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Iúil 2021

Joint Committee on Foreign Affairs and Defence
Report on Demolitions and Displacements
in the occupied Palestinian Territory
July 2021

Membership

The following Deputies and Senators are members of the Joint Committee on Foreign Affairs and Defence of the 33rd Dáil Éireann and the 26th Seanad Éireann



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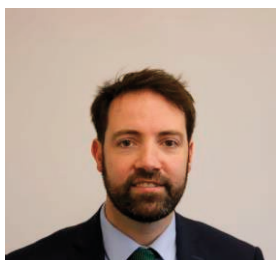
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Cathaoirleach's Foreword



The Joint Committee on Foreign Affairs and Defence has identified the Middle East Peace Process and the achievement of a viable two-state solution as a priority for consideration in its Work Programme in 2021.

Following a reported increase in demolitions, including buildings that had been constructed and refurbished with funding provided through the International Cooperation Vote of the Department of Foreign Affairs both bilaterally and multilaterally, the Joint Committee agreed to undertake a review of the situation in respect of the demolition of public and private buildings and the displacement of people in the occupied Palestinian territory.

Ireland has a proud history and long-standing role in addressing the needs of others beyond our own borders. Ireland's assistance to the Palestinian people through the Irish Aid programme supports the pursuit of a just and viable solution to the Israeli-Palestinian conflict and aims to provide support to the most vulnerable Palestinian communities in the occupied Palestinian territory.

I would like to express my gratitude to the witnesses who participated in meetings and contributed significantly to constructive and informative discussions. I also want to thank the individuals and organisations who contributed written submissions and finally to thank the members of the Committee for their dedicated work in this collaborative process.

A handwritten signature in black ink, which appears to read 'Charles Flanagan'.

Charles Flanagan
Cathaoirleach

Joint Committee on Foreign Affairs and Defence

Table of Contents

Membership	1
Cathaoirleach's Foreword	2
Introduction	5
Background: Israel – Palestine Relations	7
Ireland's Position	9
1. Demolitions and Displacements.....	11
Demolitions in figures	11
Committee hearings and submissions	11
Demolitions in the occupied Palestinian territory	11
Demolition of donor-funded structures	13
Response to reports of increased demolitions	13
Displacements	14
Possible reasons for increase in demolitions	15
2. Disputed Territory Vs Occupied Territory	17
Historical status of boundary lines	17
'Property disputes' in Sheikh Jarrah	19
Evidence from Ambassador Head of Mission of Palestine, Dr Jilian Wahba Abdalmajid	19
Evidence from Sadaka	20
Evidence from UK Lawyers for Israel.....	21
Evidence from DFA in respect of land titles	22
Possible reasons for targeting specific locations	22
International Perspective.....	23
3. De facto Annexation	24
Determining <i>de facto</i> Annexation	24
Recognition in International Law	26
Response to charges of <i>de facto</i> annexation.....	27
4. Funding: Irish Aid and EU funding.....	28
EU Funding	28
Bilateral cooperation	29
Irish Aid funding	30
Objectives of funding in the occupied Palestinian territory	31

Demolition orders and recourse	33
Area C Background	33
Building regulations in Area C	33
Approval for interventions	35
Sustainability of Donating	35
Compensation Claim	37
The “Condemnation Approach” to demolitions	38
5. What can Ireland do?	40
Wintess Requests and Recommendations	40
H.E. Ambassador of Israel Ophir Kariv	40
The Ireland-Israel Alliance	41
UK Lawyers for Israel	41
The International Legal Forum	41
Sadaka	41
The West Bank Protection Consortium	42
The Ireland-Palestine Solidarity Campaign	43
Al-Haq	44
6. Conclusions and Recommendations	46
Conclusions	46
Recommendations	47
APPENDIX A – Written Submissions	50
The International Legal Forum	50
B’Tselem	59
The Ireland-Palestine Solidarity Campaign	64
Al-Haq	74
Sadaka	82
APPENDIX B	94
Annexation of Palestine: Motion	94
APPENDIX C	96
Orders of Reference, Scope and Context of Committees	96

Introduction

In April 2021 as part of its Work Programme, the Joint Committee on Foreign Affairs and Defence agreed to undertake a review of the situation in the occupied Palestinian territory in respect of displacements of people and demolitions of public and private buildings. The decision was based on the reported increase in demolitions including buildings that had been constructed and renovated with financial assistance granted through EU funded multilateral aid and potentially with the assistance of monies allocated under the International Cooperation budget (Vote 27) under the auspices of the Department of Foreign Affairs.

The Committee agreed to invite oral presentations and written submissions from selected individuals, organisations and bodies. A complete list of the stakeholders contacted and copies of written submissions can be found at Appendix A.

The Committee held a series of engagements with stakeholders ensuring that both sides of the dispute along with independent observations were obtained. These engagements took place as follows:

Session one 11th May 2021

Ambassador Head of Mission of Palestine to Ireland, Dr Jilian Abdalmajid

Mr Éamonn Meehan, Sadaka board member

Dr Susan Power, Head of Legal Research and Advocacy at Al-Haq and Sadaka board member

Professor Noura Erakat, Assistant Professor at Rutgers University

[Link to transcript of meeting 11th May 2021](#)

[Link to debate video 11th May 2021](#)

Session two 13th May 2021

Ambassador of Israel to Ireland, H.E. Mr Ophir Kariv

Ms Jackie Goodall, The Ireland-Israel Alliance

Ms Audrey Griffin, The Ireland-Israel Alliance

Ms Natasha Hausdorff, UK Lawyers for Israel

Mr Alan Shatter, The Ireland-Israel Alliance

[Link to transcript of meeting 13th May 2021](#)

[Link to debate video 13th May 2021](#)

Session three 18^h May 2021

Mr Christopher Holt, The West Bank Protection Consortium

Mr Simon Randles, The West Bank Protection Consortium

Ms Cáit Moran, Director of the Middle East and North Africa unit in the Department of Foreign Affairs

Mr Feilim McLaughlin, Director of Global Programmes in Irish Aid

[Link to transcript of meeting 18th May 2021](#)

[Link to debate video 18th May 2021](#)

Background: Israel – Palestine Relations

In 1947 a non-binding UN General Assembly Resolution 181¹ called for the separation of Palestine into two separate Jewish and Palestinian states, with Jerusalem to become an international city. While the plan was accepted by Jewish leadership, it did not gain the acceptance of the Arab leadership, who did not want the majority Palestinian territory divided, arguing that it violated the Palestinians' right to self-determination as defined in the United Nations Charter.

In 1948 Jewish leaders declared the creation of the State of Israel to the objection of the majority Palestinian community and a year-long war began in which Jewish militias forced as many as 750,000 Palestinians to flee from their homes as refugees, in what is now referred to as Al Nakba or 'the catastrophe'.

Following the end of the fighting, Israel was in control of much of the territory. To protect the remaining Palestinian territory for the Palestinian people Jordan occupied land which became known as the West Bank and Egypt occupied the Gaza Strip. Jerusalem was divided between Israeli forces in the West and Jordanian forces in the East. However, the legal status of the city remains a corpus separatum.

The Six-Day War saw Israel take control of the Gaza Strip and the West Bank, including East Jerusalem. The Sinai Peninsula was also taken by Israel at this time, with the territory subsequently returned to Egypt in 1979 following the signing of the Camp David Accords². This agreement included principles that laid the foundation for a two-state solution.

In 1980, Ireland was the first European Member State to declare that a solution in the Middle East had to be based on a fully sovereign State of Palestine, independent of and co-existing with Israel, in a joint declaration by the Foreign Ministers of Ireland and Bahrain³. Since then Ireland has given high priority to the achievement of a two-state solution, which is now the accepted goal of all international efforts.

¹ [A/RES/181\(II\) of 29 November 1947 \(un.org\)](#)

² [The Camp David Accords all.doc \(peaceau.org\)](#)

³ [Middle East Peace Process - Department of Foreign Affairs \(dfa.ie\)](#)

The Oslo Accords^{4,5} of 1993 and 1995 represented the first face-to-face agreement between the Palestinian Liberation Organisation (PLO) and Israel and were intended to provide a framework for future relations between both parties and the transition of full governing authority to the PLO over a five-year period.

The Oslo Accords created the Palestinian Authority (PA) with responsibility for the administration of the territory under its control. The Accords also called for the withdrawal of Israeli forces from parts of the Gaza Strip and West Bank. Under the agreement, the West Bank and the Gaza Strip were split into three classes of territory:

- Area A – areas under Palestinian administration and security
- Area B – areas under Palestinian administration but joint Israeli-Palestinian security
- Area C – areas under Israeli administration and security

In 2000, a visit by Israeli leader, Ariel Sharon, to the Al-Aqua Mosque, the third holiest site in Islam, in Jerusalem, in occupied Palestinian territory, sparked a Palestinian uprising known as the Second Intifada. In 2005 Israel dismantled Jewish settlements in the Gaza Strip and withdrew Israeli troops from the territory. However, Israel retained effective military control over Gaza's airspace, waters, and a buffer zone, controlling all movement into and out of the Gaza Strip, customs, and VAT, in addition to controlling the population registry.

In 2006 Hamas won a majority in PA legislative elections and although some leaders of Hamas indicated a willingness to accept the two-state solution, Israel was unwilling to negotiate with a Hamas-led government. Israel has since implemented a crippling blockade of the Gaza Strip, leading to de-development, inflicting a humanitarian crisis and mass unemployment all of which has had a detrimental impact on the lives and livelihoods of the two million people living there, making the Gaza Strip almost uninhabitable.

⁴ [Declaration of Principles on Interim Self-Government Arrangements \(Oslo Accords\) | UN Peacemaker](#)

⁵ [Microsoft Word - Agreement p1.rtf \(un.org\)](#)

In 2009 Benjamin Netanyahu was returned to the post of Prime Minister and the Palestinian leadership insisted that negotiations could not continue without a freeze on the building of illegal Jewish settlements in the occupied Palestinian territory. A freeze was implemented from 2009-2010 and when the freeze ended, negotiations ceased.

Talks resumed again in 2013-14 but relations soon faltered, and negotiations failed to make progress. Negotiations remained at a standstill until the US Administration announced plans to revive the peace process in 2017. However, the plan offered by the US Administration of President Donald Trump was rejected by the international community and Palestinian leadership as not meeting the basic requirements needed for a viable and contiguous Palestinian state.

Ireland's Position

As per the Department of Foreign Affairs, the difficulty in reaching an agreement to resolve the conflict represents serious obstacles for both Israelis and Palestinians. Ireland is cognisant that while negotiations are paused, continuing Israeli actions in the occupied Palestinian territory are making the goal of peace and a viable two-state solution harder to achieve.

For this reason, Ireland has focused on infringements of international humanitarian law and international human rights law suffered by the Palestinian people, including the denial of the right of self-determination of the Palestinian people. These include the appropriation of land and the pillage of natural resources such as water for Israeli settlements, forced displacement of Palestinians, the unlawful transfer of Israeli settlers into the territory, the destruction of homes and other buildings, of infrastructure such as wells and water tanks, as well as movement restrictions and unequal treatment.

In May of this year, the Houses of the Oireachtas (Irish Parliament) passed a motion⁶ which declared the appropriation of Palestinian lands and the building of Israeli

⁶ Passed by the Dáil on the 26th of May 2021; text of resolution can be found at Appendix B

settlements in the occupied Palestinian territory as a *de facto* annexation. Ireland is the first Member State of the EU to do so.

1. Demolitions and Displacements

Demolitions in figures⁷

Since 2009 the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), has recorded every demolition of Palestinian property in the West Bank, including East Jerusalem. The table below outlines the number of demolitions, displacements and persons affected by demolitions in the years 2017-2021 to-date.

Year	Demolitions	Displaced	Affected
2017	421	664	7,095
2018	468	472	7,023
2019	628	907	65,524
2020	854	1,001	5,394
2021 ⁸	362	562	2,904

Table 1: Demolitions and displacements in the oPt 2017-2021

Committee hearings and submissions

Demolitions in the occupied Palestinian territory

The Committee heard that in 2020, more Palestinians lost their homes than in every year since 2016, which saw the most demolitions since the Israeli Information Centre for Human Rights in the Occupied Territories B'Tselem, began keeping record.

In the context of demolitions and increased demolitions of infrastructure funded with humanitarian aid, the West Bank Protection Consortium (WBPC) noted that they

⁷ [Data on demolition and displacement in the West Bank | United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory \(ochaopt.org\)](https://data.unhcr.org/en/situations/occupied-palestine)

⁸ Year to-date, figures updated June 17th 2021

have provided thousands of structures, including homes and schools, since 2015 and 92% of those remain in use among the Palestinian community.

However, the WBPC describes the territory as a coercive environment, which is defined by repeated violations of Palestinian rights. A key violation that the WBPC have seen escalate in recent times is that of demolition of Palestinian property, which in turn places great pressure on those Palestinians to leave their homes and communities in Area C.

The Committee was informed that 2020 and 2021 have seen a particularly concerning increase in demolitions. The affected communities can be quite remote and vulnerable in some cases and the destruction of a health clinic or school can mean that children then have to walk 10-15km past a settlement where they are exposed to harassment and violence as a result of that demolition.

The Committee heard from the Palestinian Ambassador Head of Mission Dr Jilian Wahba Abdalmajid that demolitions and confiscations of Palestinian properties continue in Area C with 315 structures demolished in the West Bank displacing 468 Palestinians⁹ in 2021. It was further claimed that in the month of February 2021, Israeli forces have demolished or seized 153 Palestinian properties, displacing 305 people, including 172 children, and affecting the livelihoods of 435 others.

In the context of Covid-19, this dramatic increase in demolitions in 2020 and 2021 is exacerbating the vulnerability of Palestinian communities. When homes are destroyed, those displaced are forced to crowd into a limited number of shelters, sharing facilities such as toilets and bathrooms, greatly exacerbating the risk of and impact of Covid-19 upon these communities.

The Committee heard from representatives of Sadaka that the underlying intention of the settlement programme is to “*embed a system of subjugation, domination and exploitation over the occupied Palestinian territory and its civilian population*”. The settlements and their infrastructure place restrictions on Palestinians as a result of walls, barriers, fences and checkpoints. Settler violence against Palestinians and

⁹ <https://www.ochaopt.org/poc/16-29-march-2021>

their property is constant as they struggle to maintain access to and ownership of their property.

In contrast to this view, the submission by the International Legal Forum (ILF) rejects the claim that Israel commits demolition and forced displacements to make way for the construction of settlements. Further, the ILF rejects what it terms as the deliberate obfuscation of zoning regulations, private property rights and Israel's settlements policy in an attempt to portray Israel as guilty of ethnic cleansing or racial discrimination.

The ILF submission refers to events in November 2020, when the Israeli Civil Administration confiscated and dismantled several illegal structures in a Palestinian outpost in the Jordan valley, known as "Khirbet Humsah" or "Humsah al Baqai'a". The submission advises that while the Israeli actions were widely reported incorrectly as *"the destruction of a Palestinian village"*, according to Civil Administration, the operation consisted of the confiscation and dismantling of three tents used for residential purposes, four goat pens, four latrines, five water reservoirs and two cars.

Demolition of donor-funded structures

Of particular concern, is a reported 108% increase in demolitions of donor-funded structures, most of which are funded by the EU and EU Member States. The Committee heard that there has been a notable increase in the targeting of humanitarian aid in the West Bank through demolition and confiscation.

Response to reports of increased demolitions

According to media reports,¹⁰ structures donated by Irish Aid were among the dismantled structures. However, according to the submission by ILF, the (Israeli) Court which authorised the dismantlement of the outpost stated:

"The territory was declared a firing zone already in 1972. There is no disagreement that the applicants have no recognized property rights on the territory. Essentially,

¹⁰ [Israel destroys Irish aid to Palestinian village community \(irishtimes.com\)](https://www.irishtimes.com/news/world/middle-east/israel-destroys-irish-aid-to-palestinian-village-community-1.4588888)

we are discussing squatters who are using the territory for grazing purposes ... Furthermore, the construction in the area is unregulated and illegal. ”¹¹

The ILF says that zoning and building regulation laws are enforced equally on all citizens and residents, regardless of ethnicity and nationality. They believe that Irish Aid can play an important and constructive role. However, in order to do so it is imperative to work in conjunction with Israeli authorities and refrain from supporting construction undertaken in opposition to Israeli building regulations.

Finally, the ILF maintains that the status of Judea and Samaria is *sui generis* and thus, cannot be considered a classical occupation¹². The ILF submission upholds the perspective that Judea and Samaria were part of the original Mandate for Palestine, which was established in the aftermath of World War 1 and adopted by the League of Nations. The Mandate was incorporated into the UN Charter and remains binding under international law¹³.

Displacements

The UNOCHA breakdown of data on demolition and displacement in the West Bank¹⁴ provides details of the number of people who have been displaced by demolitions, as well as figures of affected people. In the years 2017-2021 a total of 3,044 people were displaced from their homes. During the same period 85,036 people were affected by demolitions.

In response to questions around what happens to those displaced and where do they go, Dr Susan Power of Sadaka and Al-Haq, informed the Committee that when people become displaced, they usually stay with relatives where possible. She spoke about how displacement destroys families; the family is displaced between numerous relatives and therefore family unit is broke into different households as

¹¹ HCJ 3326/19, par. 4

¹² Shamgar, Meir. "The observance of international law in the administered territories." *The Progression of International Law*. Brill Nijhoff, 2011. 429-446 (from ILF Submission, cited 86 times GS)

¹³ de Blois, Matthijs. "The Unique Character of the Mandate for Palestine." *Israel Law Review* 49.3 (2016): 365-389.

¹⁴ [UNOCHA Breakdown of Data on Demolition and Displacement in the West Bank](#)

different relatives offer shelter. According to Dr Power this has *“ripped a deep hole in the fabric of Palestinian society”*.

There are also areas where the demolitions are continuous, and this can create the situation where people are doubly displaced and are sometimes displaced numerous times. She referred to communities in the Jordan Valley, where international aid has been received (including from Ireland), where shelters and homes have been demolished more than once.

The West Bank Protection Consortium (WBPC) advised that in many cases people seek to stay in the areas where those demolitions took place and emergency support is provided by humanitarian organisations. This can be difficult due to the restrictions on the movement of aid workers imposed by Israeli authorities. Others relocate to stay with friends or family, moving away from the area because they do not wish to be displaced again.

The Committee heard from Éamonn Meehan of Sadaka that *“Israel has no concern for the welfare of those displaced and does not care where they go as long as they move outside of the boundaries of East Jerusalem into one of the towns or cities in the West Bank. If they fall on tough times they have to be looked after by the UN or charities or taken in by family members. Their permanent residency status in East Jerusalem is tenuous, they are not citizens, nor do they have citizenship rights”*.

He went on to further express the view that the objective of the demolition is to create space for settlers to move in to occupy those houses or build additional settlements in those spaces.

Possible reasons for increase in demolitions

The WBPC further outlined that there are a number of possible reasons for the increase in demolitions. In the first instance, in August of last year, Prime Minister of Israel Mr Netanyahu suspended plans to *de jure* annex further areas of the West Bank and to apply Israeli sovereignty over that area.

