



November 25, 2019

The Honorable Mike Pompeo
U.S. Secretary of State
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

Dear Secretary Pompeo:

On behalf of the Zionist Organization of America (ZOA), the oldest pro-Israel organization in America, and our board and members throughout the United States, we thank you for affirming the truth that Jewish cities, towns, communities, homes, synagogues, businesses and universities, a.k.a. “settlements”, in the Jewish homelands of Judea/Samaria are legal under international law, and are *not* an obstacle to peace. We are deeply grateful to you for stating the truth.

We are also writing to condemn and correct the false, perfidious, antisemitic, Israelophobic November 21, 2019 letter sent to you by 106 Democrat House of Representatives members (the “106 Democrats’ Anti-Israel Letter”).

Today, 450,000 Jews live in the heart of the Jewish homeland in Judea/Samaria. It is false and antisemitic for the 106 Democrats to claim that it is “illegal” for Jewish people to live, work, pray and study in these vital, historic portions of the Jewish homeland.

Widespread Israeli Support: Israel’s two leading parties – Likud (Netanyahu) and Blue and White (Gantz) – both praised your statement. The 106 Democrats’ Anti-Israel Letter ignores the overwhelming spectrum of Israelis who uniformly support your position.

Debunking the BDS Movements’ False Claims: Your important statement also strikes a much-needed blow at the hateful anti-Israel, antisemitic BDS (boycott, divestment and sanctions) movement, which relies on false claims that Jews are “illegal occupiers” of the Jewish homeland. The 106 Democrats’ Anti-Israel Letter ignores the pressing need to counteract the BDS movements’ false, antisemitic “occupation” claims. But perhaps this is not surprising, because 14 of the Anti-Israel Letter’s signers are simultaneously co-sponsoring anti-Israel letter-signer Rep. Ilhan Omar’s House Resolution 496, which is designed to protect, immunize and *promote* antisemitic anti-Israel boycotts.¹

¹ These 14 [co-sponsors](#) of Ilhan Omar’s antisemitic, pro-BDS, H. Res. 496 are: Rashida Tlaib (D-MI-13); Alexandria Ocasio-Cortez (D-NY-14); John Lewis (D-GA-5); Bonnie Watson Coleman (D-NJ-12); Donald M. Payne, Jr. (D-NJ-10); Bobby L. Rush (D-IL-1); Danny K. Davis (D-IL-7); Ayanna Pressley (D-MA-7); Earl Blumenauer (D-OR-3); Andre Carson (D-IN-7); James P. McGovern (D-MA-2); Peter A. DeFazio (D-OR-4); Joaquin Castro (D-TX-20); Mark DeSaulnier (D-CA-11); Judy Chu (D-CA-27); Zoe Lofgren (D-CA-19); and Raul M. Grijalva (D-AZ-3). See also discussion of H. Res. 496 at “[ZOA Denounces Reps. Omar & Tlaib’s Antisemitic, Israelophobic Resolution to Protect BDS](#),” July 19, 2019,

Jewish History: The 106 Democrats’ Anti-Israel Letter moreover completely ignores the history of Judea/Samaria.

Judea/Samaria is the holy Jewish land where the Jewish people lived and prayed for thousands of years. It is the land where Abraham purchased the cave and fields in Hebron to bury his beloved wife Sarah – and where Abraham too was buried. Interestingly, this week’s Torah reading recounts Abraham’s purchase of this land. Judea/Samaria is also where the Maccabees fought off foreign invaders and Hellenists. It is where the shepherd David tended his flock, was anointed king, and first established his kingdom. It is where the ancient Jewish community of Hebron lived for centuries, until Arabs massacred the Jewish community in 1929. It is where the Jewish people planted the fields and cultivated our spiritual heritage.

