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Australia Foreign Policy White Paper

Submission by Australia Palestine Advocacy Network

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Background

The Australia Palestine Advocacy Network (APAN) is a national coalition of organisations and individuals seeking to influence Australia’s public policy regarding Palestine and Israel. APAN’s membership includes a diverse range of civil society groups and individuals, including those who identify with the three Abrahamic faiths. APAN’s executive reflects this diversity.

APAN supports the first objective of the White Paper that “Australia’s foreign policy needs to be grounded in a clear-eyed assessment of our national interests”¹.

APAN’s submission is grounded firmly in the belief that Australia’s national interests are best served by honouring our commitments to rules-based international law. The submission includes a brief assessment of our current policy and its application followed by a set of recommendations. In particular, it includes the following:

- Failure to adhere to international law undermines our credibility;
- One-sided policy disguised by the ‘Two-State’ Rhetoric;
- Redefining the “Occupation”;
- Failure to protect the vulnerable;
- Recommendation.

¹ <http://dfat.gov.au/whitepaper/wp-content/uploads/2016/11/foreign-policy-white-paper-call-for-submissions.pdf>

Failure to adhere to international law undermines our credibility

“[W]e naturally support the idea of respect for treaties; the rule of law; the principle of refraining from the use of force or the threat of force to serve national interests; respect for the territorial integrity and the sovereign independence of each state. We can be peace-loving for it suits us to join a combination against aggressors and to avoid any disturbance of the status quo. It is easier for us to be virtuous than it is for some others because the course of virtue coincides with our self-interest”.²

— Sir Paul Hasluck, Minister for External Affairs, speaking at Monash University in 1967 ahead of the Six-Day War.

A brief historical background on Australia’s position on Israel-Palestine

APAN notes that its Foreign Policy White Paper submission coincides with the 50th anniversary of the 1967 Six-Day War and UN Security Council Resolution 242 which followed, which set out the principles that should be adhered to in order to achieve a just and lasting peace in the Middle East in light of the then-recent conflict.³

Hence, it is instructive to recall that in the UN debates in 1967, Australia – through our representative to the United Nations, Sir Laurence McIntyre – voted for a General Assembly resolution calling for full Israeli withdrawal in accordance with the principle of the inadmissibility of acquiring territory by war. In that same General Assembly debate, the United States voted for a resolution that stressed that, for a “durable peace” to be achieved, “one immediate, obvious and imperative step is the disengagement of all forces and the withdrawal of Israeli forces to their own territory”.⁴

Since then, every year, the UN General Assembly passes resolutions affirming Palestine’s right to self-determination.⁵ The majority of the world’s countries support a two-state solution,

² Sir Paul Hasluck, Australian Foreign Policy. Address by the Minister for External Affairs to the Action Assembly for Moral Rearmament, Monash University, 13 January 1967. Current Notes, 1967: 12.

³ Specifically, UNSC 242 affirmed that the establishment of a “just and lasting peace in the Middle East” should include withdrawal of Israeli armed forces from territories occupied in the Six-Day War and termination of all claims or states of belligerency and respect for and acknowledgment of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force.

⁴ Statement made by the US Ambassador to the UN, Arthur Goldberg, in the General Assembly, 14 June 1967. Official Records of the General Assembly Fifth Emergency Special Session, 1554th and 1546th meetings.

⁵ United National General Assembly Resolutions on the ‘Question of Palestine’, <http://www.un.org/en/ga/62/plenary/palestine/bkg.shtml>.

compensation for land, the right of return for Palestinian refugees, East Jerusalem as the capital of Palestine, and the illegality of Israeli settlements under international law.⁶

Australia's unwavering support for Israel undermines our credibility

Yet, Australia's current policy towards Israel is characterised by unwavering support for any action taken by Israel towards Palestine, even when those acts are widely condemned by the international community.

For example, in December 2016, the UN Security Council passed resolution 2334, condemning Israeli settlement building in the West Bank as undermining the two-state solution and threatening a durable peace. Despite Australia not having a seat on the Security Council and therefore not being implicated in the vote, Prime Minister Turnbull condemned the resolution, as "deeply unsettling" and "one-sided", a position at odds with that of our strongest ally, the US, whose abstention from the vote allowed the resolution to pass unopposed.⁷ Further, Foreign Minister Julie Bishop intimated that Australia would not have supported the resolution, stating that, "in voting at the UN, the Coalition government has consistently not supported one-sided resolutions targeting Israel", even though resolution 2334 enjoyed the support of our allies the UK and New Zealand.⁸

The extent to which the Australian government is prepared to go to avoid condemning Israel's unlawful actions is, frankly, confusing. This is especially considering how much further Australia has gone beyond its close allies to justify or ignore Israel's actions, without elaboration as to why its uniquely unwavering support for Israel is in Australia's national interest, and especially considering the government's stubborn position on this issue could not fairly be said to reflect the views of the broader Australian public (as will be discussed later).