The WBPC suspects that this may have upset elements of the pro-settler movement and it is reasonable analysis to suggest that part of the reason for the increase in

demolitions and settlement expansion is to appease the settler movement following the suspension of annexation. This analysis is borne out by discussion in the Knesset on the need to increase demolitions of Palestinian properties, which are viewed by members of the Knesset as illegal Palestinian constructions.

In addition, 2021 has seen the fifth Israeli general election over a two-year period. The WBPC suggests that a reason for the increase in demolitions may be to capitalise votes for the Likud party.

Furthermore, there has been a change of administration in the US. During the Trump Administration, Israel continued with the settlement enterprise, attempting to expand settlements and increase demolitions. WBPC says that it is possible that recent actions are an attempt to test the position and resolve of the Biden Administration.

Finally, WBPC cites an historical absence of accountability as a possible reason for the increase in demolitions. There have been repeated statements of condemnation but no meaningful consequences. The commitment that States will pursue such consequences when violations occur, particularly where the destructions relate to donor-funded projects, have not materialised.

2. Disputed Territory Vs Occupied Territory

Historical status of boundary lines

The Committee heard from H.E. Mr. Ophir Kariv, Ambassador of Israel to Ireland that the area referred to today as the West Bank was first delineated in 1949 in the armistice agreement signed by Israel and Jordan following the Israeli war of independence. According to the Ambassador, the war was a result of an Arab attempt to prevent implementation of the two-state solution – ‘partition plan’ – proposed by the UN General Assembly in 1947, which was accepted by Jewish leadership and rejected by Arab leadership.

The Committee heard that Israel gained control of the West Bank in 1967. Areas were agreed upon in the Oslo Accords, designating Area A and B to full civil administration by the Palestinian National Authority. Area C remains under full Israeli control, both security and civil, and constitutes approximately 60% of the West Bank territory. Those Agreements continue to serve as the legal and practical framework for life in those areas.

The Ambassador further informed the Committee that in accordance with international law and the signed agreements, Israel continues to administer Area C through the military commander of Judea and Samaria responsible for civil administration in Area C, including safety, planning and construction. Israel is committed to carrying out its responsibilities in Area C according to international law and the existing agreements.

This position was reinforced by UKLFI representative Ms Natasha Hausdorff in her opening remarks when she addressed what she termed as “*the underlying legal status of the disputed territory*”. The argument hinges upon a legal principle known as *uti possidetis juris*, which is the universal rule for determining borders of newly emerging states at the moment of independence which dictates that the new state takes on the boundaries of the pre-existing administrative unit as its interactional borders.

Ms Hausdorff continued by stating that in 1948, the administrative lines of the eastern side of the British Mandate for Palestine ran along the Jordan river to the south, originally dividing it from the separate administrative unit of Transjordan. The Committee heard that as Israel was the only state to emerge from the British Mandate for Palestine territory in 1948, it automatically assumed as its borders the administrative lines of the former mandate territory. This included eastern Jerusalem and the West Bank, areas occupied by Jordan in 1948 during Israel's war of independence which were subsequently recovered by Israel in 1967.

Ms Hausdorff stated that Israel's peace treaties with bordering neighbours to date reinforce this reading because the treaties which ratify the borders between Israel and its neighbours are based on the boundaries of the British Mandate for Palestine. In the 1990's, Israel entered into agreements with the Palestinian Liberation Organisation (PLO) to divide up administrative control. Ms Hausdorff also confirmed to the Committee that Areas A and B were to be under the territorial control of the PLO and Area C remained under Israeli territorial control.

Therefore, UKLFI takes the view that what remains is the new state incorporating the territory of the previous administrative unit.

Professor Erakat told the Committee that *"Israel's goal is to take as much Palestinian land, with as few Palestinians on the land as possible, and to concentrate the greatest number of Palestinians onto the least amount of land possible. This is evidenced in, and explains, the 29 contiguous Bantustans in the West Bank, the concentration of Palestinians in an open air prison in the Gaza Strip, the concentration of Palestinians even within Israel proper.....and the impending removal from the south in the Negev.....Israel's matrix of rules and laws are meant to facilitate removal and territorial taking....cement segregation cement the superiority of Jewish nationals, and suppress protests.....Israel's establishment is predicated on the removal of Palestinians and the assertion of uninterrupted Jewish-Zionist spatial and temporal presence throughout historic Palestine."*

‘Property disputes’ in Sheikh Jarrah

In 2016, UNOCHA conducted a mapping exercise¹⁵ which showed that 818 Palestinians were at risk of displacement due to eviction cases filed against them in East Jerusalem. A follow-up survey in 2020¹⁶ reveals that at least 218 Palestinian households have eviction cases filed against them, the majority initiated by settler organizations, placing 970 people, including 424 children, at risk of displacement. The majority of new cases were identified in the Batn Al Hawa area of Silwan, which remains the community with the highest number of people at risk of displacement, due to ongoing eviction cases. Between 2017 and 2020, around 15 households, comprising 62 Palestinians, were evicted from their homes in the Old City, Silwan and Sheikh Jarrah neighbourhoods of East Jerusalem.

Evidence from Ambassador Head of Mission of Palestine, Dr Jilian Wahba Abdalmajid

The Committee heard from Ambassador Head of Mission, Dr Jilian Adbalmajid, that Sheikh Jarrah is considered to be one of the most important Palestinian residential areas in East Jerusalem. It covers an area of c. 200 acres in which there are around 2,800 residents, some of whom are Palestinian families who were originally displaced during the Nakba (Palestinian exodus) of 1948.

The Ambassador Head of Mission further stated that the Sheikh Jarrah neighbourhood was built in 1956 under an agreement signed between the UN Relief and Works Agency for Palestine Refugees (UNRWA) and the Jordanian Government (which controlled the city at the time). The plan was to accommodate 28 displaced Palestinian families.

The agreement provided for the payment of rent for a period of three years, after which the houses would belong to the residents. The leases expired in 1959, but according to the Ambassador, following Israel's occupation of remaining Palestinian lands in 1967, the Israeli government prevented the Palestinian families from obtaining ownership of the properties and land. The Ambassador Head of Mission

¹⁵ [East Jerusalem: Palestinians at risk of eviction | United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory \(ochaopt.org\)](https://www.ochaopt.org/documents/east-jerusalem-palestinians-at-risk-of-eviction)

¹⁶ [ACNUDH | Press briefing notes on Occupied Palestinian Territory \(ohchr.org\)](https://www.ohchr.org/en/press/briefing-notes-on-occupied-palestinian-territory)

alleged that *“two Israeli committees attempted to falsify legal documents in 1972 and register the land to be officially at the disposal of the occupation Government”*.

It is further alleged that in 1982, settlers' associations then used these false documents to request Israeli courts to evict the Palestinians from their homes. The courts deliberations continued considering partial eviction and general postponement of the decisions until April (2021) when the central court in Jerusalem rejected the appeals submitted by the residents of Sheikh Jarrah. The residents were granted a grace period between May and August to leave their homes.

Palestinian families remain at risk of forced expulsion and mass dispossession. This is evidenced by the decision of the Israeli Central Court in East Jerusalem to evict four Palestinian families from their homes in Sheikh Jarrah. The Israeli judge suggested that a compromise be found but no agreement has yet been reached. The Ambassador stated that the people of Palestine have rejected the surrendering of their rights and will never accept renting their own houses from settlers who, in turn, claim ownership prior to 1948.

Evidence from Sadaka

Professor Erakat told the Committee that *“Israel achieved its initial mass removal of Palestinians in the course of the 1948 war, between December 1947 and 1949, when it forcibly exiled some 80% of the native Palestinian population. Upon its establishment in 1948, Israel continued this process in West Jerusalem where it forcibly removed 80,000 Palestinians....Immediately following the close of the 1967 war, Israel annexed East Jerusalem despite international opposition and two UN Security Council resolutions that were supported by Israel's primary allies at the time, namely the US and the UK.....Israel expanded Jerusalem's municipal boundaries by roughly ten times, annexing some 17,000 acres of West Bank lands....Israel has continued to use a mix of martial and administrative law to pursue its territorial ambitions and the removal of Palestinians through policies, including tenuous residency rights, state lands, absentee lands appropriation, the route of the annexation wall, development of nature reserves, impunity for settler violence, and discriminatory planning and home demolitions. All of this is done separately so that*

we cannot see it as an holistic whole that merits outright condemnation and national action such as sanctions.”

Evidence from UK Lawyers for Israel

The Committee heard from Ms Hausdorff of UKLFI, who referred to the demolition of structures in Jerusalem’s Sheikh Jarrah neighbourhood as a ‘property dispute’. The Committee heard that the dispute involves *“several properties of tenants whose leases have expired and, in some cases, squatters with no tenancy rights against owner landlords who have successfully won court orders evicting the squatters and overstaying tenants.”*

Litigation in relation to properties has been ongoing for decades with the case being heard by the Supreme Court of Israel. The Committee heard that, according to UKLFI, the owners in these disputes acquired their rights through an uninterrupted chain of transactions from predecessors in title in the 19th century, with rights acquired under Ottoman law and remaining through all subsequent regimes.

It is alleged the tenants in these disputes acquired their leasehold rights through a chain running from the Jordanian Custodian of Enemy Property in the 1950’s, with their rights as leaseholders, not owners, being affirmed in several court rulings that culminated in Israel’s civil courts issuing rulings adopting settlement agreements between the leaseholders’ predecessors in title and the owners.

There was however, a *“break in the owners’ uninterrupted chain of title”* when the properties were seized from 1948 to 1967 by the Jordanian Custodian of Enemy Property. During this time Jordan transferred custody of all Jewish-owned property to the Custodian. However, it did not transfer the title to any party and the owners’ rights were not extinguished.

Thus, UKLFI contend that the reason the holdover tenants in Sheikh Jarrah lack ownership today is not because the State of Israel has denied Palestinians any rights that they have acquired but, rather, because the Government of Jordan declined to give Palestinian Arabs title to the land Jordan had seized.

Evidence from DFA in respect of land titles

The Department of Foreign Affairs (DFA) in written response to questions from the Committee advised that the West Bank Protection Consortium is a partnership between the Directorate-General for European Civil Protection and Humanitarian Aid Operations (DG ECHO), and a number of EU and other States and International NGOs that aims to support threatened communities in the West Bank facing eviction and displacement, including by providing legal assistance and advice to these communities. Advice is not provided by individual Member States of the EU; the Consortium funds the provision of local legal advice by those qualified to advise on local law, including planning and conveyancing law, through NGO partners.

In written evidence, the Committee was also advised that, irrespective of the issue regarding legal title to the lands in East Jerusalem, which is a matter for lawyers with expertise in local planning and conveyancing laws, International Humanitarian Law applies to all cases of belligerent occupation. As the “Occupying Power” in the West Bank, Israel has obligations under the Fourth Geneva Convention which dictates that the forcible transfer of members of the occupied population is prohibited. The Fourth Geneva Convention also prohibits the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies.

Possible reasons for targeting specific locations

The Palestinian Ambassador Head of Mission views the issue of Sheik Jarrah as a reflection of *“the determination of Israel to alter the legal, demographic and cultural status of Jerusalem”*. She informed the Committee that Sheikh Jarrah is located midway among Israeli neighbourhoods and expressed the view that the expulsion of Palestinian residents would facilitate easy access to Israeli neighbourhoods *“without seeing any Arab Palestinians on their daily trip in and out of their neighbourhoods”*.

The Ambassador Head of Mission also referred to comments made in January 2021 by UN Special Rapporteur Michael Lynk, when he stated: *“The eviction orders are not random but appear to be strategically focused on an area in East Jerusalem known as the Historic Basin. They seem to be aimed at clearing the way for the*

*establishment of more illegal Israeli settlements in the area and physically segregating and fragmenting East Jerusalem from the rest of the West Bank*¹⁷.

International Perspective

When questions were raised about intervening in “disputed territories” Mr Holt of the WBPC pointed out that the territory is not regarded as such, with the majority of UN member states recognising that it is occupied Palestinian territory and therefore not disputed. He stated that the WBPC acts in accordance with international humanitarian law and provides Israeli authorities with prior notice of WBPC interventions.

Mr Simon Randles of the West Bank Protection Consortium added that “*we know that Israel asserts that (these are disputed territories), because if it is not occupied territory, international humanitarian law cannot apply.*” Therefore, by asserting the territory as disputed Israel frees itself of the multitude of significant obligations it would have as an occupying power. Further to this, Israel asserts that that the transfer of settlers is not a legal violation because it is not physically transporting them to the West Bank. However, it has also been determined that the creation of such incentives and the promotion of the transfer constitutes a violation of Article 49 of the Geneva Convention.

¹⁷ [OHCHR | Israel/OPT: UN expert calls for reversal of Israel's eviction order against 16 Palestinian families](#)

3. *De facto* Annexation

Determining *de facto* Annexation

The Committee heard from Dr Susan Power of Sadaka and Al-Haq, who described annexation as the unilateral act of a state proclaiming its sovereignty over the territory of another and stated that it is prohibited as an act of aggression under the UN Charter.

She stated that *de facto* annexation occurs when actions on the ground indicate the implied intent of the occupying power to permanently incorporate the occupied territory. In 1967, Israel *de facto* annexed East Jerusalem, an act which was condemned by the UN Security Council under Resolution 242 emphasising the inadmissibility of the acquisition of territory by war and calling for Israel's immediate withdrawal. In 1980 Israel then *de jure* incorporated Jerusalem into its domestic law, declaring that Jerusalem, complete and united was the capital of the state of Israel.

Éamonn Meehan of Sadaka expressed the view that this is annexation, with no difference in law between *de jure* and a *de facto* annexation. It was asserted that the focus of the international community on a *de jure* announcement of annexation by Israel is a political and diplomatic decision, which allows Israel to pursue its agenda while offering an excuse for the international community to prevent action in defence of the Palestinian people.

The Al-Haq submission references a test for establishing when an attempted *de facto* annexation of occupied territory has “crossed the tipping point into illegal annexation”, which was proposed in 2018 by Michael Lynk, UN Special Rapporteur for the occupied Palestinian territory. The patterns of behaviour identified by him include:

- **Effective Control:** The state is in effective control of territory that it forcibly acquired from another state
- **Exercises of sovereignty:** the state has taken active measures that are consistent with permanency and a sovereign claim over parts or all of the territory or through prohibited changes to local legislation, including the application of its domestic laws to the territory, demographic transformation

and/or population transfer, the prolonged duration of the occupation and/or the granting of citizenship

- **Expressions of Intent:** This would include statements by leading political leaders and/or state institutions indicating, or advocating for, the permanent annexation of parts or all of the occupied territory
- **International Law and Direction:** The state has refused to accept the application of international law, including the laws of occupation, to the territory and/or is failing to comply with the direction of the international community respecting the present and future status of the territory¹⁸

Dr Power referred to what she termed as the “*emboldening of Israel*” last July following the US Peace Plan which saw them pushing towards a *de jure* annexation. Since this has been called off, she says that there has been an acceleration in *de facto* annexation. Demolitions of houses have increased with 535 such demolitions documented by Al-Haq last year, representing twice the annual average over the last ten years. In addition, during 2020 Israel also accelerated settlement expansion and appropriated a further 5,000 acres of Palestinian lands for settlements.

The WBPC noted that although *de jure* annexation has been suspended, they say we are witnessing an acceleration of *de facto* annexation. Based on UN data, 83% of demolitions occur within 2km of settlements and 70% occur within 1km. The WBPC say it is clear that demolitions are among the tools used by Israel to annex Palestinian land and force Palestinians from areas that Israel want to annex.

The WBPC displayed images showing an Israeli settlement – Ma’ale Adumin - with a water tower in the background. The next image showed a Palestinian Bedouin community which was in stark contrast to the Israeli settlement. The water tower is evident in both photographs and gave the Committee a strong illustration of the differences in living conditions between the communities. In the words of Mr. Holt “*this picture in itself presents a very stark reality of what annexation looks like on the ground*”.

¹⁸ A/73/45717, Situation of human rights in the Palestinian territories occupied since 1967 (22 October 2018) para. 31, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/A_73_45717.pdf

Recognition in International Law

Dr Power outlined that the prohibition of annexation is implicit in Article 2(4) of the UN Charter. She also pointed to Article 8 of the Rome Statute, which in criminalising acts of aggression and acts of annexation as acts of aggression, speaks to any annexation, be it partial, total, *de facto* or *de jure*. The definition includes “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations”.¹⁹

Jurisprudence from the International Court of Justice (ICJ) is also relevant in interpreting the relevant provisions. In the ‘Wall Advisory Opinion’ the ICJ found that the *“construction of the wall and its associated regime create a ‘fait accompli’ on the ground that could well become permanent, in which case and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation”*²⁰

In response to queries around what constitutes a grave breach of international law, Mr Simon Randles of the WBPC explained that grave breaches are simply those enumerated in the four Geneva Conventions of 1949. A grave breach refers to particularly heinous conduct within the context of armed conflict. This would include wilful killing, forcible transfers, or the extensive destruction of property where it is not justified by military necessity. Those same grave breaches are also classified in different legal instruments as war crimes. Mr Randles explained that the Rome Statute of the International Criminal Court (ICC) considers forceful transfer and

¹⁹ Article 8 bis (1), Rome Statute of the International Criminal Court.

²⁰ 14 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)

[2004] ICJ Reports 136, 121 <www.icj-cij.org/en/case/131> hereinafter Wall Advisory Opinion; In its written proceedings to the ICJ in the Wall Advisory Opinion, the Kingdom of Morocco urged, “In order to fully fulfil the request of providing an advisory opinion, the Court should rule that there is de facto illegal annexation of the Palestinian territories located between the wall and the Green Line, it will have to clarify for the benefit of the General Assembly the legal consequences resulting from this situation”. Participation of the Kingdom of Morocco to the procedure (written proceedings) before the International Court of Justice in the case: Legal consequences of the construction of a wall in the occupied Palestinian Territory -Request for an advisory opinion, p. 6, available at: <https://www.icj-cij.org/public/files/case-related/131/1585.pdf>

extensive destruction, absent military necessity, as war crimes which in a sense means that individuals such as military commanders can be prosecuted.

Response to charges of *de facto* annexation

In written response to a query around how to answer the charge that Israeli demolitions and other activities is a *de facto* annexation of the Palestinian people and its territory, Ms Hausdorff maintained the argument made in oral sessions, that is, that via the principle of *uti possidetis juris* and pursuant to the Oslo accords, Israel remains responsible for the administration of Jerusalem and Area C of the West Bank, including in relation to planning control.

In the response reference is made to the need for proper regulation of development by planning control in order to ensure services and infrastructure. Thus, “*squalid encampments, established without proper planning and services, impede economic progress, damage the environment, and compromise health, safety and security. They serve no useful purpose except as a propaganda tool to defame Israel and to promote hostility and tension. Donors should not support them; it is a waste and abuse of their generosity. Such encampments should not be permitted and should be demolished for the benefit of all residents. Demolishing such structures is not annexation, de facto or otherwise, but rather Israel’s responsibility in the interest of all residents, irrespective of the final status of these areas to be determined by negotiations between the parties. The demolition of such structures is not connected to development of Israeli communities in Judea and Samaria.*” The submission goes on to say that “*demolitions of illegal Palestinian buildings are in fact very rare and much less common than demolitions of illegal structures in European countries.*”

4. Funding: Irish Aid and EU funding

The Committee heard from Department of Foreign Affairs Official, Ms Cáit Moran, Director of the Middle East and North Africa Unit, that Ireland was the first member state in the then-EEC to adopt support for the two-state solution as official policy in February 1980. The Department of Foreign Affairs development cooperation support to the Palestinian people flows from this policy and aims to contribute to maintaining space for the two-state solution.

