



Rt Hon Dominic Raab MP  
Foreign Secretary  
Foreign and Commonwealth Office  
London SW1A 2AH

CC: Minister James Cleverly MP

27 February 2020

Dear Secretary of State,

**Re: Urging the UK government to ensure respect for international law and human rights in response to the release of the ‘Peace to Prosperity’ Plan by the US**

As lawyers committed to the protection of human rights and compliance with international law, we write to urge the UK government to challenge proposals in contravention of international law contained in the ‘Peace to Prosperity’ Plan released by the US government on 28 January 2020 (‘the Plan’).

These proposals include the formal annexation of substantial parts of occupied Palestinian territory; the retention of illegal Israeli settlements and separation barrier; land swaps in breach of international law; the prevention of access to justice for Palestinian victims of alleged serious international crimes; the effective negation of the fundamental right of self determination for the Palestinian people; and the nullification of the right of return for Palestinian refugees. There is no reference to *international law* in the Plan.

These proposals represent a considerable challenge to the protection and promotion of the rule of international law. Most constitute serious breaches of foundational principles of international law, with legal consequences for all states. In this regard it is salient to note that a treaty conflicting with a peremptory (higher) norm of general international law is void. The provisions of such a treaty have no legal force.

These proposals, if implemented, also entail a substantial risk of permanently consolidating human rights harms that are well-documented as being systematic and widespread for Palestinians living under military occupation.

Further, the Plan notably omits any reference to *occupation*. The foundation of the Plan instead appears to be built on the premise that the occupied Palestinian territory is not occupied, and that the occupied West Bank is *disputed* territory, which is Israel's official characterisation. We submit this is a fundamentally flawed and unacceptable legal foundation to base specific proposals in the Plan. It is antithetical to the long-standing international consensus that it is occupied Palestinian territory, as recognised by the International Court of Justice and relevant UN Security Council and General Assembly resolutions. It allows Israel to attempt to evade its obligations under international law when it comes to resolving fundamental issues, for example the future of illegal settlements and all parts of the barrier constructed within occupied Palestinian territory.



Against the above context, we note with concern your statement dated 28 January 2020 that the UK “welcomes” the United States’ “*proposal for peace*” as “*clearly a serious proposal*” which should be given “*genuine and fair consideration*”. In light of the UK’s express commitment to upholding international law, we respectfully submit this position is unsustainable, because the Plan is strikingly inconsistent with fundamental principles and obligations of international law. We are concerned that “welcoming” the “*proposal for peace*” can have the unintended effect of emboldening Israel to continue illegal activity consistent with the substance of the proposals in the Plan; for example, it may embolden Israel’s illegal settlement expansion in occupied Palestinian territory on the basis that all settlements are proposed in the Plan to be annexed to Israel.

We further note the comments made on the government’s behalf by then Foreign Office Minister Andrew Murrison during the Urgent Question debate on 29 January 2020 that the UK’s position, “*is right in the mainstream of international opinion on this document*”. Whilst international opinion has no bearing on this government ensuring that its own positions are compatible with international law, we wish to draw the government’s attention to the statement dated 11 February 2020 made before the UN Security Council by four EU Members of the Security Council, Belgium, Estonia, France and Germany, and joined by Poland, as a former EU member of the Security Council. Their statement only “*took note*” of the proposals, asserted that the Plan departs from “*internationally agreed parameters*”, and stated that “*the annexation of any part of the Occupied Palestinian Territory, including East Jerusalem, constitutes a breach of international law*”.

This follows statements made by the UN Secretary General Antonio Guterres highlighting the UN’s continued commitment to the relevant Security Council and General Assembly resolutions (which the Plan does not adhere to), the statement by UN Special Rapporteur Michael Lynk expressing alarm at the breaches of fundamental principles of international law contained in the Plan, and the statement of EU foreign policy chief Josep Borrell that the Plan (previewing the later statement by EU member states above) departs from “*internationally agreed parameters*” and that illegal annexation “*would not go unchallenged*”.

