

TRADING AWAY PEACE:

How Europe helps sustain illegal Israeli settlements

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Foreword

In early 1993, I was appointed EU Commissioner for External Relations. It was a time of hope and engagement between Israel and the Palestinians, months before the signing of the Oslo Accords.

Almost 20 years have passed since the Oslo Accords were signed – and peace in the Middle East seems more remote than ever. That no comprehensive peace has been achieved is due to a number of reasons. The stagnation of the peace process cannot be attributed to a single factor.

However, one of the main reasons – I would say the decisive one – is Israel's incessant settlement policy in the West Bank and East Jerusalem. In recent years, this policy has been preventing the resumption of meaningful peace negotiations. But its negative impact goes much further: it threatens the viability of the two-state solution and thus the very feasibility of peace.

During the past decades, the EU has consistently criticized and condemned the settlement policy. Dozens of official EU statements and positions reaffirm the illegality of the settlements under international law and regard them as major obstacles to peace. Repeatedly, the EU has stressed that it will not recognise any unilateral changes to the pre-1967 borders, including with regard to Jerusalem.

As settlement construction has continued and accelerated, however, we Europeans have failed to move from words to action. So far, we have refrained from deploying our considerable political and economic leverage vis-à-vis Israel to contain developments on the ground that contradict our basic values and that undermine our strategic interests.

As the window of opportunity for peace between Israel and the Palestinians is closing before our eyes, the EU now faces a fundamental challenge and possibly last chance to translate its principled positions into effective action. If Europe wants to preserve the two-state solution, it must act without delay and take the lead.

This groundbreaking report suggests how the EU could do so. It identifies concrete measures that the EU and its 27 member states should adopt to restore credibility to the EU's positions and contain the settlement policy. At the highest level, they deserve serious consideration.

I am of the opinion that these measures, directed only at illegal settlements outside Israel's recognised borders, do not constitute an anti-Israel agenda. On the contrary, the preservation of the two-state solution, in accordance with international law, should be seen as a contribution to Israel's security and legitimacy.

Hans van den Broek

Former Minister of Foreign Affairs of the Netherlands (1982-1993) and former EU Commissioner for External Relations (1993-1999)

Executive summary

The European Union's position is absolutely clear: Israeli settlements in the occupied Palestinian territory are "illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible".¹ Yet this report shows how European policy in practice simultaneously helps sustain the settlements. It reveals that the EU imports approximately fifteen times more from the illegal settlements than from the Palestinians themselves.

Israeli settlements are communities established on territories occupied by Israel since 1967. Today there are more than 500,000 Israeli settlers living across the occupied West Bank including East Jerusalem. Settlements control more than 42% of West Bank's land and the majority of its water and natural resources.² Their daily encroachment on Palestinian territory undermines the feasibility of the two state solution promoted by the European Union.

Over the past two years, settlement expansion has accelerated with more than 16,000 new housing units announced or approved.³ Meanwhile the demolitions of Palestinian structures - including those funded by European donor support - are on the rise, displacing over a thousand people from their homes in 2011, almost twice the number in 2010.⁴ The last two years have also seen unprecedented numbers of violent attacks by settlers against Palestinians.

A discriminatory two-tier system

Through the establishment of settlements, successive Israeli governments have created a discriminatory two-tier system in the West Bank with settlers enjoying all the rights and benefits of Israeli citizenship, and Palestinians subject to Israeli military laws that deprive them of their fundamental rights.

Movement of Palestinians within the West Bank and access to essential services including hospitals, remains hampered by some 542 obstacles to movement including roadblocks and checkpoints, despite limited easing in the last years.⁵ Access to water also remains hugely unequal with Israel over-extracting West Bank water resources, while restricting Palestinians from drilling new wells and developing their water infrastructure. In some cases, pumping of groundwater to irrigate export crops on settlement farms has dried up nearby Palestinian wells, limiting Palestinians' ability to cultivate their own lands.

The two economies of the West Bank

Settlement farmers and manufacturers benefit from wide-ranging Israeli government subsidies and enjoy easy access to international markets via government-built roads that bypass Palestinian populated areas.

