

The Importation into the EU of Goods from Illegal Israeli Settlements

Some EU Provisions relating to the Importation of Goods

In order to regulate the flow of goods into the European Community there are rules and administrative procedures which, inter alia, enable the country of origin of the goods to be determined. These rules are established under what is called the Common Customs Tariff. They must be applied uniformly throughout the Community otherwise traders would soon learn where the laxest import regimes operated and direct their imports through those regimes.

The origin of goods may be either preferential or non-preferential. **Preferential origin of goods** confers the benefit of preferential tariff measures on goods imported into the EU from particular non-EU countries. There are specialised rules which may be laid down for the purpose of identifying the origin of goods for which the benefit is claimed. These rules are either laid down in the particular agreement, concluded with a third country, that defines the preferential measures, or, where the preferential measures are granted unilaterally by the Community to a particular third country, the rules are determined by the European Commission on the advice of the Customs Code Committee. The Customs Code Committee is a body which assists the Commission in applying tariffs to goods imported from third countries.

In the absence of an agreement to the contrary between the EU and a third country the **burden of proving the origin of goods** lies with the EU importer since he alone knows or can be reasonably expected to know it. The failure to disclose the country of origin of the goods imported into the EU is an offence governed by the domestic law of a Member State. It is a matter for the authorities of the Member State in which the alleged offence has occurred to prosecute the alleged offender. In principle the authorities of the Member State have to accept the declaration of the origin of the goods unless they have reason to believe that it is false.

The **customs duties** charged on goods imported from outside the EU are set by the EU. Seventy-five per cent of the duties collected are transferred to Brussels and form part of the EU's own resources. Member States are permitted to retain the remaining 25 per cent to cover their collection costs.

EU-Israel Association Agreement

The EU's Association Agreement with the State of Israel was executed on the 20th November 1995 and came into force on the 1st June 2000, following ratification by the parliaments of the then 15 Member States, the European Parliament and the Knesset. It replaced the earlier Cooperation Agreement of 1975. Title V of Protocol 4 of the Agreement relates to **Proof of Origin of Products**. Article 17 of Title V sets out the documentation to be submitted in relation to the exportation of goods by Israel into the EU. Article 18 relates to the procedure to be followed for the issue of what is called a Movement Certificate EUR.1 and an invoice declaration, one or other of which must be completed by an exporter to derive the benefit of preferential tariff measures under the Agreement.

As a result of Israeli exporters routinely stating **Settlement produce** as produce "Made in Israel" and of the Israel authorities refusing to differentiate between the two, **the EU issued a Notice in 2005** to replace an earlier Notice of November 2001. The new Notice, namely No.2005/C 20/02, informed operators that the EU and Israel had reached an arrangement whereby as and from the 1st February 2005 all movement certificates EUR.1 and invoice declarations made out in Israel should bear the name of the city, village or industrial zone where production conferring originating status had taken place. Operators presenting preferential proofs of origin under the EU-Israel Association Agreement were informed that the preferential treatment would be refused to the goods for which the proof of origin indicated that the production conferring originating status had taken place in a city, village or industrial zone brought under Israeli Administration since 1967. Prior to the issue of the Notice the EU had threatened sanctions against all Israeli products if an arrangement to deal with the particular problem was not agreed.

However, it is clear that the particular **EU Notice has been ineffective** and that Israeli exporters have successfully continued to falsely describe, for export purposes, Settlement produce as produce made in Israel.

The **abuses** being perpetrated by the Israeli authorities and by Israeli exporters are **extensive**. In the House of Commons debate on the EU-Israel Association Agreement held on the 27th January 2010 Dr Phyllis Starkey expressed the belief that at least 80 per

cent of the Settlement goods exported to the UK in 2009 were imported without duty being paid on them.

Not only are these **abuses** extensive they are also **difficult to address for the following reasons**:

(1) The customs officers of EU Member States generally have **insufficient geographical knowledge** of the region to know, for example, if a particular village is in Israel or in occupied Palestinian Territory. The Gush Shalom Settlement Products Boycott List gives an indication of the range of production units operating in the occupied territories and consequently how difficult it is to combat systematic falsification of export documentation.

(2) **Settlement produce is frequently mixed with non-settlement produce** with the result that identifying the exact origin of the produce is almost impossible and deliberate falsification of the export documentation relating to mixed produce becomes easy. This mixing of produce occurs particularly with agricultural and horticultural products, such as vegetable, fruit and flowers, which constitute a major part of Settlement production.