We accordingly request the UK government takes a similarly transparent position on the Plan that gives a first order priority to respect for the international rule of law and human rights. The UK’s public position on the Plan currently lacks necessary clarity and substance on these fundamental issues and values. As a country committed to upholding the rule of law and respect for human rights, we call upon the UK government to take the lead in re-framing the core issues detailed in the Plan so that they are re-situated in their proper legal context.

Appended to this letter is a short description of how the proposals within the Plan are incompatible with fundamental principles and norms of international law, in respect of which we would be grateful for the government’s urgent attention. We would further be grateful if the government could accordingly confirm the following ten points:



1. it unequivocally opposes proposals for annexation within the Plan, and confirms that any formal annexation will entail legal consequences on the UK to act to end the serious breach of international law, in addition to a duty not to recognise, aid or assist the illegal situation;
2. it remains the UK's unequivocal position that all settlements have no legal validity and are a flagrant breach of international law, as reaffirmed in UN Security Council resolution 2334;
3. it remains the UK's unequivocal position that the parts of the barrier built within occupied Palestinian territory are illegal;
4. it reconsiders its support for 'agreed land swaps' in light of its legal obligation to ensure respect for the Geneva Convention in all circumstances;
5. it unequivocally opposes the Plan's proposal to deny the Palestinian authorities or population access to national and international justice mechanisms;
6. it unequivocally opposes the Plan's proposal to deny all Palestinian refugees from exercising their option of right of return as provided by customary international law and international human rights law;
7. it unequivocally opposes the Plan's proposals to permanently and substantially restrict the sovereignty of the future Palestinian state and thereby seriously breach the fundamental right to self-determination of the Palestinian people;
8. in bilateral meetings, public statements and international fora it will affirm that the West Bank, East Jerusalem, and Gaza Strip constitute occupied Palestinian territory, and express concern at the absence of this international consensus position in the Plan;
9. it acknowledges the legal principle that a treaty is void and its provisions have no legal force if, at the time of its conclusion, it conflicts with a peremptory norm of general international law; and
10. it ensures that an independent and comprehensive human rights risk assessment is carried out into the proposals contained within the Plan.

We would be grateful for your careful consideration of this matter and for your written reply.

Yours sincerely,

Tareq Shrourou (Director) and Alicia Mendonca-Richards  
**Lawyers for Palestinian Human Rights**



### **Appendix to LPHR letter dated 27 February 2020**

We set out below some of the most serious breaches of international law contained within the Plan, in respect of which we would be grateful for the government's urgent attention.

#### **Annexation**

The Plan includes proposals for Israel to formally annex more than 30% of Palestinian territory, including the Jordan Valley and the majority of the illegal settlements in the occupied West Bank, in exchange for land currently inside Israel. As this government is aware, the absolute prohibition against annexation of territory is a fundamental and overriding principle of international law, as stipulated by the UN Charter, as well as proclaimed by the UN Security Council on eight occasions in relation to the occupied Palestinian territory. The elevated status of this principle of international law entails that where there is a serious breach, all states are under a legal obligation to cooperate to bring it to an end through lawful means. Furthermore, all states would be under a duty not to recognise the situation as lawful, nor to aid or assist its maintenance.

We welcome then Minister Andrew Murrison's confirmation during the Urgent Question debate on 29 January 2020 that the UK's position remains in line with international legal consensus:

*“Annexation is clearly illegal. We continue to use every means available to ensure either that it does not happen or, if it does, that there is an appropriate international response. We uphold international law, and the law is perfectly clear.”*

However, we note with surprise the Minister's statement during that same debate that readers, “will not find within [the Plan]'s pages anything to legitimise annexation”. That the Plan includes proposals to annex Palestinian territory (including the Jordan Valley and illegal Israeli settlements) is expressly stated in the document (see pp. 12-13) and has been commented on by UN Special Rapporteur Michael Lynk.

