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Create the Conditions for a Meaningful Peace Process: Support the Occupied Territories Bill 2018

On 11 July 2018, the Control of Economic Activity (Occupied Territories) Bill 2018 passed its first hurdle in Seanad Éireann by 25 votes to 20 despite opposition from the Government. The Bill, proposed by Independent Senator Frances Black, seeks to make it illegal to import goods or services into Ireland from illegal settlements in occupied territories anywhere in the world, in particular, from settlements established by Israel in occupied Palestinian territory.

The legal background

In 1967, Israel took over the West Bank (including East Jerusalem) by force and has held it under military occupation ever since. Since then, it has transferred around 600,000 of its own citizens into that territory – and this process continues relentlessly today.

Article 8.2(b) (viii) of the Rome Statute of the International Criminal Court (ICC) defines “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” to be a war crime. In other words, when a state, which is occupying territory not its own, transfers some of its own civilians into that territory that process constitutes a war crime under international law.

There is little doubt that this colonisation programme has involved the commission by Israel of a tsunami of war crimes as defined in the Rome Statute and the Israelis responsible should be indicted by the International Criminal Court.

(It is worth noting that Israel’s military occupation of Palestinian territories constitutes an act of aggression under the Rome Statute, as does its forcible annexation of (i) East Jerusalem and (ii) the Syrian Golan Heights).

Government opposition

The Government has opposed the Occupied Territories Bill from the outset. It has done so even though it has frequently expressed opposition to Israel’s colonisation programme on the grounds that it is illegal under international law. For example, when the Bill was first debated in the Seanad on 30 January 2018, Foreign Minister Simon Coveney said:

“The introduction and settlement of communities from an occupying power to alter the demography of the area is unambiguously illegal under international law. The process of establishing settlements also inevitably involves violations of the rights of the occupied population through seizure of their land, demolitions, discriminatory treatment, including unequal implementation of planning laws, and other restrictions, including on movement. The Government has consistently and repeatedly condemned the construction and expansion of settlements.”

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The Bill gives expression to Ireland's opposition to these Israeli settlements by banning the imports from them and sets an example for other states to follow suit. In view of Israel's extensive record of committing war crimes, the "punishment" prescribed in the Bill cannot be said to be harsh.

So, why does the Government oppose a bill that merely seeks to sever Ireland's trade relations with these entities which, according to the Minister, are "unambiguously illegal under international law"? The primary political reason given by him in the Seanad on 11 July was that passing the Bill would have a negative impact on Ireland's role in the Middle East "peace process", which has been a priority for him as Foreign Minister. He said:

"I believe Ireland can play a positive role in the Middle East peace process in working towards an agreed solution to the conflict, with people in the two states involved, Israel and Palestine, living side by side in peace and prosperity. ...

"I have spent hours trying to build relationships with people who will be involved in decision making that can bring about peace - Palestinians, Americans, Israelis and others in Jordan, Egypt, Cyprus and many other neighbouring countries."

But he feared that this work would be undermined if the Bill were passed:

"I fear the consequence of Ireland taking a significantly different position from everybody else in the European Union and the world would be to suddenly undermine my capacity to be seen as someone to whom both sides can at least talk, even though I clearly advocate strongly for Palestinians all the time. This is a real fear."

What he is implying here, is that, if Ireland dared to adopt a policy that goes beyond verbal criticism of its war crimes, Israel would almost certainly refuse to engage with Irish efforts with respect to the "peace process."

Given the time and effort he has expended on the Middle East "peace process" as Ireland's Foreign Minister, Minister Coveney must believe that there is some chance of success: he must believe that a two-state solution can be achieved by another round of negotiations between Israel and the Palestinians.

However, the reality is that there is an insurmountable obstacle to a successful outcome to the "peace process". It is the fact that Israel's political leadership is opposed *in principle* to a Palestinian state being established in the West Bank (including East Jerusalem) and Gaza. This is compounded by the fact that the Trump Administration is fully supportive of this position.

A Palestinian state is a threat to Israel's security, says Binyamin Netanyahu

That stance was backed by the Israeli electorate in March 2015, when the present Prime Minister Binyamin Netanyahu stood on a platform which ruled out a Palestinian state. On the eve of the election, he stated unequivocally that, if he were returned to power, a Palestinian state would not be established (see Haaretz report *Netanyahu: If I'm elected, there will be no Palestinian state*, 16 March 2015, [\[1\]](#)). Any handover to Palestinians of territory on the West Bank occupied by Israel since 1967 would, he asserted, threaten Israel's security:

"I think that anyone who moves to establish a Palestinian state and evacuate territory gives territory away to radical Islamist attacks against Israel."