(3) The **Customs Authorities of the Member States do not have the power** to visit the occupied territories to check production activities. The European Commission does have the power and according to Dr Starkey officials from the Commission origin unit visited Palestine and Israel in 2009 in order it get a clearer picture of the location of particular production sites. However, the European Anti-Fraud Office (OLAF), which can inspect the premises of Israeli exporters (but only if advanced notice is given) and examine their books, has apparently not passed on any information about what came out of that visit. Any irregularities reported to the Commission are supposed to be disseminated to the Member States, including information about action taken, but this does not always appear to be happening in practice. In Dr Starkey's view the **EC is failing in its duty to collect** the information needed by Member States to deal with fraud **and to disseminate the information** between the various customs authorities.

(4) **The EUR.1 form evidently does not accompany the exported goods**. I do not know the reason for this or what documentation does accompany the goods but it would appear that, whatever it is, it is insufficiently detailed.

(5) If the customs officials of a Member State make a verification request in relation to what is considered to be doubtful information contained in the export documentation issued by the exporting country's authorities, the request goes before the verifying authorities. However, in the case of Israel **the issuing and verifying authorities are the**

same which renders the verification request of little value. Furthermore, often the request is not answered within the time stipulated in the Association Agreement.

(6) The greatest difficulty in combatting the **fraudulent practices** of the Israelis is that it would appear that these practices are **being engaged in** not just by Israeli exporters but systematically by the **State of Israel itself**.

Advice of UK Department for Environment, Food and Rural Affairs

On 10 December 2009, the UK Department for Environment, Food and Rural Affairs (DEFRA) issued advice about the labelling of settlement products on sale in the UK in the document *Technical advice: labelling of produce grown in the Occupied Palestinian Territories*. The document begins:

"The Government has received requests from retailers, consumer groups and NGOs for greater clarity about which origin should be stated on food and drink goods that have been produced and packed in the Occupied Palestinian Territories (OPT). Their enquiries have focused particularly on the distinction between products from Palestinian producers and products from Israeli settlements in the OPT."

The advice is as follows:-

"For produce from the West Bank, labelling currently states country of origin as '**Produce of the West Bank**'. Traders and retailers may wish to indicate whether the product originated from an Israeli settlement or from Palestinian producers. This could take the form, for example, of '**Produce of the West Bank (Israeli settlement produce)**' or '**Produce of the West Bank (Palestinian produce)**', as appropriate." (paragraph 4)

Labelling of Products

Proof of origin of products is required for the purposes of international trade. Product labelling is a separate matter. It **exists for the benefit of the consumer**. Labels on products inform the consumer about the characteristics of the product. For example, labels on food inform the consumer about the nutritional value and weight of the food.

EU Directive 2005/29/EC provides that consumers have the right to be adequately informed. There are some specific EU rules regarding, for example, labelling and product safety, and labels showing what textiles and other materials are made of. There are eight

EU directives dealing with the minimum labelling requirements in relation to the sale of food and drink. Apart from specific EU rules, it is a matter for each Member State to establish and implement its own legislation on labelling. There is a range of statutory instruments in Ireland which give effect to the EU directives.

There is **no legal requirement for producers of non-food items to show the country of origin on the label. With regard to food items the place or country of origin is also not required unless the absence of its disclosure might mislead the consumer to a material degree.** A name given to a food, including reference to a place, could misleadingly imply that the food comes from or has been made in a particular area, such as “American Style Burgers” that were made in Ireland. In such cases, the true place or origin should be made clear i.e. “Made in Ireland”.

Recent Parliamentary Questions in the Dail

On the 2nd February 2009 Mary Coughlan, Tánaiste and Minister for Enterprise, Trade and Employment, answered questions from Aengus Ó Snodaigh T.D. Here are his questions and her reply:

“182. Deputy Aengus Ó Snodaigh asked the Tánaiste and Minister for Enterprise, Trade and Employment if her attention has been drawn to the issues surrounding labelling of products from illegal Israeli settlements; and her plans to address these issues.

“183. Deputy Aengus Ó Snodaigh asked the Tánaiste and Minister for Enterprise, Trade and Employment if her attention has been drawn to the practice of shopping centres here renting floorspace to Israeli outlets selling Dead Sea products which are in fact products from illegal Israeli settlements; the action she will take regarding same.