We welcome Foreign Secretary Dominic Raab's statement on 31 January 2020 that, “*The United Kingdom is concerned by reports of possible moves toward annexation of parts of the West Bank by Israel.*” In light of the government's express commitment to oppose annexation which is absolutely prohibited under international law, we urge the government to confirm its unequivocal opposition to proposals for annexation within the Plan.

#### **Settlements**

A particularly alarming feature of the Plan's proposals for illegal annexation is that Israel will be granted permanent sovereignty over all illegal settlements in the occupied West Bank (see pp. 12). United Nations Security Council Resolution 2334, passed on 23 December 2016



with the support of a UK vote, reaffirmed the illegality of Israeli settlements built on occupied Palestinian territory. Operative paragraph 1 of the resolution states that these settlements have “*no legal validity and constitutes a flagrant violation of international law.*” Illegal settlements and associated infrastructure (including settler-only bypass roads, military checkpoints, and the Separate Barrier) are a central feature of Israel's prolonged military occupation of the occupied Palestinian territory. They have led to the dispossession of Palestinians, the fragmentation of their land and the exploitation of their natural resources. Furthermore, they have a wide-ranging adverse impact on the basic human rights of Palestinians, as confirmed by the Office of the United Nations High Commissioner for Human Rights in 2018:

*“The violations of human rights associated with the settlements are pervasive and devastating, reaching every facet of Palestinian life. Owing to settlement development and infrastructure, Palestinians suffer from restrictions on freedom of religion, movement and education; their rights to land and water; access to livelihoods and their right to an adequate standard of living; their rights to family life; and many other fundamental human rights.”<sup>1</sup>*

We are deeply concerned that these human rights violations will be permanently consolidated if illegal settlements built on occupied Palestinian territory are to be incorporated into the State of Israel. Additionally, to allow Israel to annex its illegal settlements would set an alarming precedent and undermine respect for the rule of law at the international level, by effectively rewarding Israel for repeated and serious violations of international law in flagrant breach of its obligations as an occupying power. The illegality of Israeli settlements has been confirmed by the International Court of Justice, the UN Security Council, the UN General Assembly and the UN Human Rights Council. We note that just prior to the announcement of the Plan, the UK Permanent Representative to the UN, Ambassador Karen Pierce, reaffirmed before the UN Security Council on 22 January 2020 that, “*It is the UK’s longstanding position that settlements are illegal under international law and undermine the viability of the two-state solution.*”

This issue was raised by Mr. James Murray MP during the Urgent Question debate on 29 January 2020, during which he asked then Minister Andrew Murrison:

*“...whether he will make it absolutely clear... that Britain still abides by all the international laws and UN resolutions that have ruled that the annexation of Palestinian land and the building of settlements is illegal, and therefore must be condemned, not legitimised in the form of this plan.”*

Similarly, Ms. Flick Drummond MP asked then Minister Andrew Murrison:

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<sup>1</sup> Report of the United Nations High Commissioner for Human Rights; 1 February 2018: [https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_hrc\\_37\\_39.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_37_39.pdf)



*“...will the Minister confirm that the UK Government’s position remains that all existing and future Israeli settlements in occupied territories are illegal under international law?”*

We note that the Minister’s response omitted to clarify whether or not UK government still holds the position that all settlements are illegal under international law. In light of Minister Murrison’s omission to respond to this specific question or to specifically oppose this aspect of the Plan, we ask the government to confirm it remains the UK’s unequivocal position that all settlements have no legal validity and are a flagrant breach of international law.

### **Separation Barrier**

Page 17 of the Plan briefly disposes of the important issue of the presence of the separation barrier built predominantly within occupied Palestinian territory: *“this physical barrier should remain in place and should serve as a border between the capitals of the two parties”*.

