

AL-HAQ TRUMP TRILOGY

PART I

Economic Peace to
Prosperity Plan



AL-HAQ

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2025 PREFACE	3
I. Positioning the ‘Economic Peace to Prosperity’ Plan 2020 as a Blueprint for Annexation	6
II. Legal Analysis	17
i. Sovereignty	18
ii. Annexation as ‘Land Swap’	24
iii. International Organisations and International Law	29
iv. Prisoners	32
v. Settlement	38
vi. Collective Punishment	41
vii. Jerusalem and the Wall	43
viii. Refugees	50
III. CONCLUSION	53

2025 PREFACE

In January 2020, during the first Trump administration, the United States presented its strategy for addressing the situation in Palestine. This Plan, entitled ‘Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People’¹ constituted a blueprint for the unlawful annexation of the occupied Palestinian territory by Israel.² The Plan, by reference to Israel’s exclusive need for ‘security’, sought to sanction and legitimise the institutionalised and systemic regime of racial oppression and domination prohibited under international law as the crime of apartheid. As such, the Plan envisioned the rampant escalation of Israeli annexationist policies over large portions of the Occupied Palestinian Territory (OPT), and the retention of the remainder under military occupation.

1 The White House, “Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People” (January 2020), <<https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/Peace-to-Prosperity-0120.pdf>>

2 Al-Haq, “Palestine: United States Plan to Entrench Israel’s Apartheid Regime Must be Rejected” (5 February 2020), <<https://www.alhaq.org/advocacy/16429.html>>

Since 2020, many elements proposed in the Plan have been unilaterally implemented or effected by Israel, with enduring US support, including by way of claimed annexation, the banning of UNRWA, the fragmentation of the West Bank through additional walls and fences, and the consolidation of its apartheid regime.

The following report was finalised during 2021 as an internal Al-Haq study but has not been previously published. As such it does not take into account subsequent developments, whereby increasingly the recognition of Palestinian rights under international law have arrived in tandem with the outrageous complicity of the international community in Israel's genocide of Palestinians in Gaza. Of particular significance has been the affirmation by the International Court of Justice in its 2024 *Palestine* Advisory Opinion that Israel's presence in the OPT is unlawful, including as a result of Israel's annexation of Palestinian territory, the denial of the Palestinian right to self-determination, and the violation of the prohibition of racial segregation and apartheid. Also of significance is the issuance of International Criminal Court arrest warrants against the Israeli Prime Minister, Benjamin Netanyahu and former Minister of Defence, Yoav Gallant for war crimes and crimes against humanity. The publishing of the Report at this time, serves to assist in understanding the underlying dynamics relevant to the current externally proposed peace plans presented in the context of Israel's ongoing genocide and apartheid.

In this regard Al-Haq again emphasises that Article 47 of the Fourth Geneva Convention stringently protects the inviolable rights of the Palestinian population and explicitly prohibits ‘any annexation’ by the Occupying Power ‘of the whole or part of the occupied territory’. The ICJ’s 2024 *Palestine* Advisory Opinion clearly affirmed the significance of Article 47 of the Fourth Geneva Convention which provides that the protected population ‘shall not be deprived’ of the benefits of the Convention ‘by any agreement concluded between the authorities of the occupied territories and the Occupying Power’, and stressed that such agreements ‘cannot be understood to detract from Israel’s obligations under the pertinent rules of international law’. Regardless as to whether representatives of the Palestinian people are coerced into accepting US demands as a price for seeking to bring a pause to genocide, international law does not permit the legal rights of Palestinians to be extinguished nor the legal obligations upon Third States to be abandoned. The persistent failure of Third States, including at the Security Council, to adopt and enforce the necessary action to bring to an end the occupation and ensure the realisation of legal obligations has had a severely detrimental and far-reaching effect on the efficacy of the international legal framework and contributed to the impending reality of Annexation and the further fragmentation of Palestine and the Palestinian people.

I. POSITIONING THE 'ECONOMIC PEACE TO PROSPERITY' PLAN 2020 AS A BLUEPRINT FOR ANNEXATION

The 'Vision' presented in the US Trump/Kushner Peace Plan of January 2020 represented an utter disregard for human rights and a rejection of even the concept of a rule of international law.³ Its function is to consolidate Israeli control of the occupied Palestinian territory and the relegation of Palestinians to an officially sanctioned subaltern status as a people without rights in a state without sovereignty.

This is neither a peace plan nor a step towards a negotiated political agreement as to how to end the occupation. It is a plan for annexation and domination, for perpetual occupation and apartheid, with a Palestinian Bantustan presented as the ultimate aspiration of self-determination. There is no pretence towards equality, accountability, or transitional justice, merely the assertion of military might and conquest where Palestinians are to be objects of security control. In its demand that Palestine's recourse to the international legal framework be conditional on Israel's permission, it is a licence for continued criminality.

3 "Peace to Prosperity: A Vision to Improve the Lives of the Palestinian and Israeli People" (January 2020), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/01/Peace-to-Prosperity-0120.pdf>

This Al-Haq Report addresses the 2020 Trump Peace to Prosperity Plan on a thematic basis, working to reveal its core assumptions and philosophy, and identifying the extent to which it constitutes an assault on the very basis of international law.

The Plan is explicit in its naked prioritisation of Israeli power over Palestinian rights, and was welcomed by Israeli Prime Minister Netanyahu as the ‘deal of the century’.⁴ While it has not garnered much open support, many of the themes of the Plan are differentiated from much liberal state practice only in terms of rhetoric. Key to the Plan’s goal of legitimising Annexation is the reliance on the rhetoric of ‘Land Swaps’. International law prohibits the acquisition of territory by force, yet the unlawful has been made palatable,⁵ supposedly inevitable, by the perseverance of the EU and US, and the Quartet (the Quartet, comprised of the European Union, Russia, United Nations, and United States was established in 2002 to facilitate the Middle-East Peace Process), in having endorsed such a policy over seeking respect for the rule of law. Responding to the Quartet’s 2016 Report for example, and noting its omission of any reference to international human rights law or humanitarian law, Al-Haq criticised the failure to distinguish ‘between the roles and obligations of Israel, the Occupying Power,⁶ and Palestinians, the occupied population. In equating the occupier and the occupied, the Quartet ignored the impact of this power imbalance.

4 Full text of Netanyahu’s speech: Today recalls historic day of Israel’s founding, 28 January 2020. <https://www.timesofisrael.com/full-text-of-netanyahus-speech-today-recalls-historic-day-of-israels-founding/>

5 Shawan Jabarin, Palestine and Israel: A rights-based approach (5 October 2011), <https://www.alhaq.org/advocacy/6987.html>

6 Al-Haq, “Quartet: International Law must be Baseline for Negotiations” (1 August 2016), <https://www.alhaq.org/advocacy/6398.html>

This reflects the international community's predilection towards consolidating the management of Palestinians on behalf of the occupation rather than seeking to contribute to the liberation of Palestine from Israel's settler colonial apartheid regime. The Plan presents a shift from sustained US policy of complicity in colonisation, to its embrace and celebration. Professor Ardi Imseis observed as much in the UN's overall approach to Palestine:



[A] central element of this humanitarian/managerial approach has been the UN's insistence that the end of the occupation of the OPT must be contingent on negotiations with a bad faith and infinitely more powerful occupant, which in effect offers no way for the Palestinians to actualize their putative sovereignty, ostensibly recognized as a legal entitlement by the Organization. The result has been to maintain Palestine's protracted subjugation in the UN during a period in which the received wisdom posits the Organization as the standard-bearer of the international rule of law.⁷

The Plan's self-understanding is that where 'The conflict has grown old, the arguments have become worn, and the parties have failed to achieve peace' this Plan is inspiring 'a future in which all the peoples in the region live together in peace and prosperity'. That it merely serves to affirm and legitimate Israel's apartheid regime over Palestinians was recognised as soon as it was published, Amira Hass noting for example, that 'Direct lines can be seen between the

7 Ardi Imseis 'Negotiating the Illegal: On the United Nations and the Illegal Occupation of Palestine, 1967-2020' *European Journal of International Law* (2020).

