriously concerned that the GRM agreement is incompatible with fundamental legal obligations under international humanitarian law, human rights law and UN law. While the UK is not a direct party to the agreement, its duty to uphold international law is likely to be breached by its ongoing support for the GRM, which it confirmed in its official 'in-year' update on Israel and the occupied Palestinian territory for 2015.

Our concerns are based on analysing a January 2015 legal opinion of Professor Nigel White from Nottingham University. This independent legal opinion, commissioned by Diakonia International Humanitarian Law Resource Centre and published by a website earlier this year, provides a detailed legal analysis which raises significant concerns about the legality of the GRM and how it effectively perpetuates the illegal closure imposed on Gaza.

Below we will summarise specific concerns raised in Professor White's legal opinion, before making requests that we urge the UK government to consider adopting so as to ensure it meets its responsibility to respect and uphold international law.

**The GRM is ineffective in meeting its stated aim of providing reconstruction**

Crucially, the GRM is ineffective in relation to its stated aim of reconstruction following the immense damage caused by Israel's 2014 military bombardment of the Gaza Strip, which is noted in the Legal Opinion to have been 'extremely limited' and 'totally inadequate given the scale of devastation.' More recent reports confirm this situation to be ongoing. For example, the UN noted in April 2016 that a ban on cement imports for the private sector into the Gaza Strip imposed unilaterally by the Israeli authorities at the start of that month (subsequently lifted on 22 May 2016) had led organisations to put on hold assistance for over 1,370 families in respect of house repairs, and that an estimated 75,000 people remained internally displaced due to access restrictions on basic construction materials and a lack of funding.



### **The GRM complements the illegal closure of Gaza**

By allowing construction materials to be admitted as limited exceptions to the illegal closure, which remains in place, and failing to mandate that a certain amount of materials must be allowed through to guarantee that the needs of the people of Gaza are being met, the Legal Opinion very significantly finds that the GRM 'is designed to complement the closure to ensure that a protracted humanitarian crisis in Gaza is maintained'. It further states that the GRM 'serves to legitimate the closure which is... illegal under international law, and, further, to occasion a number of violations of specific human rights and humanitarian law obligations'.

### **The GRM provides for an unbalanced exchange of rights and duties**

The Legal Opinion finds that the GRM agreement places many obligations on the Palestinian Authority and the UN while giving the Israeli government a number of rights. It accordingly describes the GRM as 'an unbalanced exchange of "rights" and "duties"', bearing in mind the distinct absence of corresponding obligations on the part of Israel, and the lack of rights afforded to the PA including as regards to improving conditions in Gaza in the longer term.

### **The GRM is incompatible with International human rights law**

The Legal Opinion identifies the fundamental human rights in jeopardy as a result of the 'severe scarcity of building supplies caused by the GRM, by reason of its severe restriction of building supplies entering into Gaza' as being: the right to life, to self-determination of the Palestinian people, to freedom from inhuman or degrading treatment, to liberty of movement and freedom to choose residence, to an adequate standard of living, to health and to education. While the Israeli government is directly responsible for any such violations due to being an occupying power and/or maintaining the illegal closure of Gaza, the Legal Opinion finds that the UN is potentially involved with and / or complicit in them through becoming a party to the GRM agreement and assisting in implementing it.

### **The GRM is incompatible with International humanitarian law**

The Legal Opinion asserts that 'under international humanitarian law, Israel, as an occupier, has the obligation to agree to "relief schemes" if the whole or part of the population of an occupied territory is "inadequately" supplied and further, it shall facilitate such schemes "by all the means at its disposal"'. It further asserts that the 'Government of Israel is in breach of its obligation to provide humanitarian relief' by allowing a level of control over access to humanitarian relief through the GRM that is so onerous that the basic requirements of alleviating suffering in Gaza cannot be met.

The GRM's prioritising of control above relief efforts means that it 'in effect, is a continuation, in a different form and in relation to specific supplies, of Israel's blockade of Gaza, which is in clear violation of international humanitarian law'.



The Legal Opinion therefore concludes that the Government of Israel 'appears to be using the UN in an attempt to circumvent its own obligations under international humanitarian and human rights law to allow for the full reconstruction of Gaza', and that 'although the government of Israel is not absolved of responsibility by using the UN in this way, the UN itself also bears responsibility for wrongful acts committed by it'.