Israel's right to defend itself is not an excuse to break the law

⁶ United Nation Security Council Resolutions 242, 338 & 2334 as well as United Nation General Assembly Resolution 194.

⁷ Michael Koziol, "Julie Bishop distances Australia from global statement on Israel-Palestine peace" (16 January 2017) *Sydney Morning Herald* <<http://www.smh.com.au/federal-politics/political-news/julie-bishop-distances-australia-from-global-statement-on-israel-palestine-peace-20170116-gts7vy.html>>.

⁸ Peter Martin, "Julie Bishop backs Israel rather than the US over UN resolution" (29 December 2015) *Sydney Morning Herald* <<http://www.smh.com.au/federal-politics/political-news/julie-bishop-distances-australia-from-global-statement-on-israel-palestine-peace-20170116-gts7vy.html>>.

When responding to acts by Israel condemned by the international community, in recent times both Coalition and ALP governments have often asserted that Israel “has the right” to defend itself.⁹ This is a weak position for the reason that Israel’s right to self-defence was never an issue, as it is a right afforded to all UN member states under article 51 of the UN Charter. However, importantly, the right to self-defence must be exercised within the limits of international law, and it does not provide Israel, or any state, with *carte blanche* to respond in any way they see fit. Australia continuing insistence of Israel’s right to defend itself without qualification is puzzling as it goes against clearly expressed international opinion.

For example, the issue of the legality of Israel constructing a wall in the West Bank was considered by the International Court of Justice (ICJ) in 2004 (Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories). The ICJ found that the construction of the wall “severely impedes the exercise by the Palestinian people of its right to self-determination, and is therefore a breach of Israel’s obligation to respect that right”.¹⁰ When considering whether or not the wall constituted a valid exercise in self-defence, it also found that:

The fact remains that Israel has to face numerous indiscriminate and deadly acts of violence against its civilian population. It has the right, and indeed the duty, to respond in order to protect the life of its citizens. The measures taken are bound nonetheless to remain in conformity with applicable international law. In conclusion, the Court considers that Israel cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall...¹¹

The ICJ’s opinion is a clear pronouncement on the illegality of Israel building a wall and *de facto* annexing the West Bank. The continued functioning of the ICJ as an effective international judiciary body depends upon states accepting its findings and, in contentious cases, its rulings. Australia should know this better than most states, given it only a few years ago took its dispute with Japan over whaling in the Antarctic to the ICJ.¹² When the dispute

⁹ During the 2012 Gaza War, then Prime Minister Julia Gillard asserted that “Israel has a right to defend itself” while essentially blaming Hamas for the suffering of the Palestinians trapped in Gaza during Israel’s bombardment. See for example, Henrietta Cook, “Israel ‘has the right’ to defend itself” (19 November 2012) *The Age* <<http://www.theage.com.au/victoria/israel-has-the-right-to-defend-itself-20121118-29kd7.html>>; see also Ross Burns, “Australia’s strong response to Israel comes after years of uncritical support” (28 February 2010) *Sydney Morning Herald* <<http://www.smh.com.au/federal-politics/political-opinion/australias-strong-response-to-israel-comes-after-years-of-uncritical-support-20100227-pacc.html>>.

¹⁰ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories (Advisory Opinion) I.C.J. Reports 2004, p. 136, 184.

¹¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories (Advisory Opinion) I.C.J. Reports 2004, p. 136, 195.

¹² See Whaling in the Antarctic (Australia v. Japan; New Zealand intervening), Judgment, I.C.J. Reports 2014, p. 226.

was decided in Australia's favour in 2014, Australia expected that Japan would respect the outcome, and criticised Japan for ignoring the ruling by continuing to engage in whaling in the Antarctic.¹³ If Australia expects other states to respect the opinion of the ICJ on matters of international law, then it must do so as well.