By contrast, there **never** was a Palestinian-Arab state in Judea/Samaria (or anywhere else). “Palestine” was a region – not a state. The Romans renamed Judea “Palestina” to attempt to de-Judaize the area, after crushing the Jewish revolt in the second century CE. During the Ottoman Empire rule (1517-1917), and the Mandatory period, Palestine referred to the entire area, including Jordan, south of Syria. Until the PLO usurped the name, “Palestinians” meant Jews.²

Israel’s Sovereign Rights Under International Law: Particularly egregiously, the 106 Democrats’ Anti-Israel Letter makes an unsupported assertion that the State Department’s statement violates “international law.” Meanwhile, the 106 Democrats’ Anti-Israel Letter totally ignores the international and U.S. treaty obligations that confirm the Jewish people’s unequivocal rights to settle Judea/Samaria, including the following:

- The [San Remo Resolution](#) (1920),³ unanimously adopted by the entire League of Nations (51 members) was a binding international agreement that made Britain (the “Mandatory”) responsible for putting into effect the Balfour Declaration (Nov. 2nd, 1917), “in favour of the establishment in Palestine of a national home for the Jewish people.” The San Remo Resolution also called for “*close settlement by Jews on the land*” – in Israel, including Jerusalem and Judea/Samaria (as well as present-day Jordan).
- The [Lodge-Fish Joint Resolution](#) of the 67th U.S. Congress (Joint Res. 322),⁴ unanimously passed by both houses of Congress on June 30, 1922, and signed by then-President Warren G. Harding on Sept. 21, 1922, called for a Jewish homeland (meaning a state) in Palestine (the area that encompasses Israel including Judea/Samaria and Jerusalem).

available at <https://zoa.org/2019/07/10411923-zoa-denounces-reps-omar-tlaibs-antisemitic-israelophobic-resolution-to-protect-bds/>

² See “*Origins of the Name ‘Palestine’*,” Jewish Virtual Library, available at <https://www.jewishvirtuallibrary.org/origin-of-quot-palestine-quot>

³ Available at https://wwi.lib.byu.edu/index.php/San_Remo_Convention

⁴ Available at <https://www.loc.gov/law/help/statutes-at-large/67th-congress/Session%202/c67s2ch372.pdf> See also reprint of the Congressional Record of June 30, 1922, at <https://www.loc.gov/law/help/statutes-at-large/67th-congress/Session%202/c67s2ch372.pdf>

- The League of Nations [Mandate for Palestine](#) (July 24, 1922)⁵ was an internationally binding treaty guaranteeing “*close settlement by Jews, on the land*” and reestablishment of the Jewish homeland in the land of Israel comprising the full mandatory area, which included Jerusalem and Judea/Samaria.
- The [1924 Anglo-American Convention \[Treaty\]](#)⁶ affirmed entrusting, to the British Mandatory administration, the area that is now Israel including Jerusalem and Judea/Samaria, and made the British Mandate responsible to “*secure the establishment of the Jewish national home*” there, and “to facilitate. . . in cooperation with the Jewish Agency . . . *close settlement by Jews on the land.*” The Anglo-American Convention tracked the terms of the 1922 League of Nations Mandate for Palestine. The Convention was ratified by the U.S. Senate, and signed by then-President Calvin Coolidge, making it a *binding U.S. treaty obligation*. **This binding U.S. treaty, which guaranteed the Jewish people’s right to closely settle Judea/Samaria, was never lawfully overturned.**

Former Presidents Jimmy Carter’s and Barrack Hussein Obama’s policies thus violated international law and binding U.S. treaty obligations. It was absolutely correct that you and the Trump administration ended the illegal Carter/Obama policies.

- [UN Charter Article 80](#) (1946),⁷ the Jewish People’s clause, preserves intact all the rights granted to Jewish people under the Mandate for Palestine, even after the Mandate’s expiry in 1948. The U.S. is a party to the UN Charter, which has the status of international law.

Accordingly, by its own Charter, **the UN cannot transfer the rights vested in the Jewish people, in what was formerly the Mandate for Palestine, to any non-Jewish entity.** Thus, UN resolutions that attempted to remove Jewish rights to Judea/Samaria and Jerusalem are illegal and void. Further, [UN Resolution 181](#) (1947) merely contained a *non-binding recommendation* to partition the land guaranteed to the Jewish people into Jewish and Arab states. The Arabs rejected the recommendation, rendering it a complete nullity. Instead, six Arab nations went to war to attempt to annihilate the Jewish people and state.