In stark contrast, the Palestinian economy is severely constrained by Israeli restrictions on access to markets and natural resources, the annual cost of which has been estimated at EUR 5.2 billion or 85%

¹ Council of the European Union (EU), 'Council Conclusions on the Middle East Peace Process' (8 December 2009): <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/111829.pdf>.

² B'Tselem, 'By hook and by crook - Israeli Settlement Policy in the West Bank' (July 2010): <http://www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf>.

³ The Rights Forum, 'Expansion of Israeli Settlements Expansion Monitor, October 2010 – October 2012' (19 October 2012).

⁴ United Nations Office for the Coordination of Humanitarian Affairs (UN OCHA), 'Demolitions and Forced Displacement in the Occupied West Bank' (January 2012): <http://unispal.un.org/pdfs/OCHA_Demolitions-Diplacement.pdf>.

⁵ UN OCHA, 'West Bank Movement and Access Update' (September 2012): <<http://unispal.un.org/pdfs/WBmovement-access-OCHAupdate-0912.pdf>>.

of the total Palestinian GDP.⁶ As a result of these restrictions, Palestinian exports have declined from over half of Palestinian GDP in the 1980s to less than 15% of GDP in recent years, effectively negating any benefits of the EU's preferential trade agreement with the Palestinians.⁷

This has helped create a situation where the Palestinian Authority is dependent on large amounts of funds from the EU and other foreign donors and is currently facing an acute fiscal crisis.

The contradictions of Europe's trade with Israeli settlements

The most recent estimate of the value of EU imports from settlements provided by the Israeli government to the World Bank is \$300m (€230m) a year⁸; this is approximately fifteen times the annual value of EU imports from Palestinians.⁹ With more than four million Palestinians and over 500,000 Israeli settlers living in the Occupied Territory this means the EU imports over 100 times more per settler than per Palestinian.

The most common settlement products sold in Europe include agricultural products such as dates, citrus fruits and herbs, and manufactured products including cosmetics, carbonation devices, plastics, textile products and toys.

Despite its firm position that settlements are not part of Israel, Europe has been accepting imports of these settlements products with origin designated as "Israel", thus acquiescing to Israel's extension of its sovereignty over the occupied territory. Many of these products are also sold in European stores under the misleading label "Made in Israel", denying consumers their right under existing EU consumer protection legislation to make informed decisions when they shop. As a result, many European consumers are unwittingly supporting the settlements and the attendant violations of human rights.

Beyond the trade in settlement goods, some European-owned companies have invested in settlements and related infrastructure or are providing services to them. Cases that have been reported include G4S (UK/Denmark), Alstom (France), Veolia (France), and Heidelberg Cement (Germany). Others, such as Deutsche Bahn (Germany), AssaAbloy (Sweden), and Unilever (Netherlands) have already ceased their activities in the West Bank in recent years, setting an example for the companies still doing business in the settlements.

Adding to the contradictions at the heart of EU policy towards Israel's illegal settlements, the EU has failed to fully exclude settlements from the benefits of its cooperation programmes and bilateral agreements with Israel. In several cases, EU public funds for research and development have been used to directly support activities in settlements.¹⁰ The newly ratified EU-Israel Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA), is another example of EU's failure to insist on a firm distinction between Israel proper and the illegal settlements.

⁶ Palestinian Ministry of National Economy and the Applied Research Institute - Jerusalem (ARIJ), 'The Economic Costs of the Israeli Occupation for the Occupied Palestinian Territory' (September 2011): <<http://www.un.org/depts/dpa/qpal/docs/2012Cairo/p2%20jad%20isaac%20e.pdf>>.

⁷ International Monetary Fund, 'Macroeconomic and Fiscal Framework for the West Bank and Gaza: Fifth Review of Progress. Staff Report for the Meeting of the Ad Hoc Liaison Committee (AHLC)' (April 2010): <<http://www.imf.org/external/country/wbg/RR/2010/041310.pdf>>.