“Tánaiste and Minister for Enterprise, Trade and Employment (Deputy Mary Coughlan):
I propose to take Questions Nos. 182 and 183 together.

“The issue raised by the Deputy involves a number of different policy considerations. In so far as my own area of direct policy responsibility is concerned, the Consumer Protection Act 2007 includes specific provisions in relation to the provision of information to consumers in the course of commercial transactions. Specifically the Act provides that the provision of false information in relation to the geographical or commercial origin of a product and where that information would be likely to cause the average consumer to

make a transactional decision that the average consumer would not otherwise make, such a practice is a misleading commercial practice. Traders who engage in misleading commercial practices commit an offence and are liable on conviction on indictment or on summary conviction, as the case may be, to the fines and penalties provided for under the Act. Evidence of traders engaging in misleading commercial practices should be brought to the attention of the National Consumer Agency, which is the body responsible for the enforcement of the Consumer Protection Act 2007.

“Should the products referred to in the Deputy’s questions relate to food products, there are Regulations governing the labelling of certain food products. These Regulations are enforced by the Food Safety Authority of Ireland, which operates under the auspices of my colleague the Minister for Health and Children. As regards issues relating to Israeli settlements, these issues essentially involve foreign policy considerations, which are the responsibility of the Minister for Foreign Affairs.”

The Consumer Protection 2007

The EU Unfair Commercial Practices Directive (Directive 2005/28/EC) deals with unfair and misleading business-to-consumer commercial practices. The Consumer Protection Act 2007 includes provisions for the implementation in Ireland of the particular Directive. The **fundamental principle** of these provisions in the Act is that the consumer must not be misled. **What constitutes false, misleading or deceptive information** is contained in Chapter 2 of the Act and Section 47 in Chapter 2 provides that a trader who engages in misleading commercial practices is **liable on conviction to the fines and penalties** set out in Chapter 4 of Part 5 of the Act. But it should be noted that under Section 78 of the Act the **defence of due diligence** exists if, firstly, the “commission of the offence was due to a mistake or the reliance on information supplied to the accused or to the act or default of another person, an accident or some other cause beyond the accused’s control” and, secondly, “the accused exercised due diligence and took all reasonable precautions to avoid commission of the offence”. Finally, Section 81 should also be noted: it provides that **convicted traders are liable to compensate consumers** for loss or damage sustained as a result of the offence. The provisions of the Act amply demonstrate that product information (labelling) and disclosure of the country of origin are distinct and separate matters except to the extent that inaccurate disclosure or non-disclosure of the country of origin on a product’s label misleads the consumer to a material degree.

Recommendation of the Tanaiste

I have to say, with respect to the Tanaiste and Minister for Enterprise, Trade and Employment, that reliance upon the Consumer Protection Act 2007 as a means by which to address the systematic and deliberate falsification of export documentation by the Israeli authorities and exporters is **unlikely to succeed**. I would imagine in most cases taken against traders the prosecution would not be able to satisfy the proofs required to secure a conviction. Also, it would amount to action being taken against the wrong person.

In relation to the views just expressed, it might be appropriate to quote the reply of the Exchequer Secretary to the Treasury, Sarah McCarthy-Fry, to Dr Phyllis Starkey in the House of Commons' debate on the 27th January 2010 when she said "My Hon Friend referred to provisions in section 167 of the Customs and Excise Management Act 1979, which enable Revenue and Customs to take action against traders who commit an offence. Under those provisions, we can only take criminal action against the UK importer where there is firm evidence to the effect that they knew that the goods originated in a settlement but nevertheless claimed Israeli preference. The **provisions do not enable the Department to take action against the exporter in Israel** who has drawn up a proof of preferential origin containing an incorrect place of production or an incorrect origin declaration."

Finally, the failure of criminal proceedings taken against importers or traders, while the Israelis themselves continued to act with impunity, would in all probability be reported in the Israeli media as a vindication of its policy in relation to exports from the Settlements and would weaken the negotiating position of the Palestinians in any negotiations with the Israelis.

Suggestions of Chris Andrews and Dick Roche

In the Dáil, on 21 January 2010, Chris Andrews suggested that Ireland **follow the UK's example** with regard to the labelling of goods from the West Bank. Responding for the Government, Dick Roche, Minister of State in the Department of Foreign Affairs, said: "The Minister for Foreign Affairs and I have discussed this and he has followed the UK

consultation process with interest and he took careful note of the issuing of the new guidelines in December. It is important to make clear that there is nothing to stop Irish retailers now from clearly labelling goods to distinguish settlement produce. The example of the UK suggests, however, that many retailers feel more comfortable doing so, or requiring such labelling from their suppliers, when there are clear Government guidelines to follow, to which the Deputy referred. ...