The UK has previously taken the position that 'the parts of the Separation Barrier that are located in the occupied Palestinian territory violate international law' (FCO Report, dated 21 January 2015). This correlates to the International Court of Justice in its 2004 Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory. The ICJ found that the barrier severely impeded the exercise by the Palestinian people of its right to self-determination and was thus a breach of Israel’s obligation to respect that right. It further found that barrier constituted a breach by Israel of certain of its obligations under international humanitarian and human rights law.

The ICJ Advisory Opinion further clarified that all states must ensure that any impediment to the peremptory norm of the right to self-determination of the Palestinian people created by the construction of the barrier is brought to an end, and that all states have an obligation not to recognise as lawful, or act in a manner that implies recognition of, a situation resulting from a violation of a peremptory norm.

The Plan's proposal for the retention of the barrier, and that it should serve as a border, is plainly incompatible with international law as clarified by the International Court of Justice. It would amount to annexation of occupied Palestinian territory, and would clearly appear to permanently consolidate the breach of the right to self-determination and violations of international humanitarian and human rights law. In light of this and its previous statements affirming the illegality of the barrier, we ask the government to confirm that it remains the UK's unequivocal position that the parts of the barrier that are located in the occupied Palestinian territory violate international law.

### **Land swaps**

The Plan also includes extensive proposals for ‘land swaps’, whereby annexed Palestinian territory would be exchanged for land currently in the state of Israel. These proposed land swaps include the potential transfer of areas of Israel with a high proportion of Palestinian



residents, raising concerns that Palestinian citizens of Israel in these areas might be disenfranchised.

As the government will be aware, international humanitarian law prohibits territorial exchanges between occupied and occupying parties while an occupation is ongoing. Article 47 of the Fourth Geneva Convention (*inviolability of rights* provision) explicitly prohibits the annexation of any occupied territory by an occupying power during occupation. Together with Articles 7 and 8 (*special agreements* and *non-renunciation of rights* provisions), Article 47 also prohibits any agreement made during occupation which would allow for annexation. Article 47 makes it clear that no derogations are permitted from these provisions.

Land swaps would therefore appear to be in breach of the Fourth Geneva Convention and the absolute prohibition against annexation, on the basis that an occupying power cannot legally conclude an agreement that cedes all or parts of its territory to an occupying power. As a result, any such agreement would arguably be deemed null and void under Article 53 of the Vienna Convention on the Law of Treaties.

We therefore note with concern that the UK has frequently reiterated its position that it agrees in principle to the Palestinian National Authority and Israel “*agreeing land swaps*”. The UK should not support land swap proposals that would apparently breach international law. Furthermore, the UK Government is obliged by Common Article 1 of the Geneva Conventions to “ensure respect” for the provisions of the Geneva Convention at all times.

We therefore urge the government to demonstrate that it continues to comply with its legal obligations under customary international law and the Fourth Geneva Convention by reconsidering its support for 'agreed land swaps'.

### **Right of return**

The Plan proposes a “*compensation mechanism*” for Palestinian refugees, in exchange for which, “*there shall be no right of return by, or absorption of, any Palestinian refugee into the State of Israel.*” As the UK government is aware, the right to choose the option of return is a binding norm of customary international law as recognised by UN Resolution 194, Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination, Article 12 of the International Covenant on Civil and Political Rights and Article 13 Universal Declaration of Human Rights.

It follows that any attempt to deny all Palestinian refugees their right of option of return would constitute a breach of customary international law and international human rights law. We therefore ask the government to confirm that it unequivocally opposes the Plan’s proposal to deny all Palestinian refugees their right of return in exchange for compensation.



## Accountability

We are further alarmed to see proposals in the Plan to deny the Palestinian people access to international criminal justice by requiring the Palestinian authorities to take:

*“no action, and dismiss all pending actions, against the State of Israel, the United States and any of their citizens before the International Criminal Court, the International Court of Justice, and all other tribunals.”*

This follows the announcement of the Prosecutor of the International Criminal Court on 20 December 2019 that its preliminary examination concluded that it has a reasonable basis to believe that war crimes have been and/or are being committed in the occupied Palestinian territory, and its conclusion that the statutory criteria under the Rome Statute to proceed with an investigation have been met.

