

Briefing No. 51



The Ireland Palestine Alliance ♦ www.sadaka.ie

Annexation: Sadaka submission to the Oireachtas Joint Committee on Foreign Affairs and Defence, 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.

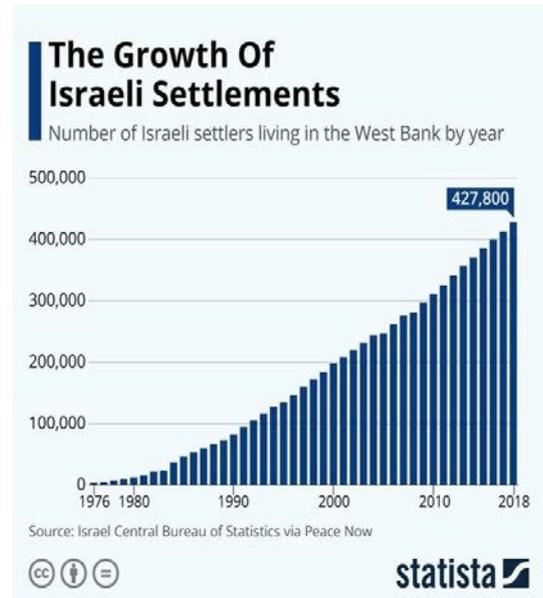
In 1967 Israel formally extended its law and administration to East Jerusalem and 28 surrounding West Bank Palestinian villages and in 1980 declared all of Jerusalem as its undivided capital under its Basic Law. An internationally binding UN Security Council 478 (1980) declared these actions null and 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.

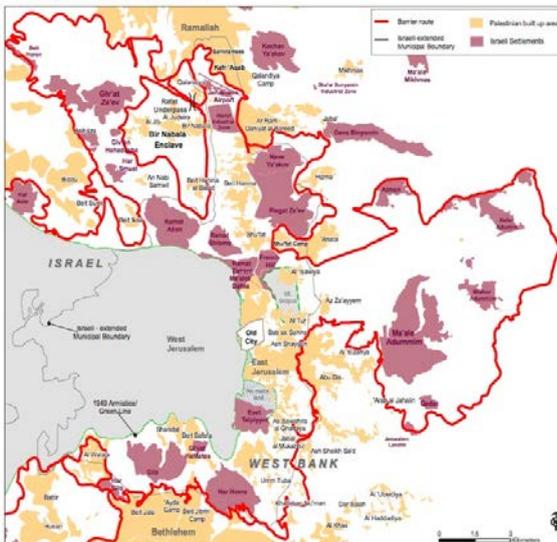
It has expanded the size of the city, expropriating Palestinian lands, expanding the settler population, forcibly transferring Palestinians from their own capital city, and encircling the city to cut off Palestinians in the city from their natural hinterland with all its attendant negative economic, 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.



East Jerusalem 2007



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 Palestinians 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.¹

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.

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.

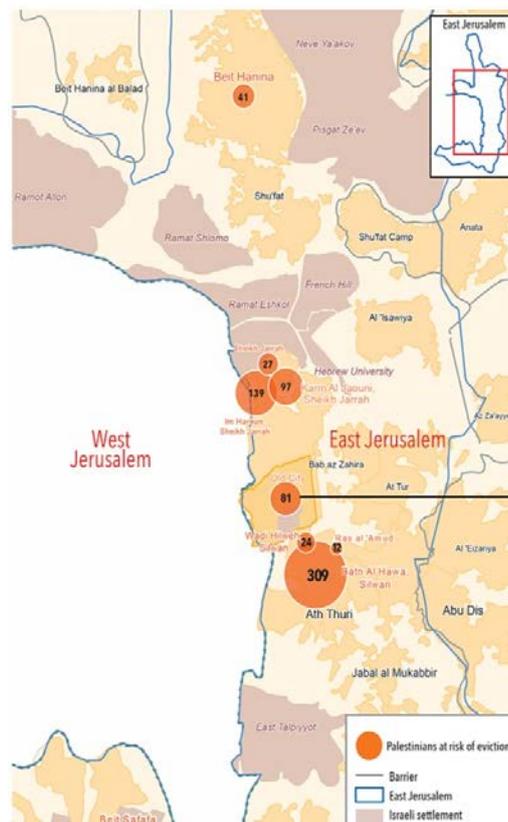
Upon its establishment in 1948, it continued this process in West Jerusalem where it forcibly removed 80,000 Palestinians. The 1967 war offered a significant opportunity for Israel to continue its expansionist project under the framework of *sui generis* occupation law and the myths of temporality and 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."*²

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 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 ³

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 the Oslo Accords. This territory was acquired by force from another state.

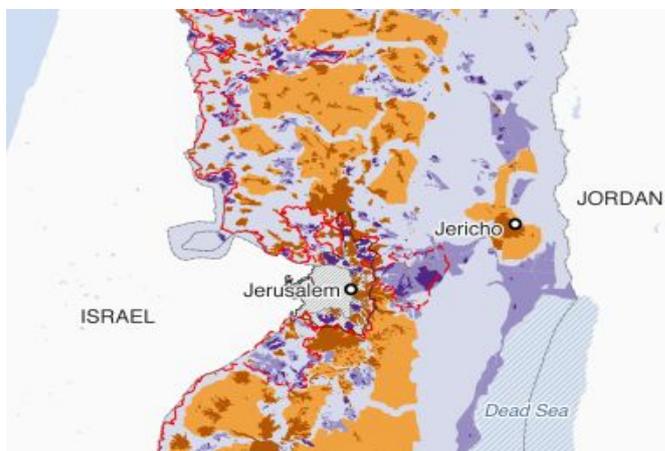
b). Israel has taken numerous actions which are consistent with permanency and with a claim of sovereignty over the area including demographic changes and population transfer; the application of its laws to the occupied territory; a separate legal system and institutions for Israeli settlers; granting 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.⁴

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.



**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.

References

1. 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>.
2. Michael Lynk, *Situation of human rights in the Palestinian territories occupied since 1967*(22 October 2018) A/73/45717/, para. 45.
3. <https://www.sadaka.ie/Articles/Briefings/BRIEFING-Annexation.pdf>
4. Haaretz, August 29, 2017.