Australia's hypocrisy undermines its standing internationally

It is not in Australia's best interest to fail to condemn Israel's construction of the wall and settlements to *de facto* annex the West Bank, if Australia expects to gain any traction in condemning, for example, Russia's incursions into East Ukraine or China's activities in the South China Sea. If Australia continues to take such a lopsided approach without clear justification, Australia cannot expect to be taken seriously as an objective and authoritative voice committed to promoting international peace and security, thereby hampering its ability to influence other countries in international matters and advance in its own best interests.

If it is to ensure its credibility, Australia must take positive steps to instil confidence in its commitment to promoting international peace and security, and human rights. This is especially urgent and important at a time when Australia is seeking a seat on the UN Human Rights Council, UNHRC. It is instructive to note that since its inception in 2006, the UNHRC has passed more than 45 resolutions condemning Israel's abuse of the human rights of the Palestinians¹⁴.

APAN therefore considers that the best approach for Australian foreign policy towards Palestine and Israel is one that involves a return to a policy grounded in international law, and, as Sir Paul Hasluck said, "the course of virtue coincides with our self-interest". By grounding its approach in international law, Australia cannot be accused of "playing favourites" or ignoring clear violations of international law and abuses of human rights which might seek to undermine its standing internationally.

One-sided Policy Disguised by the 'Two-State' Rhetoric

The Australian government's public support for Israel's settlement activities in the Occupied Palestinian Territories, especially following the unanimous UNSC resolution 2334¹⁵ in December 2016, is shocking and un-defendable. The Australian government is the only

¹³ The Guardian, *Australia slams Japan's decision to resume Antarctic whaling* (29 November 2015) <<https://www.theguardian.com/environment/2015/nov/29/australia-slams-japans-decision-to-resume-antarctic-whaling>>.

¹⁴ <http://www.ohchr.org/en/hrbodies/hrc/pages/hrcindex.aspx>

¹⁵ Resolution 2334 (2016) <http://www.un.org/webcast/pdfs/SRES2334-2016.pdf>

government in the world to criticise this resolution and in contradiction to our traditional respect for the positions taken by one of our closest allies, the US who abstained from the vote. The resolution clearly and un-equivocally reaffirms Israel's obligations as the occupying power and condemns the settlement activities in the Occupied Palestinian Territories:

“Reaffirming the obligation of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice,

Condemning all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, inter alia, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions, ...”

It is more alarming that the Government, in particular the Foreign Minister, ignores the Department of Foreign Affairs and Trade legal advice regarding the illegality of the settlements¹⁶ and act in contradiction of it.

Over the last few years, APAN have commissioned social research on Australian attitudes to Palestine and Israel. Ray Morgan Research conducted this poll consecutively in 2009, 2011 and 2014. The poll showed that there is an overwhelming endorsement by Australian citizens of Palestine's push to become an independent state living in peace beside Israel, with 57% of those polled supporting Australia's recognition of Palestine. The survey also showed that Australians overwhelmingly (62%) disagreed with the relentless settlement building by the Israeli government on Palestinian land¹⁷.

We submit that the Government - by ignoring the UNSC resolutions (242, 338 and 2334), the International Court of Justice opinion, DFAT advice and the majority of the Australian public - has for pure political gains, sided with the occupier. The Government failed to support the application of international law and instead supported the settlements' activities in the OPT. Such policy and actions are clearly undermining the Two-State solution, based on the pre-1967 borders, as stipulated in UNSC 242 and render the Government's support for it, simply rhetorical. Any government who truly believes in the Two-State solution would not support the illegal colonisation of the Occupied Palestinian Territories, where a future Palestinian state

¹⁶ Senate Estimates: Foreign Affairs, Defence and Trade Legislation Committee (DFAT), 27/02/2014

¹⁷ Ray Morgan Research poll on Israel-Palestine 2014, <https://apan.org.au/media-releases/morgan-poll-2014/>

is to be established. In a well reported speech¹⁸ in late December 2016, and following the passing of UNSC 2334 resolution, the former US Secretary of State John Kerry articulated the rationale for this resolution where he said:

“No one thinking seriously about peace can ignore the reality of what the settlements pose to that peace. But the problem obviously goes well beyond settlements. Trends indicate a comprehensive effort to take the West Bank land for Israel and prevent any Palestinian development there.”

Therefore, the Government’s uncritical support for the settlements have made us an active participant in the colonisation of Palestine and in breach of our international obligations. This position does not serve our national interest.