“Produce from the West Bank, including from settlements, is not and should not be labelled as “Product of Israel” but an identifier of “Produce of the West Bank”, or something similar, could well mislead consumers into assuming they were buying goods from Palestinian producers. There is an element of a double edged sword to this. Many Irish consumers might well wish to be aware if they are buying produce originating in illegal settlements. I am, therefore, **in favour of** consumers being given the information to make this choice, and of **similar guidelines issuing here**. The Minister for Foreign Affairs is in agreement with this view. Product labelling is not the responsibility of the Department of Foreign Affairs but rather a matter primarily for other Departments. However, the Minister has requested officials in his Department to discuss with the other relevant Departments with a view to following best practice observed in other countries.”

Voluntary labelling guidelines and/or following best practice, whatever that may be, is certainly better than allowing the status quo to continue. I am not familiar with the work that has been done or is ongoing in these areas and accordingly am not in a position to make further comment. But I do believe that robust action is also required. I will expand on this below.

Brita Case

In 2002 Brita GmbH, a German company engaged in water purification, imported drink-making equipment from an Israeli firm “Soda-Club” whose factory was based in an Israeli settlement in the West Bank. **German customs authorities queried the Israeli authorities** about the origin of the products and in response the Israeli authorities verified that the equipment had come from Israel. It would appear that the German customs authorities **did not accept the verification** given and Brita was ordered to pay €19,155 customs duties. Brita appealed the decision to a court in Hamburg. Early in 2009 the **Hamburg**

Court submitted a reference to the European Court of Justice on whether the German customs authorities were bound by the particular verification given by the Israeli authorities. The Hamburg Court also asked for a ruling on which EU association agreement, namely the one with Israel or the one with the P.L.O., applied to goods originating from the Occupied Territories.

On the 29th October 2009 one of the advocate-generals attached to the Court of Justice, namely **Advocate-General Bot**, published his Opinion which included the following **conclusions**:

- (i) The customs authorities of the importing Member State are not bound by the result of the subsequent verification given by the customs authorities of the exporting State; and
- (ii) Goods certified by the Israeli customs authorities as being of Israeli origin but which prove to originate in the Occupied Territories, more specifically the West Bank, are not entitled to preferential treatment either under EC- Israel Agreement or under the EC-PLO Agreement.

With regard to (i) above Advocate-General Bot in his Opinion also stated that there is a general **presumption** that the customs authorities of the exporting State are in the best position to verify directly the facts which determine the origin of the products. However, he added that, having regard to Israel's repeated insistence on the inclusion of Settlement products as products originating in Israel, the presumption did not apply in this case.

Finally, Advocate-General Bot stated that the entitled to preferential treatment under the EC-PLO Agreement may be granted to goods manufactured in the Occupied Territories but only if the certificates of origin are issued in accordance with that agreement and by the Palestinians authorities.

The **role of the advocate-general** is to assist the Court of Justice by presenting to the Court in advance of the court hearing his or her opinion on the issues to be determined. The opinion is not binding.

In the House of Commons debate referred to above Dr Starkey stated that the EU-Israel "agreement only applies to Israeli territory that is within its internationally recognized

borders, and that has recently been reaffirmed in a legal ruling from the European Court of Justice." I suspect that in this statement she was referring to the Brita case. However, I have just been informed that judgment in this case will be delivered tomorrow, that is on the 25th February. **If the Court does uphold Advocate-General Bot's Opinion** regarding verification, the future capacity of customs authorities of Member States to challenge the export documentation emanating from Israel should be significantly enhanced.

The Boycott of Israeli Goods

At present there is an international campaign to boycott Ahava cosmetic and beauty products and activists in various countries including Ireland have been involved. The products are based on extractions from a site on the shores of the Dead Sea inside the Occupied Territories. Ahava manufactures its products in a factory in the illegal Mitzpe Shalem settlement in the occupied West Bank and labels its products imported into the EU as originating in the "Dead Sea, Israel."

I don't know if there is any campaign to boycott Israeli products that come from Israel itself. A campaign against Israeli diamonds, if it does not already exist, might be considered. In this regard I now set out the text of a letter recently sent to the Editor of the Southern Star which a friend of mine has given me.

