27 March 2019

Dear Senator:

Re: Canada Israel Free Trade Agreement – Bill C-85 Implementation Act

We are writing to you with respect to Bill C-85, the *Canada Israel Free Trade Agreement Implementation Act.* This legislation proposes to revise and modernize the 1997 Canada Israel Free Trade Agreement. We understand that the Bill is now before the Senate, after having passed third reading in the House of Commons.

Bill C-85 contains a number of commendable features that are consistent with a modern and progressive trade agreement, including chapters on gender, corporate responsibility, labour and environmental protections. We congratulate the Government of Canada for negotiating these provisions.

However, Bill C-85 is lacking in two fundamental provisions. The absence of these provisions requires Canada to return to the negotiation table with Israel and ensure that these provisions become an integral part of the Agreement. In the absence of the inclusion of these provisions, we would recommend that the Canadian Parliament should not proceed to adopt Bill C-85 and should seek to suspend the Agreement.

The two missing, and essential, provisions are:

1. A clearly-stated provision which prohibits the Agreement from having any force or effect in any of the Occupied Palestinian Territory (OPT), such that preferential terms of trade outlined in the agreement do not apply to the entry into Canada of any goods or services produced, in whole or in part, in Israeli settlements, industrial parks, farms or other enterprises located in the OPT; and

2. A human rights provision, committing both parties to uphold all of the contemporary standards of international human rights and humanitarian law.

For the purposes of clarity, and consistent with international law, the OPT consists of the West Bank, East Jerusalem and Gaza.

Why are the missing provisions essential to the Agreement?

1. The present language of Bill C-85 would continue to extend the benefits of the Agreement to the illegally annexed East Jerusalem and, through the extension of Israel's customs laws, to the illegal Israeli settlements, industrial parks, farms and other enterprises located in the OPT. Allowing the benefits of the Agreement to

extend to the Israel's settlements in the OPT is contrary to Canada's obligations to uphold international law.

We note that the 2018 European cooperation agreement with Israel contains a provision where both sides have agreed that the benefits of the agreement do not extend to any territory beyond Israel's pre-1967 borders.

In Appendix 1 of this letter, we explain the position of international law respecting the Israeli settlements.

2. The Agreement lacks a human rights provision, which would enable Canada to use its position as a trading partner to create a regular dialogue with Israel which would insist that it satisfy its human rights and humanitarian obligations under international law regarding its military occupation of the OPT.

   We note that the 2000 EU-Israel Association Agreement contains such a human rights provision, and that the EU uses this provision to monitor the deteriorating human rights situation in the OPT.

   As well, the Canadian free trade agreement with Colombia contains an admirable human rights provision, which enables each party to the agreement to raise human rights concerns with the other in the context of a deepening economic and social relationship. The human rights provision in the Canada-Colombia agreement provides that:

   > *AFFIRMING their commitment to respect the values and principles of democracy and promotion and protection of human rights and fundamental freedoms as proclaimed in the* Universal Declaration of Human Rights;

   In Appendix 2 of this letter, we explain Canada's human rights obligations under international law not to assist in providing economic trade or support to the illegal Israeli settlements.

The 51 year-old Israeli Occupation

In this day and age, Canada cannot sign a comprehensive and revised free trade agreement with Israel without addressing the unavoidable reality that Israel has been the occupying military power in the OPT during the past 51 years. In particular, Israel's conduct of the occupation has breached a number of fundamental obligations in international human rights law and international humanitarian law, as established by the United Nations, Human Rights Watch and Amnesty International, among many other respected institutions.

In such a situation, Canada cannot act as if negotiating and implementing a revised free trade agreement with Israel is business as usual. This is not interference with Israel's internal affairs, because the territories it occupies are not part of Israel. Indeed, this issue has been a vital international responsibility since 1967, and UN members such as Canada have a solemn legal duty under international and Canadian law to not assist or provide aid to Israel's illegal annexation of parts of the OPT or to its illegal settlements.