Redefining the ‘Occupation’

Another way in which Australia has sought to make Israel’s task in defying international law easier is its efforts, matched by no other Western country, to redefine or disparage the international legal regime flowing from the basic instruments of the rules of war. The current government’s public remarks deliberately ignore the inherent imbalance of power between occupier and occupied and in essence are an attempt to redefine the very concept of “occupation”. The status of Palestine as an occupied land, based on two unanimous UN Security Council resolutions (242 and 338), have been accepted by every country in the world (except Israel), and Australia has long avoided departing from this consensus.

In the past eighteen months, however, the Australian government has quietly moved away from the tenets of its past policies, which have largely been followed by both Coalition and Labor governments. It has done so through:

- A public statement by the Foreign Minister querying the laws that make East Jerusalem occupied¹⁹;
- The refusal of Australia’s Attorney-General to use the term “occupied” when describing East Jerusalem²⁰;
- The insistence of the Australian government that the Israelis and Palestinians conduct direct negotiations to resolve the conflict²¹;

¹⁸ Former Secretary of State, John Kerry speech 29 December 2016, <http://time.com/4619064/john-kerrys-speech-israel-transcript/>

¹⁹ <https://www.theguardian.com/world/2014/jun/17/julie-bishop-avoids-referring-disputed-occupied>

²⁰ <http://theconversation.com/brandis-out-of-step-with-international-consensus-on-east-jerusalem-27689>

²¹ Joint statement between Hon Malcolm Turnbull and Prime Minister Netanyahu, February 2017, <https://www.pm.gov.au/media/2017-02-23/joint-statement>

- Since 2015, the government has changes its voting pattern in the UN General Assembly on resolutions concerned with the application of the Fourth Geneva Convention to the occupied territories and the 'Peaceful Resolution of the Question of Palestine'²² despite ample evidence of the applicability of this international instrument which forms an essential part of the framework of the laws of war;
- Its failure to openly condemn the consistent reports that Jewish settlers and the Israel Defence Force frequently act in contravention of the obligations of an Occupying Power under international law; and
- Its failure to take seriously the consistent and corroborated reports about Palestinian children being abused in Israeli detention, as reported by an Australian human right lawyer²³, and after urging in a parliamentary motion with support across the political spectrum²⁴.

Perhaps the Government's departure from previous policies without any official statement of the reasons explaining its positions and presenting it a 'fait accompli' to the Australian public, is the realisation that the majority of Australians would disagree with this change, as evident by the results of APAN public survey. The Government often refers to the financial aid (mostly humanitarian) it provides to the Palestinians as a sign of support for their aspiration for independence, yet it ignores the most basic reason for their predicament, 'the occupation'. These attempts at undermining the international framework and shifting all the responsibilities onto the victims have not served Australia's interest internationally and have left us exposed to charges of hypocrisy and double standards. Even the United States, as the most prominent backer of Israel, has consistently drawn attention to Israel's offences and have criticised the settlement activities and acknowledged their role as an obstacle to peace. The Australian government's current position of either silence or open condoning of Israel's undefined 'right to defend itself' is clearly un-defendable.

Failure to Protect the Vulnerable

The joint statement of Prime Minister Turnbull and Prime Minister Netanyahu²¹ following the historic visit of the latter to Australia this month exposed the extent to which Australia's policy towards Israel and Palestine has shifted. It placed emphasis on strengthening relations with Israel while nominally professing support for a Two State solution. In doing so, however, the

²² Voting record in the UN General Assembly on the 'Question of Palestine', 2015
<https://www.un.org/press/en/2015/ga11732.doc.htm>

²³ Military Court Watch, <http://www.militarycourtwatch.org/>

²⁴ Parliamentarians call for Israel to stop ill-treatment of Palestinian children by their military, 2016,
<https://apan.org.au/2016/11/22/nwttac/>

government has in recent years avoided setting out any guidelines that could affect such a solution outside a framework of international law.

As national states with friendly relations, Australia and Israel have agreed on two areas of mutual interest that should be developed—water technology and cyber security. While APAN recognises Australia's future inherently depends on advances in these areas, it strongly believes that the exploration of joint programs in those areas should not come at the expense of the interests of a third entity—namely Palestine whose citizens suffer from Israel's long-standing syphoning of Palestinian underground aquifers and are at the mercy of the Israeli authorities' proficiency in deep surveillance technology.

These fields are two aspects of the reality that Israel's settlements in Palestinian territory are used by the Israeli State as a weapon, the purpose of which is to preclude the possibility of a two-state solution by destroying the economic and territorial basis of Palestinian statehood. To connect the settlers to Israel, the government has built a web of Israeli-only 'bypass roads' throughout the West Bank.

