

Rt Hon James Cleverly MP
Foreign, Commonwealth, and Development Secretary
King Charles Street
London SW1A 2AH.

09 November 2022

Dear Secretary of State,

Congratulations on your re-appointment as Foreign Secretary.

As a former Minister of State for the Middle East and North Africa, you know well the political complexities and turbulence which are endemic in that region. Former Prime Minister Truss initiated a review of the location of the United Kingdom Embassy in Israel. Apparently this was requested by the Conservative Friends of Israel which wishes to see the Embassy moved to Jerusalem from Tel Aviv.

While this review has been put on hold, it would constitute a serious mis-step which would break international law. It would engage the United Kingdom in a breach of its obligations under the 1961 Vienna Convention on Diplomatic Relations to which it is a party, as is Israel. While this letter focuses on the Vienna Convention, we should make it clear that we agree with the analysis in the letter you received on 20 September from Professors Michael Lynk and Ardi Imseis: there is nothing to review.

The Vienna Convention clearly envisages that embassies be located within the territory of the receiving or host State. Article 3(1) of the Convention, which sets out the basis of diplomatic relations, provides:

The functions of a diplomatic mission consist *inter alia* in:

- (a) representing the sending State in the receiving State;
- (b) protecting *in* the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law; [emphasis added].

Article 21(1) underlines the territorial nexus in the conduct of diplomatic relations, providing:

The receiving State shall either facilitate the acquisition *on its territory*, in accordance with its laws, by the sending State of premises necessary for its mission or assist the latter in obtaining accommodation in some other way [emphasis added].

At the Vienna Conference which established the text of the Convention, there was 'prolonged discussion' as to whether Article 3 should contain an express reference to international law. Some States doubted the need for this as "all the functions of the mission could be exercised only within the limits permitted by international law...Ultimately, however, most delegations accepted the need for reassurance in this particular context, and the words 'within the limits

permitted by international law' were added by the Conference to the International Law Commission's draft".¹

Accordingly, the requirement in Article 21(1) that a diplomatic mission must be established *in the territory* of the receiving, or host, State must be understood in the light of the relevant rules of international law regarding title to territory. The immediate question is the status of Jerusalem and whether it forms part of Israeli territory and is subject to its *de jure* sovereignty.

Territory, its delineation, and possession of sovereignty are unresolved aspects of the Middle East Peace Process, particularly where authority over Jerusalem is concerned. In 1993, Israel and the Palestine Liberation Organisation entered into the Declaration of Principles on Interim Self-Governing Arrangements which, in Article V, reserved the questions of Jerusalem and borders as matters to be discussed in the final status negotiations which have not yet taken place.

The import of this was underlined when on 18 October 2022 the Australian Government reversed its previous recognition of Jerusalem as Israel's capital. Your Australian counterpart, Senator Penny Wong, stated:

"Today the Government has reaffirmed Australia's previous and longstanding position that Jerusalem is a final status issue that should be resolved as part of any peace negotiations between Israel and the Palestinian people.

This reverses the Morrison Government's recognition of West Jerusalem as the capital of Israel".²

In contrast, on 6 December 2017 President Donald Trump recognised Jerusalem as Israel's capital. During a UN Security Council meeting on 18 December 2017, all other members, including the United Kingdom, excoriated President Trump's action, declared it contrary to international law, and unanimously voted in favour of a draft resolution which reaffirmed previous Security Council resolutions on the international status of Jerusalem. The draft continued:

"Stressing that Jerusalem is a final status issue to be resolved through negotiations in line with relevant United Nations resolutions...

Affirms 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 resolution 478 (1980) of the Security Council".

This resolution was vetoed by the United States, but on 21 December 2017 the UN General Assembly overwhelmingly adopted a resolution cast in similar terms by a vote of 128-9. The United Kingdom voted in favour.

In June 2019 the UK representative to the Security Council stated there that the Israel—Palestine situation constituted a threat to international peace and security which the Council has the primary responsibility to maintain (UN Charter Article 24) and continued "It is right that we

¹. Eileen Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (Oxford UP: Oxford: 2016, fourth edition) 30: Ms Denza is a former Legal Councillor to the Foreign and Commonwealth Office. She was a visiting professor at University College, London from 1997 to 2008.

². <https://www.foreignminister.gov.au/minister/penny-wong/media-release/reversal-recognition-west-jerusalem>.

have passed resolutions and we are bound by these resolutions. And we all have a responsibility, Mr President, to implement them”.

That remains the case today. Last month, albeit in relation to a different situation, you rightly recognised this obligation when you stated “Iran cannot be allowed to violate UN resolutions”. This rule applies equally to the United Kingdom. Consequently, to support and uphold the international rule of law, the United Kingdom should not relocate its embassy from Tel Aviv to Jerusalem. In accord with Professors Lynk and Imseis, we submit that there is nothing to review.

Yours sincerely,



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