Trump plan and the Oslo Accords and their fraudulent implementation [...] Just like the Oslo Accords, the “deal of the century” could succeed precisely because it corresponds so perfectly with the Israeli colonialist project.’⁸ Yehuda Shaul writing in Foreign Policy, drew a connection with the World Zionist Organisation’s Drobles Plan, noting how ‘Trump, like Drobles 40 years ago, insists on absolute Israeli control over land, while outsourcing administration of the non-Jewish residents of that territory’.⁹

While the Plan appears to jettison attachment to the Oslo Process, it builds upon the same premise and goals in furthering a settler-colonial project by which the defeated indigenous community is to accept settler supremacy. As reiterated by Edward Said in 2000, at the start of the Al Aqsa Intifada:



Oslo was designed to segregate the Palestinians in noncontiguous, economically unviable enclaves, surrounded by Israeli-controlled borders, with settlements and settlement roads punctuating and essentially violating the territories’ integrity. Expropriations and house demolitions proceeded inexorably.¹⁰

Said perceived the ‘Peace Process’ to have been built upon ‘unchanging Israeli/American presuppositions’ derived ‘from a startling incomprehension of reality’.¹¹ To the core of this was the assumption ‘that after enough punishment

8 Amira Hass, The Trump Plan’s Vision for the Palestinians: Israel’s Security Slave, Ha’aretz, 1 February 2020. <https://www.haaretz.com/israel-news/premium-the-trump-plan-s-vision-for-the-palestinians-israel-s-security-slave-1.8474741>

9 Yehuda Shaul, Trump’s Middle East Peace Plan Isn’t New. It Plagiarized a 40-Year-Old Israeli Initiative, Foreign Policy 11 February 2020. <https://foreignpolicy.com/2020/02/11/trump-middle-east-peace-plan-isnt-new-israeli-palestinian-drobles/>

10 Edward W Said *The End of Oslo* The Nation 30 October 2000. <https://www.thenation.com/article/archive/end-oslo/>

11 *Ibid.*

and beating, Palestinians would give up, accept the compromises Arafat did in fact accept and call the whole Palestinian cause off, thereafter excusing Israel for everything it has done.’¹² The Vision then is a method for consolidating segregation, apartheid, and fragmentation based on the presumption of perpetual Palestinian submission and capitulation. Responding to the Plan, As’ad Ghanem has noted its function in providing legitimacy for:



[T]he continuation of a settler-colonial project that will gradually expand so that the Palestinians will reach a status of a defeated indigenous community which will be dismantled and that accepts the settlers’ supremacy through recognition of the above major Israeli objectives that were not only announced explicitly but are implemented as the basis and central components of the Israeli (and Jewish-Zionist) real policies instituted in Palestine a century ago.¹³

A further continuity with previous plans imposed on Palestine is the Vision’s aim of loading partition upon partition in comprehensive defiance of Palestinian right to national unity and territorial integrity. Where the UN’s 1948 partition plan paid no heed to the wishes or choices of Palestinians,¹⁴ — in denial of their collective right to self-determination as a people promised full independence by the League of Nations as a Class A Mandate — the Vision presents Israel with

12 *Ibid.*

13 As’ad Ghanem ‘The Deal of the Century in Context – Trump’s Plan is Part of a Long-Standing Settler-Colonial Enterprise in Palestine’ 23 *The Arab World Geographer/Le Geographe du monde arabe* 1 (2020) 51.

14 Nabil Elaraby ‘Some Legal Implications of the 1947 Partition Resolution and the 1949 Armistice Agreements’ 33 *Law and Contemporary Problems* 97 (1968).

the US' blessing as it unilaterally partitions the occupied territory. Israel also seeks to transfer a significant portion of its own minority Palestinian population from Israel proper into the Palestinian Bantustan.

The colonial 'Vision' is marked by orientalism: Palestinian agency is totally absent and denied, even as the Plan romanticises the natives 'olive-wood carvings', 'exquisite embroidery', and 'the famed knafeh of Nablus' as a basis for potential tourism campaigns. References to the manipulation of Palestinians by their 'Arab Brothers', and the manifold assumptions as to the role of Muslim and Arab states in underwriting the Plan, serves to reduce the Palestinian to a generic portion, and problem, of the 'Muslim World'. History and politics are reduced to banalities.

Where Iran is 'malign', and 'bad actors' hover in the background of the 'Middle East chessboard', the Plan presents Palestinians as hostages to Hamas, whose policies are solely to blame for Gaza 'approaching a humanitarian crisis'. The orientalist compartmentalisation of Palestinian solidarity and of Palestinian internationalism disregards the vibrant history of international anti-colonial solidarity and explicitly forbids contemporary international anti-racism solidarity as found in the Boycott, Divestment, and Sanctions movement, a movement dismissed as being 'destructive of peace'. Much of the Plan's reference to tourism and to travel reflect such identity prejudice.

While the term or concept of occupation is excluded from the entire document, the framing is underlined by the political theology of neoliberalism. Human rights are acknowledged twice, not in any genuine context but strictly

instrumentalised in the context of metrics by which Israel and the US can gauge and discipline the 'State of Palestine'.¹⁵ Palestine's attainment of unilaterally imposed conditions more broadly are also to be monitored and guided by (non-binding) metrics, while vaguely specified 'data-driven' projects are to 'unleash economic potential'. Palestine's civilisation progress is described through the development of 'property and contract rights, the rule of law, anti-corruption measures, capital markets, a pro-growth tax structure, and a low-tariff scheme with reduced trade barriers', is to underpin the development of 'credit-worthy financial institutions' capable of operating 'in the same manner as financial institutions of western democracies'.

Where previous attempts at revealing Israel's policies and practices in Palestine as constituting Apartheid have met with dismay and reactionary dismissal, the Vision's naked demand that Israel must dominate Palestine, and must do so justified by exclusive reference to Israeli security, when 'Palestinian resistance to violence — or the mere act of living and surviving in their homeland — has been strategically represented as dangerous to the security of the Israeli State',¹⁶ allows for no further denial of that fact that the form of discrimination Israel enforces between its Jewish nationals and the Palestinian population constitutes an institutionalized regime of systematic oppression and domination by one racial group over another.

Even stronger were the words from South Africa's President Cyril Ramaphosa, in his first speech as this year's sitting chairman of the African Union.

15 Peace to Prosperity, 33-34.

16 Noura Erekat 'The Sovereign Right to Kill: A Critical Appraisal of Israel's Shoot-to-Kill Policy in Gaza' 19 international criminal law review (2019) 783-818, 815.



“It brought to mind a horrible history that we as South Africans have gone through. The apartheid regime once imposed a Bantustan type of system on the people of South Africa, without consultation with them, and with all the oppressive elements that the plan had. As I listened to the Arab League, and as I listened to our colleagues from Palestine, it sound like this plan.”

Fifty former European prime ministers and foreign ministers have condemned U.S. President Donald Trump’s Middle East peace plan in an open letter, saying it would create an apartheid-like situation in occupied Palestinian territory. “The plan envisages a formalization of the current reality in the occupied Palestinian territory, in which two peoples are living side by side without equal rights. Such an outcome has characteristics similar to apartheid — a term we don’t use lightly”.¹⁷

Paul Pillar, commenting on leaked and draft versions of the Plan, foretold its purpose: ‘The plan is not so much a negotiating proposal as it is a kind of codification of the Trump administration’s already largely implemented policy of going all-in with the Netanyahu government.’¹⁸

Responding to Israel’s explicit pursuit of annexation of further Palestinian territory, the EU has failed to take adequate steps to support either Palestine or

17 RFI, “AU leaders reject US Middle East Peace plan during summit” RFI (10 February 2020), <https://www.rfi.fr/en/international/palestine-israel-african-union-au-leaders-reject-us-middleeast-peace-plan-during-summit>

18 Paul R Pillar ‘The Kushner Plan: Keeping Israeli-Palestinian Peace out of Reach’ XLVIII Journal of Palestine Studies 4 (2019) 114.

the fundamental principles of international law.¹⁹ While the EU’s foreign policy chief Josep Borrell has restated the organisation’s position that ‘any annexation would constitute a serious violation of international law’ the EU as a whole has not been prepared to condemn as unlawful Israel’s annexationist policies.

In 2004 the International Court of Justice held that ‘Under international law, all States have an obligation not to recognise the illegal situation resulting from the construction of the Wall, including an obligation not to assist or maintain the situation resulting from the Wall’s construction. This extends to an obligation to ensure the end of any violations to the Palestinian right to self-determination.’ The Vision presents a radical rejection of the Court’s conclusions, as endorsed by the UN General Assembly, in taking the Wall as the boundary for what it claims to be Israel’s sovereignty over all Jerusalem.

In a statement from May 2019, warning as to the effect of drafts of the Plan,²⁰ Al-Haq stressed that:



This “deal” will undoubtedly seek to not only condone, but also to reward Israel for its decades-long violations of international law, including its unlawful transfer of its own population into the occupied Palestinian territory. Recent Israeli and U.S. actions demonstrate that this plan has already been set into motion: deprive Palestinians of needed aid to coerce them into cooperating; attempt

19 Adalah, “New Netanyahu-Gantz coalition agreement stipulates illegal annexation of West Bank” (2020), <https://www.adalah.org/en/content/view/9997>

20 Al-Haq, “As a New “Peace Plan” Looms, the International Community must Stand Against Israel-US Annexation Strategy” (18 May 2019), <https://www.alhaq.org/advocacy/6051.html>



to obstruct legal avenues for remedy, including by threatening the International Criminal Court (ICC); and take unilateral action irrespective of international law or world opinion in order to cement Israel's control over Palestinian land.