"SIR- In recent years the romantic image of diamonds as objects of desire has been tarnished by bloody conflicts in central Africa that are often funded by the trade of locally mined gems. Human rights organisations have begun a campaign against "conflict diamonds", or "bloody diamonds", and the ensuing global attention has forced the diamond industry to take action against the trade.

The Kimberley Process, introduced in a 2003 UN resolution is a certification scheme designed to prevent rough diamonds used to fund conflict from entering the market. However, cut and polished diamonds, regardless of what bloody conflict they may fund, do not qualify for regulation under the Kimberley Process. Israel's blood diamonds, are thus accorded a bogus legitimacy.

Israel, the source of the world's longest conflict, is also the world's largest producer of cut and polished diamonds. In 2006, Israel

exported \$16.7 billion worth of diamonds.

The importance of the diamond industry to the Israeli economy can best be appreciated when one considers that the budget of the Israeli Ministry of Defence in 2008 was \$13 billion. Since Israeli cut and polished diamonds are not regulated by the Kimberley Process, jewellers continue to sell them to consumers who are, for the most part, completely unaware that the gems were crafted in Israel, where taxes from that industry are used to fund the illegal occupation of Palestinian and the brutal subjugation of the Palestinian people.

Because the international community – western governments in particular – has long failed to protect innocent Palestinian civilians from constant attacks by the Israeli military, it is imperative that the concerned citizens of the world take action in defence of Palestinian human rights.

Diamond exports out-perform all other Israeli export commodities, which leaves its economy vulnerable to trends and public taste. Unlike other Israeli exports – technology, software, and armaments – diamonds are purchased by individual consumers, not companies or governments. When buying a diamond, each individual consumer has the power to withhold the money that powers the Israeli war machine. By choosing a stone that is truly conflict-free, consumers will diminish funding for Israeli crimes against humanity – in Palestine and beyond.

In the interim, Israeli diamonds shall remain.... on our conscience.

Sincerely," etc.

The Feeble Role Played by the European Union

The text of the conclusions of the meeting in Brussels on the 8th December 2009 of the Council of the European Union's foreign ministers included the following statement:

"The European Union will not recognize any changes to the pre-1967 borders including with regard to Jerusalem, other than those agreed by the parties." **The reality is that the EU does give de facto recognition to the post-1967 situation** by accepting Israeli goods that have been produced in the Occupied Territories. **Israel, for its part, does not and**

need not concern itself with the niceties of whether or not there is de jure recognition as long as there is de facto recognition.

The text of the conclusions of the meeting of the 8th December 2009 also included the following statement: "The Council reiterates that settlements, the separation barrier where built on occupied land, demolition of homes and evictions are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible." **What if the reality is that the Israelis do not want a two-state solution?** Surely, then they will be encouraged to continue with their illegal activities, thereby making a two-state solution even harder to achieve.

Finally, the text of the conclusions of the particular meeting also included the following statement: "The Council urges the government of Israel to immediately end all settlement activities, in East Jerusalem and the rest of the West Bank and including natural growth, and to dismantle all outposts erected since March 2001." This kind of **feeble exhortation** is typical of what emanates from Brussels. Periodic declarations made by the EU Presidency include expressions of being "deeply concerned about the threat of demolition" of houses, reminders to "Israel of its obligations under international law" and urgent calls to Israel "to reconsider the planned construction of new settlements." The EU has committed itself to upgrading the level and intensity of its bilateral relations with Israel but has stated that this upgrading "must be based on the shared values of both parties, and particularly on democracy, respect for human rights, the rule of law and fundamental freedoms, good governance and international humanitarian law." **The Israelis have no difficulty in disregarding such pious and feeble utterances issuing from the EU.**

The EU could do far more to bring peace and justice to the region if it was not so much under the influence of the United States. In an **article of Chris Patten** entitled "Low-profile EU leaders reflect feeble global role" featured in the Irish Times on the 24th November 2009, he stated "My final guideline for policy is that Europe is not and will not become a superpower or superstate. Unlike the US, we do not matter everywhere. We do not require a policy on every problem and every place. But where the problem affects much else, and where the region is close to home, we should have a policy that consists of more than waiting to agree with whatever America decides that its policy should be, as,

for example, in the Middle East. The present “no war, no peace” lull in the Middle East is not sustainable, nor is a one-state solution either possible or desirable.