### **The GRM is incompatible with UN Law**

The Legal Opinion identifies two issues which suggests the GRM agreement is potentially in breach of UN law. Firstly, the GRM agreement was negotiated on behalf of the UN by the Office of the United Nations Special Coordinator for the Middle East Peace Process (UNSCO). However, the Legal Opinion notes that there is nothing in UNSCO's mandate that could be interpreted as giving it the authority to negotiate a binding agreement such as a treaty on behalf of the UN. It therefore concludes that in purporting to bind the UN to the GRM as a party, and thus imposing further duties on it which are not delegated by the General Assembly or Security Council, UNSCO acted outside their powers, and therefore illegally.

The Legal Opinion further notes that an apparent retroactive approval by the UN General Assembly in a 2014 resolution does not solve this fundamental problem of the GRM agreement's apparent illegality under UN law. This is fundamentally because the role accorded to the UN under the GRM is incompatible with the organisation's core principle of neutrality or impartiality. The UN Guiding Principles on Humanitarian Assistance require, *inter alia*, that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality, and that the ways emergency assistance is provided must be supportive of recovery and long-term development. It further finds that, in light of the unbalanced exchange of rights and duties discussed above, the UN has agreed to undertake a partial role in violation of its own principles by becoming a party to the GRM agreement

### **The GRM is an internationally wrongful act which facilitates the Israeli government's commission of internationally wrongful acts**

The Legal Opinion contends that the GRM amounts to an internationally wrongful act since it manifests the illegal closure of the Gaza Strip and facilitates the Israeli government's commission of wrongful acts, namely the violations of international human rights and international humanitarian law caused by inadequate availability of reconstruction materials.

### **The UN is responsible for breaching legal obligations which must cease**

The Legal Opinion concludes that the UN bears responsibility for breaching negative obligations against violating the rights of Gaza residents and positive obligations to endeavour to ensure their rights are protected. While the UN would usually try to claim immunity against any court cases against it, Professor White advises that in line with its former conduct in Haiti, the UN is under a duty and should make redress for violations by payment-in-kind, e.g. by directly coordinating the reconstruction process in contrast with the Israeli controlled process to which it has become a party. Beyond this, in order to fulfil its international



obligations and to desist from internationally wrongful conduct, the UN is urged to amend the GRM such that it becomes compatible with international law or, should this prove unworkable, to withdraw from the GRM and set up a different mechanism for the delivery of building materials in which its role as an impartial organisation is regained.

### **Requested actions for the Foreign Office**

We are aware that in response to a parliamentary question in October 2015 asking ‘what recent discussions he has had with his Israeli counterpart on the Gaza Reconstruction Mechanism,’ the Foreign Office minister with responsibility for the Middle East, Tobias Ellwood, stated that ‘We regularly urge the Israeli Government to intensify measures to support Gaza’s reconstruction and economic development... for example through better power and water supplies and facilitating exports from Gaza.’

Although we welcome the minister's clear concerns about the pace of reconstruction, we are concerned that absent in this answer was any reference to the compatibility of the GRM with fundamental international human rights and humanitarian law obligations. We are further concerned that by continuing to provide backing to the GRM, any ministerial statements of support for Gaza's reconstruction are directly undermined; the intensification of reconstruction and economic development is not compatible with the GRM, nor is it compatible with a commitment to lifting the illegal closure on Gaza.

Given the context outlined above of the fundamental incompatibility of the GRM with international law, and how it effectively perpetuates the illegal closure imposed on Gaza, we make the following vital requests of the UK government so as to ensure that it is meeting its duty to respect international law:

- Encourage the UN to urgently seek to revise the GRM so that it becomes compatible with basic international law obligations and work closely with the UN to achieve this aim, or alternatively provide support to the UN for its withdrawal from the GRM and the setting up of a UN-led alternative mechanism for the delivery of building materials in which the UN's role as an impartial organisation is regained; and
- Redouble efforts to end the nearly decade old illegal closure of Gaza.

We would be grateful for your careful consideration of the above, and for your written reply informing us of the actions that the UK government plans to undertake.

Yours sincerely,

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**Lawyers for Palestinian Human Rights**