The Plan's entire philosophy is one of apartness, of segregation, and of domination, presuming Palestinian capitulation to an apartheid regime. The occupied territory not annexed to Israel will become an increasingly fragmented series of seam zones: 'It is 'toxic enclavization' in a new form.'²¹ Alon Liel, Israel's ambassador to apartheid South Africa during the 1990s, sees the Vision as:



an imitation of the *Bantustan* model, in which the various Palestinian areas are surrounded by Israeli-ruled territories and the tunnels and bridges intended to allow movement between the different segments of the "state of Palestine" are also controlled by Israel. On the political level, the plan is a declaration that the U.S. president is co-opting the authority of the international community and is signaling that it is within his sole power and authority to legitimize the creation of a new model of apartheid.²²

The Plan's Introduction contemplates that 'no plan will give either side all of what it wants', which, given Israel will continue to control and occupy the entire OPT, in violation of Palestinian rights and of international law, it is difficult

21 Ghazi-Walid Falah 'Israel's 'Narrow Waist' and the Fate of Palestinian Localities in the Triangle Area Inside Israel' 23 *The Arab World Geographer/Le Geographe du monde arabe* 1 (2020) 80.

22 Alon Liel 'Trump's "Deal of the Century" Is Modeled on South African Apartheid' 25 *Palestine-Israel Journal of Politics, Economics and Culture* 1& 2 (2020).

to contemplate what more Israel could demand. The Palestinian people are absent, democracy or elections hardly acknowledged, with little regard given to a post-conflict Palestinian constitution unsurprising given that the control of the 'state' will remain in the hands of Israel.

The Plan is a blueprint for the consolidation and legitimization of Apartheid, modelled upon the Bantustan practice of South Africa, framed within an orientalist conception of Arabs and Muslims, and managed by the metrics and market ideology of neoliberalism. The baseline is exclusively that of Israel's security, rather than of anyone's rights, or of Palestinian self-determination. The Plan is explicit on this point: 'The security portion of this Vision was developed based on our best understanding of the security requirements of the State of Israel, as presented by successive Israeli governments to the United States.'²³ The Plan's function follows that of earlier unilateral and externally imposed 'international' documents and statements such as the 1917 Balfour Declaration, in seeking 'the elimination of the Palestinians, at least as a collective political constituency, and assuming control of their land for the sake of settler-colonial interests.'²⁴

23 Peace to Prosperity, Appendix 2A.

24 As'ad Ghanem 'The Deal of the Century in Context – Trump's Plan is Part of a Long-Standing Settler-Colonial Enterprise in Palestine' 23 *The Arab World Geographer/Le Geographe du monde arabe* 1 (2020) 48.

II. LEGAL ANALYSIS

- i. Sovereignty
- ii. Annexation as Land Swap
- iii. International Organisations and International Tribunals
- iv. Prisoners
- v. Settlement
- vi. Collective Punishment
- vii. Jerusalem and Wall
- viii. Refugees

i. Sovereignty

The Plan, opining that ‘Sovereignty is an amorphous concept that has evolved over time’²⁵ is explicit in the view that the Palestinian state it envisages will have a degree of sovereignty which sets it drastically apart from every other state. While the term ‘occupation’ is omitted from the entire document, it is impossible to read the Plan as providing for a viable or legitimate Palestinian state, since the Palestinian territory and people not annexed to Israel, are to remain subject to its military occupation: the so-called state will be a series of seam zones, with internal movement reduced to tunnels and Israeli checkpoints, and denied the capacity to act in self-defence.

In the aftermath of Israel’s disengagement from Gaza in 2005 a myriad of commentators sought to create *sui generis* categories in international law in efforts towards facilitating the fiction that Gaza is no longer occupied. After the ‘Operation Cast Lead’ assault on Gaza the Israeli government, citing *sui generis* circumstances’ claimed that: ‘the Gaza Strip is neither a State nor a territory occupied or controlled by Israel.’²⁶

Drawing on such claims, Israeli apologists suggest that while de-occupation has not ‘fully culminated’, Gaza should be treated as some form of ‘dependent’

25 Peace to Prosperity, p. 9.

26 Israel Ministry of Foreign Affairs, ‘The Operation in Gaza, 27 December 2008–18 January 2009: Factual and Legal Aspects’ (July 2009) 11. Shane Darcy and John Reynolds ‘An Enduring Occupation: The Status of the Gaza Strip from the Perspective of International Humanitarian Law’ 15 *Journal of Conflict & Security Law* 2 (2010) 211–243.

territory for which Israel should not have responsibility, but which can be managed on the basis of internationalised charity based on some spurious concept of ‘solidarity’.²⁷ While such narrative has found no acceptance from authorities including the ICRC or EU or elsewhere, it has contributed to laying the ground for the immediate fiction by which the Plan envisages a State of Palestine denuded of any sovereign powers.

The substantive quality of sovereignty rarely changes, yet struggles as to who may exercise sovereignty and to what extent, is a feature of international legal history and of realpolitik. As such the Plan indulges in contradiction. While it espouses the need to ‘address the Palestinians’ legitimate desire for self-determination’ and of ‘providing Palestinians with the legal status and international standing of a state’²⁸ its reasoning departs from the base that: ‘A realistic solution would give the Palestinians all the power to govern themselves but not the powers to threaten Israel. This necessarily entails the limitations of certain sovereign powers in the Palestinian areas (henceforth referred to as the “Palestinian State”) such as maintenance of Israeli security responsibility and Israeli control of the airspace west of the Jordan River.’²⁹ Such proposals have been identified as ‘arrangements designed to hold, monitor, and subordinate a permanently suspect and dangerous population, an uninterrupted blanket of Israeli surveillance over all ghetto areas’ characterised by the constant patrol of drones.³⁰

27 Solon Soloman, “COVID-19 Symposium: Israel and its International Law COVID-19 Obligations Towards Gaza” *Opinio Juris* (4 April 2020), <https://opiniojuris.org/2020/04/04/covid-19-symposium-israel-and-its-international-law-covid-19-obligations-towards-gaza/>

28 Peace to Prosperity, 7.

29 Peace to Prosperity, 3.

30 Ian S Lustick ‘The One-State Reality: Reading the Trump-Kushner Plan as a Morbid Symptom’ 23 *The Arab World Geographer/Le Geographe du monde arabe* 1 (2020) 25.

Limitations on sovereignty necessary to ensure Palestinians cannot ‘threaten’ Israel include that ‘Upon signing the Israeli-Palestinian Peace Agreement, the State of Israel will maintain overriding security responsibility for the State of Palestine’.³¹ For one state to condition the emergence of another on its permanent ability to police it, is to go beyond even the dominion status of the British empire or the Mandate system of the League of Nations. And yet it is presented as an opportunity, in the jargon of contemporary management, for the attainment of well-being: ‘Every country spends a very significant sum of money on its defense from external threats. The State of Palestine will not be burdened with such costs, because it will be shouldered by the State of Israel. This is a significant benefit for the economy of the State of Palestine since funds that would otherwise be spent on defense can instead be directed towards healthcare, education, infrastructure and other matters to improve Palestinians’ well-being.’³²

As such while portraying the achievement of self-determination, the proposed Palestinian state will be an entity fragmented from itself and subject to continued Israeli occupation. This requires the partition of the present occupied Palestinian state, both through direct annexation, and fragmentation into a smaller, and subservient state, still under occupation. While ‘[t]he State of Palestine shall be fully demilitarized and remain so’, it is expected to have security forces, tasked with ensuring public order and countering terrorism, though their existence

31 Peace to Prosperity, 21.

32 Peace to Prosperity, 21.

may not ‘derogate the State of Israel’s overriding security responsibility’.³³

Examples abound as to the type and form of the restrictions and limits to the sovereign powers of the supposed state. Indeed the Plan provides a list of conditions that Palestine must meet during negotiations, and a list of caveats as to the powers the subsequently sovereign state may enjoy. As a single example: ‘Five years post-agreement: ‘the State of Palestine shall have the right, subject to the satisfaction of State of Israel’s security and environmental requirements, to create an artificial island off the coast of Gaza to develop a port to serve Gaza (the “GAZA PORT”), as well as an airport for small aircraft.’³⁴ The following examples are excerpted from Appendix 2C of the Plan:

- In addition to the overriding security responsibility over the State of Palestine, the State of Israel will be responsible for security at all international crossings into the State of Palestine.’
- The State of Israel will continue to maintain control over the airspace and the electromagnetic spectrum west of the Jordan river.
- The State of Palestine will not have the right to forge military, intelligence or security agreements with any state or organization that adversely affect the State of Israel’s security, as determined by the State of Israel. The State of Palestine will not be able to develop military or paramilitary capabilities inside or outside of the State of Palestine.

33 Peace to Prosperity, 23.

34 Peace to Prosperity, 29.

- A demilitarized State of Palestine will be prohibited from possessing capabilities that can threaten the State of Israel’.
- The State of Israel will maintain the right to dismantle and destroy any facility in the State of Palestine that is used for the production of prohibited weapons or for other hostile purposes. While the State of Israel will use its best efforts to minimize incursions into the State of Palestine, the State of Israel will retain the right to engage in necessary security measures to ensure that the State of Palestine remains demilitarized and non-threatening to the State of Israel, including from terrorist threats.