Ireland has a programme of development and humanitarian assistance in Palestine which is jointly managed by the Representative Office of Ireland in Ramallah and Department of Foreign Affairs headquarters.²¹ This provides development and humanitarian assistance to meet the needs of the most vulnerable Palestinian men, women and children, which amounted to some €16.2 million in 2020²².

EU Funding²³

The EU supports emergency and protection response for families affected by demolitions and evictions in the West Bank, with partners providing emergency assistance, legal aid, and access to essential services. EU humanitarian partners also provide protection, safe education for children and trauma care for the injured while upgrading water and sanitation services in health facilities.

In 2021 the European Union provided €34 million in humanitarian funding to Palestinians in need. EU-funded humanitarian programmes provide financial assistance to vulnerable people, helping to cover costs for essential needs.

In order to alleviate the suffering of the most vulnerable, EU humanitarian aid supports numerous implementing partners in the occupied Palestinian territories, both United Nations agencies and NGOs. Since 2000, the European Union has provided more than €827 million in humanitarian assistance to help meet the basic needs of the Palestinian population.

²¹ [Irish Aid in Palestine - Department of Foreign Affairs \(dfa.ie\)](https://www.dfa.ie/middle-east-and-north-africa/palestine/)

²² Figures obtained from Department of Foreign Affairs November 2020

²³ [Palestine | European Civil Protection and Humanitarian Aid Operations \(europa.eu\)](https://european-civil-protection.eu/palestine/)

Bilateral cooperation

The European Neighbourhood Instrument²⁴ (ENI) is the main EU funding instrument for Palestine. EU funding is allocated in line with the multi-annual **European Joint Strategy in support of Palestine 2017-2020 – Toward a democratic and accountable Palestinian State**.²⁵ The strategy sets out targeted and shared priorities for the EU and EU member States.

The multi-annual financial allocation for Palestine under the ENI for 2017-2020 amounts to €1.28 billion.

The EU's cooperation portfolio in Palestine focuses on:

i. Direct Financial Support

Through the PEGASE²⁶ mechanism support is provided for recurrent expenditure to the PA and also aids the most vulnerable Palestinians by helping to pay for health referrals to the East Jerusalem hospitals. In 2020 the total EU contribution to PEGASE amounted to €159.05 million.

ii. Support to Palestinian Refugees

The EU funding is used to ensure that the United National Relief and Works Agency for Palestinian Refugees in the Near East's (UNRWA) is able to provide health, education and social services. The total contribution to UNRWA in 2018, 2019 and 2020 was €395.6 million.

iii. Development Programmes

EU funded programmes in Palestine focus on job creation and access to water and energy. It is also used to support cooperation between Israel and Palestine in the areas of energy and water. €12 million are allocated each year to projects in East Jerusalem, which is viewed as a key priority to keep the negotiated two-state solution alive.

²⁴ [Palestine* | European Neighbourhood Policy And Enlargement Negotiations \(europa.eu\)](#)

²⁵ [european joint strategy in support of palestine 2017-2020.pdf \(europa.eu\)](#)

²⁶ [directfinancialsupport_en.pdf \(europa.eu\)](#)

Irish Aid funding

Department officials informed the Committee in the current year Irish Aid plans to invest almost €16 million in the occupied Palestinian territories. The programme is delivered in conjunction with the UN, civil society organisations, humanitarian agencies, other multilateral partners and the Palestinian Authority.

Mr Feilim McLaughlin, Director of Global Programmes of the Development Cooperation and Africa Division at the Department of Foreign Affairs, outlined to the Committee that while building the capacity of Palestinian governance institutions and civil society is an important underlying theme of the approach, the work mainly focuses on:

- Supporting state building efforts
- The provision of humanitarian relief
- The protection and promotion of human rights
- Support for Palestinian refugees

In the area of state building, Ireland's particular focus is on strengthening the quality of education which will be essential to the long-term prosperity of the Palestinian people and the Palestinian state. Ireland aims to build the capacity of Palestinian educational institutions and by extension, to empower the Palestinian people. The main vehicle for this is known as a 'joint financing arrangement' whereby they and a number of other countries pool their support to the Palestinian education ministry. This supports the ministry in areas such as curriculum development and educational reform. **Ireland spends €3 million per year through this mechanism.**

The area of protection and promotion of human rights in the Palestinian territory is a fundamental pillar in the work of Irish Aid and the **total funding in this area for 2021 will be €750,000**. This will assist with the human rights and democratisation schemes, which support both Israeli and Palestinian NGOs in five priority areas:

- Freedom of movement
- Rule of law
- Rights of prisoners and detainees
- Women's rights
- Democratic development

Support for Palestinian refugees is another pillar of the approach and this is carried out through the UN Relief Works Agency. UNRWA provides education, healthcare and humanitarian relief to Palestinian refugees, of which there are approximately 5.7 million registered refugees living in the occupied Palestinian territory and in Jordan, Syria and Lebanon.

In March 2021 the Minister for Foreign Affairs signed a three-year partnership agreement with UNRWA and under the terms of this agreement, **Irish Aid will provide UNRWA with €6 million per year in core funding to the end of 2023.**

Irish Aid also provide annual funding to the United Nations Office for the Coordination of Humanitarian Affairs, UNOCHA. **The amount provided to UNOCHA in 2021 is €500,000.**

Irish Aid provides funding to the West Bank Protection Consortium, which is a strategic initiative formed in 2015 with the primary objective of preventing forcible transfer of Palestinians in the West Bank, including East Jerusalem. The Consortium is a partnership between the Directorate-General for European Civil Protection and Human Aid Operations (DG ECHO), ten Member States and International NGOs.

The primary focus of their programme is East Jerusalem Area C and H2 Hebron, where they identify Palestinians as most vulnerable.

They respond to incidents of demolitions and settler violence and support the resilience of Palestinian communities in Area C through the delivery of basic and social infrastructure, including homes, schools and education facilities. They also provide legal aid as well as humanitarian advocacy, reaching approximately 15,000 Palestinians each year.

The Irish Aid budgetary contribution to the West Bank Protection Consortium in 2021 is €200,000.

Objectives of funding in the occupied Palestinian territory

The Committee heard that on the ground, funding provided by Irish Aid takes the form of improved education in Palestinian Authority schools, better curriculum and better opportunities for the children who attend these schools. It also helps UNRWA

to provide services to refugees on a daily basis, such as education, healthcare and in many cases, shelter. In addition, it helps to provide the humanitarian aid dispersed in Gaza and elsewhere at present, in terms of provision of emergency shelters, emergency water and sanitation. Further still, it helps to provide the legal aid that the WBPC is providing to people to take legal cases on forced evictions.

Regarding queries from Members on the long-term objectives in respect of the knowledge that the likelihood of destruction is high, the Committee heard that the need to focus on long-term objectives is at the heart of what Irish Aid do. That is why they have chosen to focus on the improvement of education as *“that has the potential to empower future generations of people and create a lasting legacy which cannot be demolished overnight.”*

In the opening remarks made by representative of UK Lawyers for Israel, Ms Hausdorff stressed that the Irish Aid funding illegal building projects in Area C does a *“great deal of harm.”* The donation of funds to this area was described by the UKLFI representative as Irish Aid being *“hoodwinked to devote funds to a political campaign and funnelled into illegal building projects which fuel the conflict and perpetuate Palestinian suffering.”*

It was stated that this is due to the fact that the PA has full planning control over Areas A and B, where more than 70% of the land is suitable for development and empty. Specific areas were referred to namely, Khirbet Humsah²⁷ and Humsa Al Bqai’a²⁸, stating that these areas are not Palestinian communities, but rather *“state lands which have been designated by the Israeli Defence Forces (IDF) as training grounds due to uninhabitable conditions.”*

Her statement and comments contend that these areas are a firing range which are removed from basic municipal services such as water, electricity, sewerage systems and lack links to other communities. Ms Hausdorff takes the view that building on this

²⁷ [Israel rebuked for 'biggest demolition of Palestinian homes in years' - BBC News](#)

²⁸ [Humsa Al Bqai’a Village: OCHA Occupied Palestinian Territory \(oPt\): Flash Update #5 - Question of Palestine \(un.org\)](#)

land without planning permission or permits is illegal and subject to removal and demolition.

Demolition orders and recourse

The Committee received conflicting information regarding the process of demolition orders and access to recourse for those in receipt. Submissions received from the International Legal Forum claim that Palestinians living in Area C are subject to the same regulations as Israeli residents and entitled to the same recourse. In contrast to this, information has been received from B'Tselem and the Ireland-Palestine Solidarity Campaign stating that there are a number of legal instruments in use which prevent access to recourse.

Area C Background

According to the submission by B'Tselem, Area C covers 60% of the West Bank and is home to an estimated 180,000-300,000 Palestinians and to a settler population of at least more than 440,000 Israeli citizens (excluding East Jerusalem) living in 280 settlements and outposts. Israel retains control of security and land-management in Area C and uses the land for purposes such as military training, developing economic interests and settlement development.

Building regulations in Area C

Per the submission made by B'Tselem, authorities prohibit any construction of residential or public structures in Area C, refuse to provide connection to the water and power grids, and decline to pave access roads to the communities. When, in the absence of any other alternative, residents build without permits, the Civil Administration (CA) issues orders to demolish the structures.

While the submission acknowledges that these orders are not always carried out, they say that the threat of demolition looms constantly over the residents. In some communities, families have had their homes demolished several times. It is also claimed that the CA destroys infrastructure laid or installed by the residents themselves – such as rainwater cisterns, roads and solar panels for generating electricity – and confiscates water tanks or cuts water pipes.

The ILF submission states that the removal of illegally built structures in Judea and Samaria is primarily regulated by the Jordanian Law Planning for Cities, Villages and Structures, No. 7 of 1966²⁹. They maintain that the process regarding demolition orders is as follows:

- Once served with the demolition order, the person who constructed the structure without a permit can request a permit from the planning office and from that moment the performance of the demolition order is suspended.
- If the permit request is rejected, the decision can be appealed to the appeals board.
- If the appeal is rejected the person who constructed the structure without a permit can ask to be exempted from the requirement to receive a building permit.
- As a final safeguard, demolition orders can be challenged to the Israeli Supreme Court.

This explanation is in direct contrast to that offered in the submission made by B'Tselem which alleges that in recent years, a range of legal instruments have been applied by the Israeli Civil Administration, alongside increased cooperation between security forces which has allowed Israeli authorities to vastly expand the demolitions and confiscation of Palestinian homes and structures, much of which consists of humanitarian assistance provided by the EU and member states, in the framework of the WBPC.

The B'Tselem submission states that *“Any appeals made by Palestinians to Israeli courts of every instance that they be allowed to remain in their homes have failed, with representatives of the authorities and judges backing the policy and giving it their seal of approval. Israel does not consider the residents of East Jerusalem as individuals with equal rights, instead seeking to evict from their homes since they stand in the way of the state’s objective of Judaize Jerusalem.”*

The submission made by the Ireland-Palestine Solidarity Campaign echoes that of B'Tselem. They say that in the West Bank throughout Area C, Israeli authorities have made continued Palestinian presence almost impossible by means such as land confiscations, denial of building permits, denial of permits to farm, declaring lands as

²⁹ Adopted by the Israeli Authorities, as part of the law that was in force in the area prior to the area coming under Israeli authority – from written submission made by ILF.

'Nature reserves', the seizure of water resources and the demolition of Palestinian wells coupled with the refusal to permit Palestinians to drill new wells.

In the Area C region of the Jordan Valley – an area that comprises 30% of the West Bank - some 96% of Palestinian applications to build are denied and those that are permitted are restricted to just 1% of the area. Consequently, the Palestinian population in Area C of the Jordan Valley has declined from around 200,000 in 1967 to around 10,000 today.

Approval for interventions

The Committee heard from Israeli Ambassador to Ireland, H.E. Ophir Kariv who believes that Israel can cooperate with Ireland in projects contributing to the welfare and capacity building of Palestinians. He referred to one such project in Gaza³⁰, coordinated with the Israeli authorities, which Ireland and France are collaborating on. Attention was drawn to this as an important point, as he stated that projects that are coordinated with the Israeli authorities *“will find an open door on our side”*.

When questioned about seeking approval for interventions in Area C, the WBPC explained *“through the Israeli legal system, that there is an inherently discriminatory illegal system that applies in Area C.”* Less than 1% of the territory in Area C is allocated for Palestinian development, with the vast majority highly restricted, meaning that it is almost impossible for any application for Palestinian construction to be successful. It was further explained that the same authorities do grant permission for illegal Israeli settlements to be built in Area C and in fact, legalise, under Israeli law, what are illegal Israeli outposts.

Sustainability of Donating

In response to queries from Members around the sustainability of continued funding, it was outlined that since 2015 the WBPC has delivered some 4,000 schools, homes and community centres and over 92% remain in place.

³⁰ [November - Tánaiste and Minister for Foreign Affairs and Trade, Simon Coveney T.D., announces funding of €8.8m - Department of Foreign Affairs \(dfa.ie\)](#) “This project represents the first time that land in the Access Restricted Area has been made available for infrastructure and follows extensive engagement by Ireland’s diplomatic network with the Israeli authorities and the Palestinian Authority.”

It is thought that this may be in part due to the inclusion of logos and flags of member states on infrastructure delivered. It appears that this acts as somewhat of a deterrent, borne by the fact that 92% of structures remain intact. Further, WBPC say that the demolition rate of consortium funded structures is far below that of other self-funded homes and of other donor-funded homes.

In financial terms, the consortium has received some €50 million since its formation and less than 1.4% of that has been lost. In their view, this is an effective investment. However, that is not to say that Israel should not be held accountable for what is demolished. Attention was drawn to the fact that the work of the WBPC provides critical humanitarian aid that helps to ensure the viability of a two-state solution. Without this essential aid, the risk of forcible transfers of Palestinians would be greatly increased.

In response to queries from Members on the value of the loss as a result of demolitions, it is important to note that WBPC can only speak to what the consortium has lost. Since they commenced in 2015 the financial injury that has resulted from demolitions and seizures amounts to €750,000. This equates to less than 1.4% of the overall investment.

In response to the same question, DFA Officials outlined it is very difficult to give a figure. There are a variety of reasons for this. Firstly, the vast majority of investment goes towards human capital, education and the vindication of human rights. In terms of structures built by the WBPC and other organisations, it is again difficult to give a figure as to which percentage of which donor's funding went into that particular structure. It is also important to note that the funding also goes towards legal aid and other such areas, so it is extremely difficult to give an exact figure.

In terms of the amount that is at risk from demolitions, around €1.6 million is under threat, consisting of a large number of homes, schools, health clinics, community centres, water and energy infrastructure. This means that they have been issued with a demolition order or stop-work order. In most cases, these matters are before the courts seeking to have the demolition orders overturned. It was reiterated this is only accounting for the Consortium's losses and that what is under threat of

demolition beyond their intervention is far greater than that and puts at significant risk the viability of the two-state solution.

When questioned further around the benefit or objective of continuing to use donated funds to build structures which they know are likely to be destroyed, Mr Christopher Holt of the West Bank Protection Copnsortium referred back to the retention rate of 92% of the physical structures remaining in place with the communities for whom they were intended.

In addition, he stressed that they have chosen to operate in East Jerusalem and Area C because that is where needs are greatest, and Palestinians are most vulnerable. It is where they have the least access to livelihoods and essential services. He emphasised that as humanitarians they make these decisions based on humanitarian principles of where the needs are greatest.

Compensation Claim

Attention was drawn to statements made by the Minister for Foreign Affairs, Simon Coveney T.D. in response to parliamentary questions relating to a compensation claim that has been lodged for the demolition of structures in the amount of €625,000³¹. The witnesses were asked to elaborate on the claim; when it had been lodged; if any such claims had been lodged previously; and what, if any, compensation had been received for claims of this nature.

In response to the query on compensation, it was explained that when donors make a claim, they do not do so in a court but rather, they seek compensation from Israel through the Ministry of Foreign Affairs and the Coordination of Government Activities in the Territories³² (COGAT) Unit, which is responsible for operations in the West Bank. The WBPC records each structure that is seized or demolished in a database and has done so since 2015.

³¹ [Middle East: 26 Nov 2020: Dáil debates \(KildareStreet.com\)](#)

³² [About Coordination of Government Activities in the Territories | Coordination of Government Activities in the Territories \(www.gov.il\)](#)

Claims have been ongoing for some three years and to date, no compensation has been received, although Mr Holt remarked that this is not the expectation.

The Committee were informed that Member States seek compensation in order to preserve their legal rights. The WBPC report that Israel's response to the claims is unequivocal in that the construction supported by Member States is not compliant with Israeli law and is illegal. However, the Committee heard that the WBPC has strong and robust analysis that says that they are providing humanitarian aid in occupied territory and as such, do not require a permit from Israel.

Compensation has not been received, but because the WBPC have recorded the incidents and thus preserved legal rights, it gives Member States the option to pursue lawful countermeasures against Israel for the destruction of humanitarian aid. Such measures *"could include offsetting Irish Aid to Israel or offsetting, collectively, the aid of consortium donors all the way up, at the very top end, to sanctions."*

The "Condemnation Approach" to demolitions

The WBPC has conducted a mapping exercise which highlight what they term the "condemnation approach" and which illustrates that:

- In 2020 there was an overall increase in references to the illegality of settlements
- There was an increase from 43% to 57% in references to opposition to demolition
- An increase from 35% to 48% in the number of statements referring to these violations as an obstacle to peace

Between 2017-2020 the settler population in the occupied West Bank increased from 628,000 to 683,000. In 2017 there were 421 demolitions and this figure almost doubled in 2020 to 848. It was acknowledged that without statements of condemnation, the settlement population and demolitions would have increased at far greater rates.

However, these statements do not address or mitigate the increases. In order to address the increase in settler population, increased demolitions and increased

violations, the WBPC take the view that there must be meaningful consequences and lawful countermeasures pursued by Member States.

5. What can Ireland do?

During the course of the hearings, a variety of requests and recommendations were made to the Committee with regards to potential actions that Ireland could undertake moving forward. The following sections outline these calls, delineated by witness.

Witness Requests and Recommendations

H.E. Ambassador of Israel Ophir Kariv

Ambassador Khariv advised that Ireland can help on several levels. In the first instance, he believes that Israel can cooperate with Ireland in projects contributing to the welfare and capacity building of Palestinians. He referred to one such project in Gaza³³, coordinated with the Israeli authorities, which Ireland and France are collaborating on. Attention was drawn to this as an important point, as he stated that projects that are coordinated with the Israeli authorities '*will find an open door on our side*'.

