

Control of Economic Activity from Settlements in Occupied Territories

Draft framework for Bill; To be complemented with domestic law references

Article 1: Summary

- A) This bill gives effect to the State's obligations:
1. Arising under customary international humanitarian law, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, peremptory norms of international law and the customary Articles on the Responsibility of States for Internationally Wrongful Acts.
 2. In compliance with Article 36 of the Treaty on the Functioning of the European Union and with the EU Regulation 475/2015 of the European Parliament and of the Council of 11 March 2015 on common rules for imports.
 3. In keeping with the spirit of the Constitution of *[Insert Country]* generally, and specifically *[Insert relevant domestic laws on humanitarian law, ICC and others]*.
- B) For that purpose, the Bill:
1. Instructs the *[Insert Country]* custom authorities no longer authorize imports from or exports to illegal settlements located in occupied territories.
 2. Makes it an offence to a person or company to (1) import or sell goods or services originating in an occupied territory and produced by an illegal settler, (2) export goods or services to a settlement or illegal settler based in an occupied territory.

Article 2: Concepts

“Duties of Non-Recognition and Non-Assistance” refer to state obligations laid out in Article 41(2) of the Articles on the Responsibility of States for Internationally Wrongful Acts, which form an integral part of customary international law and requires that ‘states shall neither recognize as lawful a situation created by a serious breach of a peremptory norm of international law, nor render aid or assistance in maintaining the situation created by the breach’.

“Fourth Geneva Convention” means the Convention (IV) relative to the Protection of Civilian Persons in Time of War done at Geneva, 12 August 1949.

“Illegal settlement” – see article 5.

“Illegal settler” means a member of the civilian population of an occupying power who was or is present within the relevant occupied territory and whose presence is being, or has been, facilitated directly or indirectly, by the occupying power.

“Ministers” means the minister competent for foreign trade and the minister for foreign affairs.

“Occupied territory” – see article 4.

“Occupying power” has the same meaning as it has in the Fourth Geneva Convention.

“Peremptory norm of international law” means, in accordance with article 53 of the Vienna Convention on the Law of Treaties, a norm of generational international law which is ‘accepted and recognized by the international community of States as a whole from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character’.

“Resources” means natural resources, which include but are not limited to oil, gas, mineral, rock, energy, timber, marine life, and agricultural produce.

“Settlement goods” means goods produced in whole or in part within a relevant occupied territory by an illegal settler.

“Settlement services” means services provided in whole or in part within a relevant occupied territory by an illegal settler.

“Settlement trade” means trade originating to/from the State of *[Insert Country]* and from/to illegal settlements in occupied territories.

Article 3: Obligation of the State of Belgium to act on illegal settlement trade

- A) Having regard to the quintessential importance of abiding by peremptory norms of international law for the pursuit and protection of international peace and security.
- B) Having regard to the fact that all peremptory norms are international customary law and that the State of *[Insert Country]* recognizes the need to protect international treaty and customary law in the case of grave violations of international humanitarian law in *[Insert relevant domestic laws]*.
- C) Having regard to the stipulations of internationally wrongful acts in *[Insert relevant domestic laws]*, in particular that a crime against humanity includes apartheid as defined in the Rome Statute of the International Criminal Court and that internationally wrongful acts include those articles of the 1949 Geneva Convention including, but not limited to:
 - (1) The destroying or taking possession of the property of the enemy, unless the taking possession is a consequence of urgent military need;
 - (2) The destruction or taking possession of goods, not as a result of urgent military need, that are exported on large scale, unlawfully and willingly;
 - (3) The pillage of a city or place, also when these are taken during an attack;
 - (4) The direct or indirect transfer of the civilian population of the occupying force to the occupied territory;
- D) Having regard to the confirmation by the State of *[Insert Country]* that the crimes elaborated in the *[Insert relevant domestic laws]* are to be penalized with incarceration.
- E) Having regard to the peremptory norms discussed by the International Law Commission in its developing of the Articles on the Law of Treaties and the Articles on the Responsibility of States for Internationally Wrongful Acts, including the prohibitions of aggression, genocide, slavery, racial discrimination, crimes against humanity, torture and the right to self-determination.
- F) Having regard to the International Court of Justice decision that core norms of international law are *erga omnes* norms to be observed by all States because they constitute intransgressible principles of international customary law that are fundamental to the respect of humanity.
- G) Having regard to the definition of Crimes Against Humanity by the Criminal Court of Justice, including but not limited to¹:
 - (1) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
 - (2) The crime of Apartheid.
- H) Having regard to the definition of War crimes by the International Criminal Court, including but not limited to²:
 - (1) Grave breaches of the 1949 Geneva Conventions including extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - (2) Other serious violations of the laws and customs applicable in international armed conflict, including, but not limited to, (1) the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, (2) the destructing or seizing of the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war, and (3) the pillaging of a town or place, even when taken by assault.
- I) Having regard to the fact that trade can imply recognition of an internationally wrongful act, particularly when such trade primarily benefits the occupying power. In particular referring to the ICJ Advisory Opinion on Namibia in which the ICJ addresses economic relations: “the restraints which are implicit in the non-recognition of South Africa’s presence in Namibia [...]

¹ Rome Statute of the International Criminal Court, Article 7.

