

The International Institute for Peace, Justice and Human Rights (IIPJHR), the
Global Organization against Racial Discrimination and Segregation) (AARDi)
and the Scandinavian Institute for Human Rights/HMF

Deal of the Century:

A path to peace, or a roadmap to perpetual apartheid?

صفقة القرن:

طريق إلى السلام أم خريطة طريق للفصل العنصري (الأبارتايد) الدائم؟

SIHR Geneva 16 March 2020

'A path to peace, or a roadmap to perpetual apartheid'

A Civil Society Response

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'A path to peace or a roadmap to perpetual apartheid'? There can be no doubt whatsoever about the intention of 'Peace to Prosperity' – the so-called Trump Peace Plan. The Plan is written in direct and indeed deliberate contravention of UN resolutions, binding decisions of the International Criminal Court and the Fourth Geneva Convention. It is written in bold and flagrant opposition to international law. It is intended to effectively establish a 'greater Israel,' reinforce an existing system of apartheid and formalise, through an international agreement, a powerful and comprehensive system of control over the Palestinian people, be they within the current Occupied Territories, within the state of Israel, or part of the refugee population of over 7 million people.

My input today will comment on the Trump Plan from the perspective of a pro-Palestinian civil society organisation which uses international law as the premise and guiding principles for our political advocacy efforts in striving towards the achievement of rights for the Palestinian people. It will introduce the Occupied Territories Bill, ground-breaking legislation we are introducing in Ireland, as an initiative we would like to see replicated across the globe. Before I focus on the Irish Occupied Territories Bill as an example of how we can begin to regain control over international law as the defining parameters of a long lasting solution for Palestine & Israel, I would like to make two points specifically in relation to the Trump Plan from a civil society perspective.

Firstly, this is a dangerous document. I say this, not because it threatens the rights of the Palestinian people to self-determination, because in my opinion, it should not be afforded sufficient gravitas or any degree of authority which would provide it with any influence over a future Palestinian state. I say it is dangerous because it is written in utter defiance of international law, of UN resolutions and of international institutions which nations of the world have developed to protect the rights of citizens and nation states. It is dangerous, not only because it rewards previous breaches of international law, it encourages further violations in multiple ways. It is dangerous because it is written as though international law and institutions are 'a la carte' options from which any state may select to further its own political agendas or indeed, as in this case, those of its international friends. It is dangerous because it totally disregards the profound and extensive historical and contemporary human and civil rights abuses experienced by the Palestinian people. It is dangerous because it obliterates the rights of an entire nation of people to sovereignty, self-determination and control over their own nation state and borders. It is dangerous because it systematically plans to legalise and further extend annexation of another nation's territory. And fundamentally, it is a dangerous document because of the simple fact that a text like this has been written and published by the most powerful government in the world. The fact that this can happen, threatens, or at least seriously questions, the very world order as we know it. There is something profoundly shocking about the fragility of a global order in which a document like this which openly tramples on the rights of an entire nation of people can see the light

of day. This document should have been met with outrage by the international community and consigned to the dustbin of history.

Secondly, Governments and institutions with the power of sanction in the international community must assume a considerable proportion of blame for the production of this so-called peace plan. They have created a political vacuum. They have failed to take leadership. They have allowed the state of Israel to commit war crimes and to breach international law on a daily basis. They have witnessed the evolution of a comprehensive system of apartheid. They have allowed a most brutal and repressive military regime to operate unleashed on an entire civilian population. They have watched as children are systemically shot, arrested and stripped entirely of their rights. They have simply turned a blind eye. In failing to intervene, in failing to use the punitive measures at their disposal (such as the economic sanctions liberally used in other situations such as Iran or Russia in relation to Crimea), in failing to defend international law, they have essentially colluded with Israel and its US allies in permitting crimes that remain unpunished. They have left the field wide open for the production of this document which is singularly focused on one nation exerting full and unchecked control over another.

Professor Michael Lynk, UN Special Rapporteur on Palestine, in his most recent report to the UN General Assembly on the situation of human rights in the Palestinian territories captures this perfectly (and I quote):

'No occupation in the modern world has been conducted with the international community so alert to its many grave breaches of international law, so knowledgeable about the occupier's obvious and well-signalled intent to annex and establish permanent sovereignty, so well-informed about the scale of suffering and dispossession endured by the protected population under occupation, and yet so unwilling to act upon the overwhelming evidence before it to employ the tangible and plentiful legal and political tools at its disposal to end the injustice.1' (end of quote).

EU Response

So, how do we counter the Trump Plan and establish a constructive alternative based on the equal rights of two peoples to sovereign nation states? At the end of February 2020, 250 former foreign ministers and leaders from across the EU wrote an open letter expressing serious reservations about the Plan. They commended the EU high representative Josep Borrell's continued commitment to a two-state solution based on the 1967 borders, in accordance with the international parameters and the EU's commitment that that Israeli **"steps towards annexation, if implemented, could not pass unchallenged."** These sentiments have been echoed by many respected commentators in the international community. People such as Alon Liel (former Israeli Ambassador to South Africa and Director General of Israel's Ministry of Foreign Affairs) stated³:

'It (the Plan) (thus) violates the principles of the rules-based international order, signalling that Trump believes he can disregard international law and legitimize a new 21st-century model of apartheid. This arrogant show of force must be met with a clear answer.'

He further states:

'No one must give even tacit approval to this new form of apartheid and the ideology undergirding it. Doing so would betray not only the legacy and efficacy of international resistance to South African

apartheid but also the fate of millions of people living in Israel and what should be a truly independent Palestine.'

