



Briefing No. 46

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The Control of Economic Activity (Occupied Territories) Bill 2018 What is it and what will it achieve?

What is the Occupied Territories Bill?

The Control of Economic Activity (Occupied Territories) Bill 2018 is proposed legislation which, when enacted, will result in a complete ban on the import of goods and services produced in illegal Israeli settlements in the Occupied Palestinian Territories (the West Bank).

Why do we need an Occupied Territories Bill?

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. Importantly, in relation to the Occupied Territories Bill, it is also a crime under Irish law, no matter where in the world it is committed.

In other words, these settlements are built on land outside Israel’s internationally recognised borders and deep in the heart of Occupied Palestinian Territory. Palestinian communities are forcibly removed from their land in order to make way for these illegal settlements which comprise residential, agricultural and business developments. They now account for more than 42% of the land of the West Bank in Occupied Palestinian Territory and consume the majority of its water and natural resources.

The position of the Irish Government and that of the European Union’s is absolutely clear: Israeli settlements in the Occupied Palestinian Territory are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible. Yet, both Ireland and the EU while defining these settlements as illegal and an obstacle to peace, provide them with the economic means to thrive. Professor Michal Lynk, UN Special Rapporteur on ‘the situation of human rights in the Palestinian territories occupied since 1967 notes that allowing these goods and services ongoing access to the European market, *‘will enable the settlement wineries, farms, factories and high-tech industrial parks to continue to flourish on occupied territory that belongs to another people. The Green Line must be a red line’*.¹

Does the Bill only apply to the Occupied Palestinian Territories?

The Bill will prohibit the sale in Ireland of goods and services produced in settlements established in Occupied Territory. It does not name Israel or Palestine specifically but will apply only to Palestine automatically on enactment. It can be applied to other occupied territories if that territory is occupied within the meaning of the Fourth Geneva Convention and has been confirmed as such by a decision or advisory opinion of the International Court of Justice, a decision of the International Criminal Court or of an international tribunal. Its application to these territories is subject to an order of the Minister for Foreign Affairs and Trade.

Is the Bill compatible with EU Law?

Article 24 of EU Regulation 2015/478 on the common rules for imports from non-Member States of the EU allows States to ban the importation of goods from such States “on grounds of public morality, public policy [or] the protection of health and life of humans.”

The same exception applies under Article 36 of the Treaty on the Functioning of the European Union in relation to goods in free circulation within the EU. A prohibition on the importation of settlement goods is justifiable on each of these grounds. There is a range of eminent legal opinion which unequivocally demonstrates the compatibility of the Occupied Territories Bill with EU law.

These opinions are authored by;

- Michael Lynn, Senior Counsel, Bar Council in Ireland;
- Professor James Crawford of the University of Cambridge, Senior Counsel (UK), a former Judge in the International Criminal Court and one of the most eminent authorities on international law worldwide and;
- Professor Takis Tridamas, Kings College, London, a leading scholar in the field of EU law and one of the most frequently quoted academic authors by Advocates General of the European Court of Justice and, on matters of EU law, by English courts. His opinion that the Bill is compatible with EU law is unequivocal.

Who supports this in the international community?

Professor Michael Lynk, UN Special Rapporteur on Palestine, in his most recent report to the UN General Assembly on the situation of human rights in the Palestinian territories occupied since 1967, notes that:

No occupation in the modern world has been conducted with the international community so alert to its many grave breaches of international law, so knowledgeable about the occupier’s obvious and well-signalled intent to annex and establish permanent sovereignty, so well-informed about the scale of suffering and dispossession endured by the protected population under occupation, and yet so unwilling to act upon the overwhelming evidence before it to employ the tangible and plentiful legal and political tools at its disposal to end the injustice.²

In the same report, he recommends that the international community:

[i]n line with Common Article 1 of the 1949 Geneva Conventions, the 2001 Articles of Responsibility of States and Article 25 of the Charter of the United Nations, take all measures necessary, including countermeasures and sanctions, to ensure respect by Israel, and all other relevant parties, of their obligations under international law to end the occupation.

In a recent letter to Irish parliamentarians, Professor Michael Lynk further states this in relation to the Occupied Territories Bill:

*'The ban on trade with Israeli settlements prescribed by the Occupied Territories Bill is the very type of measure I had in mind in making (this) recommendation. Indeed, as is clear from my report, I am of the view that members of the international community are under an obligation arising under international law to adopt such measures. This obligation is a legal requirement, not a policy or political choice.'*³

How far has the Bill progressed?

The Bill, which was introduced to the Seanad by Senator Frances Black, has passed all stages in Seanad Éireann. Fianna Fáil introduced the Bill to the Dáil in January 2019, where it was passed by an overwhelming majority of 78 votes to 45. Three Ministers did not support the Government's opposition to the Bill and abstained from the vote. The Bill was subsequently referred to the Joint Oireachtas Committee for Foreign Affairs and Trade (JOCFAT) for detailed scrutiny. JOCFAT heard from expert testimony over several months and on the 12th December 2019 voted in favour of its progression to the next stage of the Dáil. The Bill has now passed eight out of ten stages in the Dáil and Seanad.

Conclusion

Decades of condemnation from the UN and countries across the world of Israeli settlement building, as well as a decision of the International Court of Justice confirming the illegality of this activity, has done absolutely nothing to deter Israel in its effort to colonise the West Bank.

It is patently clear that Israel will only comply with its obligations under international law if the international community compels it to do so. In order to ensure respect for international criminal law, international humanitarian law, and for the Irish law which gives effect to it, and more importantly in the interest of ending the severe hardship caused to Palestinians by Israeli settlements, the Oireachtas should enact this legislation as a matter of priority.

The recently announced so called Trump Plan has proven to be nothing short of a mockery of international law. It legitimises existing illegal settlements and proposes formal annexation. Annexation is illegal under the UN Charter and UNSC regulations 242 and 338. The proposal violates the principle of self determination, which is a core principle of international law and also offers the creation of 'Bantustans'. This would mean legitimisation of Palestinians living in fragmented spaces with restrictions of movement based on racial discrimination. Apartheid is criminalised under the Rome Statute of the International Criminal Court. If implemented, the so called 'Great Plan' would further extend existing breaches of international law and allow multiple new violations including annexation and the loss of self determination.

Rather than provide any hope or opportunity to pave the way for a solution, the 'Trump Plan' has created an imperative for other members of the international community to take a firm stance in defence of UN resolutions and international law.

Ireland's 33rd Dáil has a unique opportunity to lead an international movement which reaffirms the primacy of international law as the basis for bringing about a just solution in the Middle East.

References

- ¹ Communication from Professor Michael Lynk to EU Commissioner & Foreign Ministers (November 2019)
- ² Professor Michael Lynk, Report to UN General Assembly on the situation of human rights in the Palestinian territories occupied since 1967 (advanced unedited version published on 23rd October 2019).
- ³ Letter to Irish Parliamentarians, 29th October 2019.

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