



Department of the Taoiseach,  
Government Buildings,  
Merrion Street Upper,  
Dublin 2,  
D02 R583,  
Ireland.

17 September 2020

## **RE: Occupied Territories Bill and Effective Steps Against Annexation**

An Taoiseach, Micheál Martin TD,

I am writing to you in my capacity as General Director of Al-Haq, a Palestinian human rights organisations based in Ramallah, Palestine, and on behalf of Palestinian civil society, in reference to your newfound concerns regarding the legality and practicality of the Control of Economic Activity (Occupied Territories) Bill, voiced in Dáil Éireann.<sup>1</sup> We in Palestine, and those who represent Palestinian civil society throughout the world, deeply regret this newfound position and the Bill's exclusion from the recent Programme for Government, and wish to reassure you that there is no legal barrier to the full implementation of the Bill, as we previously communicated to you and members of your party in letters dated 5 June 2020.<sup>2</sup>

As we noted in these letters, Fianna Fáil has long been a leading voice in championing the rights of the Palestinian people, who have lived under 53 years of continuous occupation and domination, and are moreover subjected to an institutionalised regime of racial domination and oppression, amounting to the crime of apartheid.<sup>3</sup> Indeed, we look toward Ireland, and its efforts in the pursuit of international peace, justice, and accountability as inspirational: the opposition of apartheid in South Africa;<sup>4</sup> the introduction of the Nuclear Non-Proliferation Treaty;<sup>5</sup> your unbroken commitment to peacekeeping, including in southern Lebanon

<sup>1</sup> See Dáil Debates (21 July 2020), speeches 229 and 231, available at:

<https://www.oireachtas.ie/en/debates/debate/dail/2020-07-21/7/?highlight%5B0%5D=palestine&highlight%5B1%5D=palestine&highlight%5B2%5D=palestine#s10>;

Irish Times, 'Taoiseach insists Occupied Territories Bill breaches EU law' (21 July 2020), available at:

<https://www.irishtimes.com/news/politics/taoiseach-insists-occupied-territories-bill-breaches-eu-law-1.4310242>;

Irish Examiner, 'Taoiseach says it is not legally possible to implement Occupied Territories Bill' (21 July 2020), available at: <https://www.irishexaminer.com/news/arid-40019615.html>.

<sup>2</sup> See Al-Haq, Al-Haq Writes to Irish Political Parties Fine Gael, Fianna Fáil, and the Green Party, Urging Support for Occupied Territories Bill (6 June 2020), available at: <http://www.alhaq.org/advocacy/16946.html>.

<sup>3</sup> On apartheid, see Al-Haq, Palestinian, regional, and international groups submit report on Israeli apartheid to UN Committee on the Elimination of Racial Discrimination (12 November 2019), available at: <http://www.alhaq.org/advocacy/16183.html>.

<sup>4</sup> Embassy of Ireland, South Africa, South Africa & Irish Relations, available at:

<https://www.dfa.ie/irishembassy/south-africa/our-role/irish-relations/>; TheJournal.ie, 'This day 30 years ago the Dunnes Stores antiapartheid strike began' (19 July 2014), available at: <https://www.thejournal.ie/30-years-dunnes-stores-strike1579724-Jul2014/>.

<sup>5</sup> Permanent Mission of Ireland to the UN, Disarmament and Non-Proliferation, available at:

<https://www.dfa.ie/pm/un/newyork/peace-and-security/disarmament-and-nonproliferation/#:~:text=Ireland%20was%20part%20of%20a,and%20possession%20of%20nuclear%20weapo>



(UNIFIL) and the occupied Syrian Golan (UNDOF);<sup>6</sup> and of course your constant support for Palestine.<sup>7</sup>

Fianna Fáil, both in government and opposition, have shown themselves to be friends of Palestine, and we trust that this friendship will continue throughout your current term. In particular, we wish to call attention to your 2020 election manifesto, wherein your party committed to “Progress the Occupied Territories Bill” and “Continue to spearhead the campaign to seek the recognition of the state of Palestine by the Irish Government”.<sup>8</sup> Further, we recall that it was your party, in particular Mr Niall Collins TD, which took the important step of introducing the Bill to Dáil Éireann.<sup>9</sup>

The Occupied Territories Bill has represented, for Palestinians in Palestine and around the world, a beacon of hope and solidarity. In particular, the Bill’s progress is being watched by parliamentarians in States such as Chile, who aim to model their own legislation on its provisions.<sup>10</sup> Similarly, the Bill was lauded by Professor Michael Lynk in his capacity as the United Nations (UN) Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 in his recent report submitted to the UN Human Rights Council.<sup>11</sup>

As such, it is important to stress that rather than having no practical value, and falling short of a “game changer”, passing the Bill would send a clear message to those watching from abroad that effective action may be taken. Your government’s support for this Bill could very well usher in a new era for human rights-based accountability for Palestine on the international stage, and firmly position Ireland as a leader in this regard. The situation in Palestine would not have reached this stage had such action against commerce with illegal

---

ns.; Irish Times, ‘How Ireland sowed seeds for nuclear disarmament’ (14 April 2010), available at: <https://www.irishtimes.com/opinion/how-ireland-sowed-seeds-for-nuclear-disarmament-1.652042>.