- The fundamental, well-established, clear border-determination rule of international law, called *uti possidetis juris* (“as you possess under law”), entitles a new country (e.g., the reestablished state of Israel) to the borders of the preceding top level administrative mandated territory (e.g., the British Mandate for Palestine, including Judea/Samaria and Jerusalem). This international legal entitlement to the full mandatory borders applies regardless of whether various sectarian groups

⁵ Available at <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20mandate%20for%20palestine.aspx>

⁶ Available at http://www.alliedpowersholocaust.org/wp-content/uploads/2015/03/1924-Anglo-American-Convention.pdf?utm_source=ZOA&utm_campaign=e7ed2866a2-EMAIL_CAMPAIGN_2019_06_18_07_49&utm_medium=email&utm_term=0_57a3dee48d-e7ed2866a2-184854577

⁷ See Discussion by scholar Howard Grief, at <https://www.algemeiner.com/2011/09/22/article-80-and-the-un-recognition-of-a-“palestinian-state”/>

are happy with a new country's borders. International Law Professor Eugene Kontorovich's extensive scholarship confirms this rule's applicability to Israel.⁸

- During the 1948-1949 war of annihilation by six Arab nations against Israel, Jordan seized and then illegally occupied the eastern portion of Jerusalem and Judea/Samaria for 19 years (1948-1967), dynamited 58 centuries-old synagogues, and expelled and murdered the Jewish population. Israel recovered these lands in the defensive 1967 Six Day War. During Jordan's 19-year illegal occupation, Jordan was never internationally recognized as having a rightful claim to these areas, and never established a Palestinian Arab state. No Arab group even made a claim for a Palestinian state in Judea/Samaria during Jordan's illegal occupation. In 1988, Jordan formally relinquished its claim to Judea/Samaria. The [Israel-Jordan Peace Treaty](#) (1994)⁹ recognized the Mandatory border as the international border – thereby affirming that Judea/Samaria is within Israel.

- UN Security Council [Resolution 242](#) (Nov. 22, 1967)¹⁰ called for “*Termination of all claims or states of belligerency and respect for and acknowledgement 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.*”

The settlements are essential to Israel's “right to live in peace within secure and recognized boundaries.” Without key areas of Judea/Samaria, at the very least including the Jordan Valley and settlement blocs, Israel would be indefensible.¹¹ Notably, Resolution 242 called for the integrity of the existing “States in the area” – meaning Israel, Jordan, Egypt, Syria and Lebanon; the resolution did not call for the creation of a new contiguous Palestinian-Arab state on Israel's sovereign land. Yet, the 106 Democrats' Anti-Israel Letter wrongly demands that Israel should be relegated to indefensible borders, in order to make way for a belligerent contiguous Palestinian-Arab terror state that endangers Israel's existence.

- The “[Levy Commission Report on the Legal Status of Building in Judea and Samaria](#),”¹² authored by highly respected former Israeli Supreme Court Justice Edmond Levy, Judge Tehiya

⁸ See Summary of Prof. Kontorovich speech at <https://zoa.org/2017/01/10350197-leading-intl-legal-scholar-kontorovich-emphasizes-at-zoa-event-us-embassy-should-move-to-jerusalem/> and “*Palestine, Uti Possidetis Juris and the Borders of Israel*,” by Professors Abraham Bell and Eugene Kontorovich, March 8, 2016, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2745094

⁹ Available at <https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israel-jordan%20peace%20treaty.aspx>

¹⁰ Available at

<https://mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/UN%20Security%20Council%20Resolution%20242.aspx>

Also see interpretative statements at

<https://mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/statements%20clarifying%20the%20meaning%20of%20un%20security%20c.aspx>

¹¹ See maps and discussion by Major General Uzi Dayan regarding defensible borders, Jerusalem Center for Public Affairs, at http://jcpa.org/requirements-for-defensible-borders/defensible_borders_to_ensure_israels_future/

¹² Available in English translation, at <https://web.archive.org/web/20150508072813/http://regavim.org.il/en/wp-content/uploads/2014/11/The-Levy-Commission-Report-on-the-Legal-Status-of-Building-in-Judea-and-Samaria2.pdf> Also see summary of the Levy Commission's conclusions at <http://elderofziyon.blogspot.com/2012/07/english-translation-of-legal-arguments.html>

Shapira, and Ambassador Alan Baker, concluded, after an extensive investigation, that under “international law, the establishment of Jewish settlements in Judea and Samaria is not illegal.”

In sum, the 106 Democrats’ Anti-Israel Letter ignores all of the history, binding international legal agreements and scholarship affirming the legality of Jewish communities in Judea/Samaria.