The Plan does not make a single acknowledgment of the fact of occupation. Since the basis for any discussion of or reference to the conflict is premised on the application of the laws of occupation arising from the law on the use of force and the law of self-determination, this confirms the extra-legal approach of the plan and its fixation on power politics. Determination as to whether Palestine has met the various and far-reaching, and impossible criteria set out on the Plan, is to remain within the exclusive power of Israel and the USA: ‘The following criteria are a predicate to the formation of a Palestinian State and must be determined to have occurred by the State of Israel and the United States, jointly, acting in good faith, after consultation with the Palestinian Authority.’

The Plan presents a sham state, one which is denied any legal status known to international law other than as a Trump occupation, partitioned by annexation.

Edward Said had predicted that unless the status quo were changed, such would be the logical outcome of a process directed by Americans and Israelis, that Palestine would become a form of Bantustan or reservation. Predicting a kind of ‘interim permanent settlement’, Said perceived that for a Palestinian ‘state entity’ to be recognised, it would ‘be a state totally dependent on Israel economically’, ‘it will be at the mercy of Israeli security so that it will not have the power to let people in and out; that will still be in Israeli hands as it is today’, ‘it will not have contiguous territory, a very important point. That is to say, if it comes into being now there will be several cantons, all of which will have to be connected via Israeli territory so Israel could cut off one canton from another’, ‘it will be the only state in the world that I know of that will have no sovereignty - properly speaking’, and ‘it will not be a state where Palestinians can easily be repatriated.’³⁵ As will be considered below, the Plan represents a method of formalising and executing each of these predictions.

35 Cindi Katz and Neil Smith ‘An Interview with Edward Said’ 21 *Environment and Planning D: Society and Space* (2003) 635-65, 637.

ii. Annexation as ‘Land Swap’

A key feature of the Plan is its conception and presentation of Annexation as ‘land swap’. This works on the presumption that Palestine holds no sovereign title to its own territory and is justified by reference to the open ended ‘security’ demands of the Occupying Power. While the Vision is purely political and seeks to present no legal justification for its claims or analysis, it does assert without further comment that: ‘The State of Israel and the United States do not believe the State of Israel is legally bound to provide the Palestinians with 100 percent of pre-1967 territory (a belief that is consistent with United Nations Security Council Resolution 242).’³⁶

Specific areas which the Plan names as territory to be annexed by Israel includes Jerusalem, and the Jordan Valley: ‘The Jordan Valley, which is critical for Israel’s national security, will be under Israeli sovereignty.’³⁷ Palestine’s maritime territory and jurisdiction is also to be annexed: ‘The State of Israel will retain sovereignty over territorial waters, which are vital to Israel’s security and which provides stability to the region.’³⁸

With regards illegal settlements, the Plan asserts that the State of Israel ‘will not have to uproot any settlements, and will incorporate the vast majority of Israeli settlements into contiguous Israeli territory. Israeli enclaves located

36 Peace to Prosperity, 11-2.

37 Peace to Prosperity, 13.

38 Peace to Prosperity, 13.

inside contiguous Palestinian territory will become part of the State of Israel and be connected to it through an effective transportation system.’³⁹

On the manipulation of demographics, the Plan proclaims that ‘Approximately 97% of Israelis in the West Bank will be incorporated into contiguous Israeli territory, and approximately 97% of Palestinians in the West Bank will be incorporated into contiguous Palestinian territory. Land swaps will provide the State of Palestine with land reasonably comparable in size to the territory of pre-1967 West Bank and Gaza.’⁴⁰

In the wake of the Arab Spring, diplomatic efforts at restarting negotiations saw the PLO, Israel, and the USA present various plans, each of which considered some form of ‘land swap’. Al-Haq responded to these proposals by reiterating that the ‘PLO is legally prevented from entering into agreements with Israel that would undermine the rights of the Palestinian people under international law’ and, expressing concern ‘about the continuous and intensified call for ‘land swaps’ from the international community’,⁴¹ stressed that ‘the representatives of the Palestinian people are prevented from concluding ‘land swap’ agreements during occupation’.⁴²

The legal basis precluding such land swaps is most authoritatively set out in Articles 8 and 47 of the Fourth Geneva Convention. Article 8 asserts that ‘protected persons may in no circumstances renounce in part or in entirety the

39 Peace to Prosperity, 12.

40 Peace to Prosperity, 12.

41 Al-Haq ‘Exploring the Illegality of Land Swap Agreements Under Occupation’ (2011) 8.

42 Al-Haq ‘Exploring the Illegality of Land Swap Agreements Under Occupation’ (2011) 6-7.

rights secured to them by the present Convention and by the special agreements referred to in the foregoing Article.' The drafters of the Geneva Convention sought to ensure that states could not take 'refuge behind the will of the protected persons' to justify their failure to comply with the provisions of the Convention, and in Article 47 emphasised the non-derogability of the Convention's protections: 'Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.'

Together, Articles 8 and 47 affirm that belligerents cannot conclude agreements which derogate from or deny to protected persons the safeguards of the Fourth Geneva Convention. Nor can any renunciation of rights by protected persons have legal effect. As such, Al-Haq's 2011 analysis and warning stands:



In light of the obligations incumbent upon every State, the politically motivated calls for 'mutually agreed land swaps' is irreconcilable with third party States' responsibilities under international law. Instead of recognising the situation as unlawful and endeavouring to bring these violations to an end, third States are advocating to formalise Israel's violations, effectively condoning an existing illegal situation by calling for the conclusion of disputable agreements exchanging land whilst occupation is ongoing.⁴³

43 Al-Haq 'Exploring the Illegality of Land Swap Agreements Under Occupation' (2011) 19.

The nomenclature of 'land swap' implies an exchange, and what is envisioned as being presented to the Palestinian dominion are two distinct areas of land, an unviable patchwork in the Naqab on the Egyptian border, and the so-called Triangle of Palestinian towns in Israel:



The Triangle Communities consist of Kafr Qara, Ar'ara, Baha al-Gharbiyye, Umm al Fahm, Qalansawe, Tayibe, Kafr Qasim, Tira, Kafr Bara and Jaljulia. These communities, which largely self-identify as Palestinian, were originally designated to fall under Jordanian control during the negotiations of the Armistice Line of 1949, but ultimately were retained by Israel for military reasons that have since been mitigated. The Vision contemplates the possibility, subject to agreement of the parties that the borders of Israel will be redrawn such that the Triangle Communities become part of the State of Palestine. In this agreement, the civil rights of the residents of the triangle communities would be subject to the applicable laws and judicial rulings of the relevant authorities.⁴⁴

The Vision proclaims the aim of achieving '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.'⁴⁵ As has been demonstrated by Israel's legislative restriction of a right to self-determination to its Jewish population exclusively,⁴⁶

44 Peace to Prosperity, 13.

45 Peace to Prosperity, 7.

46 Hassan Jabareen and Suhad Bishara 'The Jewish Nation-State Law: Antecedents and Constitutional Implications' 48 *Journal of Palestine Studies* 2 (2019) 43-57.

Palestinian citizens of Israel are second class citizens, liable to be traded and transferred on the basis of their ethnicity and identity, their communities of value to Israel only in terms of their perceived military utility. Liel sees the proposal of transfer as 'reminiscent of the cruel policy of transfer that moved tens of thousands of black South Africans from their original homes to the *Bantustans* scattered throughout the country.'⁴⁷ Further, and as noted by Ghazi-Walid Falah, to move the border westward would be to contradict Israel's narrative whereby its 'narrow waist', along the area between the Green Line and the Mediterranean, would be rendered even narrower, and that this aspect of the Plan, practicality given the overall 'security' narrative, 'constitutes a concrete antithesis to all past decades of claims about Israel being under threat and vulnerability.'⁴⁸

As has been the case throughout modern history, unilaterally imposed partition of states and the consequential transfer of people has resulted in far reaching and severe violations of human rights and the perpetuation of conflict and instability. In proposing to partition the occupied Palestinian territory, to transfer Palestinian citizens of Israel, and to install a 'state' whose exercise of any degree of sovereignty would be fictional, the Plan is to intended in reality to cement apartheid and to consolidate layers of annexation and occupation.

47 Alon Liel 'Trump's "Deal of the Century" Is Modelled on South African Apartheid'

48 Ghazi-Walid Falah 'Israel's 'Narrow Waist' and the Fate of Palestinian Localities in the Triangle Area Inside Israel' 23 *The Arab World Geographer/Le Geographe du monde arabe* 1 (2020) 72.

iii. International Organisations and International Law

Having excluded Palestine from the international community of states by denying its sovereignty, the Plan aims to consolidate this position by the inevitable demand that Palestine, both presently, and subsequent to US recognition, be excluded from the universality of the international legal framework. That section of the occupied Palestinian territory not formally annexed to Israel and which the US deigns to consider a 'state', is to be denied the capacity to choose to join any international organisation or to proceed with any legal dispute against Israel or the USA.