<sup>6</sup> See throughout, the “Symposium Issue on Law and Peacekeeping” in Siobhán Mullaly and Fiona de Londras (eds) *The Irish Yearbook of International Law, Volume 13, 2018* (Hart Publishing, 2020); Irish Times, ‘The Irish Times view of Ireland’s peacekeeping work: a record to be proud of’ (10 January 2019), available at: <https://www.irishtimes.com/opinion/editorial/the-irish-times-view-on-ireland-s-peacekeeping-work-a-record-to-be-proud-of-1.3752737>.

<sup>7</sup> Foreign Affairs, ‘Why the Irish Support Palestine’ (23 June 2010), available at: <https://foreignpolicy.com/2010/06/23/why-the-irish-support-palestine-2/>.

<sup>8</sup> Fianna Fáil, *An Ireland for All, Éire do Chách: Manifesto 2020*, pg. 146, available at: <https://www.inmo.ie/tempDocs/Fianna%20Fail%20GE%202020.pdf>.

<sup>9</sup> Frances Black, July 2019 Update: Occupied Territories Bill (22 July 2019), available at: <https://www.francesblack.ie/single-post/OTBillJuly2019>.

<sup>10</sup> See Al-Haq, Al-Haq Welcomes Chilean Parliament Resolution Calling on the Government to Review Treaties with Israel (6 December 2018), available at: <http://www.alhaq.org/advocacy/6127.html>; Haaretz, ‘Not Just Ireland: Chilean Congress Calls for Boycott of Israeli Settlements’ (29 November 2018), available at: <https://www.haaretz.com/israel-news/premium-chilean-congress-follows-ireland-and-calls-for-boycott-of-israeli-settlements-1.6700267>.

<sup>11</sup> UN Human Rights Council, *Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967* (15 July 2020) UN Doc A/HRC/44/60, para 13, available at: [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A\\_HRC\\_44\\_60.pdf](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session44/Documents/A_HRC_44_60.pdf).



Israeli settlements been taken much earlier, however now Ireland has the opportunity to begin to right this wrong.<sup>12</sup>

As addressed in our previous letter, we once again wish to underscore that we see no legal barriers to the full implementation of the Bill, contrary to the advice given by the previous Attorney General.<sup>13</sup> We see no contradictions between the provisions of the Bill and *Bunreacht na hÉireann*,<sup>14</sup> and moreover note that no such similar contradiction exists between the Bill and principles of European Union (EU) law. This has been authoritatively set out by internationally eminent legal experts, including Professor James Crawford, Judge at the International Court of Justice, who noted that “A full ban [on products originating from illegal Israeli settlements], however, could only be based on EC Regulation 260/2009 and considerations of public policy, *which remain within the purview of the individual EC Member States: thus the decision to extend such a ban would need to be made by each Member individually*” (emphasis added).<sup>15</sup> Professor Crawford further noted that “There do not appear to be any EC laws which could be breached by a Member State taking the decision to ban the import of settlement produce on public policy grounds.”<sup>16</sup> This opinion is shared by Professor Takis Tridimas, a leading scholar on issues relating to EU law, based in King’s College London,<sup>17</sup> and by members of Irish civil society who have read the former Attorney General’s opinion.<sup>18</sup>

Thus, rather than being in contravention of Ireland’s legal obligations, the enactment of the Bill would bring Ireland into line with its obligations under the *Draft Articles on State Responsibility for Internationally Wrongful Acts*, which mandate the non-recognition of unlawful situations, such as Israel’s illegal settlement enterprise, its racially discriminatory regime over the Palestinian people as a whole, the closure of Gaza, the annexation of East Jerusalem, and the threatened *de jure* annexation of vast swaths of the West Bank. The *Draft Articles* further obligate States to refrain from contributing, directly or indirectly, towards the maintenance of such illegal situations and cooperating to bring them to an end.<sup>19</sup> The enactment of the Bill would thus, in effect rectify an ongoing breach of Ireland’s Third State obligations, and ensure that Irish consumers do not contribute towards the colonisation, apartheid and annexation of the Occupied Palestinian Territory.