No Violation of the Fourth Geneva Convention: Instead of examining applicable international law, the 106 Democrats’ Anti-Israel Letter wrongly labels Judea/Samaria “occupied Palestinian territory,” and falsely claims that your State Department’s policy statement “disregards Article 49 of the Fourth Geneva Convention, which affirms that any occupying power shall not ‘deport or transfer parts of its own civilian population into the territory it occupies’.”

In fact, Jewish settlements do **not** violate Article 49 of the Fourth Geneva Convention for multiple reasons, including the following:

- The Fourth Geneva Convention is inapplicable because it is a specialized treaty among the “high contracting parties” – the countries who signed this treaty. The Palestinian Authority is not a signatory.
- Israel is not an “Occupying Power” under the Fourth Geneva Convention, because, as the international treaties, law and history discussed above make clear, Israel has the sovereign right to Judea/Samaria. Judea/Samaria is not the territory of another sovereign country. Palestinian-Arabs have **no** sovereign rights to this land. Israel is thus **not** an “occupier” of Judea/Samaria.
- The Fourth Geneva Convention concerns **forcible** transfers of populations. It does not apply to Jews voluntarily returning to the Jewish homeland. As former Yale Law School Dean Eugene Rostow explained: “[T]he Convention prohibits many of the inhumane practices of the Nazis and the Soviet Union during and before the Second World War - the mass transfer of people into and out of occupied territories for purposes of extermination, slave labor or colonization, for example. . . . The Jewish settlers in the West Bank are most emphatically volunteers. They have not been “deported” or “transferred” to the area by the Government of Israel, and their movement involves none of the atrocious purposes or harmful effects on the existing population it is the goal of the Geneva Convention to prevent.”¹³
- Professor Eugene Kontorovich’s examination of actual occupations throughout the world¹⁴ demonstrates that the Fourth Geneva Convention has never been interpreted to impose an obligation on occupying powers to prevent their citizens from moving into their occupied territories. Accordingly, prohibiting such moves is not international law. The 106 Democrats’ Anti-Israel Letter attempts to demonize Israel by wrongly re-interpreting the Fourth Geneva Convention, in a novel manner, to prevent voluntary civilian moves. Thus, even if, for argument’s sake, Israel were an occupying power, Jewish settlements in Judea/Samaria would still be legal.

¹³ Quoted in the *Levy Commission Report*, see n.9, *supra*.

¹⁴ See n. 7, *supra*.

- The 106 Democrats’ Anti-Israel Letter perniciously attempts to use the Fourth Geneva Convention to ethnically cleanse Jews from Judea/Samaria – which is the polar opposite of the Convention’s purpose. As the late renowned, International Law Professor [Julius Stone](#) stated: “

Irony would. . . be pushed to the absurdity of claiming that Article 49(6), designed to prevent repetition of Nazi-type genocidal policies of rendering Nazi metropolitan territories judenrein [devoid of Jews], has now come to mean that. . . the West Bank [Judea/Samaria] . . . must be made judenrein and must be so maintained, if necessary by the use of force by the government of Israel against its own inhabitants. Common sense as well as correct historical and functional context excludes so tyrannical a reading of Article 49(6.)”¹⁵

In sum, your statement that Jewish settlements in Judea/Samaria are “not illegal” under international law is correct, and the 106 Democrats’ Anti-Israel Letter is wrong.

Jewish Communities are Not an “Obstacle to Peace”: The 106 Democrats’ Anti-Israel Letter also promotes a so-called “two-state solution” – a euphemism for eliminating Jewish communities and creating a Gaza-style Palestinian-Arab state on Israel’s sovereign land. Such a state will be a Hamas-Fatah-Hezbollah-Iranian-proxy terror state, place all of Israel within rocket-range, pose an existential danger to every Israeli, and threaten U.S. security interests throughout the Middle East.

Jewish communities in Judea/Samaria are **not** an “obstacle to peace,” and the creation of a Palestinian-Arab state would **not** bring peace. The Palestinian Authority turned down over-generous peace offers of a Palestinian-Arab three times during the last 19 years, because the PA refused to give up its genocidal goal of completely destroying Israel. The real “obstacles to peace” are that the PA continues to preach hatred and violence towards Jews in every conceivable venue (schools, media, mosques, sports teams, etc.); pays Arabs to murder Jews; and seeks to annihilate the Jewish state and her people.