These are strong and very welcome statements which carry the authority of respected figures on the global political landscape. They are of course important and highly significant contributions. However, as history has taught us, words and letters, however brilliantly crafted, have not made a single iota of difference to Israel's grand plan of annexation and the establishment of full control over Palestinian territory. They have not prevented the creation of an apartheid system by stealth. The reality is, we need serving Governments, not former Ministers, to take strong definitive action within the mechanisms available to us. It is patently clear that Israel will only comply with its obligations under international law if the international community compels it to do so. One such measure, and a mere starting point, is Ireland's Occupied Territories Bill.

Civil Society Response: Ireland's Occupied Territories Bill

Ten years ago, Sadaka – the Ireland Palestine Alliance was formed to mobilise support in Ireland for the freedom and rights of the Palestinian people. Since 2009, we have worked towards securing a ban on the importation of goods from illegal settlements and having considered and exhausted other options, we began work on this particular phase of the Occupied Territories Bill in 2016. The Occupied Territories Bill, if and when enacted, will ban the import of goods from illegal Israeli settlements into Ireland.

The Bill is based on international law. Article 8.2(b) (viii) of the Rome Statute of the International Criminal Court (ICC) defines "the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies" to be a war crime. In other words, when a state, which is occupying territory not its own, transfers some of its own civilians into that territory, that process constitutes a war crime under international law. Settlements therefore, are war crimes and as it stands, we trade openly with them.

In terms of the Bill's compatibility with EU trade law (which is the most common query in relation the Bill), Article 24 of EU Regulation 2015/478 on the common rules for imports from non-Member States of the EU allows States to ban the importation of goods from such States "on grounds of public morality, public policy [or] the protection of health and life of humans."

The same exception applies under Article 36 of the Treaty on the Functioning of the European Union in relation to goods in free circulation within the EU.

A prohibition on the importation of settlement goods is justifiable on each of these grounds. There is a range of eminent legal opinion which unequivocally demonstrates the compatibility of the Occupied Territories Bill with EU law.

Furthermore, in a letter to Irish parliamentarians issued in October 2019 Professor Michael Lynk notes that:

[i]n line with Common Article 1 of the 1949 Geneva Conventions, the 2001 Articles of Responsibility of States and Article 25 of the Charter of the United Nations, take all measures necessary, including countermeasures and sanctions, to ensure respect by Israel, and all other relevant parties, of their obligations under international law to end the occupation.

He further notes that:

'The ban on trade with Israeli settlements prescribed by the Occupied Territories Bill is the very type of measure I had in mind in making (this) recommendation. Indeed, as is clear from my report, I am of the view that members of the international community are under an obligation arising under international law to adopt such measures. This obligation is a legal requirement, not a policy or political choice. 4

So, in other words, not only are measures such as the Occupied Territories Bill possible within EU Law, this opinion states that we are under an obligation arising under international law to adopt such measures.

The Occupied Territories Bill has passed 8 out of 10 stages in the Irish legislature. We are now emerging from a General Election and negotiations are underway towards the formation of a new Government. Within that process, 6 of the 7 main political parties are committed to enactment of the Occupied Territories Bill. Significantly, two of the three largest political parties included this commitment within pre-election manifestoes. As expected, the political parties are under severe pressure from both Israel and US sources not to extend this commitment to the Programme for Government. However, we are confident they will withstand the pressure and are hopeful that the Bill will be enacted within months of the formation of a new Government. If and when this comes to pass, Ireland will be the first country in the world to ban trade with illegal Israeli settlements.

But this must just be the starting point. Ireland's Bill, drafted as compatible with EU trade law paves the way for other EU countries to follow suit and pass similar legislation. A critical mass of other EU countries adopting this law will ensure that this action will have an economic as well as a political impact.

However, we are aware that in the context of an apartheid regime, active commitments of war crimes and the systematic annexation of another nation's territory, denial of rights to over 7 million refugees, all committed by the state of Israel with the support of their US allies, the adoption of this legalisation is an incredibly modest response.

Conclusion

In conclusion, we are long past the stage of agonising over whom we might upset by putting legislative measures directed at Israel's war crimes in place. The Trump 'Peace to Prosperity' Plan, which is unashamedly designed to doom the Palestinian people to a future under an apartheid regime with no control over their own destiny, should be a harsh lesson to the international community of the cost of inertia, the cost of inaction, the cost of allowing Israel to breach international law with impunity.

In Trump's Plan, only one people will experience peace, one people will experience prosperity and one people will enjoy full human, civil and political rights in controlling their own territory. That is not an acceptable outcome. We, in the international community must do everything in our power to ensure it does not become a political reality and as civil society organisations, we must do everything in our power to ensure our Governments act in line with international law.

The Trump Plan states: 'An important goal of this Vision is for the State of Israel to be treated by all as a legitimate part of the international community.' On the contrary, the only way in which the state of Israel should be treated as an accepted state within the international community is when it adheres to

the norms and stipulations of the UN and international law. The imperative for the international community to ensure it does so has never been stronger.

Marie Crawley Chair, Sadaka – the Ireland Palestine Alliance

6th March 2020

1- Prof Michael Lynk, Report to UN General Assembly on the situation of human rights in the Palestinian territories occupied since 1967 (advanced unedited version published on 23rd October 2019).

2- Guardian 27th February 2020

3- Foreign Policy. Com – 27th February 2020

4- Letter to Irish Parliamentarians, 29th October 2019.