

16 June 2021

Ine Eriksen Søreide
Minister for Foreign Affairs
Box 8114 Dep
N-0032
Oslo, Norway

Re: Norway – Foreign Policy – Israeli Occupation of Palestine

Dear Ine Eriksen Søreide:

Please accept my greetings and congratulations on Norway's election as a member of the United Nations Security Council for the period 2021-2022.

Norway has a long and honoured history with the United Nations, starting with its status as a founding member and the election of Trygve Lie as the first Secretary-General of the UN. Norway has been a strong supporter of the international rule of law and the rules-based international order.

In particular, Norway has played an important role in the search for a just and durable peace in the Middle East, including its work during the Oslo process and a principled voting record in support of international law at the United Nations General Assembly respecting the Israeli occupation of Palestine.

Norway at the United Nations

I welcome the statement of Mona Juul delivered to the Security Council on Thursday, 25 March 2021,¹ addressing the current violence in the West Bank, including East Jerusalem. Representing Norway, she spoke with moral clarity and compassion on the issues of the moment, saying that:

We regret to hear from you that more than four years after resolution 2334 was adopted by this Council, the trends are moving in the wrong direction. In fact, resolution 2334 – the most recent parameter for peace laid down by this Council, building on previous Council products – is not being implemented. 2020 set a new, and deeply concerning record in the number of new settlement units being built or announced. And the high level of settlement activity and

¹ <https://www.norway.no/en/missions/UN/statements/security-council/2021/sc-the-situation-in-the-middle-east3/>

house demolitions continue. The evictions of Palestinian families in Sheikh Jarrah and other areas of East Jerusalem are also worrying. These developments contribute to a more volatile situation, and undermine the prospects of a future, contiguous Palestinian state. Israeli settlement activities on occupied Palestinian territory are illegal under international law. Settlement expansions, demolitions and evictions, and all acts of violence against civilians must stop.

I also welcome the briefing of Tor Wennesland, Special Coordinator for the Middle East Peace Process, on the implementation of UNSCR 2334 (2016), 25 March 2021, when he pointed out that²:

- *Security Council resolution 2334 (2016) calls on Israel to “immediately and completely cease all settlement activity in the Occupied Palestinian Territory, including East Jerusalem” and to “fully respect all of its legal obligations in this regard.” Israeli settlement activity has, nevertheless, continued throughout the reporting period.*
- *In its resolution 2334 (2016), the Security Council called upon all States “to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.” No such steps were taken during the reporting period.*
- *Security Council resolution 2334 (2016) calls for “immediate steps to prevent all acts of violence against civilians, including all acts of terror, as well as all acts of provocation and destruction.” Unfortunately, violence continued daily.*
- *The Gaza Reconstruction Mechanism remains critical to facilitate reconstruction, as well as vital infrastructure projects to bolster Gaza’s water and energy networks. However, humanitarian and economic support alone, will not overcome Gaza’s challenges. It is vital that Hamas and other factions end militant activity and the military build-up. Taking into consideration its legitimate security concerns, I urge Israel to ease the restrictions on the movement of goods and people to and from Gaza, in line with UN Security Council resolution 1860 (2009), with the goal of ultimately lifting them. Only by fully lifting the debilitating closures can we hope to sustainably resolve the humanitarian crisis.*

While welcoming these statements, I am writing you to say that more needs to be done. As a member of the UN Security Council, one of your priorities is to be an outspoken defender of international law, including international humanitarian and human rights law³. I urge Norway 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

² <https://www.un.org/press/en/2021/sc14476.doc.htm>

³ https://www.regjeringen.no/en/topics/foreign-affairs/the-un/unsc_priorities/id2701066/

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. As a consequence, Israel has been able 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 Missions at the United Nations in New York and Geneva, 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

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:⁴

⁴ A/73/447

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.

As you are likely well aware, the Irish Dail Eireann last month unanimously adopted a motion which stated that *de facto* annexation is as illegal under international law as *de jure* annexation, that Israel's actions in the OPT "amount to unlawful *de facto* annexation of that territory," and called upon the Irish government "not to recognise as lawful any situation created by any such serious breach of international law, nor to imply such recognition, and to not render aid or assistance to the responsible state in maintaining the situation so created and to cooperate to bring the serious breach to an end."

I urge Norway 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. In my statements to the United Nations, I have stated that 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 Norwegian economic activity and trade with the illegal Israeli settlements.
- Recognizing that Israel has *de facto* annexed much of the West Bank, which is as illegal under international law as *de jure* annexation.
- Using Norway's voice on the UN Security Council to urge Member States to take practical action to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, in line with UN Security Council resolution 2334 (2016).
- Ensuring that Norwegian public sector pension funds divest their holdings in any company, Norwegian or foreign, that have been listed in the United Nations Human Rights Council Database respecting business enterprises involved in the Israeli settlement economy, released in February 2020.

My hope is that you and your government will find these proposals beneficial as Norway 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 19 June 2021.

My best wishes



Michael Lynk

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

Cc Ms. Mona Juul, Norwegian Permanent Representative to the UN, New York
Ms. Tine Mørch Smith, Norwegian Permanent Representative to the UN, Geneva