⁸ World Bank, 'Fiscal Crisis, Economic Prospects: The Imperative for Economic Cohesion in the Palestinian Territories. Economic Monitoring Report (EMR) to the AHLC', p.4 (September 2012): <<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCReportFinal.pdf>>.

⁹ Average annual value of Palestinian imports for 2007-2011 has been €15m. European Commission DG Trade, 'EU Bilateral Trade with the Occupied Palestinian Territories' (21 March 2012): <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113382.pdf>.

¹⁰ European Parliament, 'Answer to European Parliamentary Question P-006190/2011' (19 July 2011): <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2011-006190&language=EN>>; European Parliament, 'Answer to European Parliamentary Questions E-009280/11, E-009975/11' (6 December 2011): <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-009975&language=EN>>.

The way forward

The many linkages with settlements are inconsistent with Europe's obligations under international law, which stipulates that third parties, including European governments, have the duty not to recognise, aid or assist settlements as well as the duty to effectively oppose them. By trading with settlements and contributing to their permanence, the EU is also undermining its years of political and financial investment in Palestinian state-building efforts. There is a growing awareness among European governments of the need to close the gap between their rhetoric on settlements and their practice. The British and Danish governments have already taken concrete steps by adopting guidelines for correct labelling of settlement products. But there is much more that national governments and the EU can do to ensure their policies do not directly or indirectly support settlements and the associated injustices.

Recommended measures (for national governments and the EU as appropriate)

A. Sales and imports of settlement products

1. Ensure correct consumer labelling of all settlement products as a minimum measure, as done by the UK and Denmark but also covering manufactured products. (National and EU)
2. As a further measure, discourage businesses from purchasing settlement goods and from all other commercial and investment links with settlements, by means of a formal government advice. (National)
3. As a more comprehensive option, ban imports of settlement products, as called for by Ireland. (National in absence of common EU action)

B. Excluding settlements from EU and national relations with Israel

4. Exclude settlement products from preferential market access by insisting that Israel start designating the origin of settlement products differently than 'Israel'. (EU/EFTA)
5. Exclude settlements from bilateral agreements and cooperation instruments with Israel by means of explicit legal provisions and safeguards. (EU and national)
6. Exclude settlement products and companies from public procurement tenders. (National and EU)

C. Financial transactions with settlements

7. Remove organisations funding settlements from tax deduction systems as done in Norway. (National)
8. Prevent financial transactions to settlements and related activities by means of applying restrictive measures, as a more comprehensive approach. (National in absence of common EU action)

D. Other measures

9. Discourage citizens from buying property in settlements by means of formal advice, as already done by several EU member states. (National)
10. Issue guidelines for European tour operators to prevent support for settlement businesses. (National)

11. Draw up a list of companies mis-stating the origin of settlement goods as 'Israel' as requested by the European Parliament. (EU)
12. Insist that Israel disaggregates settlement data provided to the Organisation for Economic Co-Operation and Development (OECD). (OECD members)

Introduction

The signatories to this report – humanitarian, development, human rights, peace-building and faith organisations from nine EU member states, as well as from Norway and Switzerland - have been witnessing the daily impacts of Israeli settlements on Palestinian communities in the occupied territory for many years. In contrast to the commonly held perception that the situation is one of stalemate and status quo, they have seen that the reality on the ground is far from static. Settlements are expanding reducing Palestinian access to resources such as water and farmland, while the related infrastructure of checkpoints, settler roads and the separation barrier is blocking their freedom of movement and hindering their access to basic services. Palestinian homes and infrastructure are being demolished to make way for settlements, displacing hundreds of people every year.

The position of the European Union is absolutely clear: “Settlements are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible”.¹¹ Yet, over the years, the EU’s statements have done little to halt the continued settlement construction. At the same time, Europe has continued trading with the settlements, thus facilitating their entrenchment and growth. Given that settlement expansion is making a viable Palestinian state all but impossible, the trade with settlements is undermining billions of Euros in aid that Europe has invested in Palestinian state-building efforts. There is a growing awareness among European governments of the need to rectify these policy inconsistencies.