<sup>12</sup> Irish Broad Left, ‘We Have a Moral and Legal Obligation to Pass the Occupied Territories Bill’ (15 June 2020), available at: <https://irishbroadleft.com/2020/06/15/we-have-a-moral-and-legal-obligation-to-pass-the-occupied-territories-bill/>.

<sup>13</sup> See Irish Independent, “Enforcing draft law on Israeli goods would be impractical,” says AG’ (4 June 2020), available at: <https://www.independent.ie/irish-news/politics/enforcing-draft-law-on-israeli-goods-would-be-impracticalsays-ag-39258885.html>.

<sup>14</sup> Pearce Clancy, ‘The Occupied Territories Bill and Unconstitutional Vagueness: A Red Herring’ (8 June 2020) *Irish Centre for Human Rights*, available at: <https://ichrgalway.wordpress.com/2020/06/08/the-occupied-territories-bill-and-unconstitutional-vagueness-a-red-herring/>.

<sup>15</sup> James Crawford, ‘Opinion: Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories’ (24 January 2012) para 138, available at: <https://www.tuc.org.uk/sites/default/files/tucfiles/LegalOpinionIsraeliSettlements.pdf>.

<sup>16</sup> *Ibid.*, para 125.

<sup>17</sup> TheJournal.ie, ‘New legal advice finds Occupied Territories Bill is “fully compliant with EU trade rules”’ (23 November 2018), available at: <https://www.thejournal.ie/occupied-territories-bill-4354083-Nov2018/>.

<sup>18</sup> Sadaka, *Analysis of AG opinion*, available at: [http://www.sadaka.ie/Articles/Briefings/BRIEFING-Sadaka\\_Analysis\\_of\\_AG\\_opinion.pdf](http://www.sadaka.ie/Articles/Briefings/BRIEFING-Sadaka_Analysis_of_AG_opinion.pdf).

<sup>19</sup> Article 41, *Draft Articles on State Responsibility for Internationally Wrongful Acts* (2001).



The Bill is also an important first step to counter the on ongoing annexation in East Jerusalem and looming *de jure* annexation in the West Bank. A letter signed by 1,080 parliamentarians from 25 European countries, including TDs from your party, called on “European leaders to act decisively in response to this challenge [of annexation]”.<sup>20</sup> This may include such measures as the enactment of the Bill, but may further be achieved through the imposition of sanctions on Israel<sup>21</sup> and the recognition of the State of Palestine.

At the time of writing, we are awaiting a decision from the Pre-Trial Chamber of the International Criminal Court on the question of territorial jurisdiction for war crimes and crimes against humanity committed in the Occupied Palestinian Territory.<sup>22</sup> As previously noted by Al-Haq, non-recognition of the State of Palestine by powerful and obstructionist States has stood as a roadblock in the dismantlement of Israel’s pervasive culture of impunity for international crimes and human rights violations directed toward the Palestinian people.<sup>23</sup>

Ireland and your party have committed to recognition of the State of Palestine, and has pledged, in the 2020 Programme for Government, to “Honour our commitment to recognise the State of Palestine ... when we believe doing so will progress efforts to reach a two-state solution or protect the integrity of Palestinian territory.”<sup>24</sup> While, in our view, the assault upon the integrity of Palestinian territory has long since warranted effective action,<sup>25</sup> including the closure and blockade of Gaza,<sup>26</sup> the annexation of East Jerusalem,<sup>27</sup> and the *de*

---

<sup>20</sup> *Joint letter by 1.080 parliamentarians from 25 European countries to European governments and leaders against Israeli annexation of West Bank* (23 June 2020), available at: <https://www.scribd.com/document/466688615/Letter-by-European-Parliamentarians-Against-Israeli-Annexation>.

<sup>21</sup> See Al-Haq, *Al-Haq Condemns as Illegal Prime Minister Netanyahu’s Stated Plans to Annex West Bank Settlements and Calls on Third States to Apply Economic Sanctions on Israel* (10 September 2019), available at: <http://www.alhaq.org/advocacy/15096.html>.

<sup>22</sup> For an explainer on the Situation in the State of Palestine, see Al-Haq, *Palestine and Territorial Jurisdiction at the International Criminal Court* (28 April 2020), available at: <http://www.alhaq.org/advocacy/16792.html>; see also Al-Haq, Palestinian Centre for Human Rights, Al Mezan Centre for Human Rights, and AlODameer Association for Human Rights, *Review Paper: Arguments Raised in Amici Curiae Submissions in the Situation in the State of Palestine Before the International Criminal Court* (28 April 2020), available at: <http://www.alhaq.org/advocacy/16796.html>; Pearce Clancy, ‘Vindicating Rights and Ending Impunity: Palestine, Statehood, and the International Criminal Court’ (22 April 2020), available at: <https://justiceinconflict.org/2020/04/22/vindicating-rights-and-ending-impunity-palestine-statehood-and-the-international-criminal-court/>.