Asked if that meant there would be no Palestinian state during his tenure of office, he replied: "Indeed." (*Binyamin Netanyahu rules out Palestinian state if he wins*, Guardian, 16 March 2015, [\[2\]](#)).

In the March 2015 election, he saw off his political rivals and his Likud party was returned once again as the largest party in the Knesset (with 30 seats out of 120). This enabled him to continue as Prime Minister in a new coalition government.

We are here to stay forever, says Netanyahu

In recent years, Netanyahu has regularly asserted that “not an inch” of the West Bank will be given up by Israel. For example, here’s an extract from a speech on 28 August 2017, at an event in the Barkan settlement to celebrate 50 years of Israeli occupation and colonisation of the West Bank, when thousands cheered as he restated his determination that Israel will hold on to the West Bank permanently:

“We are here to stay forever. There will be no more uprooting of settlements in the land of Israel. ... This is the inheritance of our ancestors.

“This is our land. Imagine that on these hills were the forces of radical Islam. It would endanger us, it would endanger you, and it would endanger the entire Middle East.” [\[3\]](#)

This land is ours, all of it is ours, says Tzipi Hotovely

Tzipi Hotovely is a Likud Knesset Member and Deputy Foreign Minister. As such, she is Israel's second highest ranking diplomat, after Netanyahu himself, who acts as his own foreign minister. In an inaugural address to Israeli diplomats around the world on 22 May 2015, she gave full expression to the principle that all of the land west of the Jordan River belongs to Israel, saying:

“We need to return to the basic truth of our rights to this country. ... This land is ours. All of it is ours. We did not come here to apologise for that.” [\[4\]](#)

She justified her stance on the grounds that God had promised the land of Israel to the Jews and she set herself the task as a foreign minister of getting “the international community to recognise Israel’s right to build homes for Jews in their homeland, everywhere”.

The Israeli government is united in its opposition to a Palestinian state, says Tzipi Hotovely

Recently, she set out in public what she described as Israel’s “red lines regarding negotiations with the Palestinians”. She indicated that these had been communicated to the Trump administration, which is said to be drawing up a plan for Israel/Palestine. They were as follows:

“Settlements is a red line. No Jew will be evacuated from his home. The idea of displacement or withdrawal from the territory will not be repeated.

“In addition, we are a government that opposes the idea of a Palestinian state. ... the Israeli government is united in its opposition to a Palestinian state. This is an idea that endangers the State of Israel. ...

“We will continue to develop Jewish settlement in the areas where we have a 4,000 year-old connection.” (Arutz Sheva, 23 October 2018, [\[5\]](#))

So, there is no doubt whatsoever that Israel’s political leadership is opposed *in principle* to the establishment of a Palestinian state in the West Bank (including East Jerusalem) and Gaza.

The Trump administration will not force Israel to agree to a Palestinian state

Nevertheless, speaking to the UN General Assembly on 29 September 2018, Simon Coveney reiterated his belief that the Middle East “peace process” led by the US could deliver a state for the Palestinian people. Here are his words:

“I believe there is a way forward for the Middle East Peace Process with American leadership and with the support of others, that can help to broker a peace deal between an Israel that justifiably demands security and a Palestinian people who dream of their own country and state.”

[\[6\]](#)

In other words, the Minister believes it is possible that the Trump administration will pressurise Israel’s leaders into doing a U-turn and agreeing to the establishment of a Palestinian state, something which neither President Obama nor any other US president has been prepared to do.

US policy towards Israel/Palestine today is virtually indistinguishable from that of Binyamin Netanyahu. This has led President Abbas to sever relations with the US (and suggest that, in any negotiations, the US should be part of the Israeli delegation, since it could no longer pretend to be a neutral mediator).

Binyamin Netanyahu stood on the West Bank in August 2017 and proclaimed that “this is our land” and “we will stay here forever”. That was a clear statement that for him the West Bank, including East Jerusalem, is Israeli territory from which withdrawal is inconceivable, and not territory occupied by Israel from which withdrawal is possible.