The Vision requires that during negotiations:



The PLO and the Palestinian Authority shall: Refrain from any attempt to join any international organization without the consent of the State of Israel; Take no action, and shall 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; Take no action against any Israeli or United States citizen before Interpol or any non-Israeli or United States (as applicable) legal system.⁴⁹

49 Peace to Prosperity, 39.

The Vision requires that subsequent to recognition by the USA:



[T]he United States will encourage other countries to welcome the State of Palestine as a full member in international organizations. However, the State of Palestine may not join any international organization if such membership would contradict commitments of the State of Palestine to demilitarization and cessation of political and judicial warfare against the State of Israel.⁵⁰

The derogatory reference to Palestine's efforts at utilising the international legal framework to secure its rights as 'political and judicial warfare' is typical of the 'lawfare' slur by which any expression of Palestinian right or turn to law is cast as vindictive, malicious, and a conspiratorial mechanism of subversion. At a time when the USA is issuing public threats to the staff and families of the International Criminal Court, the Vision's exclusion of Palestinians from challenging impunity is consistent. In practice the Vision's conditions are dramatic.

The Vision is provocative in that while its effect would be an unlawful blanket amnesty for all past and ongoing Israeli criminal conduct, it does not recognise such conduct, and aims to consolidate the erasure of Israel's conduct. Further, it seeks to affirm a blanket amnesty also for ongoing and future unlawful conduct. The January 2020 Request on Jurisdiction by the Office of the Prosecutor at the International Criminal Court affirmed that:

50 Peace to Prosperity, 35.



The Prosecutor is satisfied that there is a reasonable basis to initiate an investigation into the situation in Palestine, pursuant to article 53(1) of the Statute. There is a reasonable basis to believe that war crimes have been or are being committed in the West Bank, including East Jerusalem, and the Gaza Strip (“Gaza” or “Gaza Strip”), and the Prosecution has identified potential cases arising from the situation which would be admissible. There are no substantial reasons to believe that an investigation would not serve the interests of justice.⁵¹

Since Palestine first approached the ICC in 2009, UN Commissions of Inquiry, including the 2009 United Nations Fact Finding Mission on the Gaza conflict,⁵² the 2012 International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory,⁵³ the United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict,⁵⁴ The United Nations Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory have identified a massive range of Israeli human rights abuses constituting war crimes and crimes against humanity for which there has been no accountability.⁵⁵

51 Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine, ICC-01/18-12, 22 January 2020, para 2. <https://www.icc-cpi.int/court-record/icc-01/18-12>.

52 United Nations Fact Finding Mission on the Gaza conflict (2009), <https://www.ohchr.org/en/hr-bodies/hrc/special-sessions/session9/fact-finding-mission>

53 International Fact-Finding Mission on Israeli Settlements in the Occupied Palestinian Territory (2012), <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session19/israeli-settlements-in-the-opt>

54 The United Nations Independent Commission of Inquiry on the 2014 Gaza Conflict (2014), <https://www.ohchr.org/en/hr-bodies/hrc/co-i-gaza-conflict/commission-of-inquiry>

55 The United Nations Commission of Inquiry on the 2018 protests in the Occupied Palestinian Territory (2018), <https://www.ohchr.org/en/hr-bodies/hrc/co-i-opt/opt>

As such the Plan is a licence for criminality and a radical obstacle to efforts at achieving respect for fundamental human rights, as can be seen in the Plan's explicit endorsement of Israel's policies and practices of unlawful settlement and of collective punishment, and its implicit endorsement of the crime against humanity of apartheid.

iv. Prisoners

As of March 2020, Addameer report that 5000 Palestinian political prisoners are being held in Israeli detention. Article 76 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War outlines the rights of protected persons facing detention by an Occupying Power. Amongst these rights is the right to remain in the occupied territory during all stages of detention, including during the serving of prison sentences if convicted. The vast majority of Palestinian prisoners from the occupied territory are held in Israel, making it extremely difficult for family visits, as well as for their legal representatives. The transfer of Palestinians from the West Bank and Gaza into prisons in Israel is a practice that constitutes the 'unlawful deportation or transfer or unlawful confinement of a protected person' and 'wilfully depriving a protected person of the rights of fair and regular trial' and as such constitute grave breaches of the Fourth Geneva Convention. This gives rise to the legal obligation on all 194 High Contracting Parties to the Convention to provide effective penal sanction for persons committing or ordering the commission of such grave breaches, and to search for and prosecute such persons.

Also included at Article 76 are the occupying power's obligations to provide adequate medical care, and to provide special protection for women and child detainees, each of which has been aggravated in the context of the Covid-19 pandemic. The Fourth Geneva Convention contains several provisions providing for due process and administration of justice guarantees. While applicable to any Palestinian before the Israeli judicial-security system, administrative detention refers to the imprisonment of Palestinians, without charge or trial, through the use of administrative rather than any formal judicial procedures.

The State of Israel's Military Order 1229 (1988) allows its military commanders to detain Palestinians for indefinitely renewable periods of up to six months if they have 'reasonable grounds to presume that the security of the area or public security require the detention.' This provides a mechanism by which the military commander has total discretion in the issuance and execution of administrative detention orders. The orders, which are reviewed by a military judge, can be appealed to a separate military judge, and it is inevitably the case that the administrative detention order is upheld at the appeal stage. Administrative detention orders are issued on the basis of secret evidence, not disclosed to the detainee or their legal counsel at any stage of either the review or appeal. There is therefore no opportunity to meaningfully challenge or refute the alleged grounds justifying the detention order.

The policy of administrative detention is intimately linked to broader policies of collective punishment and persecution. The process breaches international humanitarian and human rights law, meeting the contextual elements of torture, deportation or forcible transfer, imprisonment, persecution, and

apartheid as crimes against humanity, in addition to wilfully causing great suffering, or serious injury to body or health, unlawful confinement, wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial, as war crimes. As such, ‘the decision to arrest and the imposition and/ or renewal of an administrative detention order is not confined to the evaluation of the risk of particular individual Palestinian civilian but, rather, is exercised as a supplementary form of sanction in relation to the Palestinian civilian population as a whole in accordance with the military objectives of the Israeli Defence Force.’⁵⁶

The Vision requires that any Palestinian prisoners released (not all would be eligible), under the Plan ‘will be required to sign a pledge to promote within their community the benefits of co-existence between Israelis and Palestinians, and to conduct themselves in a manner that models co-existence. Prisoners who refuse to sign this pledge will remain incarcerated.’⁵⁷

Co-existence, as understood by the Vision, consists of perpetual Palestinian submission to Israeli Zionism and the abandonment of the struggle for human rights and national liberation. The requirement that prisoners endorse such submission is reflective of the overall thrust of the Vision and signals an effort at ending politics. It represents a contemporary means of achieving what was forbidden by Article 45 of the 1907 Hague Convention regulating ‘the Laws and Customs of War on Land, in its stipulation that: ‘It is forbidden to compel the

56 Peter Langford and Triestino Mariniello with Paolo Lobba ‘Israel’s Administrative Detention in the Occupied Palestinian Territories: An Assessment of the Applicable Norms of International Law and Possibilities of Enforcement’ (September 2019) 156.

57 Peace to Prosperity, 30.

inhabitants of occupied territory to swear allegiance to the hostile power.⁵⁸ In aiming to force submission to the Plan's conditions and to Israel's unlawful and perpetual occupation of the occupied Palestinian territory, the effect is compulsion to accept allegiance to the hostile power. The impossible arrogance and hubris of the Plan is also seen in the requirement that Palestinians refrain from challenging or opposing exclusive Israeli dominance of Jerusalem — 'Neither party shall encourage or support efforts by other countries or persons to deny the legitimacy of the other party's capital or its sovereignty'⁵⁹ — and is central to the requirement that Palestine be denied access to international organisations or legal tribunals other than those of the racist Israeli authorities.