<sup>23</sup> Al-Haq, *In Light of Israel’s Plans to De Jure Annex Parts of the Occupied Palestinian Territory, Al-Haq Urges the Diplomatic Community to Implement Effective Measures* (1 July 2020), available at: <http://www.alhaq.org/advocacy/17052.html>; see also Al-Haq, Palestinian, Regional, and International Human Rights Organisations Submit Joint Report on Accountability to UN Special Rapporteur (3 June 2020), available at: <http://www.alhaq.org/advocacy/16931.html>.

<sup>24</sup> *Programme for Government: Our Shared Future* (2020) pg. 122, available at: [https://www.finegael.ie/app/uploads/2020/06/ProgrammeforGovernment\\_Final\\_16.06.20-1.pdf](https://www.finegael.ie/app/uploads/2020/06/ProgrammeforGovernment_Final_16.06.20-1.pdf).

<sup>25</sup> Al-Haq, *Third States Must Act to Prevent Further Israeli Annexation of Occupied Palestinian Territory* (5 June 2020), available at: <http://www.alhaq.org/advocacy/16937.html>.

<sup>26</sup> Al-Haq, *51 Years of Israeli Occupation, 11 Years of Closure of the Gaza Strip: Time for Action, Time for Sanctions* (6 June 2018), available at: <http://www.alhaq.org/advocacy/6190.html>; Al-Haq, *Gaza 2020 Lift the Closure* (9 June 2020), available at: <http://www.alhaq.org/advocacy/16965.html>.

<sup>27</sup> Al-Haq, *Annexing A City: Israel’s Illegal Measures to Annex Jerusalem Since 1948* (11 May 2020), available at: <http://www.alhaq.org/publications/16855.html>.



*facto* annexation of much of the West Bank,<sup>28</sup> if action is not taken now, ahead of further *de jure* annexation, then there may very well never be another chance to do so.

The continued campaign of wilful killings targeting Palestinians, including Iyad Al-Hallaq<sup>29</sup> and Ahmad Erekat,<sup>30</sup> and such measures as the retention of the bodies of deceased Palestinians as a measure of collective punishment,<sup>31</sup> all form this pervasive impunity, which has been permitted to further entrench itself without any meaningful opposition from the international community. As a respected member of that community,<sup>32</sup> Ireland's meaningful and effective support for the Palestinian people, through the enactment of the Occupied Territories Bill and the recognition of the State of Palestine, would clearly indicate to those in Palestine and abroad that Palestinian rights may not be trampled upon without Irish fervent opposition and intervention.

We trust that, upon reflection, your government will resist the comfort of political expediency and inaction in the face of the widespread and systematic commission of international crimes and human rights violations, and make the correct decision in enacting the Occupied Territories Bill and taking the necessary and important step of recognising the State of Palestine. We assure you that these steps, including the enactment of the Bill, would represent a “game changer” in the struggle against the colonial domination of Palestine and will remain at your disposal on these issues throughout your term as Taoiseach.

Is mise le meas,

  


Shawan Jabarin,

Al-Haq General Director

<sup>28</sup> Al-Haq, *Establishing Guidelines to Determine whether the Legal Status of 'Area C' in the Occupied Palestinian Territory represents Annexed Territory under International Law* (17 July 2020), available at: <http://www.alhaq.org/publications/17136.html>; Al-Haq, *De Facto Annexation Continues with House Demolitions using Hyundai bulldozers, Destruction of Palestinian Lands, Infrastructure and Pillage* (16 July 2020), available at: <http://www.alhaq.org/advocacy/17124.html>.

<sup>29</sup> Al-Haq, *Al-Haq Sends Urgent Appeal to UN Special Procedures on the Extrajudicial Execution and Wilful Killing of Palestinian Person with Disability Iyad Al-Hallaq* (9 June 2020), available at: <http://www.alhaq.org/advocacy/16963.html>.

<sup>30</sup> Al-Haq, *83 Organisations Send Urgent Appeal to UN Special Procedures on the Wilful Killing of Ahmad Erekat, Urging International Justice and Accountability for Israel's Shoot-to-Kill Policy* (14 July 2020), available at: <http://www.alhaq.org/advocacy/17112.html>.

<sup>31</sup> Ibid.

<sup>32</sup> See *The Economist*, 'How Ireland gets its way' (18 July 2020), available at: <https://www.economist.com/europe/2020/07/18/how-ireland-gets-its-way>.