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21 May 2021

Mr. Simon Coveney TD
Minister for Foreign Affairs & Trade
Ministerial Office
Iveagh House
80, St. Stephens Green
Dublin 2
Ireland
D02 VY53

Re: Republic of Ireland – Foreign Policy – Israeli Occupation of Palestine

Dear Mr. Coveney:

Please accept my greetings and my best wishes for the success of your administration of Irish foreign policy in this turbulent world. Ireland is a small country, but it regularly punches above its weight in international affairs. It has made important contributions to international peace-keeping, it provides a clarion voice for a principled foreign policy within the European Union, and it is now addressing the world's leading political problems with a seat on the United Nations Security Council.

Ireland at the United Nations

I welcome your presentation delivered to the Security Council on Sunday, 16 May 2021, addressing the current violence in Gaza and Israel. You spoke with moral clarity and compassion on the issues of the moment:

- An immediate end to the violence;
- The collective inertia of the international community in failing to achieve a political resolution to the Israeli occupation;
- The centrality of international law both in conducting war and waging peace;
- The illegality of annexation and the settlements;
- An end to the illegal blockade of Gaza; and

- The recognition that the international community cannot return to “business as usual” when this current round of violence has been brought to an end.

I am writing you to say that more needs to be done. I urge Ireland to use its voice on the international stage to press the United Nations to address the core issues of this situation, including: (i) requiring Israel to strictly comply with its international legal duties, as laid out in more than 30 Security Council resolutions and several hundred General Assembly resolutions; and (ii) completely ending Israel’s 54 year old occupation.

In particular, accountability must now rise to the top of the agenda and the international community. The simple reality is that the occupation has become as entrenched and as sustainable as it has because the international community has never imposed a meaningful cost on Israel for acting as an acquisitive occupying power. This stands in stark distinction to the imposition of sanctions and countermeasures on Russia after its annexation of Crimea in 2014.

Realpolitik and International Law

If, as has been attributed to Albert Einstein, the definition of insanity is to repeat the same process over and over again while expecting a different outcome, then it is folly to expect that relying on *realpolitik* and sidelining the sturdy legal scaffolding of international law will result in a just and durable to the Israeli-Palestinian conflict.

The various peace initiatives over the past three decades – from the 1993 Declaration of Principles to the 2020 Trump Peace for Prosperity Plan – have all been conducted largely or entirely outside of the framework of international law. These have allowed Israel to make the core issues of self-determination, annexation and settlements negotiable issues, rather than issues of illegality from which Israel must completely desist. This has enabled Israel to negotiate from the strength of its many illegal ‘facts on the ground,’ rather than from the framework of fundamental rights and legal duties. This is the primary reason why all of these many peace initiatives have failed.

What International Law Requires

There are five foundational principles arising from the long-standing international consensus which must be at the heart of any future rights-based initiative to bring peace, justice, security and equality in a durable settlement to Israel and Palestine. These principles are all reflected in various UN Security Council and General Assembly resolutions and in international diplomatic practice. I would like to ask your Ministry, and your Permanent Mission at the United Nations in New York, to rely upon these principles in its representations at the United Nations and in its foreign policy:

1. The diplomatic framework for fully ending the occupation is to be found within international law and human rights;
2. The end goal must be genuine Palestinian self-determination;
3. Because of the vastly asymmetrical differences in power between Israel and the Palestinians, active international intervention is indispensable;

4. Israel has been a bad-faith occupier, and its occupation will not end until meaningful accountability measures have been imposed; and
5. The occupation must end with all deliberate speed.

De Jure and De Facto Annexation

With respect to taking decisive steps towards imposing accountability, the current Irish government has agreed in its coalition agreement that it would: “Continue to work with other Member States to give leadership within the EU to oppose any annexation or plans to apply Israeli sovereignty over territory in the West Bank, which is part of the occupied Palestinian territory.”

I submit to you that, under international law, the *de facto* annexation of occupied territory by an occupying power is just as illegal as the *de jure* annexation of territory. As I pointed out in my October 2018 report to the UN General Assembly:¹

Given the broad international consensus respecting the illegality of annexation, acquisitive states in modern times who wish to annex territory have a strong incentive to obfuscate the reality of their plans. Typically, they will work assiduously to create a series of facts-on-the-ground in order to buttress a sovereign claim, while postponing a formal declaration because of the fear of a diplomatic and political reaction by the international community. With this in mind, I submit that, if the prohibition against annexation is to be coherent and effective, particularly in the context of the occupied Palestinian territory, then the liberal purposes of international law should ensure that the absolute prohibition against annexation extends to those incremental, yet substantive, measures being taken by a state to lay the ground for a future claim of sovereignty over conquered and/or occupied territory.

My report concluded by finding that:

...Statements [by Israeli cabinet ministers] of their political intent [to annex], 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. While Israel has not yet declared formal sovereignty over any parts of the West Bank, the Special Rapporteur submits that the strict prohibition against annexation in international law applies not only to a formal declaration, but also to those acts of territorial appropriation by Israel that have been a cumulative part of its efforts to stake a future claim of formal sovereignty over the occupied Palestinian territory.

¹ A/73/447

I urge you to adopt this understanding of international humanitarian law.

Accountability

Accountability is the principle which lies at the very heart of modern international law. Without it, international law becomes lighter than air. Throughout modern history, the enemies of accountability have been impunity and exceptionalism. And throughout the five decade long Israeli occupation, it has been sorely missing. As I have previously said, accountability is the key to unlocking the titanium cage that is the occupation.

Accordingly, I would call upon your government to adopt meaningful accountability measures respecting the Israeli occupation that would include:

- Halting all Irish economic activity and trade with the illegal Israeli settlements;
- Reviewing and downgrading Ireland's military relationship with the Israeli military;
- Recognizing that Israel has *de facto* annexed much of the West Bank, which is as illegal under international law as *de jure* annexation; and
- Using its voice within the European Union for Brussels to support measures to review and downgrade its economic, cultural, military and diplomatic relationships with Israel until the occupation fully ends.

My hope is that you and your government will find these proposals beneficial as Ireland seeks effective ways to use its voice on the international stage to enhance the values of the United Nations.

I would be delighted to meet remotely with you to discuss these issues at a time of your convenience.

I would plan to release this letter publicly on Tuesday, 25 May 2021.

My best wishes

Michael Lynk



United Nations Special Rapporteur for the situation of Human Rights
in the Palestinian Territory Occupied since 1967.