The Committee also heard that Ireland could contribute to both sides from its own experience in solving complex conflicts. The Ambassador reminded the committee that the Israeli-Palestinian conflict goes back many years, encompassing many dimensions – national, geographical, historical and sometimes even religious. While taking care in drawing parallels between the Israeli-Palestinian conflict and the history of conflict in Ireland, one aspect he says that can be drawn on, is that of complexity.

Essential to resolving conflict is the ability to listen to both sides and take into account the interests, feelings and sensitivities of both sides. This necessity for such an approach is something that he feels that Ireland, perhaps more than any other European country, could appreciate.

³³ [November - Tánaiste and Minister for Foreign Affairs and Trade, Simon Coveney T.D., announces funding of €8.8m - Department of Foreign Affairs \(dfa.ie\)](#) "This project represents the first time that land in the Access Restricted Area has been made available for infrastructure and follows extensive engagement by Ireland's diplomatic network with the Israeli authorities and the Palestinian Authority."

The Ireland-Israel Alliance

Asked that members of the committee ensure that any decision they make of relevance to the Israeli-Palestinian conflict or which could detrimentally impact upon Israel, do not exclude Ireland from playing a practical role in reigniting a viable peace process and that decisions made by the committee are ones that encourage peace and not division.

UK Lawyers for Israel

Ms Hausdorff stated that the key to peace is injecting economic opportunity and the development of business relations in the West Bank between ordinary Israelis and Palestinians. In this vein, she encouraged Ireland to further its own initiatives in the West Bank region as a means to contributing towards a better future.

The International Legal Forum

The International Legal Forum maintain that by providing funding and supporting these projects, the Irish Government encourages Palestinian rejectionism and hard-line policies, undermining its role as an honest broker and ultimately wasting valuable energy and aid dollars. In some cases, they say that it can also endanger the safety of those Palestinians, when such structures are located in dangerous military zones.

To effectively promote Palestinian living standards and regional peace-building, a goal strongly shared also by Israel, ILF say it is imperative that the Irish Government instead work in conjunction with Israeli authorities and refrain from supporting construction done in opposition to Israeli building regulations.

Sadaka

Called for the Irish Government to sponsor a motion in both Houses of the Oireachtas declaring *de facto* annexation has happened throughout the West Bank, which should then be taken to the EU and UN Security Council for follow up action on Israel's breach of international law.

With regards to measures that could be implemented at EU and UN levels Dr Power offered the following suggestions: in the first instance, Ireland could help to ensure the continuation and annual updating of the UN database on businesses activity in

the settlements. Further, she encouraged Ireland to consider using the database in its public procurement.

With regard to Ireland's seat at the UN Security Council, it was suggested that Ireland could push for the convening of a special committee on apartheid to examine and oversee issues of apartheid at the UN General Assembly.

Other options include a freezing of diplomatic relations between Ireland and Israel; the imposition of individual restrictive measures such as asset freezes and travel restrictions on individuals who are part of a policy and plan to commit crimes against the Palestinian people, including crimes such as annexation and crimes related to the settlements such as appropriation, pillage of property etc.

Restrictions on economic relations between Ireland and Israel, similar to those regarding Crimea and Sevastopol, and restrictions on economic cooperation e.g the freezing of Horizon 2021-2027 programme, withdrawal, or suspension of the EU-Israel Association Agreement.

The West Bank Protection Consortium

The WBPC advised that concrete measures could include sanctions and restricted measures at the top end. However, Mr Randles does not think that such measures are necessary in this context but went on to say that alternative measures such as measures of retorsion³⁴ could be applied. This may include the deduction of funds from bilateral agreements between e.g. Ireland and Israel or the EU-Israel Association Agreement equivalent to that which has been lost through the destruction of property in the West Bank.

Mr Randles advised that efforts should be made to formally map those options available to member states. In order to implement such measures, a state first needs to understand what it is entitled to do. The WBPC have offered their assistance in this regard.

³⁴ [Oxford Public International Law: Retorsion \(ouplaw.com\)](https://ouplaw.com)

The Ireland-Palestine Solidarity Campaign

The IPSC believe that there are several important steps that the Irish Government can take to address the discriminatory land policies enforced upon Palestinians, of which the demolition of homes and other structures coupled with forced displacement of people forms an integral part. The IPSC state that these land policies themselves form one of the main pillars of the entire system of Apartheid and Persecution that Israel imposes upon the Palestinian people. In light of this, they have made the following recommendations:

Enact the Occupied Territories Bill. The IPSC state that this Bill is a legal necessity in order to bring Ireland into compliance with its duty of non-recognition of and non-assistance to serious breaches of international law, in this instance, Israel's illegal settlements in the oPt, including East Jerusalem. It is the construction and expansion of these settlements and their de-Palestinianised hinterlands that lie at the heart of demolitions and evictions.

Demand reparations for the destruction of any Irish-funded projects. The Irish government must ensure that any damage to, or destruction of, projects, structures, etc. to which it contributed funding has a financial consequence. If recompense is not forthcoming, then there must be political and diplomatic consequences. Failure to ensure this will just mean further destruction, and more wasted aid.

Support the calls for an ICC investigation into the evictions in Sheikh Jarrah.

The government has already stated its support for the International Criminal Court's investigation into issues around Palestine and Israel. In Sheikh Jarrah, families and more than 190 supporting human rights organisations have submitted legal claims to the ICC Prosecutor. These claims have been reiterated in a separate submission signed by 250 legal scholars including UN Special Rapporteurs, and the ICC Prosecutor has stated they are following the situation closely. The Irish Government should strongly and publicly support these calls.

Impose lawful and targeted sanctions. The Human Rights Watch report on Israeli Apartheid makes a clear call for EU member states, acting unilaterally, to "Impose targeted sanctions against individuals and entities found to be responsible for the

continued commission of grave international crimes, including apartheid and persecution.” We echo this call loudly. If the government is serious about stopping them, there must be sanction for these crimes. Failure to punish will ensure they continue.

Undertake an ‘Apartheid Audit’ of the Irish state. The Human Rights Watch report on Israeli Apartheid makes a clear call for EU member states, acting unilaterally, to subject *“bilateral agreements, cooperation schemes, and all forms of trade and dealing with Israel to enhanced due diligence to screen for those directly contributing to the commission of crimes of apartheid and persecution of Palestinians, mitigate the human rights harms and, where not possible, end the activities and funding found to directly contribute to facilitating these serious crimes.”*

The IPSC believe that such an ‘apartheid audit’ of the Irish state is absolutely necessary. It would, for example, mean no further collaboration by Irish institutions such as An Garda Síochána with the Israeli Ministry of Public Security, which oversees many of the home demolitions, evictions and displacements in Jerusalem and elsewhere.

Al-Haq

In light of the recent and ongoing attacks on the Palestinian people as a whole, Al-Haq urges Ireland to address the root causes of this systematic and widespread violence and colonial oppression, and:

To fulfil its international responsibility of non-recognition of Israel’s unlawful *de facto* annexation as legal. Given that the prohibition on annexation is a violation of jus cogens norms, it gives rise to erga omnes obligations on all States not to recognize the illegal situation, not to render aid or assistance in its maintenance, and to cooperate to bring the illegal situation to an end.

Despite EU guidelines on labelling settlement-made products, the EU States, including Ireland, are still allowing such products to be imported, thus imposing little consequences for Israel’s disregard of international law. It is therefore critical that Ireland take concrete and immediate steps to prohibit the import of settlement goods and services and progress without further delay, the Occupied Territories Bill.

Ireland has a responsibility not to render aid or assistance in Israel's illegal activities. One such step would be for States to stop military aid to Israel and to adopt effective concrete measures including sanctions and countermeasures to ensure annexation is deterred.

In particular, given that the EU is Israel's largest trade partner, with nearly a third of Israel's exports going to the bloc, the EU has unique leverage and should review and cease existing trade and cooperation agreements with Israel, including the Horizon 2021-2026, EU-Israel Association Agreement, the EU-Israel Euro-Mediterranean Aviation Agreement, and the EU should immediately halt the conclusion of the Euro Asia Interconnector until Israel complies with international law.

Call for Ireland to support the annual update of the UN Database on Businesses Active in the Settlements, including through budgetary contributions to ensure long-term viability of the Database, and ensure the findings of the Database are adhered to in its public procurement activities.

Further call for Ireland to fully support the investigation of the Prosecutor of the International Criminal Court (ICC) into the Situation in Palestine. In addition, where possible, for Ireland to increase its financial contributions to the ICC to ensure the viability of the Court, and to protect when necessary, the Prosecutor, judges, personnel of the ICC, victims, victims lawyers, and NGO's who may be threatened in relation to their work on the Situation in Palestine.

Finally, for Ireland to use its seat on the Security Council and its forthcoming Presidency of the UN Security Council to address the root causes of the prolonged occupation of Palestine, including *de facto* annexation and apartheid. We call on Ireland to actively use this opportunity to take concrete measures to bring the prolonged occupation, including the fourteen-year siege of Gaza and colonisation to an end, in the interests of maintaining international peace and security.

6. Conclusions and Recommendations

Conclusions

The increase in demolitions and displacements in 2020 and 2021 has caused hardship for the people in the occupied Palestinian territory and has greatly contributed to increased tensions in the region.

International Humanitarian Law applies to all cases of belligerent occupation and recognises that the Occupying Power is merely a *de facto* administrator of the territory of another sovereign. As the Occupying Power in the West Bank, Israel has obligations under the Fourth Geneva Convention which dictates that the forcible transfer of members of the occupied population is prohibited. The Fourth Geneva Convention also prohibits the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies.

In the context of Covid-19, the increase in demolitions is exacerbating the vulnerability of Palestinian communities particularly in the case of those displaced being forced into limited shelters and sharing sanitation facilities greatly intensifying the risk of and impact of Covid-19 upon these communities.

The pattern of evictions, demolition orders and displacements are not random but appear to be strategically focused on altering the demography of East Jerusalem by targeting areas-such as Sheikh Jarrah, which according to International Human Rights Watch seem to be clearing the way for the establishment of more illegal Israeli settlements in the area and physically segregating and fragmenting East Jerusalem from the rest of the West Bank.

Likewise, the Committee is particularly concerned at the reported 108% increase in demolitions of donor-funded structures including schools and medical centres in Area C, most of which are funded by the EU and EU Member States and calls on the Israeli authorities to cease the targeting of humanitarian aid in the West Bank through demolition and confiscation.

The continuing Israeli actions, in the occupied Palestinian territory, are making the goal of peace and a contiguous Palestinian state harder to achieve.

The Committee welcomes and emphasises the resolution agreed by Dáil Éireann declaring the building of Israeli settlements in the occupied Palestinian territory as a *de facto* annexation.

As repeated statements of condemnation are not achieving any change there is a need for individual countries, the European Union and the United Nations to ensure that there are meaningful consequences. Furthermore, there needs to be a commitment by States and organisations to pursue such consequences where grave violations of international law occur and persists.

Recommendations

The Committee recommends:

- That Ireland, following on from its recent recognition that *de facto* annexation has taken place in the occupied Palestinian territory, now takes steps towards realising its responsibility to not render aid or assistance to Israel which would facilitate the maintenance of an internationally wrongful act of annexation.
- That Ireland, in addition to issuing statements of condemnation on actions taken by the Israeli authorities, agree a graduated set of proposals and concrete measures domestically, including diplomatic and economic and in conjunction with international organisations and bodies, to apply where further violations and breaches of international law occur in respect of demolitions, evictions, displacements, settlement expansion and *de facto* annexation.
- For Ireland to support the annual update of the UN Database on Businesses Active in the Settlements, including through budgetary contributions to ensure the long-term viability of the Database, and to ensure the findings of the Database are adhered to in its public procurement activities.
- For Ireland to support an International Court of Justice Opinion on the illegality of the prolonged occupation and *de facto* annexation of the occupied Palestinian territory.

- That Ireland supports the call by Palestinian victims for an International Criminal Court investigation into evictions in Sheikh Jarrah amongst others, including through ensuring the protection of Court personnel, victims, lawyers and NGOs working with the Court and ensuring the capacity of the Court to fully execute its mandate.
- That Ireland uses her seat and forthcoming Presidency of the UN Security Council to address the root causes of the prolonged occupation of Palestine territory, the poverty, inequality and injustices, and to progress means to bring *de facto* annexation to an end in the interests of maintaining international peace and security.
- That Ireland demands directly (and through international bodies) reparation from the Israeli Government, for the destruction of projects where Irish and EU funding was utilised.
- That Israel acknowledges that the forced displacement of the protected Palestinian population and the presence and expansion of Israeli settlements, in the West Bank, including East Jerusalem, undermines the prospects of peace and takes immediate steps towards restitution.
- To enable meaningful negotiation between the international community and Israel with a view to resolving clear differences in respect of demolitions and displacements the Israeli authorities need, in the first place, to desist from further evictions, transfer of settlers, demolitions, land appropriations, and pillage of natural resources in the occupied Palestinian territory, and to take concrete steps to dismantle illegal settlements and disengage from the occupied Palestinian territory.
- That this Committee supports the setting of a clear timeframe towards the recognition of the State of Palestine.

- That Ireland uses its influence within the international community to urge Israel to bring to an end all settlement activity and to effectively promote Palestinian living standards and regional peace-building including the realisation of the right of the Palestinian people as a whole to self-determination.

APPENDIX A – Written Submissions

The International Legal Forum

Submission to The Joint Committee for Foreign Affairs and Defence, Ireland

Topic: *‘Settlements, Demolitions & Displacements’*

21 May 2021

Submitted by The International Legal Forum (ILF)

Arsen Ostrovsky, Chair & CEO, International Legal
Forum

Russell A. Shalev, Attorney, International Legal Forum

Introduction

1. The International Legal Forum (ILF) is an Israel-based NGO of over 3,000 lawyers in over 30 countries, dedicated to combating antisemitism, terror and the delegitimization of the State of Israel in the international legal arena.
2. The ILF completely rejects the claim that Israel commits demolition and forced displacements to make way for the construction of settlements. Furthermore, the ILF strenuously rejects the deliberate obfuscation of zoning regulations, private property rights and Israel's settlements policy - all disparate issues - in attempt to portray Israel as guilty of alleged ethnic cleansing or racial discrimination.
3. Israel's housing demolition policy both in Judea and Samaria ("the West Bank") and in Jerusalem are governed by Israeli zoning and building regulations and laws. These laws are enforced equally on all citizens and residents, regardless of ethnicity and nationality.
4. This submission will also provide much-needed context on illegal housing demolitions in Judea, Samaria and east Jerusalem, as well as legal and factual context to the dispute in Sheikh Jarrah.
5. It shall be our contention that Israeli building regulations are no different in essence to those of other countries, not least Ireland, and are ultimately for the benefit of citizens and residents, including by preventing dangerous and illegal construction and preserving residential, environmental and historical spaces.
6. We believe that Ireland, including organizations like Irish Aid, can play an important and constructive role in advancing peace in the region, including by providing crucial housing to those in need, however, it is imperative to work in conjunction with Israeli authorities and refrain from supporting construction done in opposition to Israeli building regulations.

Status of Territory at Issue

Judea/Samaria

7. The status of Judea and Samaria is *sui generis* and cannot be considered to be a classical occupation.³⁵ The laws of occupation in international public law rest on the

³⁵ Shamgar, Meir. "The observance of international law in the administered territories." *The Progression of International Law*. Brill Nijhoff, 2011. 429-446.

occupation of territory from a lawful sovereign, whereby the Occupying power manages the territory temporarily on behalf of the displaced sovereign. Judea and Samaria were part of the original Mandate for Palestine (set aside for the future Jewish homeland), established in the aftermath of World War I and adopted unanimously by the League of Nations. The Mandate was incorporated into the United Nations Charter and remains binding under international law.³⁶

8. For further background to Israel's legal claim to the land in Judea & Samaria, as well as Jerusalem, please refer to the following paper by Professors Eugene Kontorovich and Avi Bell³⁷.
9. In 1967, upon conclusion of the defensive "6 Day War", Israel reunited Jerusalem and seized control of Judea and Samaria. Israel thereafter applied its full law, jurisdiction and administration to all parts of Jerusalem³⁸ and issued a declaration that with respect to Judea & Samaria, the law in effect (a mix of Ottoman, British, and Jordanian law) prior to Israeli control of the area would continue to be in effect, unless otherwise necessary.³⁹

Relationship to Palestinian Authority

10. In 1995, the State of Israel and the Palestinian Liberation Organization, mutually agreed to a series of agreements regarding governance of Judea, Samaria, and the Gaza Strip. These agreements, collectively known as the "Oslo Accords", provided the basis for establishing the Palestinian autonomous governing body, the Palestinian Authority ("PA"), and divided Judea and Samaria into three distinct areas.⁴⁰

³⁶ de Blois, Matthijs. "The Unique Character of the Mandate for Palestine." *Israel Law Review* 49.3 (2016): 365-389.

³⁷ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2745094

³⁸ See more on The Status of Jerusalem in International and Israeli Law, in this paper published by the Jerusalem Center for Public Affairs, 2018:

https://jcpa.org/pdf/berkowitz_jerusalem_web_covers.pdf

³⁹ See article 43 of the 1907 Convention respecting the Laws and Customs of War on Land (Hague Convention). While this section assumes that the deposed sovereign was under the "authority of the **legitimate** power", as noted above, Judea and Samaria were, prior to the Israeli control, under the non-sovereign control of the Hashemite Kingdom of Jordan.

⁴⁰ See Chapters 2 and 3 of Israel-Palestinian Negotiations: Interim Agreement on the West Bank and the Gaza Strip (Oslo II) (September 28, 1995)

11. The Accords detail, inter alia, the powers and jurisdiction that each side would hold in the different areas:

a) In “Area A” (the large Palestinian cities and their immediately outlying areas in which all the residents are Palestinian), it was agreed that the PA was given civil and security powers and jurisdiction.

b) In “Area B” (predominantly, rural areas adjacent to Area A), the PA holds civil jurisdiction while security powers and jurisdiction remain in the hands of Israel.

c) In “Area C” (predominantly open areas and Israeli settlements in which only a small percent of the Palestinians live) Israel retained both civil and security powers and jurisdiction.

12. Palestinian residents of Areas A and B are subject to the Palestinian Authority’s legal system, with the exception of Palestinian residents of Area C who are under the PA’s authority for matters of personal jurisdiction (taxation, education, health, etc.). In Area C, unlike in Areas A and B, matters of housing, zoning permits and infrastructure for all residents are governed by the Israeli Civil Administration

Factual Context Relating to the Illegal Palestinian Building

13. In recent years, the Palestinian Authority has advanced the construction of numerous settlements in Area C,⁴¹ in violation of the Oslo Accords, in order to establish Palestinian “facts on the ground.” Often, such enclaves are illegally and deliberately established in military firing zones, or other sensitive security locations, in order to provoke conflict, garner extensive PR, and entangle Israeli authorities in drawn-out litigation. In other words, the insistence on construction in Area C in sensitive locations, without permits, reveals that the primary motivations are political and

⁴¹ A September 2014 Directorate-General for European Civil Protection and Humanitarian Aid Operations (ECHO) document presented close coordination between the EU and the PA on Area C development: “The European Union and the PA are now actively participating in the planning and zoning of Area C which, if successful, could pave the way for development and more authority of the PA over Area C. The planning and zoning should help to protect the existing community structures.”

strategic, as opposed to ensuring Palestinian residents enjoy stable, safe housing with access to basic services.

