



Briefing No. 47

SADAKA صدقة

The Ireland Palestine Alliance ♦ www.sadaka.ie

Occupied Territories Bill: Briefing Update (May 2020)

The Control of Economic Activity (Occupied Territories Bill) 2018 will make it an offence for a person to import or sell goods or services originating in an occupied territory or to extract resources from an occupied territory in certain circumstances; and to provide for related matters.

The Bill lapsed with the dissolution of the Dáil and Seanad, but had reached committee stage, having been universally welcomed by all political parties and the vast majority of Independents, with the exception of Fine Gael.

Legal Arguments

The most persistent argument posited by Minister Coveney as grounds for not supporting the Occupied Territories Bill is his assertion that it is incompatible 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:

- Professor Takis Tridimas, 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;
- 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;
- Michael Lynn, Senior Counsel, Bar Council in Ireland.

[This opinion piece](#) by Gerry Liston (Legal Officer with Sadaka), published in the Irish Times on 26th November 2018 summarises the legal discussions relating to the Bill. It also cites the approach taken to banning goods from Apartheid South Africa in the 1980s at which time, an Irish Minister by-passed the advice of the Attorney General and identified a legal basis on which South African goods could be banned (<https://www.irishtimes.com/opinion/ireland-must-ban-goods-from-occupied-territories-1.3709898>).

Supporting the Two-State Position / Preparing the Ground for a Peace Process

Israeli settlements, or colonies, are illegal under international law (Rome Statutes and the 4th Geneva Convention). There are some 700,000 settlers now living illegally in the West Bank, the Jordan Valley and in East Jerusalem. Their presence has long been recognised as a barrier to negotiations for peace and to implementation of a two state solution. Simon Coveney is on record as reiterating the EU position on the illegality of the settlement/colonisation of Palestine. As Israel is stepping up its plans for annexation, and bringing all the illegal settlements under its sovereignty as part of the US 'Peace Plan', it is now more imperative than ever that action in the form of sanctions and not just condemnations are implemented.

[Irish Times: Israel's annexation plans could be a game changer for its relationship with EU](#)

[The Journal: Coveney condemns 'illegal' Israeli settlements in wake of US policy U-turn](#)

- Under the "Mitchell Principles" which guided the Irish peace process negotiations, the parties to the process were required to cease activity inconsistent with the achievement of the peace 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.
- The Occupied Territories Bill brings Ireland into line with International law. No ongoing illegal situation should ever be 'up for negotiation' (this certainly was not the case as part of the Irish Peace Process) and therefore the Bill could not be inconsistent with any properly functioning peace process, if one existed.

Uni-Lateral Action – Sets the EU standard

There are numerous examples where action on Palestine by EU member states has led the way for collective EU or multiple state actions. In other words, if one country leads, others will follow.

- In February 1980, the then Minister for Foreign Affairs Brian Lenihan decided to make Ireland the first European country to both recognise the PLO and to call for a Palestinian state. Just months later the (then) EEC adopted a similar position.
- Similarly, amid criticism for doing so, the then Minister for Foreign Affairs Micheál Martin was the first EU Minister to go to Gaza in 2010 - numerous EU delegations have visited or attempted to since.
- EU labelling guidelines on goods from Israeli settlements were issued by the EU in 2015 but only after the UK went alone as a member state in 2009, followed later by Denmark in 2013 and followed by Belgium in 2014.
- The EU reiterated in 2019, that goods originated in illegal Israeli settlements must be clearly labelled as such in order to allow consumers to make 'informed choices'. The European Court of Justice in Luxembourg made the ruling following the sale of French wine, grown on stolen Palestinian land in the West Bank was labelled as a product of Israel.

There is now an ideal opportunity for Ireland to lead the international community in taking clear and meaningful action by progressing the Occupied Territories Bill. The recent letter issued by 127 UK MPs, coupled with statements from the French government and other states clearly indicates that the international community is seeking ways to deploy punitive economic sanctions in response to the threat of annexation.

Ireland is ahead on this issue. The Occupied Territories Bill is just two stages from having passed both Houses of the Oireachtas and has the overwhelming support of the majority of Oireachtas members. Ireland is ideally placed to take a lead, not just within the EU, but within the international community, by enacting the Bill. This would clearly demonstrate to Israel and the international community that tangible actions in support of the Palestinian people's just cause, and securely framed within international law, are possible and achievable.

Negotiations on a Programme for Government – a need to compromise?

The Fine Gael leadership appears to continue to resist including the Occupied Territories Bill in the programme for Government but they may offer a compromise, recognition of the State of Palestine, in its place.

It is important to be aware that such an offer is not a compromise at all. In 2017 Dr. Mustafa Barghouti, a senior Palestinian politician and former presidential candidate, on a visit to Dublin, was asked which is more important, the OTB or recognition. He was unequivocal in his reply. He stated that over eighty countries had recognised the State of Palestine and that Ireland's recognition, while welcome, would add little to the Palestinian cause. The OTB, on the other hand, is a game-changer because **it will establish in national law the illegitimacy of the Israeli settlements as set out in international law**. While Israel can continue to flout international law with impunity it cannot do so with national law.

This explains the vehement opposition of Israel to the OTB. They see it as the first such initiative which if replicated in other countries, would have very serious consequences for how Israel carries out its policies in relation to Palestine. As a result, such a 'compromise' should be resisted.

20th May 2020