As has recently been discussed with regard the position of the Rohingya between Myanmar and the international legal framework, restricting the identity of subaltern people, and especially Muslim majority peoples, to the role of either violent terrorist or pitiful victim, serves to deny and invalidate the agency of oppressed people: 'Both the terrorist and the refugee are cast out of the realm of the political: the terrorist as the object of universal repudiation, the refugee as the object of universal pity.'⁶⁰

The obligation on Prisoners to commit to promote 'co-existence' can be further connected with the Plan's platitudes and conditions that for the 'state' to be recognised: 'The Palestinians shall have ended all programs, including school

58 Sahar Francis 'Status of Palestinian Prisoners in International Humanitarian Law' 43 *Journal of Palestine Studies* 4 (2014) 39-48,

59 Peace to Prosperity, 19.

60 "Resisting the Rohingya Genocide: From Pity to Solidarity, Inside and Beyond the ICJ" *TWAIL* (29 April 2020), <https://twailr.com/resisting-the-rohingya-genocide-from-pity-to-solidarity-inside-and-beyond-the-icj/>

curricula and textbooks, that serve to incite or promote hatred or antagonism towards its neighbors, or which compensate or incentivize criminal or violent activity.’⁶¹ In reflecting on the need for Palestinians — and Palestinians exclusively — to develop a ‘culture of peace’, the Vision claims: ‘The creation of a culture of peace should include an end to incitement, including in government-controlled media, as well as an end to the glorification of violence, terrorism and martyrdom. It should also prohibit hostile propaganda, as well as textbooks, curriculum and related materials contrary to the goal of the Israeli-Palestinian Peace Agreement, including the denial of one another’s right to exist.’⁶²

No such requirement is asked of the State of Israel, even while the UN’s Committee for the Elimination of Racial Discrimination, in its Concluding Observations Report on Israel in December 2019 expressed its concern as to ‘The tide of racist hate speech in public discourse, in particular by public officials, political and religious leaders, in certain media outlets and in school curricula and textbooks’ (paragraph 26(a)). The Committee also highlighted the ‘proliferation of racist and xenophobic acts’ including Israeli settler violence, against Palestinians (paragraphs 26(b) and 42(c)). Accordingly, the Committee urged Israel to ‘Step up its efforts to counter and stem the tide of racism and xenophobia in public discourse, in particular by strongly condemning all racist and xenophobic statements by public figures, political and religious leaders, as well as media personalities, and by implementing appropriate measures to combat the proliferation of acts and manifestations of racism’ in addition to removing ‘any derogatory comments and images that perpetuate

61 Peace to Prosperity, 34.

62 Peace to Prosperity, 35.

prejudices and hatred from school curricula and textbooks' (paragraph 27(a)). This recommendation was highlighted as being of particular importance and requiring Israel's detailed follow-up in its upcoming review (paragraph 55).⁶³

The right to education is a fundamental human right, the infringement of which has recently been identified by the International Criminal Court as liable to amount to conduct constituting persecution as a crime against humanity.⁶⁴ Israel is refusing to issue work permits for international academics working at Palestinian universities in the occupied West Bank and is escalating a harsh visa policy that is forcing them to abandon their students and leave the country. Murky and arbitrary Israeli regulations leave international lecturers and their families in constant uncertainty and subject to deportation at any time. Israel's policy of targeting Palestinian academic freedom and isolating Palestinian institutions of higher learning, as reported by Al-Haq with Adalah and Birzeit University in July 2019,⁶⁵ is one element of exploitation of its control over entry to Palestine so as to attack and diminish the Palestinian education sector and Palestinian society more broadly through the diminishment of the capacity to exercise freedoms of thought and expression.

63 Committee on the Elimination of Racial Discrimination, Concluding observations on the combined seventeenth to nineteenth reports of Israel, CERD/C/ISR/CO/17-19, 27 January 2020. <https://docs.un.org/en/CERD/C/ISR/CO/17-19>.

64 Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19, 14 November 2019, para 101. Citing 'for example, article 26 of the 1948 Universal Declaration of Human Rights; article 13 of the International Covenant on Economic, Social and Cultural Rights, 16 December 1966, UNTS vol. 993, p. 3; articles 28-29 of the Convention on the Rights of the Child, 20 November 1989, UNTS vol. 1577, p. 3; article 5(e)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, UNTS vol. 660, p. 195; article 13 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", 17 November 1988, OAS Treaty Series, No. 69; article 17 of the African Charter on Human and Peoples' Rights; article 11 of the African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990); article 2 of Protocol No. 1 to the (European) Convention for the Protection of Human Rights and Fundamental Freedoms, 20 March 1952.'

65 Al-Haq, Birzeit University, Adalah, "Israel forcing international lecturers out of West Bank Palestinian universities" (2019), <https://www.alhaq.org/advocacy/14721.html>.

The Plan's short section on prisoners concludes with the caveat that 'No Palestinian prisoners or administrative detainees will be released in accordance with this section if all Israeli captives and remains are not returned to the State of Israel.' That Israel continues to hold the remains of Palestinians, and will continue to imprison Palestinian captives is an additional illustration of the impossibility of the Plan's Vision.

v. Settlement

The Vision upends the applicable international law and seeks to legitimise and recognise and reward the settlement project that has repeatedly been declared and rejected as illegal: 'During the peace negotiations, the State of Israel is expected to do the following:



1 'In areas of the West Bank that are not contemplated by this Vision to be part of the State of Israel, Israel will not: Build any new settlement towns, expand existing settlements or advance plans to build in those areas; 2 Expand any of the Israeli enclaves referred to in Section 4 [enclaves that remain inside contiguous Palestinian territory but that are part of the State of Israel] or advance plans to expand those enclaves in those areas beyond their current footprint'.⁶⁶

⁶⁶ Peace to Prosperity, p. 38.

UN Security Council Resolution 2334 reaffirmed ‘that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace’ and reiterated ‘its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard’.

By the Plan’s reckoning Israel will, during the planned negotiations, persist in the unlawful transfer of its civilian population into occupied territory. Although the transfer of Israeli civilians into occupied territory has, for a prolonged period, been an overt and organised state policy, executed on a large scale and in a systematic manner, it remains an illegal practice and can find no justification under international law.

The ICRC’s Customary Law Study of 2005 affirmed that Rule 130, as derived from Article 49(6) of the Fourth Geneva Convention, is a norm of customary international law applicable in international armed conflicts.⁶⁷ Article 49(6) provides that ‘States may not deport or transfer parts of their own civilian population into a territory they occupy’, and this conduct constitutes an international crime. Article 8(2)(b)(viii) of the Rome Statute criminalises individuals’ complicity in ‘the transfer, directly or indirectly, by the Occupying

67 JM Henckaerts & L Doswald-Beck (eds) ICRC Customary International Humanitarian Law Volume I Rules (Cambridge: Cambridge University Press, 2005), 462.

Power of parts of its own civilian population into the territory it occupies’.

The settlement project is an essential element of Israel’s broader Apartheid policy. In 2012 the UN Committee on the Elimination of Racial Discrimination, in its Concluding Observations on Israel’s periodic report, drew attention to General Recommendation 19 (1995) concerning the prohibition of all policies and practices of racial segregation and apartheid. The Committee urged Israel to take immediate measures to ‘prohibit and eradicate any such policies or practices which severely and disproportionately affect the Palestinian population in the Occupied Palestinian Territory’. It expressed extreme concern at:



the consequences of policies and practices which amount to de facto segregation, such as the implementation by the State party in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand.

The Human Rights Council’s 2013 Fact-finding Mission Report on Israel’s settlement activity, while avoiding the apartheid label, also stressed this point, reiterating that the settlements ‘are established for the exclusive benefit of Israeli Jews’ through a ‘system of total segregation [...] supported and facilitated by a strict military and law enforcement control to the detriment of the rights of the Palestinian population’.

vi. Collective Punishment

Article 33 of the Fourth Geneva Convention is the primary provision of international humanitarian law protecting civilians from collective punishment. It expressly prohibits collective penalties and states that: ‘No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.’ Similar rules exist in Additional Protocols I and II to the Geneva Conventions, and in the opinion of the ICRC the prohibition of collective punishment has attained the status of customary international law.⁶⁸

Israel’s imposition of collective punishment against the protected Palestinian population has been a characteristic feature of the occupation. A 2010 ICRC statement noted with regards Israel’s blockade of Gaza: ‘The whole of Gaza’s civilian population is being punished for acts for which they bear no responsibility. The closure therefore constitutes a collective punishment imposed in clear violation of Israel’s obligations under international humanitarian law.’⁶⁹ Al-Haq has documented widespread and systematic use of collective punishment measures across the OPT, including punitive home demolitions, residency and permit revocations, arbitrary house raids, arrests, and the confiscation of money. Palestinians are unable to challenge or attain effective remedies for these abuses in Israeli courts. It is therefore imperative that the international community pressures Israel to put an end to its unlawful policies and practices in the occupied Palestinian territory.⁷⁰

68 ICRC, Rule 103. Collective Punishments. <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule103>.

69 ICRC, Gaza closure: not another year!, News Release 10/103, 14 June 2010; <https://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm>

70 Al-Haq, Unremitting Collective Punishment against Palestinians, 23 October 2017 <http://www.alhaq.org/advocacy/6313.html>.