Legal Process Relating to Demolition Orders

14. The removal of illegally built structures in Judea and Samaria is primarily regulated by the Jordanian Law Planning for Cities, Villages and Structures, No. 7 of 1966⁴². According to the Jordanian Planning Law, once the construction of a structure that does not have a permit starts, the authorities can give the person responsible for the construction a demolition order.⁴³ Once served with the demolition order, the person who constructed the structure without a permit can request a permit from the planning office, and from that moment the performance of the demolition order is suspended.⁴⁴ If the request for the permit is rejected, the decision can be appealed to the Appeals Board.⁴⁵ If the appeal is rejected, the person who constructed the structure without a permit can ask to be exempted from the requirement to receive a building permit.⁴⁶
15. As a final safeguard, demolition orders can be challenged to the Israeli Supreme Court. Israel's Supreme Court is the highest instance in the Israeli legal system. It has the authority to carry out judicial review over actions carried out by the state or its officials in its capacity as the High Court of Justice (HCJ). Any interested person (including non-governmental organizations) or affected persons (citizens and non-citizens) can petition the court on a claim that a government action is unlawful, unconstitutional, or otherwise unauthorized.
16. Access to the Court is extremely broad, with little to no procedural, substantive, or financial hurdles.⁴⁷ Palestinian residents of Judea and Samaria have recourse to the

⁴² Adopted by the Israeli Authorities as noted above, as part of the law that was in force in the area prior to the area coming under Israeli authority.

⁴³ Article 38(1)

⁴⁴ Article 38(4)

⁴⁵ Article 36(1)

⁴⁶ For example, by claiming that the structure is for agricultural purposes in a designated area – See Article 38(4)(d) regarding the definition of construction.

⁴⁷ For comparison with US Supreme Court, see Hoyt, Joshua. "Standing, Still? The Evolution of the Doctrine of Standing in the American and Israeli Judiciaries: A Comparative Perspective." *Vanderbilt Journal of Transnational Law* 53.2 (2020). For comparison with Canadian Supreme Court, see Singh, Ajit, *Public Interest Standing Before the Supreme Courts of Israel and Canada: Are Our Canadian*

Court and can petition against actions they believe to be unlawfully or unduly infringing on their human rights.

17. In determining its decision, the Court also applies a proportionality standard and has awarded relief to Palestinian petitioners in past cases.

Factual Context to Specific “Demolitions” - Khirbet Humsah/ Humsah al Baqai’a

18. In November 2020, the Israeli Civil Administration confiscated and dismantled several illegal structures in a Palestinian outpost in the Jordan valley, known as “Khirbet Humsah” or “Humsah al Baqai’a”. While the Israeli actions were widely reported incorrectly as “the destruction of a Palestinian village”, according to Civil Administration, the operation consisted on the confiscation and dismantling of three tents used for residential purposes, four goat pens, four latrines, five water reservoirs and two cars.⁴⁸ According to reports, structures donated by Irish Aid were among the dismantled structures.⁴⁹

19. The dismantlement of the outpost was authorized by the Israel Supreme Court. According to the Court:

*“The territory was declared a firing zone already in 1972. **There is no disagreement that the applicants have no recognized property rights on the territory. Essentially, we are discussing squatters who are using the territory for grazing purposes ... Furthermore, the construction in the area is unregulated and illegal.**”⁵⁰*

Courts Accessible Enough? (August 6, 2011). Available at SSRN: <https://ssrn.com/abstract=1963105> or <http://dx.doi.org/10.2139/ssrn.1963105>

⁴⁸ <https://presspectiva.org.il/עלילות-מאהל-חירבת-חומסה-וחבר-הקונגרס-ה/>

⁴⁹ <https://www.irishtimes.com/news/world/europe/israel-destroys-irish-aid-to-palestinian-village-community-1.4489881>

⁵⁰ HCJ 3326/19, par. 4

Construction and Demolition in East Jerusalem⁵¹

20. As previously explained, Israel reunited Jerusalem following the June 1967 “Six Days” War, applying its full law, jurisdiction and administration to all parts of the city.
21. During the period of Jordanian occupation, from 1949-1967, land title was based on the Ottoman system used in the Land of Israel during the 19th century. This system was notoriously complex, with land title marked according to boundary markers, as opposed to surveying and mapping. Only a minority of land was registered in the Ottoman registry, and in the ensuing century, many of the deeds could not be located.
22. Today, around 80% of the territory in east Jerusalem is not registered in the Israel Land Registry, as ownership cannot be determined for purposes of issuing a building permit.
23. In recent years, the municipality has adopted the “*Mukhtar (village elder) practice*”, in which the municipality will consider documentation provided by recognized village elders when providing building permits. The idea is that, in the absence of an official land title, village elders are able to testify to the historical use or ownership of village properties. This practice has revolutionized the ability of east Jerusalem residents to receive building permits, with the Jerusalem Municipality regularly approving new building projects for Jewish and Arab residents alike.

Context in Sheikh Jarrah Property Dispute

24. The case of Sheikh Jarrah is a complex and long-running legal matter, subject to competing property claims over a small area of land in Jerusalem, by the Jewish owners and Palestinian tenants, that also incorporates the area’s religious significance and spans a history dating back to pre-1948 British mandate era.
25. In essence, the **case is one of civil litigation over a private property dispute. The Israeli government is not a party to the proceedings**, nor can it affect the court’s decision (due to the separation of powers under Israeli law).
26. According to previous Court decisions, the land title to the property in question belongs to its Israeli owners and the existing residents were unable to provide proof of

⁵¹ This section is based on personal correspondence with Fleur Nahum-Hassan, Jerusalem deputy-mayor

purchase or legal transfer of title, however nonetheless, the Palestinian families enjoyed Protected Tenant Status.

27. As protected tenants, they would be able to continue living on the property as long as they paid rent to the owners and maintained the property.⁵²
28. However, beginning in 1993, the owners began legal proceedings against the residents based on their non-payment of rent and of illegal changes to the property, claiming that, in the absence of rent being paid by the tenants, they have the legal right to pursue eviction, as would any property owner under the law in such circumstances.
29. Following judgement of the Jerusalem District Court in February 2021, upholding an earlier court decision that, in the absence of payment of rent, the Palestinian residents must vacate the premises, the tenants appealed to the Supreme Court. The Court's final verdict is expected in the next 30 days.
30. For more information about this case, including the relevant chronology of events and analysis of legal issues, please refer to this paper, written by the ILF, dated 9 May, 2021⁵³.

Conclusion

31. Demolitions of unauthorised structures as referred to above, cannot be seen as annexation, whether de facto or otherwise, and are not carried out to make way for the construction of settlements.
32. Rather, such demolitions carried out by Israeli authorities are governed by the same principles that govern any other state - namely zoning restrictions, infrastructure and building legality, as well as security considerations and welfare of the residents,

⁵² Supreme Court 6239/08

⁵³ Sheikh Jarrah: A Legal Background, Position paper drafted by The International Legal Forum, 9th May, 2021 https://98f2f7f5-93ed-4a21-b23f-3f28cbb690f5.filesusr.com/ugd/3445b6_7201a573e2b84d718badb7053afdfaba.pdf

- particularly in circumstances where the property or structures are located in closed military zones. They are equally enforced on all persons, irrespective of background.
33. Meantime, the Palestinian Authority deliberately seeks confrontation with the Israeli government by directing construction to closed military zones and strategic locations, in violation of the terms of the Oslo Accords.
 34. By providing funding and supporting these projects, the Irish government encourages Palestinian rejectionism and hard-line policies, undermining its role as an honest broker and ultimately wasting valuable energy and aid dollars. In some cases, it can also endanger the safety of those Palestinians, when such structures are located in dangerous military zones.
 35. To effectively promote Palestinian living standards and regional peace-building, a goal strongly shared also by Israel, it is imperative that the Irish government instead work in conjunction with Israeli authorities and refrain from supporting construction done in opposition to Israeli building regulations.

B'Tselem

20.5.2021

Israel's policy of Demolition and forcible transfer in the occupied Palestinian territories - Briefing paper for the Joint Committee on Foreign Affairs and Defence:

Data on demolitions of homes in the West Bank and East Jerusalem:

Despite the pandemic and the unprecedented economic crisis, Israel has ramped up [home demolitions in the West Bank](#), including East Jerusalem. In 2020, more Palestinians lost their homes in this area than in every year since 2016 – which saw the most demolitions since B'Tselem began keeping record.

From the start of 2021 and until April 30th, Israel demolished 83 homes, leaving 232 Palestinians – 117 of them minors – homeless.

In 2020, total, Israel demolished 273 homes in total (in the West Bank and East Jerusalem), leaving 1,006 Palestinians – 519 of them minors – homeless. By comparison, Israel demolished the homes of 677 Palestinians in 2019, 397 in 2018, and 528 in 2017.

In 2020, Israel also demolished 456 non-residential structures and infrastructure facilities.

Up to date demolition figures, with a breakdown between the West Bank and East Jerusalem, are regularly updated on [B'Tselem's demolition database](#).

New instruments have enabled a vast expansion of the demolition and confiscation of Palestinian homes in area C

A range of legal instruments applied by the Israeli Civil Administration (ICA) in recent years, coupled with increased cooperation between branches of the security forces, and higher prioritization, allowed the Israeli authorities to vastly expand the demolitions and confiscations of Palestinian homes and livelihood structures, much of which consists of humanitarian assistance provided by the European Union and member states, in the framework of the West Bank Protection Consortium (of which Ireland is a member).

This information was conveyed in briefings by Brigadier General Ghassan Alian, the head of the ICA, and Marco Ben Shabat – Head of the Supervision Unit at the Civil Administration, at a hearing of the Knesset's Foreign Affairs and Defense Committee entitled "The struggle over Area C" which took place on 13 August 2020.

The premise of the Knesset hearing is that the Oslo Accords placed area C of the West Bank under Israeli sovereignty, and that the Palestinian Authority, backed by the European Union, is trying to Subvert this and take over Area C, utilizing illegal construction and agriculture.

The two main instruments cited by the ICA officials are:

- Military order 1797, that removes any option for Palestinians to challenge demolition orders that the Civil Administration issues for new structures, allowing Israel to demolish homes summarily – [more on this](#)
- A military order allowing the ICA to confiscate portable buildings without a hearing or right to objection – [more on this](#)

Main points raised:

- Confiscation of movable structures skyrocketed: in the first half of 2020, the ICA confiscated 242 structures or parts of structures, up from 6 in the same period in 2015.
- In 2019, the ICA reduced the number of international projects to 12, from almost 75 projects in 2015
- The average time in 2019 between the spotting of a portable building and its confiscation was 14 days.
- In 2019, the ICA uprooted 7500 trees planted by Palestinians on so-called state land.
- 2019, out of around 700 confiscations of heavy machinery, more than 150 were undertaken by military units in operational activities as direct assistance to the ICA.
- In the East Jerusalem Periphery, until 2016, more than 300 portable buildings were erected by the European Union, most of which are under various processes to facilitate demolition.
- The time frame enabling confiscation of movable structures was extended from 30 to 90 day.

Background:

Area C covers 60% of the West Bank and is home to an estimated 180,000-300,000 Palestinians and to a settler population of at least more than 440,000 Israeli citizens (excluding East Jerusalem) living in 280 [settlements and outposts](#). Israel retains control of security and land-management in Area C and views the area as there to serve its own needs, such as military training, economic interests and settlement development. Ignoring Palestinian needs, Israel practically bans Palestinian construction and development. At the same time, it encourages the development of Israeli settlements through a parallel planning mechanism.

Scores of farming-shepherding communities, home to thousands of Palestinians, dot the landscape of Area C. For decades, the Israeli authorities have been implementing a policy aimed at driving out some of these communities. They have made living conditions miserable and intolerable in an attempt to get residents to leave, ostensibly of their own volition.

Under this policy, authorities prohibit any construction of residential or public structures in these communities, refuse to hook them up to the water and power grids, and decline to

pave access roads to the communities. When, in the absence of any other alternative, residents build without permits, the Civil Administration (CA) issues orders to demolish the structures. While these orders are not always carried out, the threat of demolition looms constantly over the residents. In some communities, families have had their homes demolished several times. The CA also destroys infrastructure laid or installed by the residents themselves – such as rainwater cisterns, roads and solar panels for generating electricity – and confiscates water tanks or cuts water pipes.

The authorities' efforts center on three areas in the West Bank:

- [The South Hebron Hills](#)
- [Area of Ma'ale Adumim](#)
- [The Jordan Valley](#)

This policy runs counter to the provisions of international humanitarian law, which prohibit the forcible transfer of protected persons (unless carried out for their own protection or for an imperative military need – exceptions that do not apply to these Palestinian communities). The prohibition on forcible transfer is not limited to transfer by physical force, but applies also to instances in which people leave their homes involuntarily or because they or their families were pressured into it. Departure due to impossible living conditions created by the authorities – through, for instance, demolishing homes or disconnecting them from electricity and running water – is considered wrongful forcible transfer. This constitutes a war crime for which all those involved bear personal liability.

Evictions of Palestinians in East Jerusalem:

In recent years, the number of settlers moving into the heart of Palestinian neighbourhoods in East Jerusalem – in the Old City, Silwan, Ras al-'Amud, a-Tur, Abu Dis and a-Sheikh Jarrah – has been on the rise, with the settler population there now reaching around three thousand. They had done so with the approval, backing, budgeting and assistance of all Israeli authorities. The claim, made by the Israeli MoFA, that the issue is a “real estate dispute between private parties” is a falsehood that stands in contradiction with the known facts.

The resulting settlement enclaves in the Palestinian neighbourhoods of [East Jerusalem](#) have altered them and made unbearable the lives of the Palestinian residents: they suffer invasion of privacy, economic pressure, and daily harassment by settlers and their security guards, who are paid for by the authorities. This state affairs leads to violent clashes between the settlers and young Palestinians. The state and settler organizations, with their vast resources and power, force the Palestinian residents to conduct lengthy and expensive legal proceedings to contest the demands that they leave their homes: in Silwan, suits are underway to remove more than 80 families from their homes; in a-Sheikh Jarrah, 62 families; and dozens of other families in the Old City.

In most cases, various bodies representing the settlers seek to evict Palestinians from their homes by applying the Israeli law which enables Jews to claim ownership of property they or other Jews were in possession of prior to 1948. The state also enacted a law that bars

Palestinians from taking such action with regard to property they owned before 1948. Any appeals made by Palestinians to Israeli courts of every instance that they be allowed to remain in their homes have failed, with representatives of the authorities and judges backing the policy and giving it their seal of approval. Israel does not consider the residents of East Jerusalem as individuals with equal rights, instead seeking to evict from their homes since they stand in the way of the state's objective of Judaize Jerusalem. Israel uses a variety of methods – all illegal – to achieve that end: it deliberately prevents Palestinians from building in the city – for housing or other purposes; issues demolition orders for homes built without a permit – for want of any other option; and [demolishes dozens of homes every year](#). The Israeli authorities do not invest in infrastructure and services for the Palestinian neighbourhoods, be it physical infrastructure, public institutions, education, culture or sanitation, and does not allow residents of Jerusalem who married residents from elsewhere in the West Bank or the Gaza Strip to live together in the city.

The implementation of this policy, aimed at cleansing parts of the city of Palestinians, is not new. Israel has been carrying it out for years, ever since it occupied the West Bank and annexed East Jerusalem and its satellite villages.

Data on Palestinians at Risk of Eviction

In recent weeks, the cases of families being evicted from their homes in Sheikh Jarrah have gained international prominence, but this is far from being the only hot sport for evictions, by state-backed settler associations. In fact, the most egregious case is the neighbourhood of Batan al-Hawa, in Silwan, which the setting for the most extensive expulsion in recent years in East Jerusalem and deserves special focus.

In 2016, UNOCHA conducted a mapping exercise which showed that 818 Palestinians were at risk of displacement due to eviction cases filed against them in East Jerusalem. A follow-up survey in 2020 reveals that at least 218 Palestinian households have eviction cases filed against them, the majority initiated by settler organizations, placing 970 people, including 424 children, at risk of displacement. The majority of new cases were identified in the Batn Al Hawa area of Silwan, which remains the community with the highest number of people at risk of displacement, due to ongoing eviction cases. Between 2017 and 2020, around 15 households, comprising 62 Palestinians, were evicted from their homes in the Old City, Silwan and Sheikh Jarrah neighbourhoods of East Jerusalem.

The briefing paper should be read in the context of B'Tselem's recently-published [position paper](#) asserting that the Israeli regime, which strives to promote and perpetuate Jewish supremacy in the entire area between the Jordan River and the Mediterranean Sea, is an apartheid regime. Accordingly, land is used to develop and expand existing Jewish settlements and build new ones, while Palestinians are dispossessed and corralled into small, crowded enclaves.

B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories strives to end Israel's occupation and apartheid regime, recognizing that this is the only way to achieve a future that ensures human rights, democracy, liberty and equality to all people, Palestinian and Israeli alike, living on the bit of land between the Jordan River and

the Mediterranean Sea. Various political routes can bring about this future, and while it is not B'Tselem's role to choose among them, one thing is certain: continued occupation and apartheid is not an option.

The Ireland-Palestine Solidarity Campaign

Submission to the Irish Department of Foreign Affairs and Defence call for input on ‘The Demolition of buildings in the occupied Palestinian territory and the displacement of people’



Ireland-Palestine Solidarity Campaign

May 2021



Introduction

The purpose of the JCFAD call for submissions is to address the “Demolition of buildings in the occupied Palestinian territory and the displacement of people”. However, we do not believe it is possible to view these in isolation from the discriminatory land policies enforced upon Palestinians, of which they form an integral part. These land policies themselves form one of the main pillars of the entire system of Apartheid and Persecution that Israel imposes upon the Palestinian people.

Since the creation of the state of Israel in 1948, land ownership and use has driven the policies of the Israeli government and been a core issue at the heart of Israel’s colonization of historic Palestine. Over this period vast swathes of Palestinian owned land has been expropriated for exclusive Jewish-Israeli use, and hundreds of thousands of Palestinians forcibly removed from their homes. It is a process that continues today in the Jordan Valley, in Hebron and in East Jerusalem. Palestinians call this the ongoing Nakba – an ongoing catastrophe which dates back to 1948 and the forced expulsion of over 700,000 Palestinians from their homes and lands.

The Israeli government actively and aggressively promotes this catastrophe through claiming that all of historic Palestine belongs exclusively to Israel and that Israel will maintain its occupation of Palestine in perpetuity. It is asserted in the Jewish Nation State Law (2018) that Jewish settlement is as a national priority to be pursued by every Israeli government.

According to [Human Rights Watch](#) and the [Israel’s leading human rights organization B’Tselem](#) this law, alongside a corpus of other discriminatory

laws and rulings is a cornerstone of what they call Israel's system of racist apartheid.

