

The law has teeth: building on judicial decisions

Momentum should be built up toward outlawing Israel's policy in major parts of the world

By Chibli Mallat

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Amid the continuing turmoil over the settlements, a little judicial victory for West Bankers was registered at the European Court of Justice on February 25. The case is excerpted on this page, together with a comment by Christopher Lund.

Considering the bulldozing-like style of Israeli occupation, both really and figuratively, the little achieved by European judges – ruling that goods manufactured in Israeli settlements in the West Bank were not “made in Israel” – is more significant than the tons of paper devoted to condemnation of Israeli policy in sundry diplomatic places, including recently by the EU new High Representative for Foreign Affairs and Security Policy of the European Union, Catherine Ashton. The law has teeth, which all political declarations in the world lack. Israel may not go bankrupt because preferential trade has been denied to a small portion of its manufacturing industries, but the message of Israel’s boundaries stopping at the line of 1967 is powerful one.

Coming together with the Goldstone Report and the increasing fear by Israeli high officials and military officers of travelling to Europe lest they get arrested, the judicial momentum should be built up toward outlawing Israeli governmental policy in major parts of the world.

Under international law, the settlers are the weakest link in Israel’s continued breaches of international law.

It is up to the Palestinians to transform small victories in a more serious manner, and to ensure that settlers pay a significant price for their illegal colonization of the West Bank.

There are many ways to do so, starting with a so-far-lost dictum of the US judge on the International Court of Justice in the advisory opinion of the ICJ in July 2004, yet another place where international law was vindicated for Palestinian rights. Thomas Buergenthal’s opinion is forceful: “Paragraph 6 of Article 49 of the Fourth Geneva Convention also does not admit for exceptions on grounds of military or security exigencies. It provides that ‘the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.’ I agree that this provision applies to the Israeli settlements in the West Bank and that their existence violates Article 49, paragraph 6.”

In other words, Israeli settlers in the West Bank are in open violation of international law. Judicial action against the settlers’ breach of the law should now be taken outside Israel.

Chibli Mallat edits THE DAILY STAR law page. He has represented Sabra and Shatila victims against Sharon et al., and the families of Imam Musa Sadr and his companions against Moammar Gadhafi and his aides. He is presidential professor of law at the University of Utah, and EU Jean Monnet Professor of European Law at Saint Joseph’s University in Lebanon.