A long standing illegal practice of the Israeli military, and one sanctioned by the Israeli judiciary, has been the imposition of collective punishment against Palestinians by means of home demolitions. Punitive house demolitions, as part of an overall policy, are a grave breach of the Fourth Geneva Convention, and amount to the war crimes of extensive property destruction and the imposition of collective punishment. The policy involves the intentional and severe deprivation of fundamental Palestinian rights and is directed against Palestinians by reason of their identity. The punitive house demolition policy is utterly discriminatory and the Israeli authorities know this. As Al-Haq have consistently demonstrated, Israel's punitive housing demolitions are punishable as the crime against humanity of persecution.⁷¹

The Plan however, refuses to acknowledge the applicable international law, and seeks to legitimise and recognise this unlawful practice:



In areas of the West Bank that are not contemplated by this Vision to be part of the State of Israel, Israel will not: [...] 3. Demolish any structure existing as of the date of this Vision and secure the necessary legislative and/or legal decisions to ensure such an outcome. This moratorium does not preclude demolition of any illegal construction, where such construction was initiated following the release of this Vision. This moratorium does not apply to the demolition of any structure that poses a safety risk, as determined by the State of Israel, or punitive demolitions

71 Shane Darcy 'Israel's Punitive House Demolition Policy: Collective Punishment in Violation of International Law' (Al-Haq, 2003). https://www.alhaq.org/cached_uploads/download/alhaq_files/publications/Israels_Punitive_House_Demolition_Policy.pdf

 following acts of terrorism.⁷²

As such the Vision is complicit in the perpetuation of a long-standing and discriminatory Israeli policies of collective punishment of which individual acts constitute both war crimes and crimes against humanity.

vii. Jerusalem and the Wall

Marking 15 years since the International Court of Justice released its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*,⁷³ in July 2019 Al-Haq reported that ‘The Annexation Wall marks one prong of Israel’s policy of colonisation of the Palestinian territory, after 52 years of prolonged occupation, annexing large tracts of Palestinian land, while its associated permit and closure regime fragments the Palestinian territory and its people, who Israel, the Occupying Power, governs under various segregationist administrative regimes.’⁷⁴

Consolidation of the Annexation Wall and its illegal effects is central to the Vision: ‘The security barrier will be realigned to match the new borders. New, modern and efficient border crossings will be constructed.’⁷⁵ Further, a Crossings Board

72 Peace to Prosperity, 38.

73 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136, <https://www.icj-cij.org/sites/default/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>

74 Al-Haq, 15 Years Since the ICJ Wall Opinion: Israel’s Impunity Prevails Due to Third States’ Failure to Act, 9 July 2019. https://www.alhaq.org/advocacy/14616.html#_ftn3

75 Peace to Prosperity, 14.

(‘A board of overseers (the “CROSSINGS BOARD”) comprised of three Israelis, three Palestinians and a United States’ representative) is envisaged, while ‘All persons and goods will cross the borders into the State of Palestine through regulated border crossings, which will be monitored by the State of Israel.’⁷⁶

The Israeli military forces which are to police these crossings will not wear uniforms. The logic for this is not expressed — the Plan noting only that the system ‘will be implemented in a manner that keeps the visibility of the State of Israel’s security role to a minimum. As permitted by law, security personnel at these crossings shall wear civilian uniforms with no state designation.’⁷⁷ No reference is provided as to what authority such ‘law’ is derived from.

A primary function of the Annexation Wall is to fragment Jerusalem from the rest of occupied Palestinian territory, contrary to, *inter alia*, UN Security Council resolution 2334 which underlined ‘that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations’.

The 2018 move of the US embassy from Israel to Jerusalem constitutes a flagrant violation of the customary international law prohibition against not recognizing an illegal situation as lawful, including the ‘inadmissibility of the acquisition of territory by force.’ The Vision rejects this, noting only that ‘On December 6, 2017, on behalf of the United States of America, President Trump recognized Jerusalem as Israel’s capital. The President also made clear that the

76 Peace to Prosperity, 24.

77 Peace to Prosperity, 24.

specific boundaries of Israeli sovereignty in Jerusalem would be subject to final status negotiations between the parties.’

The city of Jerusalem is an integral part of Palestine.⁷⁸ As recognized by the international community, Israel does not have sovereign rights over the city. This status has been reflected in numerous UN Security Council and General Assembly Resolutions. UN General Assembly Resolution ES10/L.22 on the Status of Jerusalem, adopted in 2017 at emergency session, reaffirmed prior UN Security Council Resolutions, including by affirming that ‘any decisions and actions which purport to have altered the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council, and in this regard calls upon all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to Council resolution 478 (1980).’

With regards the Annexation Wall, the Plan asserts that ‘This physical barrier should remain in place and should serve as a border between the capitals of the two parties. Jerusalem will remain the sovereign capital of the State of Israel, and it should remain an undivided city. The sovereign capital of the State of Palestine should be in the section of East Jerusalem located in all areas east and north of the existing security barrier’.⁷⁹ Contrary to the International Court of Justice Opinion that the Wall is unlawful, the Vision instead adopts the Wall as providing the parameters for the boundary of Israel’s annexation

78 Al-Haq ‘Annexing A City: Israel’s Illegal Measures to Annex Jerusalem Since 1948’ (May 2020), <https://www.alhaq.org/publications/16855.html>

79 Peace to Prosperity, 17.

of Jerusalem. Here Palestinian identity is denied and the Plan reverts to the conception of generic ‘Arab’ neighbourhoods:

[A] security barrier currently exists that does not follow the municipal boundary and that already separates Arab neighborhoods (i.e., Kafr Aqab, and the eastern part of Shuafat) in Jerusalem from the rest of the neighborhoods in the city. This physical barrier should remain in place and should serve as a border between the capitals of the two parties. Jerusalem will remain the sovereign capital of the State of Israel, and it should remain an undivided city. The sovereign capital of the State of Palestine should be in the section of East Jerusalem located in all areas east and north of the existing security barrier, including Kafr Aqab, the eastern part of Shuafat and Abu Dis, and could be named Al Quds or another name as determined by the State of Palestine.⁸⁰

On the question of the obligations of third States, the *Wall* Advisory Opinion was unambiguous: ‘the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem.’⁸¹

Despite this promisingly clear formulation of the applicable law, Al-Haq noted that ‘third States have largely ignored their obligations under Common Article 1 of the 1949 Geneva Conventions, consistently failing to hold Israel to account

⁸⁰ Peace to Prosperity, 17.

⁸¹ International Court of Justice, Advisory Opinion, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, 2004 ICJ Reports, para. 159.

for illegal annexation and expansion of illegal settlements in the OPT.’ In the scope and brazenness of the Trump Plan, this failure has been revealed as having provided comfort and political capital to Israel’s annexationists and their international supporters.

Where the *Wall* Advisory Opinion identified various Israeli violations of international law and called upon it and third states to bring those violations to an end, ending the occupation, as noted by Ardi Imseis, was not among them: ‘On the contrary, as noted, after pronouncing on the illegality of the wall, the Court went to pains to call for ‘a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel’, thereby upholding the conventional UN position.’

In considering Israel’s plans for construction of Walls throughout the West Bank, and having regard to the UN Secretary-General’s Report on the Wall submitted to the Court, the 2004 *Wall* Advisory Opinion reflected on how ‘If construction of the two barriers were completed, two enclaves would be formed, encompassing 72,000 Palestinians in 24 communities.’⁸² The Court proceeded to consider the scope of the violations of human rights law and humanitarian law arising from this specific aspect of the Wall. Having reference to ‘the Qalqiliya enclave or the City of Jerusalem and its suburbs’, the Court noted that violations of the right of freedom of movement ‘are aggravated by the fact that the access gates are few in number in certain sectors and opening hours appear to be restricted and unpredictably applied.’ The Court affirmed the unlawful effects of the Wall:

82 2004 *Wall* Advisory Opinion, para 81.



They also impede the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the United Nations Convention on the Rights of the Child. Lastly, the construction of the wall and its associated régime, by contributing to the demographic changes [...] contravene Article 49, paragraph 6, of the Fourth Geneva Convention and the Security Council resolutions’⁸³

Each of these consequences, and more, have been borne out in the experience of Palestinians in the Seam Zone.⁸⁴ The Plan’s approach is to replicate and repeat the Seam Zone through further fragmentation, presenting Israeli controlled transport nodes between the fragments as a boon for Palestinians, emphasising the virtues of ‘building an innovative network of roads, bridges and tunnels that enables freedom of movement for the Palestinians’,⁸⁵ ‘a Palestinian state that maximizes ease of travel within the State of Palestine through state-of-the-art infrastructure solutions comprised of bridges, roads and tunnels’,⁸⁶ and ‘First-rate infrastructure solutions (including tunnels and overpasses) will be built to maximize unimpeded movement throughout both states and in between states and their respective enclaves.’⁸⁷

The Plan, in claiming it will unleash economic potential by opening the West

83 2004 *Wall* Advisory Opinion, para 134.