This report documents the effects of Israeli settlements on Palestinian rights and livelihoods and describes the Israeli government’s starkly different treatment of settlers and Palestinians in the West Bank. It outlines the economic links between Europe and the settlements, naming the most common settlement products sold in Europe and detailing the involvement of European companies. The report also analyses European and national policies relevant to trade and other linkages with settlements. It presents a range of concrete and feasible measures to bring the actions of national governments and the EU in line with their words and to ensure that their policies do not directly or indirectly assist the settlements.

¹¹ Council of the EU, ‘Council Conclusions’ (8 December 2009), op. cit.

Chapter 1 - Israeli settlements and their impact

Settlements are Israeli communities established on territory occupied by Israel since the 1967 Arab-Israeli war. Settlements are supported by an infrastructure including special roads, checkpoints, and the separation barrier dividing them from the surrounding Palestinian population. Settlements violate international law and UN Security Council resolutions and yet throughout the 45 years of Israel's occupation of the Palestinian territory, every Israeli government has promoted continued settlement expansion.

There are now more than 500,000 Israeli settlers living in over 200 settlements in the West Bank including East Jerusalem.¹² The settler population has more than doubled since the conclusion of the Oslo peace accords in 1993, which were intended to provide a framework for ending the occupation.¹³ The settler population is growing at a much faster rate (an average of 5.3% annually over the last decade) than the Israeli population as a whole (1.8%).¹⁴ Some of the largest settlements, such as Ma'ale Adummim, Ariel and Betar Illit are now sizable towns with tens of thousands of inhabitants.

During the past two years in particular, following the failure of US President Obama's effort to convince the Israeli government to freeze settlement construction, settlement growth has markedly accelerated. More than 16,000 new housing units have been announced or approved since October 2010.¹⁵ Over the same period, Israeli authorities have stepped up demolitions of Palestinian homes, while violent attacks by settlers against Palestinians have also sharply increased.

The growth of settlements is creating facts on the ground that are violating the Palestinian right to self-determination and making the two-state solution promoted by the European Union ever harder to achieve. More than 42% of West Bank land and the majority of water and natural resources have been seized from Palestinians and allocated to settlements.¹⁶ Settlements and the related infrastructure, including new road networks and the separation barrier, have carved up Palestinian communities into disconnected enclaves with movement controlled by checkpoints. This "land grab", that has no legitimate security justification, has dramatically reduced the space available for Palestinians to develop livelihoods and construct housing and infrastructure. At the same time, settlements have been integrated with Israel proper, blurring the internationally accepted pre-1967 border between Israel and the West Bank.

Through the establishment of settlements, Israel has created a discriminatory two-tier regime in the West Bank with two populations living separately in the same territory under two different systems of law. While settlers enjoy all the rights and benefits of Israeli citizens, Palestinians are subject to a system of Israeli military laws that deprives them of their fundamental rights.¹⁷

Areas A, B and C: permanent temporariness

Under the Oslo Accords, the West Bank was divided into three administrative zones which were meant to be temporary and transitional. "Area A", which covers just 18% of the West Bank, is under civil and security control of the Palestinian Authority. "Area B" is under Palestinian civil control and joint Israeli-Palestinian security control. "Area C" is under the full civil and military control of the Israeli government and it is the area where Israeli settlements are located. Covering 62% of the West

¹² According to the Israeli human rights organisation B'Tselem, there are 124 settlements recognised by the Israeli government and about 100 unrecognised settlements often referred to as 'outposts' in the West Bank, not including the settlements in East Jerusalem. B'Tselem, 'Human Rights in the Occupied Territories - 2011 Annual Report', p. 32 (March 2012): <http://www.btselem.org/download/2011_annual_report_eng.pdf>.

¹³ B'Tselem, 'By hook and by crook', op. cit., p. 10.

¹⁴ UN OCHA, 'The Humanitarian Impact of Israeli Settlement Policies' (January 2012): <http://unispal.un.org/pdfs/OCHA_IsrSettlementPolicies.pdf>.

¹⁵ The Rights Forum, 'Expansion of Israeli Settlements', op. cit.