² Rome Statute of the International Criminal Court, Article 8.

impose upon member States the obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory”³. The Hague Convention and the Fourth Geneva Convention confirm that the fundamental prohibition of the transfer of civilian population *ipso facto* implies an equally strong prohibition on the economic activity of transferred civilians for the benefit of the occupying state⁴.

- J) Having regard to the fact that trade can provide assistance to the maintenance of an internationally wrongful act, particularly when such trade primarily benefits the occupying power. In particular referring to the Marrakesh Agreement Establishing the World Trade Organization, whose preamble confirms the economic benefits of liberalized trade: “raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services”⁵.
- K) Having regard to [Insert Country] experience with restricting trade because of a lack of consent, for example in [Insert relevant domestic laws].
- L) Having regard to the competence of the State of [Insert Country] over its customs authorities while always recognizing the exclusive competence of the European Commission in the field of Common Commercial Policy.
- M) Having regard to Article 36 of the Treaty on the Functioning of the European Union, which allows for “prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security”⁶.
- N) Having regard to Article 24.2 lett. a) of the Regulation 2015/478 of the European Parliament and of the Council on Common Rules for Imports, which confirms that the regulation on imports “shall not preclude the adoption or application by Member States of: (a) prohibitions, quantitative restrictions or surveillance measures on the ground of public morality, public policy or public security”⁷.
- O) Having regard to the conformity of trade restrictive measures toward illegal settlements in occupied territories with WTO law, because of a lack of substantive jurisdiction of GATT due to the limits on its territorial application, the *lex specialis* nature of the duties of non-recognition and non-assistance, or the application of public moral and security exceptions in the WTO treaties.
- P) It is confirmed that the State of [Insert Country] will prohibit the importation and exportation of goods and services to and from illegal settlements in Occupied Territories. This measure does not constitute a sanction, but safeguards the territoriality principle in, and unity of, international law, specifically with regards to peremptory norms of international law.

Article 4: Establishing whether a territory is occupied

“Occupied territory” means a territory which is occupied within the meaning of the Fourth Geneva Convention and which has been confirmed or designated in one or more of the following:

- (1) a decision or advisory opinion of the International Court of Justice, or
- (2) a decision of the International Criminal Court, or
- (3) a decision of an international tribunal, or
- (4) in a regulation made by the Minister of Foreign Affairs, or

³ Advisory Opinion, *Legal consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276*, ICJ, 21 June 1971, para. 124-125.

⁴ 1907, Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (The Hague Regulation), Article 55.; Conference of the High Contracting Parties to the Fourth Geneva Convention: statement by the International Committee of the Red Cross, 05 December 2001, Article 49.; Moerenhout, *The obligation to withhold from trading in order not to recognize and assist settlements and their economic activity in occupied territories*, 2012, *Journal of International Humanitarian Dispute Settlement*, Vol. 3, N. 2, at 349-352.

⁵ 1994 Marrakesh Agreement Establishing the World Trade Organization, no. 31874.

⁶ Treaty on the Functioning of the European Union, Article 36.

⁷ European Parliament and Council, *Regulation on Common Rules for Imports*, 11 March 2015, Regulation 2015/478, L83/16.

(5) in the Common Foreign and Security Policy of the European Union

Article 5: Establishing whether settlements are illegal

“Illegal settlements” means settlements within an occupied territory in which civilians of the occupying power live and whose presence is being, or has been, facilitated directly or indirectly, by the occupying power, and whose illegality has been confirmed or designated in one or more of the following:

- (1) a decision or advisory opinion of the International Court of Justice, or
- (2) a decision of the International Criminal Court, or
- (3) a decision of an international tribunal, or
- (4) in a regulation made by the Minister of Foreign Affairs, or
- (5) in the Common Foreign and Security Policy of the European Union

Article 6: Prohibition on importation and exportation

- A) The import into the territory of *[Insert Country]* of goods, services and resources originating in whole or in part in illegal settlements in occupied territories shall be prohibited. This includes products that circulate on the EU’s internal market, which originated in whole or in part in illegal settlements in occupied territories.
- B) The export from the territory of *[Insert Country]* of goods, services and resources toward illegal settlements in occupied territories shall be prohibited.

Article 7: Consequences of the prohibition on importation and exportation

- A) It shall be an offence for a person or company to import or attempt to import goods, services or resources that originate in part or in whole in illegal settlements in occupied territories.
- B) It shall be an offence for a person or company to assist another person to import or attempt to import goods, services or resources that originate in part or in whole in illegal settlements in occupied territories.
- C) It shall be an offence for a person or company to export or sell goods, services or resources to an illegal settler or to any person or company located in illegal settlements, or attempt to do so.
- D) It shall be an offence for a person or company to assist another person to export or sell goods, services or resources to an illegal settler or company located in illegal settlements, or attempt to do so.
- E) For the purpose of A and B in this Article, it shall be an offence for a person to engage, attempt to engage, or assist another person to engage in the extraction of resources from a relevant occupied territory or its associated territorial waters, provided that such extraction has not been consented to by the internationally recognized representative of the Occupied People.

Article 8: Penalties

- A) To be completed in line with and reference to domestic law

Article 9: Defenses

- A) To be completed in line with and reference to domestic law