How can Australia morally take advantage of Israeli water technology when it is built upon Palestinian disadvantage and Australia's unequivocal support for Israel's illegal settlement activity?

Similarly, Israel's unquestionably superior cyber and security technology should enable safe and rapid movement of Palestinians from the West Bank to Israel for work and vice versa. It should enable Palestinians in their territory to move easily to visit relatives, shops and hospitals. Instead, Palestinians are subject to frustration and humiliation every time they try to leave home. Palestinian children refuse to go to school because of harassment from the settlers. In order to counter this harassment, volunteers from the global ecumenical accompaniment programme accompany children to school, their only protection being a camera. Israeli technology is being used to target children who may have thrown a stone at an armoured vehicle to be identified, arrested and imprisoned. Palestinians have proven themselves capable of running their own internet system, however Israel does not allow this. If Australia is to partner with Israel in cyber technology it must do so cognisant of the fact that this technology is used as a weapon for suppression of the Palestinian people.

This submission also coincides with the 10th anniversary of the siege of the Gaza Strip, and therefore we draw attention to the conclusion of UN Special Rapporteur John Dugard in his September 2006 report to the Human Rights Council:

'In effect, the Palestinian people have been subjected to economic sanctions—the first time an occupied people [has] been so treated... This is difficult to understand. Israel is in violation of major Security Council and General Assembly resolutions dealing with unlawful territorial change and the violation of human rights and has failed to implement the 2004

advisory opinion of the International Court of Justice, yet it escapes the imposition of sanctions. Instead the Palestinian people, rather than the Palestinian Authority, have been subjected to possibly the most rigorous form of international sanctions imposed in modern times... It is interesting to recall that the Western States refused to impose meaningful economic sanctions on South Africa to compel it to abandon Apartheid on the grounds that this would harm the black people of South Africa. No such sympathy is extended to the Palestinian people or their human rights.²⁵

The Australian government's public stance in support of Israel goes well beyond the level of support needed to sustain a viable and mutually advantageous bilateral relationship. Noteworthy, is that such a stance is inconsistent with those exercised by our natural allies, the UK, USA or New Zealand. The extent of Australia's uncritical support of whatever action Israel deems necessary, including measures that abuse the human rights of Palestinians, risks tarnishing our reputation and works against our national interest. For our country, Australia, to pride itself on its human rights record and respect for law, but then publicly and openly turn a blind eye towards Israel's violations of human rights on a scale that works against prospects of a future viable relationship between Israelis and Palestinians, robs ourselves of international credibility. As signatories of the relevant international treaties cited above, Australia has also accepted its obligation to support the implementation of those treaties both in Australia and elsewhere. Our actions and public support for Israel and its practices in Palestine not only encourage a level of violence in flagrant violation of the international legal regime but implicates Australia through the neglect of its duty as a state party that should be making every effort to strengthen, not undermine, the conventions.

Recommendation

APAN submits that the Australian foreign policy towards Israel-Palestine needs to reflect our commitment to international law and to our values of 'fair go', justice and equality. Such commitment can be realised through:

1. Changing our voting pattern in the UN to support the application of international law and relevant treaties, including the Fourth Geneva Convention, in order to provide the vulnerable population of Palestine the required protection;
2. Urging the Israeli government openly (and in private) to desist from intensifying or spreading the pattern of settlements and so strengthen the chances of a peaceful outcome free of the atmosphere of a land grab by the stronger party;

²⁵ Report of the Special Rapporteur of the Commission on Human Rights, John Dugard, on the situation of human rights in the Palestinian territories occupied since 1967 (17 January 2006)

3. Developing and applying practical measures that support the establishment of the State of Palestine, based on the pre-1967 borders, in order to compel the government of Israel to abide by its obligation under international law;
4. Recognising the state of Palestine in order to address the imbalance and give the Palestinians access to UN bodies. In doing so (and in recognition of our role in endorsing the division of Palestine in 1947 and later recognition of the State of Israel), Australia would correct the one-sided approach we are seen to have taken to the detriment of our reputation internationally; and
5. Using our unique position as a middle power with strong links to all sides to act as an honest mediator in order to bring this conflict to a peaceful resolution.

APAN is thankful for the opportunity to provide this submission and will be pleased to provide further information and clarifications in person or in writing if deemed required.