

The Control of Economic Activity (Occupied Territories) Bill 2018

Proposed by Senator Frances Black & the Seanad Civil Engagement Group
With the support of: Trócaire, Christian Aid, Irish Congress of Trade Unions

What does the Bill do?

Under international criminal law, the transfer by a State of its civilian population into a territory it has militarily occupied is a ‘war crime’¹, as well as a ‘grave breach’ of international humanitarian law.² Importantly, such a transfer is also a crime under Irish law, no matter where in the world it is committed.³ Ireland has a duty to ensure these laws are respected and to uphold the humanitarian principles outlined in them.

To this end, the **Control of Economic Activity (Occupied Territories) Bill 2018** seeks to prohibit certain economic activity with illegal settlements in territories deemed occupied under international law. It would restrict the import and sale of **goods** produced in such settlements, Irish involvement in the provision of **services** in such settlements, and the extraction of **resources** from occupied territories without the consent of the legitimate authority of that territory. Such economic activity underpins the long-term continuation of illegal settlements, and in tabling this bill we are stating that Ireland should not provide economic or political support for them, wherever they arise.

What territories does the bill apply to?

Whether or not certain territories are occupied for the purposes of international law is often contested. Differing views exist between states as to whether, for example, Morocco occupies Western Sahara. Section three of the bill is drafted specifically to take this into account. If enacted, it will apply by default only to territories where there is clear international legal consensus on the status of the occupation. It then provides the option to add extra territories beyond this, provided there is agreement between the Minister for Foreign Affairs & Trade and both Houses of the Oireachtas, again working on the basis of consensus.

“Relevant occupied territories” are therefore defined as those which have been:

- Confirmed as such by the International Court of Justice (ICJ), the International Criminal Court (ICC), or an International Tribunal
- Designated as occupied for the purposes of this Act by the Minister of Foreign Affairs & Trade, subject to the approval of both Houses of the Oireachtas.

Legal consensus: the occupied Palestinian territories (OPT)

As it stands, only the occupied Palestinian territories have been confirmed as occupied for the purposes of international law by the ICJ. This is consistent with repeated statements by the EU, UN and the longstanding position of the Irish Government, who state that: *“Ireland and its EU Partners have a clear position on Israeli settlements. The West Bank, including East Jerusalem, Gaza and the Golan Heights are territories which have been occupied by Israel since 1967. Israeli settlements are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution to the Israeli-Palestinian conflict impossible.”*⁴

¹ Rome Statute of the International Criminal Court: http://legal.un.org/icc/statute/99_corr/cstatute.htm

² Fourth Geneva Convention concerning the Protection of Civilian Persons in Time of War: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>

³ Specifically the International Criminal Court Act, 2006 and the Geneva Conventions Acts, 1962 and 1998.

⁴ <https://www.dfa.ie/our-role-policies/international-priorities/middle-east-and-north-africa/opt-ivestment-advice/>

As presented, the bill would *not* implement a ban on Israeli goods – only goods produced in settlements deemed illegal under international law. In 2012, the Joint Oireachtas Committee on Foreign Affairs & Trade called for such a move on the basis that it “could have a strong and effective impact on suffering in the region”. Several NGOs working on this issue have long echoed this call, including Trócaire, Christian Aid, the Irish Congress of Trade Unions and many others.

It is the hope of the Civil Engagement Group, however, that the application of the bill could potentially be extended to territories when a similar case for occupation can be made, such as Western Sahara, where the suffering of the Sahrawi people is longstanding and well-reported. A collaborative approach is required here, based on consensus within the Oireachtas. The general principle is the same: where there is clear agreement that a territory is occupied for the purposes of international law, Ireland should do what it can to alleviate the human suffering that inevitably results and refuse to politically or economically support illegal settlement activity.

Why does this matter? The case of Palestine

A clear modern example of a breach of the prohibition of the transfer of civilian population into occupied territory is the settlement by Israel of the Palestinian “West Bank”. Israel has occupied the West Bank since 1967, and since then has transferred over 600,000 of its citizens onto that territory. This has been facilitated by the widespread confiscation of Palestinian land, particularly fertile land used for farming. It has severely reduced the land available for agriculture, housing and basic services, caused displacement of Palestinians, and led to immense suffering and a deteriorating human rights situation on the ground, particular due to highly restricted access to water and electricity. The way settlements have been constructed has fragmented the West Bank into a series of disassociated enclaves, with freedom of movement between them highly limited. A 2013 World Bank study estimated that the restricted Palestinian access to the part of the West Bank in which most of the settlements are located cost the Palestinian economy \$3.4 billion in 2011.⁵ Meanwhile, fruit and other goods originating in the illegal settlements have appeared for sale on Irish shelves, sustaining this injustice.

Is this measure compatible with EU law?

Under the Treaty of the Functioning of the EU, trade rules are generally uniform across all EU Member States. However, exceptions are granted where they can be justified “on grounds of public morality, public policy or public security, and the protection of health and life of humans”.⁶ The legal basis of the bill and its permissibility under EU law are provided by two formal legal opinions: the first from Michael Lynn, Senior Counsel in Ireland, and the second from Professor James Crawford of the University of Cambridge, Senior Counsel in the UK and one of the most eminent authorities on international law worldwide. The bill was drafted with the oversight of the Office of the Parliamentary Legal Advisor (OPLA) of the Houses of the Oireachtas.

Next steps

The Control of Economic Activity (Occupied Territories) Bill 2018 will be proposed by Senator Frances Black, the Seanad Civil Engagement Group and other supportive Senators for debate in Seanad Éireann on January 31st 2018. If you have any questions on the bill, please feel free to contact Senator Black’s office on 016183279.

⁵ ‘Area C and the Future of the Palestinian Economy’, World Bank, October 2nd 2013: <https://openknowledge.worldbank.org/bitstream/handle/10986/16686/AUS29220REPLAC0EVISION0January02014.pdf?sequence=1>

⁶ Article 36 of the Treaty on the Functioning of the EU; and Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports, OJ L 84, 31.3.2009.