So what can we do to nudge things forward in a region where America is again engaged but not respected, and where Europe is neither? **At the very least, we could set our own policy, beginning with an effort to end the fragmentation of Palestine and Palestinians between the West Bank, Gaza and East Jerusalem.”**

The Relevance of International Law

I agree with Chris Patten that the EU ought to have its own distinct policy on the Middle East and to come to the aid of the Palestinian people. However, the Palestinians, for their part, would be foolish to place too much hope in Europe becoming more assertive. In my view, they should give consideration to the international legal dimensions to the conflict.

On the 20th November 2003 the **UN General Assembly requested the International Court of Justice (ICJ) to give an advisory opinion** on the question, “What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory”. Israel was of the opinion that the court did not have jurisdiction to deal with the question and that even if it did have jurisdiction, the court should refrain from exercising it.

On the 9th July 2004 the ICJ delivered its replies. It was unanimous in its finding that it had jurisdiction to give the advisory opinion requested. Furthermore, it found that there was no compelling reason for it to use its discretionary power not to give an advisory opinion. The court accordingly complied with the request and then gave the following replies:

- (a) That the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated regime, were contrary to international law;
- (b) That Israel was under an obligation to terminate its breaches of international law; it was under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of the Opinion;

- (c) That Israel was under an obligation to make reparation for all the damage caused by the construction of the wall in the Occupied Palestinian Territory, including in or around East Jerusalem;
- (d) That all States were under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; that all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12th August 1949 had in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in the Convention;
- (e) That the United Nations, and especially the General Assembly and the Security Council, should consider what further action was required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking account of the Advisory Opinion.

The replies at (a), (b), (c) and (e) above were given by fourteen votes to one, the dissenting judge being the judge from the United States; the reply at (d) was given by thirteen votes to two and again the judge from the United States was one of the dissenting judges.

The ICJ is the principal judicial organ of the UN. It is composed of fifteen judges, who are elected for terms of office of nine years by the UN General Assembly and the Security Council. It acts as a world court. It has a dual jurisdiction: it decides, in accordance with international law, disputes of a legal nature that are submitted to it by sovereign states; and it gives advisory opinions on legal questions at the request of the organs of the UN or specialized agencies authorized to make such a request.

Though the Court's advisory opinions are non-binding, they are nonetheless influential and carry great moral authority. Their non-binding character does not mean that they are without legal effect. The legal reasoning embodied in them reflects the Court's authoritative views on important issues of international law and, in arriving at these views, the Court follows essentially the same rules and procedures that govern its binding judgments delivered in contentious cases submitted to it by sovereign states.

Of course, **Israel has**, not surprisingly and with the support of the United States, **disregarded the advisory opinion of the ICJ**. Indeed, its violations of international are now much more extensive than they were when the advisory opinion was given. However, what is most significant in the ICJ's advisory opinion, in terms of seeking to bring about positive change, is the contents of (d) above. The **obligations** in this part of the ICJ's reply are **of an *erga omnes* character**. In other words, the particular obligations under international law are the responsibility of all States to discharge. As stated above, the EU from time to time reminds Israel of its obligations under international law. However, in my view, **the EU itself is in breach of the *erga omnes* obligations** contained in the ICJ's advisory opinion. The EU imports goods produced in the Occupied Palestinian Territory thereby rendering aid and assistance to Israel in maintaining the situation created by the wall.

I did not as a legal practitioner have any professional experience of international law but, in my view, **if an advisory opinion were requested from the ICJ** as to whether the trade relations between the EU (and other countries) and Israel constituted a breach of the particular obligation, the reply would be in the affirmative. If this were the outcome, **the EU**, in having greater respect for the ICJ than either the United States or Israel, **would find itself compelled to revise its trade relations with Israel** in a manner that would benefit the Palestinians.

It should also be pointed out that the **ICJ's reply at (e) above should act as an encouragement to the General Assembly** of the UN to request the proposed advisory opinion. I have no idea of what kind of lobbying took place in advance of the General Assembly in 2003 requesting the ICJ's advisory opinion. Clearly, this would have to be looked into. Also, such action would require the full support of the Palestinians who understandably would have to have due regard to the possible political consequences. But I am firmly of the view that unless some **robust action** is taken against the Israelis, they will continue to make life more and more intolerable for the Palestinians.

Kevin Liston
24th February 2010