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Merrion Street Upper,
Dublin 2,
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Ireland

25 May 2021

RE: Motion on *de facto* Annexation in the Occupied Palestinian Territories

An Taoiseach, Micheál Martin TD,

I am writing to you in my capacity as General Director of Al-Haq, a Palestinian human rights organization based in Ramallah, Palestine, and on behalf of Palestinian civil society, in reference to the upcoming motion on *de facto* annexation in the Occupied Palestinian Territories (OPT) in Dáil Éireann. Those of us who represent Palestinian civil society, both in the OPT and around the world, urge full cross-party support of the motion and to unanimously stand with the Palestinian people against Israel's *de facto* annexation of Palestinian territory as a wrongful act in violation of international law.

The crime of *de facto* annexation has been perpetuated in the OPT for decades. We urge the parliamentarians sitting in Dáil Éireann to vote in support of the Motion to both show solidarity with the Palestinian people and to meet the Republic of Ireland's obligations under international law, of non-recognition of illegal acts of *de facto* annexation, noting that the prohibition of annexation is a *jus cogens* norm, applying *erga omnes* between all States.¹ Israel's violation of *jus cogens* norms in the OPT to entrench colonization have taken many forms, from forced displacement, to the creation of illegal settlements, to the illegal expropriation of Palestinian national resources, to the supplanting of the Palestinian national identity with Israeli identity, and beyond.² It is important to stress that the Republic of Ireland not only has a legal obligation to oppose the progressive annexation of Palestinian territory, but also an opportunity to act as a clarion beacon for the international community to oppose this blatant attempt at the forced dispossession of rights of the Palestinian people.

¹ *Erga omnes* obligations are obligations that every state has toward the entire international community as a whole. *Jus cogens* violations are preemptory norms of international law that sit atop the hierarchy of international legal rules.

² See 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* (21 May 2021), for the attention of The Committee on Foreign Affairs and Defence, Dáil Éireann, the Republic of Ireland



Notably, annexation can be either formal (*de jure*) or established through the acts of a belligerent (*de facto*). Both forms of annexation are international wrongful acts, in violation of Article 2(4) of the UN Charter, which prohibits the acquisition of territory by forcible means.³ This prohibition on annexation is echoed in the customary international law Principle 1 of the UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States.⁴ The Rome Statute establishing the International Criminal Court (ICC) criminalizes ‘any annexation’ of territory as a crime of aggression under Article 8 *bis* 2(a), including acts of total, partial, *de jure* or *de facto* annexation.⁵ In particular, annexation during belligerent occupation is specifically prohibited under Article 47 of the Fourth Geneva Convention.⁶

Michael Lynk, the United Nations (UN) Special Rapporteur for the situation of human rights in the Palestinian Territory occupied since 1967, has proposed a four part test for determining when *de facto* annexation has taken place: (1) the belligerent State has taken effective control of a forcibly acquired territory; (2) the belligerent State has taken measures consistent with a permanent claim of sovereignty over the forcibly acquired territory through prohibited means; (3) institutions and/or leaders in the belligerent State have expressed the intent to permanently annex the forcibly acquired territory; and (4) the belligerent State has refused to accept the application of international law in the forcibly acquired territory.⁷

The acts of aggression reported across the OPT over the past weeks are a microcosm of the attempts by the State of Israel to annex Palestinian lands and are a symptom of a larger settler-colonial enterprise and apartheid regime that has its origins 73 years in the past. In the decades since it first acted to refuse Palestinians displaced by violence the right to return to their land and property, Israel has acted to dispossess the region’s indigenous people of their land and their rights. This has been evident against the Palestinian people as a whole, on both sides of the Green Line or living as refugees and exiles abroad, but is particularly acute in the West Bank, including East Jerusalem.⁸ For example, the Israeli government has acted to support the transfer of over 650,000 settler-colonizers into the West Bank and has similarly acted through both state and parastatal

³ See Charter of the United Nations, 26 June 1945, 892 UNTS 119 (UN Charter) Article 2(4).

⁴ UNGA Res. 2625 (XXV), 24 October 1970.