84 Al-Haq, “The Fragmentation of ‘Azzoun ‘Atma’” (14 June 2012), <https://www.alhaq.org/media/15657.html>

85 Peace to Prosperity, 7.

86 Peace to Prosperity, 12.

87 Peace to Prosperity, 14.

Bank and Gaza, notes, without shame, that: ‘The Palestinian people routinely encounter logistical challenges in the West Bank and Gaza, impeding travel, stagnating economic growth, reducing exports, and stunting foreign direct investment.’ The ““Breaking Down Barriers” Border Crossing Points Upgrades’, a ‘breakout venture’ project scheduled for ‘Up to \$900 million in grant funding’, will see cargo terminals, special access roads, and other infrastructure built at major crossing points, and heralds investments that ‘will reduce wait times and improve customer service at crossing points. The project will create hundreds of direct jobs in construction and crossing-point management’.⁸⁸

Such infrastructure are proclaimed as ‘greatly enhance[ing] the mobility and quality of life’,⁸⁹ yet it is clear that these ‘transportation corridors’, including ‘a high-speed transportation link that will enable efficient movement between the West Bank and Gaza’⁹⁰ are not a connecting tool but a dividing mechanism, necessary only because of the occupation’s fragmentation of the land and people of Palestine. The Plan is a marketing brochure, a start-up fund for Apartheid.

The costs of this infrastructure of apartheid is to be met by an ‘International Fund’, of which no detail is provided: ‘This Vision contemplates the establishment of an international fund (the “INTERNATIONAL FUND”) for the development of the land swap areas designated for the State of Palestine, as well as all infrastructure improvements and all security measures contemplated by the

88 Peace to Prosperity, Part B Economic Framework p 7-8.

89 Peace to Prosperity, 8.

90 Peace to Prosperity, 12.

Israeli-Palestinian Peace Agreement, including port facilities, roads, bridges, tunnels, fences, overpasses, rail links, border crossings and the like. The cost of these improvements and measures is not expected to be absorbed by the State of Israel or the State of Palestine.’⁹¹

viii. Refugees

A key element of the Plan is the summary dismissal of the rights of Palestinian refugees to return to their homes: ‘There shall be no right of return by, or absorption of, any Palestinian refugee into the State of Israel.’⁹² It declares that ‘Upon the signing of the Israeli-Palestinian Peace Agreement, Palestinian refugee status will cease to exist, and UNWRA will be terminated and its responsibilities transitioned to the relevant governments.’⁹³ This erasure of the Palestinian refugee, and the institutions which assist in sustaining them through occupation and apartheid, resisted by the Great Return March in Gaza, which has seen the killing and wounding of thousands of Palestinians by the Israeli military since 2017, goes to the heart of the conflict: ‘The spectre of Palestinian return from Gaza triggers an Israeli settler anxiety that has framed the return of refugees as an existential threat.’⁹⁴

91 Peace to Prosperity, 14.

92 Peace to Prosperity, 32.

93 Peace to Prosperity, 33.

94 Noura Erekat ‘The Sovereign Right to Kill: A Critical Appraisal of Israel’s Shoot-to-Kill Policy in Gaza’ 19 international criminal law review (2019) 783-818, 801.

Casting the UN resolutions and international law on which this right is based as mere ‘proposals’, the Plan dismisses the rights of Palestinian refugees as unrealistic and as ‘empty promises’.⁹⁵ Further illustrating the lack of sovereignty foreseen for the state, is the diktat that it will have no control over its own immigration or nationality policy: ‘The rights of Palestinian refugees to immigrate to the State of Palestine shall be limited in accordance with agreed security arrangements’,⁹⁶ reinforcing Israel’s historic criminalisation of ‘the act of Palestinian return as acts of ‘infiltration’, justifying surveillance, deportation and state violence.’⁹⁷

The right of return of Palestinian refugees was first acknowledged by the UN General Assembly in resolution 194 (III) of 1948, resolving that ‘refugees wishing to return to their homes and live at peace with their neighbours should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or equity, should be made good by the Governments or authorities responsible’. Drafted and adopted contemporaneously with the Universal Declaration of Human Rights, Article 13(2) of which recognises that “Everyone has the right to leave any country, including his own, and to return to his country”, the right of return has been reiterated in many General Assembly resolutions, including for example UN General Assembly Resolution 3236 of 1974 which framed this right within the broader Palestinian right to self-determination, and reaffirmed

95 Peace to Prosperity, 31.

96 Peace to Prosperity, 33.

97 Erekat ‘The Sovereign Right to Kill’ 783-818,

‘the inalienable right of the Palestinians to return to their homes and property from which they have been displaced and uprooted, and calls for their return’.

As part of an inherently discriminatory policy, continued denial of the Palestinian right to return represents an element of Israel’s adoption of widespread and systematic violations of human rights. As noted by the ICC’s Office of the Prosecutor with regard to Myanmar’s denial of a right to return for deported Rohingya — potential harms resulting from denial of any ‘right to return’ might ‘potentially be prosecuted as an aspect of persecution or other inhumane acts, if the requisite elements were met.’⁹⁸

Al-Haq welcomes the report of the international commission of inquiry on OPT protests, as it focuses on individual criminal responsibility and on the root causes of the Great Return March, which have called, since 30 March 2018,⁹⁹ for an end to Israel’s unlawful closure of the Gaza Strip and the realisation of Palestinians’ inalienable rights, including the right of Palestinian refugees to return, as mandated by international law.

98 Prosecution Response to Observations by Intervening Participants, ICC-RoC46(3)-01/18, 11 July 2018, para 30. Request for authorisation of an investigation pursuant to article 15, ICC-01/19 4 July 2019, para 172.

99 Al-Haq, “30 March: 15 Palestinians Killed, More than a Thousand Injured, as IOF Violently Suppress Palestinian Protestors in the Gaza Strip” (31 January 2018), <https://www.alhaq.org/advocacy/6252.html>

III. CONCLUSION

When Israel annexed East Jerusalem in 1967, Security Council Resolution 267 affirmed that ‘all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem [...] are invalid and cannot change that status.’ Security Council Resolution 478 of 1980 called on all states ‘not to recognize the ‘basic law’ and such other actions by Israel that, as a result of this law, seek to alter the character and status of Jerusalem’ and that ‘those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City.’ Recognition of Israel’s unlawful annexation of East Jerusalem amounts to complicity in the unlawful settlement enterprise, as condemned by Security Council Resolution 2334 of 2016, the fundamental logic of which was the need in law for ‘all States...to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.’

Having dismissed UN General Assembly, Security Council, and other international resolutions as having ‘enabled political leaders to avoid addressing the complexities of this conflict rather than enabling a realistic path to peace’, the Vision nonetheless seeks to legitimise the proposed contract by means of UN General Assembly and Security Council resolution: ‘The Israeli-Palestinian Peace Agreement will end the conflict between Israelis and Palestinians, and end all claims between the parties. The foregoing will be

proposed in (i) a new UN Security Council resolution, and (ii) a new UN General Assembly resolution.’¹⁰⁰

Falah understands implementation of the Plan as the establishment of ‘an apartheid country extending across the whole of historic Palestine’.¹⁰¹ In its December 2019 presentation to the UN Committee on the Elimination of Racial Discrimination, Al-Haq noted that ‘Israel has consolidated its apartheid regime by entrenching the fragmentation of the Palestinian people, through the persistent denial of the right of Palestinian refugees to return, the imposition of freedom of movement, residency, and access restrictions, in particular the closure of Jerusalem and Gaza, and the denial of family unification.’¹⁰² Al-Haq further stressed that Israel’s apartheid regime has been embedded in a series of laws adopted by the State since 1948, including laws relating to citizenship and entry, such as the 1950 Law of Return, the 1952 Citizenship Law, and the 1952 Entry into Israel Law, which enshrine a superior status of Jewish nationality, and grant every Jewish person the exclusive right to enter Israel and claim citizenship, while denying the right of Palestinian refugees and displaced persons to return to their homes, lands, and property. The dispossession of Palestinian refugees was sealed in Israeli law with the adoption of the 1950 Absentee Property Law, which continues to be used to confiscate Palestinian property today.

100 Peace to Prosperity, 38.

101 Falah ‘Israel’s ‘Narrow Waist’ and the Fate of Palestinian Localities in the Triangle Area Inside Israel’ 80.

102 Al-Haq, “Joint Oral Intervention to the 100th Session of CERD for the Review of Israel” (2 December 2019), <https://www.alhaq.org/advocacy/16266.html>

The Plan arrives in the wake of the 2018 Israeli Basic Law: Nation-State of the Jewish People, which entrenches Israel's apartheid regime in the State's constitutional legal foundations, by stipulating that the right to self-determination in Israel is unique to the Jewish people, and establishing 'Jewish settlement as a national value' thereby giving constitutional force to the expansion of illegal Israeli settlements. As such it seeks to give effect and an international imprimatur to the Basic Law which what Ilan Pappé described as having 'legitimise[d] in hindsight de facto policies of apartheid and colonization and at the same time envisages the future Israel as an officially apartheid state.'¹⁰³

In the face of a Peace Plan which rejects the rule of law and human rights other than in how they can facilitate capitalist accumulation or the disciplining of a community — and against a sustained backdrop of complicity and tolerance on the part of third states with Israel's racist and criminal occupation — Al-Haq will continue to assert the demand for human rights and basic dignity for all Palestinians as individuals and as a community.

103 Ilan Pappé 'The Steal of the Century: Robbing Palestinians of their Past and Future' 23 *The Arab World Geographer/Le Geographe du monde arabe* 1 (2020) 10.