Land ownership in the State of Israel and the occupied Palestinian territories

Inside the State of Israel

It is beyond the remit of this paper to investigate issues around land inside the State of Israel. Perhaps at a future date the Committee will consider this vital issue, as land issues in the oPt cannot be seen in isolation from the process that has been ongoing across historic Palestine since 1948. Suffice it to say that decades of ethnic cleansing, discriminatory legal chicanery and arbitrary dismissal of ownership have established the reality that today Palestinian citizens of Israel, who make up 20% of the population, own only 3% of the land in the state. And this is without mentioning the millions of Palestinian refugees from families exiled between 1947 and 1949 who still maintain deeds to their land, but who are barred from ever returning by Israel's racist immigration policy.

The Occupied Palestinian Territories - East Jerusalem, the West Bank and the Gaza Strip

As the recent reports from Human Rights Watch and Israeli NGO B'Tselem highlight, apartheid implemented to ensure Jewish-Israeli domination is a ruling principle in all Israeli interactions with Palestinians. The severity of its application varying depending on the geographic area in which Palestinians reside. This variation in treatment is clearly evident in Israel's treatment of Palestinians in the Occupied Palestinian Territories (OPT). Yet, just as inside Israel, the seizure and expropriation of

Palestinian land and the establishment of Jewish settlements remains a constant in every area except the Gaza Strip where an attempt at settlement failed.

East Jerusalem

Occupied East Jerusalem is illegally annexed by Israel (1980). Contrary to international law Israel applies its civil law there and treats it as its own sovereign territory. However, whilst annexing the territory, Israel has not annexed its Palestinian residents who remain subject to arbitrary and discriminatory laws that allow for their dispossession and expulsion from the city. This has led to accusations of Israel conducting a policy of ethnic cleansing so as limit the population of growth of Palestinians in the city.

As regards land ownership and use, the main instruments to ensuring Jewish-Israeli domination are the application of discriminatory law (as in the proposed evictions of Palestinian families from the Sheikh Jarrah district); the illegal separation wall; and the twin evils of a discriminatory permit regime and a policy of home demolition. The outcome of such demographic engineering is that today over 220,000 Jewish Israeli settlers live in the midst 330,000 Palestinian non-citizens.

The West Bank

In the West Bank the situation as regards land use and ownership is further complicated by the division of the territory into three distinct administrative districts. Area A, around 18% of the land is in theory under the civil and security control of the Palestinian Authority; Area B, about 21% of the territory is under mixed Palestinian Authority civil control and Israeli security control; Area C around 60% of the West Bank is under full Israeli military control.

Additionally, Palestinian land ownership and use is further affected by all the same discriminatory mechanisms and practices that impact life for Palestinians in East Jerusalem with the additional strictures that West Bank Palestinians are also subject to Israeli Military Orders and are subject to the whims of an Israeli Military Governor.

Consequences of Israeli Land Policies in the occupied Palestinian territories

East Jerusalem

In East Jerusalem Israel's land acquisition and use policies have pushed the Palestinian population into revolt. As a result of discriminatory laws and policies over 14,000 Palestinians have had their right to residency revoked within the city. Many thousands of others have had to leave to unite with loved ones and family denied access to Jerusalem or denied permission to build a home.

Similarly, Israel's rigorous house demolition policy has resulted in over 20,000 Palestinian homes being demolished since 1967 with another 30,000 under demolition order. At the same time, according to the [Israeli Committee Against Home Demolition](#) (ICAHD), Israeli policies have induced a shortage of 25,000 housing units in the Palestinian sector whilst the Israeli state has constructed more than 55,000 new housing units for Jewish settlers and not a single house for Palestinians.

This blatant demographic engineering has created an apartheid reality on the ground. Israel's planning and zoning policy in East Jerusalem, as ICAHD states, is purposely designed to impoverish and de-develop increasingly isolated Palestinian enclaves who are cut-off from the

Palestinian hinterland in the West Bank, hemmed in by the illegal separation wall and segmented by blocks of strategically placed Israeli settlements. In other words, Israel's planning and land policy is designed to minimise the Palestinian presence in Jerusalem.

The West Bank

In the West Bank Israeli land policy has been described by Human Rights Watch as aiming at maximum land with minimum Palestinians. The manifestations of this policy is evident in the settlement blocks around Jerusalem, Hebron, and Nablus; is evident in the route followed by the illegal separation wall; is evident in the effective expropriation of the Jordan Valley. The result is that effectively 40% of the territory of the West Bank is corralled to serve the present and future needs of the over 200 illegal Israeli settlements. The rights and needs of the 3.2 million West Bank Palestinians are subjugated to the privilege of the approximately 350,000 illegal settlers. It is racist colonisation on a grand scale.

Beyond the settlements and throughout the entirety of Area C, (the 60% of the West Bank under direct Israeli Military control), Israeli authorities have made continued Palestinian presence in the area almost impossible. This has taken the familiar forms of land confiscations, denial of building permits, denial of permits to farm, declaring lands as 'Nature reserves', the seizure of water resources and the demolition of Palestinian wells coupled with the refusal to permit Palestinians to drill new wells.

It is a system of compound oppression that that HRW declares constitutes the Crime of Persecution, combining as it does elements of the bureaucracy, the judiciary and the military. In the Area C region of the Jordan Valley – an area that comprises 30% of the West Bank, 96% of

Palestinian applications to build are denied, and those that are permitted are restricted to just 1% of the area. Consequently, the Palestinian population in Area C of the Jordan Valley has declined from around 200,000 in 1967 to around 10,000 today.

Concluding Analysis

This brief summary merely skims the surface of Israel's land policy in the oPt. It barely touches upon the detail of how these policies and practices impact upon the everyday experience of those who have to live under them. However, a few key points can be made at a general level regarding the intent of these policies.

Israeli land policy is racially based. Israel aggressively seeks to maximise the amount of land under Jewish-Israeli control. Palestinian rights, whether private or collective to land are neither protected nor respected by Israel. Israeli land policy has and is deliberately the pursuing goal of driving Palestinians from their lands. Israel implements these policies and practices to attain the enduring political goals of the assertion of sovereignty over East Jerusalem, the West Bank settlements and the Jordan Valley.

Ultimately Israel pursues these policies to render the intended internationally agreed two state solution of the peace process moot. This is evidenced by Israel's defiance of the international community in annexing East Jerusalem, by its continued expansion of its illegal settlements, by its announced intention to annex Area C of the West Bank when it adjudges the time to be correct. Israel's land policy is an integral and essential part of the Apartheid system it operates throughout the entirety of Israel and the OPT.

Recommendations

We believe that there are several important steps that the Irish government can take to address the discriminatory land policies enforced upon Palestinians, of which the demolition of homes and other structures coupled with forced displacement of people forms an integral part. These land policies themselves form one of the main pillars of the entire system of Apartheid and Persecution that Israel imposes upon the Palestinian people.

1) Enact the Occupied Territories Bill

This Bill is a legal necessity in order to bring Ireland into compliance with its duty of non-recognition of and non-assistance to serious breaches of international law, in this instance, Israel's illegal settlements in the oPt, including East Jerusalem. It is the construction and expansion of these settlements and their de-Palestinianised hinterlands that lie at the heart of demolitions and evictions.

2) Demand reparations for the destruction of any Irish-funded projects

The Irish government must ensure that any damage to, or destruction of, projects, structures, etc. to which it contributed funding has a financial consequence. If recompense is not forthcoming, then there must be political and diplomatic consequences. Failure to ensure this will just mean further destruction, and more wasted aid.

3) Support the calls for an ICC investigation into the evictions in Sheikh Jarrah

The government has already stated its support for the International Criminal Court's investigation into issues around Palestine and Israel. In Sheikh Jarrah, families and more than 190 supporting human rights organisations have [submitted legal claims](#) to the ICC Prosecutor. These claims have been reiterated in a separate submission signed by [250 legal scholars](#) including UN Special Rapporteurs, and the ICC Prosecutor [has stated](#) they are following the situation closely. The Irish government should strongly and publicly support these calls.

4) Impose lawful and targeted sanctions

The Human Rights Watch [report on Israeli Apartheid](#) makes a clear call for EU member states, acting unilaterally, to “Impose targeted sanctions against individuals and entities found to be responsible for the continued commission of grave international crimes, including apartheid and persecution.” We echo this call loudly. If the government is serious about stopping them, there must be sanction for these crimes. Failure to punish will ensure they continue.

5) Undertake an ‘Apartheid Audit’ of the Irish state

The Human Rights Watch [report on Israeli Apartheid](#) makes a clear call for EU member states, acting unilaterally, to subject “bilateral agreements, cooperation schemes, and all forms of trade

and dealing with Israel to enhanced due diligence to screen for those directly contributing to the commission of crimes of apartheid and persecution of Palestinians, mitigate the human rights harms and, where not possible, end the activities and funding found to directly contribute to facilitating these serious crimes.”

We believe that such an ‘apartheid audit’ of the Irish state is absolutely necessary. It would, for example, mean no [further collaboration](#) by Irish institutions such as An Garda Síochána with the Israeli Ministry of Public Security, which oversees many of the home demolitions, evictions and displacements in Jerusalem and elsewhere.

Al-Haq



**Written Submission on the Recognition of Israel's de facto
annexation in the Occupied Palestinian Territory, as an
internationally wrongful act, with consequences**

Date: 21/05/2021

For the attention of

The Committee on Foreign Affairs and Defence

Dáil Éireann, the Republic of Ireland

Submitted by

Al-Haq – Defending Human Rights since 1979

Ramallah, State of Palestine

Call for accountability

In the recent widespread and systematic attacks against the Palestinian people on both sides of the Green Line⁵⁴, since April 2021, Israel has violated human rights and humanitarian law. As the ceasefire started on the Friday night, 21 May 2021, a full-scale military offensive on the Gaza Strip took a toll of 232 Palestinians killed, including 65 children, 39 women, and 17 elderly people, while 1,900 Palestinians were injured⁵⁵.

Whilst the ceasefire has started, the Palestinian people as a whole are still being targets of inhumane acts of apartheid through a wide spectrum of laws, policies, and practices that advance colonization in the continuance of Israel's *de facto* annexation of Palestinian land. We call on Ireland to address the root causes of Israel's violations under international law and to take concrete steps towards ending Israel's impunity and holding it accountable for facts on the ground and policies resulted in *de jure* and *de facto* annexation, persisting illegal closure of the Gaza Strip and racial discriminatory system targeting the Palestinian people as a whole.

Al-Haq together with other Palestinian civil society organisations “affirm that the announced ceasefire does not mean, in any way, an end to Israel's violations against Palestinians. For 73 years, the Palestinian people have suffered Israel's systematic, institutionalised and long-established unlawful laws, policies, and practices, embedded in Israel's settler-colonial and apartheid regime.”⁵⁶

Nature of the *de facto* annexation

In order to address the root causes of the recent attacks against Palestinians, the reality on the ground such as *de facto* annexation in the West Bank, including Jerusalem, must be recognised and condemned as a pervasive violation of the international law. Such a fragrant

⁵⁴ Al-Haq, “International Community Must Address Root Causes, of Colonialism, Apartheid and De Facto

⁵⁵ Figures from Ministry of Health as of 6 pm on 20 May 2021, available at: <<https://www.moh.gov.ps/portal/twohundred-and-thirty-two-232-palestinians-have-so-far-been-killed/>>

⁵⁶ Al-Haq, Palestinian Civil Society Organisations Call for a Special Session on the Escalating Israeli Attacks against Palestinians on Both Sides of the Green Line, 22 May 2021, available at: <<https://www.alhaq.org/palestinian-humanrights-organizations-council/18389.html>>

violation requires actions whose paramount objective is to secure the inalienable rights of the Palestinian people, including the right to self-determination and permanent sovereignty over natural resources.

Although, Israel's formal de jure annexation of the occupied West Bank planned for July 2020, was suspended on 13 August 2020⁵⁷, de facto annexation still continues as evidenced by Israel's alteration of the demographic of the Occupied Palestinian Territory in order to maintain domination of Jewish Israelis over Palestinians and its appropriation of Palestinian land, properties and natural resources.

Al-Haq has monitored and documented an accelerated rate of property demolitions in the West Bank and Jerusalem amidst the Covid-19 pandemic,⁵⁸ a growth of settler violence supported by the Israeli police and occupation,⁵⁹ and the ongoing threat of the forcible transfer of Palestinian families in Sheikh Jarrah and Silwan in Jerusalem (for more details please see the joint urgent appeal in **Annex 1** and letters to the International Criminal Court in **Annex 2** and **Annex 3** to this report).

Al-Haq has further witnessed the construction of more than 250 settlements and outposts in the occupied territory with connecting infrastructure back to Israel in addition to the illegal transfer in of more 650,000 Jewish-Israeli settlers. Meanwhile, Israel continues to use and exploit Palestinian sovereign resources for the expansion and maintenance of settlements in the West Bank, including the pillage of quarried materials, Dead Sea minerals, water, gas and oil.⁶⁰

⁵⁷ UN, Secretary-General Welcomes Joint Statement Suspending Israel's Plans to Annex West Bank, Expresses Hope for Renewed Talks towards Two-State Solution, 13 August 2020, available at: <<https://www.un.org/press/en/2020/sgsm20205.doc.htm>>

⁵⁸ Al-Haq, Special Focus: Sharp High Rate of Property Demolitions since the Second Half of 2020 , 20 October 2020, available at : < <https://www.alhaq.org/advocacy/17468.html>>

⁵⁹ Al-Haq, International Community Must Address Root Causes, of Colonialism, Apartheid and De Facto Annexation Leading to Killing of 123 Palestinians and injury of over 1,500 in an Eid of Israeli Terror , 13 May 2021, available at < <https://www.alhaq.org/advocacy/18323.html>>

⁶⁰ OHCHR, "Israel's exploitation of Palestinian resources is human rights violation, says UN expert" (18 March 2018), available at <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24349&LangID=E>>

In 2018, Michael Lynk, UN Special Rapporteur for the Occupied Palestinian Territory proposed a test for establishing when an attempted de facto annexation of occupied territory has “crossed the tipping point into illegal annexation”. The patterns of behaviour include:

“Effective control: The state is in effective control of territory that it forcibly acquired from another state.

Exercises of sovereignty: The state has taken active measures that are consistent with permanency and a sovereign claim over parts or all of the territory or through prohibited changes to local legislation, including the application of its domestic laws to the territory, demographic transformation and/or population transfer, the prolonged duration of the occupation and/or the granting of citizenship.

Expressions of Intent: This would include statements by leading political leaders and/or state institutions indicating, or advocating for, the permanent annexation of parts or all of the occupied territory.

International Law and Direction: The state has refused to accept the application of international law, including the laws of occupation, to the territory and/or is failing to comply with the direction of the international community respecting the present and future status of the territory.”⁶¹

More recently in October 2020, Michael Lynk, definitively called on the international community to “counter all measures on the ground that amount to de facto annexation, which Israel advances in the plain sight of the international community, and which lead to serious breaches of the human rights of Palestinians on a daily basis”.⁶²

Legal basis

Annexation is strictly prohibited under international law. Article 2(4) of the 1945 United Nations Charter enshrines the prohibition on the acquisition of territory by force, stating that,

⁶¹ A/73/45717, Situation of human rights in the Palestinian territories occupied since 1967 (22 October 2018) para.

31, available at: https://reliefweb.int/sites/reliefweb.int/files/resources/A_73_45717.pdf

⁶² A/75/532, Situation of human rights in the Palestinian territories occupied since 1967, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk (22 October 2020), para. 13, available at: <https://www.ohchr.org/Documents/Countries/PS/A_75_532_AUV.pdf>

“all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”⁶³ Principle 1 of the UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States, which is legally binding as customary international law, further states that, “no territorial acquisition resulting from the threat or use of force shall be recognised as legal.”⁶⁴ Annexation is also specifically prohibited during belligerent occupation.⁶⁵

The preambles to the 2005, 2006 and 2007 UN General Assembly resolutions on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, reiterated “opposition to settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and to any activities involving the confiscation of land, the disruption of the livelihood of protected persons and the de facto annexation of land”.⁶⁶ In the ‘Wall Advisory Opinion’, the International Court of Justice (ICJ) found that the “construction of the wall and its associated régime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation”.⁶⁷

Additionally, the Rome Statute of the International Criminal Court includes the act of annexation as comprising the crime of aggression. For example, “any annexation by the use of force of the territory of another State or part thereof” may amount to an act of aggression, for which there is individual criminal responsibility under Article 8 bis 2(a) of the Rome

⁶³ See Charter of the United Nations, 26 June 1945, 892 UNTS 119 (UN Charter) Article 2(4).

⁶⁴ UNGA Res. 2625 (XXV), 24 October 1970.

⁶⁵ Article 47, Fourth Geneva Convention (1949)

⁶⁶ UN General Assembly, Res. 60/106, 8 December 2005, preamble, voting record: 153-7-10-21; UN General Assembly, 68/118, 14 December 2006, preamble, voting record, 162-8-10-12; UN General Assembly, Res. 62/108,

17 December 2007, preamble, voting record, 165-7-5-15.

⁶⁷ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Reports 136, 121 <www.icj-cij.org/en/case/131> hereinafter Wall Advisory Opinion; In its written proceedings to the ICJ in the Wall Advisory Opinion, the Kingdom of Morocco urged, “In order to fully fulfil the

request of providing an advisory opinion, the Court should rule that there is *de facto* illegal annexation of the Palestinian territories located between the wall and the Green Line, it will have to clarify for the benefit of the General Assembly the legal consequences resulting from this situation”. Participation of the Kingdom of Morocco to

the procedure (written proceedings) before the International Court of Justice in the case: Legal consequences of the

construction of a wall in the occupied Palestinian Territory -Request for an advisory opinion, p. 6, available at: <https://www.icj-cij.org/public/files/case-related/131/1585.pdf>

Statute. The definition includes “the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations”.⁶⁸ The definition of annexation is quite broad and covers “any annexation”.

Notably the Working Group on the Crime of Aggression, for the Preparatory Commission for the ICC, has distinguished between annexation or incorporation, the latter referring to the signing of the law or decree, or what might be termed *de jure* annexation, which suggests that the term “any annexation” includes both *de facto* and *de jure* annexation as acts of incorporation of territory.⁶⁹

Establishing De Facto Annexation of the Occupied Palestinian Territory

In July 2020, Al-Haq published a comprehensive report outlining when occupied territory may be considered to be *de facto* annexed and concluded that the portion of the occupied Palestinian territory classed under the Oslo Accords as ‘Area C’ has already been *de facto* annexed. [The report](#), is the culmination of two years of research prepared by the IHL Clinic of the Kalshoven-Gieskes Forum on International Humanitarian Law, Leiden Law School, and developed by Al-Haq. The report establishes a set of ‘12 Guidelines’ as indicative factors of annexation. It bears emphasizing, that with the exception of Guideline 1 that none of the guidelines identified below is in itself essential for annexation to occur; nor are all of them cumulative. It is possible that in a given factual scenario some guidelines may be fulfilled with a higher degree of intensity (qualitative and/or quantitative) than in other contexts, yet both situations can be regarded as examples of annexation. Each Guideline has been applied to Area C, in order to determine if the criteria indicating annexation are fulfilled and to assess the extent to which Area C has been *de facto* annexed by Israel in whole or in part.