The Plan also requires that Palestinian authorities take *“no action against any Israeli or United States citizen before Interpol or any non-Israeli or United States (as applicable) legal system”*, thereby preventing potential access to justice and legal accountability for alleged serious international crimes through recourse to universal jurisdiction.

The Plan therefore attempts to comprehensively prevent victims, survivors and their families in the occupied Palestinian territory from pursuing legal accountability and justice for alleged serious international crimes. Somewhat conversely, the Plan also requires the Palestinian authorities to ensure, *“respect for human rights for its citizens”*, as well as, *“uniform and fair enforcement of law and contractual rights”*, whilst simultaneously restricting Palestinian access to these rights.

Any agreement that purports to deny Palestinian victims, survivors and their families of alleged serious international crimes access to justice would arguably constitute a serious breach of the Fourth Geneva Convention by depriving an occupied population of the Convention’s rights and protections contrary to Articles 7, 8 and 47 (see land swaps analysis).

These proposals would also seriously impinge upon efforts to secure, *“a just and lasting resolution that ends the occupation and delivers peace for both Israelis and Palestinians”*, to which the UK confirmed its commitment at the UN Security Council on 22 January 2020. We submit that there cannot be a ‘just’ resolution through an agreement that prohibits one party from access to international criminal justice, while allowing the other to avoid legal accountability for alleged violations of international criminal law. Measures to enable access to legal accountability and justice are not incompatible with efforts to secure a genuine and credible peace agreement. We take the position that they are vital components for a genuine and lasting peace.

Following threats of sanctions made to personnel and judges of the International Criminal Court by then US National Security Adviser, John Bolton, we were pleased to see the UK government confirm in September 2018 that, *“support for international criminal justice and*





*accountability – at the national or international level - is a fundamental element of our foreign policy*”.<sup>2</sup> In light of this express commitment, we ask the government to confirm that it unequivocally opposes the Plan’s proposals to deny the Palestinian authorities or population access to national and international justice mechanisms.

### **Sovereignty and the fundamental right to self-determination**

The Plan’s stated ‘Vision’ includes:

*“to achieve mutual recognition of the State of Israel as the nation state of the Jewish people, and the State of Palestine as the nation-state of the Palestinian people, in each case with equal civil rights for all citizens within each state.”*

However, the Plan proposes to allow Israel to retain control over the movement of persons and goods into the future Palestinian state, as well as retaining control over Palestinian airspace, borders, territorial waters, security measures and the bulk of its natural resources. The Plan also includes proposals that would limit the future Palestinian state’s control over its welfare and finance policies as well as prohibiting the Palestinian authorities from joining, *“any international organization without the consent of the State of Israel”*.

Collectively, these proposals greatly impinge upon Palestinian sovereignty. We are deeply concerned that these proposals deprive the Palestinian people of their fundamental right to self-determination. It appears to effectively make permanent Israel’s ongoing occupation of the Palestinian territory, with the substantial risk of permanently consolidating a wide range of existing human rights harms that are pervasive and systematic for Palestinians.

Depriving the occupied Palestinian population of their recognised fundamental right to self-determination would constitute a serious breach of a fundamental principle of international law, with legal consequences for all states. We also refer to Ambassador Pierce’s confirmation on 22 January that the government is committed to a solution that *“ends the occupation”* as well as confirming the UK’s support for, *“a viable and sovereign Palestinian state”*. We therefore urge the government to confirm that it will unequivocally oppose the Plan’s proposals to permanently and substantially restrict the sovereignty of the future Palestinian state and thereby seriously breach the fundamental right to self-determination of the Palestinian people.

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<sup>2</sup> *International Criminal Court: Written question – 173618*, at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-09-11/173618>