The Trump Administration’s Other Positive Steps: The 106 Democrats’ Anti-Israel Letter also wrongly condemns the Trump administration’s other highly positive steps – including moving the U.S. Embassy to Israel’s eternal capital Jerusalem in accordance with longstanding U.S. law; closing the PLO mission in Washington, D.C. due to the PLO’s violations of U.S. law; properly placing the U.S. Consulate in Jerusalem under the U.S. Embassy in Jerusalem’s auspices; and ending sending U.S. taxpayer dollars to the Palestinian Authority – because the PA is continuing to pay terrorists to murder Jews.

The Trump administration should be uniformly praised for these important steps to enhance peace and security in the Middle East. But instead, the 106 Democrats’ Anti-Israel Letter promotes the deadly interests of the corrupt, genocidal Palestinian Authority regime.

It is also telling that J Street supports the 106 Democrats’ Anti-Israel Letter. Harvard University Law School Professor Alan Dershowitz aptly stated: “*J Street is the one of the most virulent anti-*

¹⁵ Quoted in the *Levy Commission Report*, see n.9, *supra*. Professor Stone’s biography is at <http://www.mythsandfacts.org/media/user/images/stone-bio.pdf>

Israel organizations in the history of Zionism and Judaism.” A detailed, [ZOA report](#) demonstrates that J Street consistently sides with Israel’s enemies.¹⁶

Denying Jewish Human Rights: The 106 Democrats’ Anti-Israel Letter also has the gall to invoke the term “human rights” – while demanding that the State Department should deny the Jewish people their most basic lawful human right to live in the Jewish homeland.

When former Democratic Senator and U.S. Ambassador to the UN Daniel Patrick Moynihan condemned the United Nations’ obscene antisemitic 1975 “Zionism is racism” resolution (rescinded in 1991), Ambassador Moynihan related that the false accusations of racism against Israel arose because “*old religious grounds for anti-Semitism were losing force. New justifications were needed for excluding and persecuting Jews.*” The Ambassador noted that this abuse of human rights “racism” language did damage “*to the idea of human rights and the language of human rights [that] could well be irreversible.*”¹⁷

Today’s “new justification for excluding and persecuting Jews” is the lie in the 106 Democrats’ Anti-Israel Letter, that Jews are “illegal occupiers” of lands to which the Jewish people have the sovereign legal right. As Ambassador Moynihan expounded, using the “language of human rights” to perpetrate this antisemitic lie strips the idea of human rights of all meaning.

The 106 Democrats’ Anti-Israel Letter is a Recipe for Renewed War: After the Six-Day War, Democratic then-President Lyndon Johnson explained that making Judea/Samaria judenrein (as it was during the 19-year illegal Jordanian occupation) would invite renewed war. Pres. Johnson stated: “*There are some who have urged, as a single simple solution, an immediate return to the situation as it was on June 4 [1967] [when Jordan illegally occupied Judea/Samaria and eastern Jerusalem for 19 years and expelled all the Jews] . . . [T]his is not a prescription for peace but for renewed hostilities. . . The main responsibility for the peace of the region depends upon its own peoples and its own leaders of that region.*”¹⁸

The Zionist Organization of America (ZOA) thus once again thanks you for your accurate, principled statement that Jewish communities in Judea/Samaria are neither illegal nor an obstacle to peace. We trust that you will ignore the 106 Democrats’ Anti-Israel Letter’s false assertions and unfounded, grotesque, antisemitic demands to reverse your accurate statement.

¹⁶ See “J Street Sides With Israel’s Enemies & Works to Destroy Support for Israel,” available at <https://zoa.org/zoa-expose-j-street-sides-with-israels-enemies-works-to-destroy-support-for-israel/>

¹⁷ Daniel Patrick Moynihan, Response to United Nations Resolution 3379, delivered 10 November 1975, transcript available at <https://americanrhetoric.com/speeches/danielpatrickmoynihanun3379.htm>

¹⁸ U.S. President Lyndon Johnson: Speech on Five Principles for Peace in the Middle East, June 19, 1967, at <http://www.jewishvirtuallibrary.org/president-johnson-speech-on-five-principles-for-peace-in-the-middle-east-june-1967>

Respectfully submitted:



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Esq.