The report concludes that a) there is a strong argument for the *de facto* annexation of the area which comprises the settlements, the closed military zones, the seam zone and the

⁶⁸ Article 8 bis (1), *Rome Statute of the International Criminal Court*.

⁶⁹ PCNICC/2002/WGCA/L.1/Add.1, Preparatory Commission for the International Criminal Court, Historical review of developments relating to aggression (18 January 2002) 65, available at: <<https://www.legaltools.org/doc/19ee1a/pdf>>

expropriated state land and natural parks; and b) that Area C is *de facto* annexed by Israel in its entirety.

Recommendations

In light of the recent and ongoing attacks on the Palestinian people as a whole, Al-Haq urges Ireland to address the root causes of this systematic and widespread violence and colonial oppression, and:

- To fulfil its international responsibility of non-recognition of Israel's unlawful *de facto* annexation as legal. Given that the prohibition on annexation is a violation of jus cogens norms, it gives rise to erga omnes obligations on all States not to recognize the illegal situation, not to render aid or assistance in its maintenance, and to cooperate to bring the illegal situation to an end.
- Despite EU guidelines on labelling settlement-made products, the EU states, including Ireland, are still allowing such products to be imported, thus imposing little consequences for Israel's disregard of international law. It is therefore critical that Ireland take concrete and immediate steps to prohibit the import of settlement goods and services and progress without further delay, the Occupied Territories Bill.
- Ireland has a responsibility not to render aid or assistance in Israel's illegal activities. One such step would be for States to stop military aid to Israel and to adopt effective concrete measures including sanctions and countermeasures to ensure annexation is deterred.
- In particular, given that the EU is Israel's largest trade partner, with nearly a third of Israel's exports going to the bloc, the EU has unique leverage and should review and cease existing trade and cooperation agreements with Israel, including the Horizon 2021-2026, EU-Israel Association Agreement, the EU-Israel Euro-Mediterranean Aviation Agreement, and the EU should immediately halt the conclusion of the Euro Asia Interconnector until Israel complies with international law.
- For Ireland to support the annual update of the UN Database on Businesses Active in the Settlements, including through budgetary contributions to ensure long-term viability of the Database, and ensure the findings of the Database are adhered to in its public procurement activities.

- For Ireland to fully support the investigation of the Prosecutor of the International Criminal Court (ICC) into the Situation in Palestine. In addition, where possible, for Ireland to increase its financial contributions to the ICC to ensure the viability of the Court, and to protect when necessary, the Prosecutor, judges, personnel of the ICC, victims, victims lawyers, and NGO's who may be threatened in relation to their work on the Situation in Palestine.
- For Ireland to use its seat on the Security Council and its forthcoming Presidency of the UN Security Council to address the root causes of the prolonged occupation of Palestine, including de facto annexation and apartheid. We call on Ireland to actively use this opportunity to take concrete measures to bring the prolonged occupation, including the fourteen year siege of Gaza and colonisation to an end, in the interests of maintaining international peace and security.

Sadaka

Submission to the Oireachtas Joint Committee on Foreign Affairs and Defence by Sadaka-the Ireland Palestine Alliance, 11 May 2021.

1. Introduction and Background.

Israel occupied the Palestinian territory, i.e., the West Bank, including East Jerusalem, and the Gaza Strip, in addition to the Syrian Golan in 1967. The territory was placed under the effective control and administrative governing authority of the Israeli military during an international armed conflict and is therefore under a belligerent occupation as defined by the Hague Regulations of 1907.

Israel immediately commenced its civilian settlement programme in these occupied territories, disguised as military camps – acts in violation of the Hague Regulations and Fourth Geneva Convention. The Fourth Geneva Convention specifically prohibits an Occupying Power from transferring in its civilian population to colonise occupied territory, as amounting to grave breaches and war crimes.



Since 1967 more than 250 settlements have been established and incentivised throughout the West Bank including East Jerusalem and are now inhabited by more than 650,000 settlers.

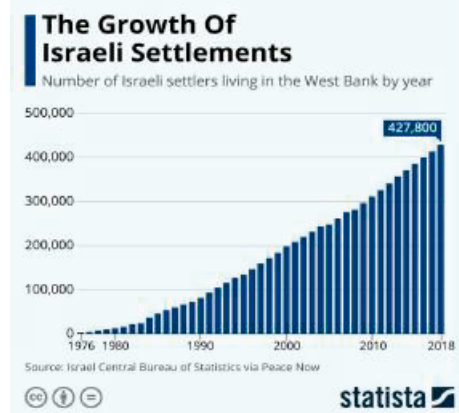
The underlying intention of this settler-colonial enterprise is to embed a system of subjugation, domination and exploitation over the occupied Palestinian territory and its civilian population. This is defined as colonisation in Article 1 of the UN Declaration on the Granting of Independence to Colonial Countries and Peoples, and denies the collective rights of the Palestinian people as a whole to self-determination.



In 1967 Israel formally extended its law and administration to East Jerusalem and 28 surrounding West Bank Palestinian villages and in 1980 declared all of Jerusalem as its undivided capital under its Basic Law. An internationally binding UN Security Council 478 (1980) declared these actions null and void and called on States to not recognise the amendment to the Basic Law as constituting a violation of international law.

Over the years Israel has issued numerous declarations of permanent sovereignty over East Jerusalem and implemented a policy of settler implantation and demographic gerrymandering. It has expanded the size of the city, expropriating Palestinian

lands, expanding the settler population, forcibly transferring Palestinians from their own capital city, and encircling the city to cut off Palestinians in the city from their natural hinterland with all its attendant negative economic, social and cultural consequences.



Palestinians in East Jerusalem have been designated by Israel as so-called “permanent residents”. They are subject to an onerous policy where they must continuously prove that their centre of life is in East Jerusalem. Failure to prove centre of life, results in residency revocations. In this way, since 1967, Israel has revoked the residencies of over 14,500 Palestinians in East Jerusalem, forcing their transfer and denying their right of return. Meanwhile Israel has expedited the illegal transfer in of more than 250,000 Israeli settlers in more than 15

settlements in occupied East Jerusalem.

The policies and practices of dispossession of Palestinians in their own city continues in 2021 with ongoing and accelerated expulsions, displacement, demolitions and settler implantation in neighbourhoods such as Silwan and Sheikh Jarrah.

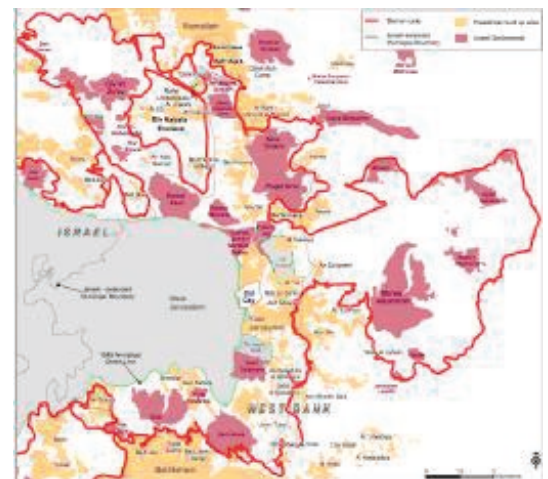
The homes of about one-third of East Jerusalem’s Palestinian population remain under threat of demolition. In 2020, during the pandemic, Israel demolished 73 Palestinian houses in East Jerusalem.

The annexation wall constructed by Israel around East Jerusalem absorbed more West Bank territory into Jerusalem and placed about 150,000 Palestinians outside the wall and vulnerable to further erosion of their rights as residents of the city. These “enclave” neighbourhoods, and Palestinian neighbourhoods in East Jerusalem, have been essentially abandoned by the Israeli authorities. The annexation wall was designed for demographic reasons, namely to reduce the city’s Palestinian presence. A survey conducted by BADIL in 2006, found that 21.4 percent of all Palestinian reported to have at least one member who was separated from relatives, whereas 17.3 percent of all Palestinians in East Jerusalem who changed their residence did so due to the construction of the Annexation Wall.⁷⁰

⁷⁰ BADIL, “On the Main Findings of the Impact of the Wall and its Associated Regime on the Forced Displacement of the Palestinians in Jerusalem,” June 2006, available at: <http://www.badil.org/en/publication/press-releases/20-2006/1643-press-422-06.html>.

Israel's laws apply throughout East Jerusalem and systematically discriminate against Palestinians in terms of planning, provision of services, policing and economic development. For example, Palestinians may only build on 13 percent of the land in East Jerusalem, most of which is already built up and overcrowded. In comparison, 35 percent of Palestinian land has been expropriated for unlawful settlement construction and expansion. The policy is one of official neglect.

In total, there are now more than 650,000 settlers in the West Bank and East Jerusalem in more than 250 settlements. The settlements and their infrastructure place enormous restrictions on Palestinians because of walls, barriers, fences and checkpoints. Settler violence against Palestinians and their property is a constant as they struggle to maintain access to and ownership of their property.



East Jerusalem 2007

Israeli settlers in West Bank settlements live under Israeli law.

Settler roads have been built to facilitate travel from the settlements into Israel and to disrupt Palestinian travel and connectivity. They have specially-constructed settler-only infrastructure linking them to Israel which are not available to most Palestinians. For example Road 4730 in Jerusalem (see image below) is divided by an eight meter high wall in the centre. Palestinians who are denied entry to Jerusalem are forced to travel on one side, while the other side serves the access of Israeli settlers from the West Bank to Jerusalem.



In contrast, Palestinians in the West Bank live under Israeli military law.

The economy of the settlements is intrinsically linked to that of Israel while Palestinian natural resources such as water, land, minerals, quarries, are exploited and pillaged by Israeli and international enterprises.

Land in the West Bank continues to be appropriated. These seizures are excused as military firing zones, national parks, archaeological sites, and state land. In 2020, the Israeli Occupying Forces further confiscated 20,030 dunums (4,949 acres) of Palestinian land.

Israel's actions in the West Bank and East Jerusalem are part of a long-term strategy to establish irreversible facts on the ground and to obstruct Palestinian self-determination. Since 1967 Israel has further entrenched its footprint throughout the territory by way of roads, rail lines, electrical, water and communications systems all of which are integrated into Israel's domestic system.

Israel having appropriated and pillaged Palestine's water wells and aquifers, systematically prohibits further Palestinian development of water infrastructure under Military Order 158. Meanwhile Israel has placed the entire Palestinian water system under the control of Mekorot, Israel's national water utility. As a result of Israel's discriminatory policies and practices, Palestinians have access to much less water for consumption and agriculture than Israeli settlers and pay considerably more for each litre than settlers who enjoy unlimited supplies of water for consumption, recreation and agriculture, with settlers consuming over six times the amount of water used by the Palestinian population.

Meanwhile, in Gaza, two million Palestinians live under a permanent and debilitating blockade implemented by Israel. In addition 5.6 million Palestinians, descendants of those who lost their homes, lands and villages in 1948 and subsequently, now live as refugees and exiles in neighbouring countries and further afield, are denied their inalienable right of return to their homelands and right of self-determination.

2. Historical Development: East Jerusalem and the Jordan Valley

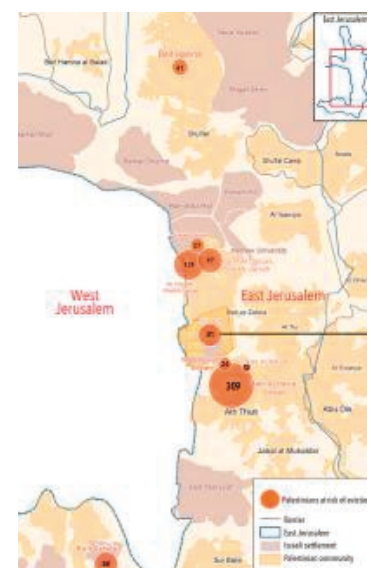
Since 1948, Israel has pursued a settler-colonial enterprise, forcibly transferring Palestinians from their land and replacing them with Jewish-Israeli settlers. Since 1967, Israel has continued its settler colonial enterprise and expansionist policies and practices in the occupied Palestinian territory. The goal is to take as much Palestinian lands with as few Palestinians on them as possible, while confining Palestinians to Bantustan-style fragments of territory.

Israel's laws, policies and practices are designed to facilitate Palestinian removal and land appropriation amount to an apartheid regime that cements segregation, racial superiority of Jewish-Israeli nationals, while suppressing indigenous Palestinian protest.

Annexation is one feature of this apartheid process which can be clearly seen in the case studies of Jerusalem and the Jordan Valley.

Israel's establishment is predicated on the removal of Palestinians and the assertion of uninterrupted Israeli spatial and temporal presence throughout historic Palestine. It achieved its initial mass removal of Palestinians in the course of the 1948 war between December 1947 and March 1949 when it removed and forcibly exiled some 700,000 native Palestinians.

Upon its establishment in 1948, it continued this process in West Jerusalem where it forcibly removed 80,000 Palestinians. The 1967 war offered a significant opportunity for Israel to continue its expansionist project under the framework of *sui generis*



occupation law and the myths of temporality and military necessity. Immediately following the end of the 1967 war, Israel annexed East Jerusalem despite international opposition. It expanded the municipal boundaries of **Jerusalem** by roughly ten times and annexed some 17,000 acres of West Bank lands.

Rather than reverse these takings, the Oslo Accords legitimated them as it recognised 54 percent of the settlements as Jewish neighbourhoods. Since 1993 Israel has continued to use a mix of martial and administrative law to pursue its territorial ambitions in East Jerusalem.

This sees the removal of Palestinians through policies which include tenuous residency rights, state lands/absentee lands appropriation, the route of the annexation wall, the development of nature reserves, impunity for settler violence, and discriminatory planning, home demolitions and expulsions, as well as settlement building.

Similarly, Israel's leadership has historically marked **the Jordan Valley** as being of military, economic, and political significance. In 1968, Yigal Allon, then Israeli Labour Minister included it within the scope of Israel's "defensible borders" and thus within the scope of the State's permanent borders.

Numerous Israeli leaders from Yitzhak Rabin to Benjamin Netanyahu have reiterated that the Jordan Valley (the eastern-most border alongside Jordan and 30 percent of the West Bank territory) is part of its "security border" and Israel will not withdraw from it under any circumstances.

Israel declared 60 percent of the Jordan Valley as closed military zones in 1967, built its first settlements there in the early 1970s, and then consolidated its control when it included 90 percent of the Jordan Valley as Area C-under full Israeli civil and military control-under the Oslo II framework.

Since 1967, Israel has reduced the Palestinian population in the Jordan Valley from 320,000 to 60,000; limits Palestinian access to less than one percent of Area C; and has settled approximately 11,000 settlers across 37 settlements in the Jordan Valley. The territory is a significant source of water underscoring Israel's intransigent refusal to withdraw from it.

In 2001, then Prime Minister Ariel Sharon, revealed Israel's permanent ambitions, when he was asked whether Israel would withdraw from the Jordan Valley. He replied, "Is it possible today to concede control of the hill aquifer, which supplies a third of our water? Is it possible to cede the buffer zone in the Jordan Rift Valley? You know, it's not by accident that the settlements are located where they are."

3. International Law and the Settlements.

As outlined above the West Bank and East Jerusalem were occupied by Israel in 1967 in the course of an international armed conflict. The UN has consistently resolved that Israeli settlements in the occupied territories are illegal. In particular, UN Security Council resolution 2334 (2016) condemns "the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem", as having "no legal validity" and constituting 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”.

Occupation is intended to be a temporary short-term situation of a few years however Israel’s occupation of the Palestinian territory has continued for over half a century with Israel now annexing large swathes of Palestinian territory. Given Israel’s “occu-annexation” of the West Bank including East Jerusalem, UN Special Rapporteur Michael Lynk has warned that Israel’s occupation of Palestinian territory has crossed the red line into illegality.

International law is clear on the rights of people living under occupation who retain their collective right to self-determination and permanent sovereignty over their lands. The fundamental statement of the international legal order, the Charter of the United Nations, prohibits the acquisition of territory from threat or use of force. This principle is repeated in the Friendly Relations Declaration (1970), adopted unanimously by the UN General Assembly, which declares that “the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force”. In addition, Article 47 of the Fourth Geneva Convention, specifically prohibits the Occupying Power from annexing occupied territory.

Under the Fourth Geneva Convention and the Rome Statute of the International Criminal Court those living under occupation are protected persons. They may not be removed from their homes or otherwise displaced, have their lands or other resources confiscated, or have their basic rights removed.



The Occupying Power may not transfer, or incentivise the transfer, of its population into occupied territory or remove or use the resources of that territory for its own advantage, and it may not apply its own laws in those territories.

Israel is in breach of each of these laws.

Central to Israel’s annexation plan has been the transfer of more than 650,000 settlers into Palestinian territory. This unlawful transfer amounts to a war crime under article 8(2)(a)(vii) of the Rome Statute and prosecutable at the International Criminal Court (ICC) Notably, in December 2019, the Prosecutor of the ICC concluded her preliminary examination into the Situation in Palestine finding a reasonable basis to believe that war

crimes have been committed in the occupied Palestinian territory including the transfer in of Israeli settlers into the West Bank.

Annexation of territory taken in war, or under threat of war, is illegal. This is a fundamental principle and has the status of a peremptory norm in international law. It is a cornerstone of international peace and security.

Israel has breached the law of occupation and the absolute prohibition on annexation as well as its obligations to only act in the best interests of the protected persons - the Palestinian population – under its effective control. For example, its failure to vaccinate, or facilitate the vaccination of, the vast majority of Palestinians, is one of the most recent examples of a succession of grave breaches of international law.

The international community, through numerous UNSC resolutions (most recently 2334 in 2016), legal opinions such as from the ICJ in 2004 on the annexation wall, and formal statements such as those by Ireland, at the UN and other fora, has indicated a complete rejection of Israel's annexation of occupied Palestinian territory.

Ireland, as a member of the UNSC, has a duty to ensure that breaches of UNSC resolutions are responded to in a forthright way and with actual consequences for the state in breach of them.

Failure to do so enables and incentivises further breaches.

4. Q: When is annexation not annexation? A: Never.

Israel has annexed *de jure* East Jerusalem and the Syrian Golan and claims permanent sovereignty over this territory which it has forcibly acquired.

To be clear, *de jure* annexation does not grant legality to that action. It is a statement that a territory has been annexed and regarded as “lawfully incorporated” into the territory of the Annexing Power. However it has no legal status beyond that and remains illegal under international law. Russia’s “annexation” of Crimea is another example of this. This particular annexation is also a perfect example of the way in which such action can draw countermeasures from the international community (including Ireland) when the political will exists to do so.

De facto annexation is widespread across the West Bank and has been occurring for more than 50 years. The UN Special Rapporteur on the situation of human rights in the occupied Palestinian territory, Prof Michael Lynk, has stated:

“No country creates civilian settlements in occupied territory unless it has annexationist designs in mind, which is why the international community has designated the practice of settler-implantation as a war crime. The political purpose of the Israeli settlement enterprise

has always been to establish sovereign facts-on-the-ground and to obstruct Palestinian self-determination.”⁷¹

The International Court of Justice (ICJ) pointed out in 2004 that the continued construction by Israel of its wall on occupied Palestinian territory “would be tantamount to *de facto* annexation”. The construction of the annexation wall continues to this day.