While the Trump administration’s ‘peace plan’ for the Middle East has yet to be published, all the indications are that the Trump administration agrees with Binyamin Netanyahu on this matter, agrees that Israel is not occupying any territory in the West Bank, including East Jerusalem, or anywhere else in Israel/Palestine. A forewarning of this appeared in a joint statement [\[7\]](#) on 2 November 2016 by Jason Greenblatt, who is now President Trump’s chief negotiator on Israel/Palestine, and David Friedman, who is now US Ambassador to Israel. Published just before the presidential election, the joint statement contained the following short but very significant sentence:

“The false notion that Israel is an occupier should be rejected.”

This is now being reflected in US State Department documents, which no longer refer to the West Bank (including East Jerusalem), Gaza and the Golan Heights as “occupied”. Thus, for example, whereas earlier Country Reports on Human Rights Practices for Israel/Palestine were titled *Israel and the Occupied Territories* [\[8\]](#), the 2017 report, published on 20 April 2018, is titled *Israel, Golan Heights, West Bank and Gaza* [\[9\]](#).

The view that Israel is not an occupier has profound policy implications. It follows that Israel is (a) under no obligation to withdraw from any territory and (b) free to build Israeli settlements anywhere in the West Bank, including East Jerusalem. Whether these implications are reflected in the promised US plan for Israel/Palestine remains to be seen. What can be said for certain is that the Trump administration will not force Israel to agree to the establishment of a Palestinian state in the West Bank (including East Jerusalem) and Gaza. His predecessors didn’t do it, and neither will he.

That the Trump administration’s position on the “peace process” is dictated by facts on the ground created by Israel in disregard of international law is further evidenced by the justification offered for his administration’s recognition of Jerusalem as the Israeli capital. In his [statement](#) announcing this decision, he described it as amounting to “nothing more, or less, than a recognition of reality.” No reference was, of course, made to the annexation of or transfer of Israeli settlers into East Jerusalem, a “reality” that persists in flagrant violation of international law.

On settlement building, Middle East Eye reports:

“In the 22 months before Trump was elected in November 2016, 4,476 housing units were approved, according to the Israeli organisation Peace Now. But in the 21 months since, that figure has more than tripled to 13,987 housing units.” (see *How Israel boosted its settlement programme after Trump's election victory*, 26 July 2018, [\[10\]](#))

It is highly likely that this dramatic increase is due to the US no longer applying any restraint on Israeli settlement activity, which the US now regards as legal.

Lastly, the Trump Administration's recent decision to withdraw all funding for the UN Relief and Works Agency for Palestinian Refugees (UNRWA) is also indicative of the “peace plan” likely to be proposed by that administration. In a tweet posted in response to this decision, Minister Coveney described it as “shocking” and asked “How can u promote peace+target innocent children in this way”? The obvious point however, is that this measure is about imposing (rather than promoting) “peace” on exclusively Israeli terms. As Foreign Policy reported on the move, American officials themselves acknowledge that its objective is “to strip [Palestinian refugees] of their refugee status in the region and take their issue off the table in negotiations between Israel and the Palestinians” [\[11\]](#).

It is therefore plainly obvious on the basis of the key positions taken by the Trump administration on the Middle East to date that its “peace plan” will for the most part endorse the Israeli position on key issues such as settlements, the establishment of a Palestinian state, the status of Jerusalem and refugees.

A road to nowhere

The “peace process” under the leadership of the Trump administration, by which Minister Coveney sets such store has no chance whatsoever of bringing about a two-state solution and will instead seek to ensure that Israel benefits from its systematic breaches of international law over decades. Nevertheless, he insists that Ireland should play a role in some undefined way with this process.

It is far from obvious that it is appropriate for Ireland to be associated with this process in circumstances where Israel is being tacitly encouraged by the U.S. to engage in activity which is both illegal and contrary to what Ireland and the international community agree ought to be the objectives of that process. It is unhelpful to suggest that Ireland must relinquish the objective of banning the import of goods and services from Israel's illegal settlements in order to play a role in such a process. There can be no peace process while one party, encouraged by the overseer of that process, acts to systemically undermine the objective it is supposed to achieve.

Under the “Mitchell Principles”, the parties to the Irish peace process were required to cease activity inconsistent with the achievement of the peace that that process set out to achieve. By the same token, Ireland can, in passing the Occupied Territories Bill, set an example for other states to follow, contribute to the ending of Israel's illegal settlement activity and ultimately help to facilitate the establishment of a meaningful peace process.

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