⁵ Article 8 *bis* (2), *Rome Statute of the International Criminal Court*

⁶ See 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>>

⁷ 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

⁸ See Al-Haq, *Deprived of a Voice: An Investigation into Shrinking Space in Area C* (2020), available at <https://www.alhaq.org/publications/17636.html>



institutions to transfer land away from Palestinians in an attempt to create a larger Israeli state that will function as an exclusively Jewish state.⁹

The Israeli government and its parastatal institutions have similarly acted to integrate the OPT through its legal and monetary institutions. This has included the extraterritorial application of Israeli domestic law to illegal settlements in the OPT, the use of said illegal settlements as an extension of the judicial power of the Israeli state extraterritorially into the OPT, and through the integration of the monetary system of the OPT with that of Israel as underscored by the use of the Israeli Shekel in the OPT.¹⁰ This integration has been coercively bolstered through instances of settler violence against indigenous Palestinians that has received the tacit support of the Israeli state via non-prosecutions of known perpetrators.¹¹

These decades of subjugation and annexation culminated in a wave of escalated Israeli attacks unseen in the West Bank in nearly a decade. The catalytic event for this violence was the imminent threat of having eight Palestinian families in the Sheikh Jarrah neighborhood of Jerusalem forcibly evicted and transferred.¹² These forced evictions set off a wave of protests and saw the generation of a unified movement against the progressive annexation of Jerusalem and the West Bank by Israel in violation of international law. In response to this protest movement, the Israeli government, set off a wave of indiscriminate attacks starting in Jerusalem.

On Eid week, the holiest and most sacred week in the Muslim calendar, Israeli Occupying Forces (IOF) attacked Palestinian civilian worshippers, including men, women, children, the elderly and later paramedics and journalists, with sound bombs, tear gas and rubber-coated metal bullets at Al-Aqsa Mosque. On 10 May 2021, the Palestine Red Crescent documented the injury of 520 civilians, including 333 injuries transferred to Al-Makassed Hospital, Saint Joseph Hospital, Augusta Victoria Hospital, and Palestine Red Crescent field hospital, leaving five in a critical condition. This provoked an escalation of hostilities in Gaza, amounting to a widespread and systematic attack on the civilian population, including through Israel's direct and indiscriminate

⁹ See Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports, 100th Session (10 November 2019), paras. 42-46

¹⁰ See 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* (21 May 2021), for the attention of The Committee on Foreign Affairs and Defence, Dáil Éireann, the Republic of Ireland

¹¹ See Al-Haq, *Deprived of a Voice: An Investigation into Shrinking Space in Area C* (2020), available at <https://www.alhaq.org/publications/17636.html>

¹² France24, *Palestinians remain 'united' in fighting expulsions from Sheikh Jarrah*, (21 May 2021), available at <https://www.france24.com/en/middle-east/20210521-palestinians-remain-united-in-fighting-expulsions-from-sheikh-jarrah>



targeting of civilians and civilian infrastructure, and disproportionate attacks, killing 248 Palestinians, including 66 children and 39 women and the wounding of 1,948 more.¹³

This wave of Israeli attacks is a stark reminder to the world that justice is a precondition for peace. Embedded in its settler-colonial and apartheid regime, Israel further enables both parastatal institutions and Israeli settlers to maintain and expand such regime. This settler-colonizer movement is in direct violation of international criminal law, international humanitarian law, customary international law, and international treaty law. It is the legal obligation of the Republic of Ireland to oppose the recognition of this *de facto* annexation. As such, Al-Haq urges you to address the root causes of this systematic and widespread violence that is fueled by neo-colonial oppression and support the Motion on *de facto* annexation before Dáil Éireann.

In addition to non-recognition of the illegal annexation and support for the coming Motion, Al-Haq also recommends that the Republic of Ireland:

- (1) take concrete and immediate steps to prohibit the importation of settlement goods and services and progress, and adopt without further delay, the Occupied Territories Bill;
- (2) halt any and all military aid to Israel
- (3) adopt countermeasures and sanctions to ensure annexation is deterred as was done toward the Russian Federation in light of its annexation of Crimea and Sevastopol;
- (4) support the annual update of the UN Database on businesses operating in illegal Israeli colonial settlements;
- (5) fully support the investigation of the Prosecutor of the International Criminal Court into the Situation in Palestine; and
- (6) to use its seat on the UN Security Council and its forthcoming Presidency of the Security Council to address the root causes of the prolonged occupation of Palestine, including *de facto* annexation and apartheid.

We trust that upon reflection of the situation in Palestine and the information contained in this and other correspondence from our organization to your government, you will make the correct

¹³ Palestinian Ministry of Health, available at <
<http://www.moh.gov.ps/portal/%f0%9f%87%b5%9f%87%b8%9%88%8%b2%8%a7%8%b1%8%a9-%8%a7%9%84%8%b5%8%ad%8%a9-%9%82%8%b7%8%a7%8%b9-%8%ba%8%b2%8%a9-%8%aa%8%ad%8%af%9%8a%8%ab-%9%84%8%a7%8%ac%9%85%8%a7-19/>>

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decision in supporting the forthcoming Motion on *de facto* Annexation in the Palestinian Territory. We assure you that this step and the steps contained in our above recommendations can make lasting change in the region, further bolster Ireland's reputation as a true friend of the Palestinian people, and establish the Republic of Ireland as a beacon for the rest of the international community to follow.

Is mise le meas,


Shawan Jabarin

General Director, Al-Haq