There is no distinction in international law between *de jure* and *de facto* annexation. Both forms of annexation are equally unlawful. The illegality is in the annexation rather than when (or if) the Occupying Power declares the territory to be annexed.

Herein lies one of the international community’s greatest failures to defend the rights of Palestinians, including their right to self-determination and permanent sovereignty over their lands and natural resources.

As well as annexing *de jure* East Jerusalem and Golan, Israel has implemented a series of incremental (and often deliberately oblique) demographic, institutional, legislative and political actions in the West Bank to establish a future claim of sovereignty over territory acquired in war but without a formal declaration of annexation.

Given the weakness of the international community in responding to decades of breaches of international law, Israel has a strong incentive to persist in the illegal acquisition of Palestinian territory and to displace thousands of the natural residents of that territory in doing so.

It continues a decades-long project of creating facts on the ground to support a claim of sovereignty while postponing a formal declaration of annexation – only because of the stated intentions of the international community to respond should it do so.

In fact, by stopping short of *de jure* annexation, not only has Israel been successful in preventing measures, including sanctions, from the international community, it has succeeded in creating normalised relations with three neighbouring Arab states (The United Arab Emirates, Bahrain and Morocco) as well as Sudan. In effect, Israel has been rewarded for not going down the route of *de jure* annexation.

So, the international community stands by, equipped with an array of measures it will enact should Israel declare *de jure* annexation. Meanwhile *de facto* annexation, the exact same thing—in effect and in international law terms—continues without consequence.

The longer this subterfuge is tolerated the more difficult it becomes to achieve justice, equality and self-determination for the Palestinian people, while any possibility of a two-state solution, with a contiguous Palestinian state beside Israel, so beloved of the international community as a desired outcome, disappears from view.

The absolute prohibition of annexation as a fundamental tenet of peace and security among nations is gravely undermined and becomes both incoherent and ineffective unless it is

⁷¹ Michael Lynk, *Situation of human rights in the Palestinian territories occupied since 1967* (22 October 2018) A/73/45717/, para. 45

applied to those incremental yet undeniable and quantifiable measures taken by Israel and in breach of international law.

The facts on the ground are clear. Israel has no intention of reversing its colonial-style settlement project in the Palestinian territory of East Jerusalem and the West Bank.

Annexation has already happened.

The pretence that all of this is reversible, absent a statement of *de jure* annexation by Israel, is to deny the reality for the hundreds of thousands of Palestinians whose homes, communities, livelihoods and land have been destroyed by Israel's *de facto* annexation.

For example, if population-transfer, settlement-building and expulsions are a violation of international law and amount to war crimes and crimes against humanity, what difference would a formal declaration of annexation by Israel actually make? Legally speaking, since these permanent actions and extensions of Israel's sovereignty *de facto* into the occupied Palestinian territory are already illegal, a formal declaration of annexation would change nothing.

The focus by the international community on a *de jure* announcement of annexation is a political and diplomatic decision which gives maximum space to Israel to pursue its annexationist agenda while offering the perfect excuse to do nothing to protect the Palestinian people.

A *de jure* annexation doesn't break more international law or make these breaches worse. The law is already broken by a *de facto* extension of sovereignty in precisely the same way as it would be after a *de jure* annexation.

Our excuses for a failure to act are, frankly, threadbare.

We are wilfully blind to reality. We take the easy way out rather than defend the vulnerable. We make statements which debase language by their powerlessness and lack of action and give Israel the signal to continue because there is no price to pay. By our failure to act we send the strongest possible message that it can continue to act with impunity.

To repeat: there is no distinction in law between types of annexation of territory taken in war.

Annexation should be judged by the actions on the ground of the annexing state coupled with the State's intention to annex and not by that State's deliberate pretence that permanently constructed settlements are somehow reversible in the context of a peace agreement. It is not; and there is no intention to reverse it.

5. Evidence of *de facto* annexation.

Why is it correct to say that significant parts of the West Bank have been annexed as well as East Jerusalem and Syrian Golan?

- a) Israel is in effective control of all of the West Bank, including areas A, B and C in Oslo Accords. This territory was acquired by force from another state.

- b) Israel has taken numerous actions which are consistent with permanency and with a claim of sovereignty over the area including demographic changes and population transfer; the application of its laws to the occupied territory; a separate legal system and institutions for Israeli settlers; granting citizenship rights to settlers including enabling participation in civic life such as voting and parliamentary representation; building bypass roads and railway lines connecting settlements to Israel which are inaccessible to Palestinians; unequal access to basic services; planning and zoning policies which discriminate against Palestinians; and the exploitation of Palestinian lands and natural resources in the interest of the settlements.

Article 7 of the 2018 Nation State Law provides that “the State [Israel] views the development of Jewish settlement as a national value”.

- c) There have been numerous statements of intent by Israel's political leaders, including the Prime Minister and other Ministers, that the occupied territory has already been or will be annexed in whole or in part. "We're here to stay, forever", as Mr. Netanyahu has said in regard to the occupied territories.⁷²
- d). Israel has failed to comply with the demands of the international community concerning the occupied territories. For example, UNSC resolution 2334 has reaffirmed that "the establishment by Israel of settlements has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of a two-State solution and a just, lasting and comprehensive peace".

Israel has displayed a pattern of behaviour and actions which are consistent with annexation. These actions are not consistent with any intention to respect the right to self-determination of the Palestinian people; they are clearly not temporary, nor are they taken in good faith. There is no conclusion that can be drawn other than that the settlements are clearly intended to be a core component of the Israeli state.



⁷² Haaretz, August 29, 2017.

Israel has not therefore decided to defer annexation of the West Bank. Annexation has already happened.

Even in the absence of a formal declaration, Israel is in violation of the international prohibition on annexation. Regardless of the Occupying Power's formal declarations of sovereignty *de jure* or the assertion of sovereignty *de facto*, the laws of occupation continue in force in the occupied Palestinian territory and continue to bind Israel, the Occupying Power.

The international community must acknowledge this reality and respond accordingly.

5. Conclusions and recommendations.

Annexation is a crime in international law. Uniquely in modern history, Israel has faced no sanction for its annexation of Palestinian (and Syrian) territory. Even Israel's *de jure* annexation of occupied territory in East Jerusalem and the Syrian Golan elicits no meaningful response from the international community.

The evidence for annexation having taken place in large parts of the West Bank is also clear and incontrovertible.

In addition, recent reports by the UN Committee on the Elimination of Racial Discrimination (CERD, Jan 2020), Human Rights Watch and Israeli NGO's B'Tselem and Yesh Din, that Israel has created a system of institutionalised racial discrimination (apartheid) in the occupied territories as well as in Israel, are significant, as is the investigation by the International Criminal Court into war crimes which may have been committed by Israel and Hamas. Further reports identifying a regime of apartheid will appear in the coming months.

As Hagai El Ad, Director of Israeli Human Rights organisation, B'Tselem, put it: "There is nowhere between the river and the sea where a Jewish Israeli and a Palestinian are equal in rights".

In response to Russia's annexation of Crimea the EU introduced a series of economic sanctions on Russia which included restrictions on trade and investment and import and export bans on goods, services and technologies.

Israel's actions and its failure to respond to international demands to cease its annexationist project threatens to do serious damage to the post-war international legal order.

In the context of annexation and discrimination doing nothing is no longer an option.

1. As a member of the UNSC Ireland should seek to implement a comprehensive and meaningful response to Israel's *de jure* annexation of Palestinian and Syrian territory captured in war.
-
- Ireland, and the international community, have the tools to respond to the crimes being committed by Israel in the occupied Palestinian territory i.e. the West Bank including East Jerusalem and the Gaza Strip. In the absence of meaningful measures in response to these crimes, our condemnations are hollow, and quite simply, display a lack of respect for those people who are unprotected and who bear the brunt of Israel's occupation of their territory.

2. The Government should sponsor a motion in both houses of the Oireachtas declaring that annexation *de facto* has happened in much of the West Bank.
3. In recognition of its legal duties under international law, which are clearly laid out in UNSC resolution 2334 and in the 2004 ICJ judgement on Israel's annexation wall built on Palestinian territory, Ireland must demand similar action from the EU and the international community.
4. In view of Ireland's serious concern about the situation in Palestine and in order to exploit fully our membership of the UNSC Ireland should now introduce and spearhead an urgent debate at EU level to address the deteriorating situation in the occupied Palestinian territory including East Jerusalem with a view to endorsing a new initiative which would persuade Israel to discontinue its current strategy of taking Palestinian homes and land and establishing illegal settlements.

In conclusion, given this Committee's urgent concerns for the people of Sheikh Jarrah, Silwan, and other neighbourhoods under threat in East Jerusalem, who are protected persons under international law, it should demand that Government takes immediate measures against Israel, the Occupying Power in East Jerusalem and which it has annexed *de jure*, and the Jordan Valley which it has annexed *de facto* to defend the fundamental rights of its Palestinian residents.

Words of condemnation are no longer enough.

APPENDIX B

Annexation of Palestine: Motion

“That Dáil Éireann:

- notes that recent weeks have seen the most serious escalation of violence in Israel and the occupied Palestinian territory (i.e. the West Bank, including East Jerusalem and the Gaza Strip) since 2014, with a tragic impact on innocent civilians and loss of life, including the deaths of at least 65 children;
- condemns the violent acts of Hamas and other militant groups, including the firing of rockets and incendiary devices from Gaza into Israel, the disproportionate and indefensible response of Israel bombing civilians and essential infrastructure in the Gaza Strip, the loss of life in both Israel and Palestine, and recalls the obligations on all parties under international humanitarian law and international human rights law to protect civilians and children while providing humanitarian supports to help rebuild Gaza;
- welcomes the announcement of the ceasefire of 21st May, and calls on all parties to support its implementation;
- emphasises the importance of immediate and unimpeded access for vital humanitarian assistance for those in need;
- affirms that a just and lasting peace requires addressing the poverty, inequality, injustice and underlying root causes of these cycles of violence, and meaningful accountability for breaches of international law; and
- recognises that the forced displacement of the protected Palestinian population and the presence and expansion of Israeli settlements, in the West Bank, including East Jerusalem, undermines the prospects of peace, not just in recent weeks but over decades, and represent flagrant violations of international law;

further notes that:

- the annexation of territory, whether *de jure* or *de facto*, is a violation of the fundamental principle of international law enshrined in Article 2(4) of the United Nations (UN) Charter which states ‘All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations’, and UN Security Council (UNSC) Resolution 2334 (December 2016) on Israel underscores ‘the inadmissibility of the acquisition of territory by force’, echoing the original phrase from UNSC Resolution 242 in November 1967;
- the Geneva Conventions of 1949, and their protocols, bind Ireland as a High Contracting Party, and provide that parties to the Conventions must respect and ensure respect for the Conventions;
- the transfer by an Occupying Power of parts of its own civilian population into the territory it occupies is prohibited under the Fourth Geneva Convention;
- in its 2004 advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the International Court of Justice held that the construction of the wall and its associated regime ‘create a *“fait accompli”* on the

ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to *de facto* annexation.’;

- Israel has altered and purports to alter the character and status of Jerusalem, by annexing the territory *de jure*, and has extended its ‘law, jurisdiction and administration’ to the occupied Syrian Golan and the UNSC has condemned both steps as having ‘no legal validity’ and constitute ‘a flagrant violation of the Fourth Geneva Convention’ in UNSC Resolutions 476 and 478 (Jerusalem) and 497 (Syrian Golan);
- there are now over 600,000 Israeli settlers living in illegal settlements established in the West Bank, including East Jerusalem, and the Israeli Government continues the expansion of these settlements;
- the UN Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, in his report to the UN General Assembly 73rd Session on 22nd October, 2018, concluded ‘Statements of political intent, together with Israel’s colonizing facts on the ground, its legislative activity, and its refusal to adhere to its solemn obligations under international law or to follow the direction of the international community with respect to its 51-year-old occupation, have established the probative evidence that Israel has effectively annexed a significant part of the West Bank and is treating this territory as its own’; and
- the Minister for Foreign Affairs stated on 23rd April, 2020, regarding developments in Israel, that ‘Annexation of territory by force is prohibited under international law, including the UN Charter, whenever and wherever it occurs, in Europe’s neighbourhood or globally. This is a fundamental principle in the relations of states and the rule of law in the modern world. No one state can set it aside at will’;

recalls that Ireland distinguishes between the territory of the State of Israel and the territories occupied since 1967, including illegal Israeli settlements, land appropriated for future settlements, and territory incorporated by the wall and its associated regime;

condemns the recent and ongoing forced displacement of Palestinian communities in the occupied Palestinian territory;

further condemns the annexation by Israel of East Jerusalem and its settlement activity there and in other areas of the West Bank, as serious breaches of international law and as major obstacles to peace that undermine the viability of the two-State solution;

declares that Israel’s actions amount to unlawful *de facto* annexation of that territory; and calls on the Government:

- not to recognise as lawful any situation created by any such serious breach of international law, nor to imply such recognition, and to not render aid or assistance to the responsible state in maintaining the situation so created and to cooperate to bring the serious breach to an end;
- to urge Israel to bring to an end all settlement activity and not to impede the collective right to self-determination of the Palestinian people as a whole; and
- to focus its efforts on bringing an end to settlement activity and to regularly update Dáil Éireann.”

APPENDIX C

Orders of Reference, Scope and Context of Committees

Scope and context of activities of Select Committees (DSO 94 and SSO 70)

DSO 94

- (1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.
- (2) It shall be an instruction to each Select Committee that—
 - (a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
 - (b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;
 - (c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)⁷³; and
 - (d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (i) a member of the Government or a Minister of State, or
 - (ii) the principal office-holder of a State body within the responsibility of a Government Department or
 - (iii) the principal office-holder of a non-State body which is partly funded by the State, Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

⁷³ Retained pending review of the Joint Committee on Public Petitions

- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Cathaoirleach of one of the Select Committees concerned, waives this instruction.

SSO 70

- (1) The Seanad may appoint a Select Committee to consider any Bill or matter and to report its opinion for the information and assistance of the Seanad and, in the case of a Bill, whether or not it has amended the Bill. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum thereof, and may appoint a date upon which the Committee shall report back to the Seanad.
- (2) It shall be an instruction to each Select Committee that—
- (a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;
 - (b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Seanad;
 - (c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 108 (1)⁷⁴; and
 - (d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (i) a member of the Government or a Minister of State, or
 - (ii) the principal office-holder of a State body within the responsibility of a Government Department, or

⁷⁴ Retained pending review of the Joint Committee on Public Petitions

- (iii) the principal office-holder of a non-State body which is partly funded by the State, Provided that the Committee may appeal any such request made to the Cathaoirleach, whose decision shall be final.

Functions of Departmental Select Committees (DSO 95 and SSO 71)

DSO 95

- (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—
 - (a) legislation, policy, governance, expenditure and administration of—
 - (i) a Government Department, and
 - (ii) State bodies within the responsibility of such Department, and
 - (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.
- (2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—
 - (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
 - (b) shall be referred to the Committee by order of the Dáil.
- (3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—
 - (a) for the accountability of the relevant Minister or Minister of State, and
 - (b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.
- (4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—
 - (a) consents to such consideration, or

- (b) has reported on such accounts or reports.
- (5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—
 - (a) the Committee Stage of a Bill,
 - (b) Estimates for Public Services, or
 - (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.
- (6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.
- (7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Cathaoirleach of the Joint Committee
- (8) Where a Select Committee proposes to consider—
 - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
 - (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

- (iii) at the invitation of the Committee, other members of the European Parliament.
- (9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—
 - (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or 19 summer recess periods) of the report being laid before either or both Houses of the Oireachtas.⁷⁵

SSO 71

- (1) The Seanad may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Seanad on any matter relating to—
 - (a) legislation, policy, governance, expenditure and administration of-
 - (i) a Government Department, and
 - (ii) State bodies within the responsibility of such Department, and
 - (b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.
- (2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which –
 - (a) stand referred to the Committee by virtue of these Standing Orders or statute law, or
 - (b) shall be referred to the Committee by order of the Seanad.

⁷⁵ Retained pending review of the Joint Committee on Public Petitions.

- (3) The principal purpose of Committee consideration of matters of policy, governance expenditure and administration under paragraph (1) shall be—
 - (a) for the accountability of the relevant Minister or Minister of State, and
 - (b) to assess the performance of the relevant Government Department or a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.
- (4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—
 - (a) consents to such consideration, or
 - (b) has reported on such accounts or reports.
- (5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Dáil Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Seanad: provided that the Joint Committee shall not consider—
 - (a) the Committee Stage of a Bill,
 - (b) Estimates for Public Services, or
 - (c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.
- (6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.
- (7) The Chairman of a Joint Committee appointed pursuant to this Standing Order shall be a member of Dáil Éireann.
- (8) Where a Select Committee proposes to consider—
 - (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 116, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
 - (d) matters listed for consideration on the agenda for meetings of the relevant EC Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.
- (9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—
- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
 - (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 113 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.⁷⁶

Powers of Select Committees (DSO 96 and SSO 72)

DSO 96

Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

⁷⁶ Retained pending review of the Joint Committee on Public Petitions.

- (1) power to invite and receive oral and written evidence and to print and publish from time to time—
 - (a) minutes of such evidence as was heard in public, and
 - (b) such evidence in writing as the Committee thinks fit;
- (2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;
- (3) power to draft recommendations for legislative change and for new legislation;
- (4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—
 - (a) require any Government Department or other instrument-making authority concerned to—
 - (i) submit a memorandum to the Select Committee explaining the statutory instrument, or
 - (ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil, and
 - (b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;
- (5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—
 - (a) policy, or
 - (b) proposed primary or secondary legislation (prior to such legislation being published), for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

- (6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;
- (7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;
- (8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;
- (9) subject to any constraints otherwise prescribed by law, power to require that principal officeholders of a—
 - (a) State body within the responsibility of a Government Department or
 - (b) non-State body which is partly funded by the State, shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil; and
- (10) power to—
 - (a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and
 - (b) undertake travel; Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Cathaoirleach under Standing Order 120(4)(a).

SSO 72

Unless the Seanad shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

- (1) power to invite and receive oral and written evidence and to print and publish from time to time –
 - (a) minutes of such evidence as was heard in public, and

- (b) such evidence in writing as the Committee thinks fit;
- (2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Seanad;
- (3) power to draft recommendations for legislative change and for new legislation;
- (4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to –
 - (a) require any Government Department or other instrument making authority concerned to –
 - (i) submit a memorandum to the Select Committee explaining the statutory instrument, or
 - (ii) attend a meeting of the Select Committee to explain any such statutory instrument: provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Seanad, and
 - (b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;
- (5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss–
 - (a) policy, or
 - (b) proposed primary or secondary legislation (prior to such legislation being published), for which he or she is officially responsible: provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Seanad: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;
- (6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

- (7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;
- (8) power to require that a member of the Government or Minister of State who is officially responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 168;
- (9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a –
 - (a) State body within the responsibility of a Government Department, or
 - (b) non-State body which is partly funded by the State, shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Seanad; and
- (10) power to-
 - (a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and
 - (b) undertake travel; Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 107(4)(a).

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