As individuals and organizations with long standing relationships with Palestinian and Israeli civil society organizations, and with a deep interest in human rights, we bring partners and lived reality before the Canadian government – that the 51-year-old Israeli occupation has led to serious and worsening human rights abuses of the Palestinian people. We note that official Canadian policy asserts that the Israeli settlements are a flagrant violation of international law.

By December 2018, there were approximately 240 Israeli settlements and over 600,000 settlers in the West Bank and East Jerusalem, built and maintained for the exclusive benefit of Israeli Jews. At the core of the thickening Israeli settlement enterprise is a discriminatory two-tier system of laws, political rights, zoning laws, roads, property, public services and access to courts, based entirely on ethnicity. The illegal Israeli settlements are the engine of the occupation: they serve as the irreducible 'facts on the ground' to assert Israeli sovereignty and to forestall Palestinian self-determination.

These settlements are also central to the systemic human rights harm caused to the Palestinians. This includes the ubiquitous use of collective punishment, the confiscation of land and natural resources under various guises, the presence of hundreds of military checkpoints, the practice of settler violence, the forcible transfer of communities, the death and injuries of civilians with little accountability by the Israeli military and police, the regular detention of children, environmental degradation, the confiscation of natural resources, the de-development of the Palestinian economy and the denial of fundamental freedoms.

Most importantly, the establishment of the Israeli settlements in the Occupied Palestinian Territory has the effect of forestalling the creation of a viable and contiguous Palestinian state, thereby denying the fulfillment of the right of self-determination for the Palestinians. As you know, the right to self-determination is among the most important of human rights to be found in the International Bill of Rights.

Conclusion

We welcome the commitments made by the Government of Canada to uphold international law and a rules-based international order. We support Prime Minister Justin Trudeau's statement in December 2018, where he said that: "Canada is unwavering in its commitment to protect and promote human rights. We will not stand idle while hundreds of thousands of people around the world suffer gross human rights violations, nor will we hesitate to condemn violations of human rights, regardless of where they take place."

As well, we endorse the statement made by the Honourable Chrystia Freeland in June 2017 in the House of Commons when she said that: "Canada has a huge interest in an international order based on rules. One in which might is not always right…We will robustly support the rules-based international order, and all its institutions, and seek ways to strengthen and improve them."

Accordingly, we urge the Government of Canada to bring Bill C-85 into compliance with Canada's international and domestic legal commitments by amending Bill C-85 to include an

express human rights provision and a clearly-stated article that does not extend the benefits of the revised CIFTA to any part of the OPT.

In addition, we would request the opportunity to meet with you to further discuss our concerns about Bill C-85.

Yours respectfully,

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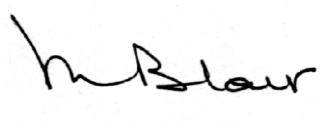

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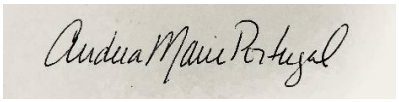

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1. **Appendix 1** – Briefing note on the status of Israeli Settlements under International and Canadian Law

The Israeli settlements in the occupied Palestinian territory – which includes East Jerusalem and the West Bank – are deemed to be illegal under international law and, in particular, Article 49(6) of the *Fourth Geneva Convention of 1949*. They are also a presumptive war crime under the *Rome Statute of the International Criminal Court of 1998,* Article 8(2)(b)(viii).

The United Nations, the International Court of Justice, the High Contracting Parties of the Fourth Geneva Convention and many leading human rights organizations have all found that the Israeli settlements are a grave violation of the *Fourth Geneva Convention:*

- United Nations Security Council Resolution 2334 (23 December 2016):

> 1. Reaffirms 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…

- United Nations General Assembly Resolution A/RES/73/98 (7 December 2018):

> Reaffirms that the Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan are illegal and an obstacle to peace and economic and social development;
>
> Calls for the consideration of measures of accountability, in accordance with international law, in the light of continued non-compliance with the demands for a complete and immediate cessation of all settlement activities, which are illegal under international law, constitute an obstacle to peace and threaten to make a two-State solution impossible, stressing that compliance with and respect for international humanitarian law and international human rights law is a cornerstone for peace and security in the region;

- International Court of Justice, *Wall Advisory Opinion* (4 July 2004), para. 120:

> [T]he Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law;

- Conference of High Contracting Parties to the Fourth Geneva Convention Geneva (17 December 2014):

> They reaffirm the illegality of the settlements in the said territory and of the expansion thereof and of related unlawful seizure of property as well as of the transfer of prisoners into the territory of the Occupying Power.

- Amnesty International, 7 June 2017

> The international community must ban the import of all goods produced in illegal Israeli settlements and put an end to the multimillion dollar profits that have fuelled mass human rights violations against Palestinians.
>
> To mark the 50th anniversary of Israel's occupation of the West Bank, including East Jerusalem, and the Gaza Strip, the organization is launching a new campaign calling on states across the world to prohibit settlement goods from their markets and to prevent their companies from operating in settlements or trading in settlement goods.
> https://www.amnesty.ca/news/states-must-ban-israeli-settlement-products-help-end-half-century-violations-against

Canadian Law

As well, the Israeli settlements are in violation of domestic Canadian law, specifically the *Geneva Conventions Act*, R.S.C., 1985, c. G-3, Schedule IV, Part 1, Article 49(6); and the

Crimes Against Humanity and War Crimes Act, S.C. 2000, c. 24, Schedule 2(1), Article 8(2)(b)(viii). According to Canadian law – which mirrors international law word for word – Israeli settlements are a grave breach under the Geneva Conventions Act and a war crime under the *Crimes Against Humanity and War Crimes Act.*

Under the *Geneva Conventions Act*, Schedule IV, Part 1, Article 49(6) provides that:

> *"The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."*

Under the *Geneva Conventions Act*, Schedule V, Part V, Article 85(4)(a) defines as a "grave breach" under the Act as follows:

> *(a) the transfer by the occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the* Fourth Convention

Under the *Crimes Against Humanity and War Crimes Act*, Schedule 2(1), Article 8(2)(b)(viii), the following is a war crime:

> *(viii) the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;*

2. **Appendix 2** – Briefing note on the human rights obligations of United Nations Members respecting the Israeli settlements

In 2013, an independent fact-finding mission commissioned by the United Nations Human Rights Council, reported that business activities – involving both Israeli and foreign enterprises – sustain the economic viability of the illegal Israeli settlements and contribute to the range of human rights violations experienced by the Palestinians under occupation. (A/HRC/22/63). The Report called upon:

> "…all Member States to comply with their obligations under international law and to assume their responsibilities in their relations with a State breaching peremptory norms of international law, and specifically not to recognize an unlawful situation resulting from Israel's violations." [Para. 116]

In March 2016, the United Nations Human Rights Council adopted a resolution (A/HRC/RES/31/36) requesting that all states to take the following steps with respect to the Israeli settlements:

> 12. *Urges* all states:

> (*a*) To ensure that they are not taking actions that either recognize or assist the expansion of settlements or the construction of the wall in the Occupied Palestinian Territory, including East Jerusalem, including with regard to the issue of trading with settlements, consistent with their obligations under international law;
>
> (*b*) To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing or contributing to gross human rights abuses of Palestinians, in accordance with the expected standard of conduct in the Guiding Principles and relevant international laws and standards, by taking all necessary steps;

In December 2016, the United Nations Security Council adopted Resolution 2334, with the following request of all member states:

> 5. Calls upon all States, bearing in mind paragraph 1 of this resolution [respecting the illegality of the Israeli settlements] to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967;

And in December 2018, the United Nations General Assembly adopted Resolution 73/98, with the following request on all states and international organizations:

> 12. Calls upon all States and international organizations to continue to actively pursue policies that ensure respect for their obligations under international law with regard to all illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem, particularly Israeli settlement activities;

These obligations on Canada to not aid or assist in the breach of international humanitarian law, including the strict prohibition against civilian settlements established by the occupying power in occupied territory, are well-established in both international law and Canadian law. The *Fourth Geneva Convention of 1949*, in Article 1, states that: "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances."

This exact language is replicated in the *Geneva Conventions Act*, R.S.C., 1985, c. G-3, Schedule IV, Part 1, Article 1. It is binding Canadian law.