¹⁶ B'Tselem, 'By hook and by crook', op. cit.

¹⁷ Human Rights Watch (HRW), 'Separate and Unequal' (December 2010): <<http://www.hrw.org/reports/2010/12/19/separate-and-unequal-0>>.

Bank, Area C is the largest and the only contiguous area connecting 227 separate enclaves (A and B).¹⁸ In order to travel through Area C Palestinians must cross through checkpoints. Area C also contains the majority of water resources and grazing and agricultural land. As the EU has noted in an internal report, the Palestinian state-building project supported and co-financed by the EU “is in effect partly limited to the fragmented and isolated ‘islands’ of areas A and B in the ‘ocean’ of the contiguous area C”.¹⁹

Quote

"Israel's continuing announcements to accelerate the construction of settlements in the Occupied Palestinian Territories, including East Jerusalem, send a devastating message. We call on the Israeli government to reverse these steps. The viability of the Palestinian state that we want to see and the two-state solution that is essential for Israel's long-term security are threatened by the systematic and deliberate expansion of settlements. Settlements are illegal under international law and represent a serious blow to the Quartet's efforts to restart peace negotiations. All settlement activity, including in East Jerusalem, must cease immediately."

EU statement at the UN Security Council, December 2011²⁰

1.1 Impacts on Palestinian rights and livelihoods

The Israeli policy of building settlements in the occupied territory results in widespread human rights violations and undermines the development of Palestinian communities. Palestinian homes are demolished to make way for illegal settlements, displacing hundreds of people every year. Settlements deny Palestinians freedom of movement and deprive them from accessing vital resources such as water and farmland.

Demolitions and forced displacement

The last few years have seen a large increase in demolitions of Palestinian homes and infrastructure by Israeli forces, resulting in accelerated forcible displacement of people. In 2011, 622 Palestinian homes, wells, rainwater harvesting cisterns, and other essential structures were destroyed in Area C and East Jerusalem, displacing almost 1,100 Palestinians. This is almost double the number of people displaced in 2010, and the highest figure in years. Over 60% of demolitions are carried out close to, or inside areas allocated to settlements.²¹

In the first nine months of 2012, the number of demolitions per month has kept up pace with the preceding record year.²² Thousands more remain at risk of demolition and displacement in Area C and East Jerusalem. Destruction of the occupied population's property except in cases of absolute military necessity is a violation of international law.²³

Demolitions deprive people of their homes, remove their sources of livelihood and have an overwhelmingly negative psychosocial impact. More than half the Palestinians displaced in 2011 were children²⁴ for whom the loss of their home is particularly devastating.

According to Israeli authorities, demolitions are carried out because structures lack the required building permits. In reality, it is almost impossible for Palestinians to obtain permits to build homes,

¹⁸ World Bank, 'Fiscal Crisis, Economic Prospects', op. cit., p.4.

¹⁹ EU Heads of Mission, 'Area C and Palestinian State Building' (July 2011):

<<http://www.thecepr.org/images/stories/pdf/area%20c%20%20final%20report%20july%202011.pdf>>.

²⁰ Joint statement by EU Security Council members (20 December 2011):

<<http://ukun.fco.gov.uk/en/news/?view=PressS&id=708021082>>.

²¹ UN OCHA, 'Demolitions and Forced Displacement in the Occupied West Bank', op.cit.

²² Displacement Working Group oPt, 'Demolition Summary Table' (8 October 2012).

²³ Geneva Convention (IV), Article 53 (August 1949): < <http://www.icrc.org/ihl.nsf/full/380>>

²⁴ UN OCHA, 'Demolitions and Forced Displacement in the Occupied West Bank', op.cit.

clinics, schools, wells, animal pens, or other vital infrastructure for local communities in Area C. Israeli authorities have rejected 94% of construction permit applications for Palestinian structures in Area C in recent years.²⁵

In contrast, Israeli settlement construction continues unabated and receives strong government support despite violating international law. Even in cases where Israeli settlers have built entire settlement outposts in breach of Israel's own regulations, the Israeli authorities have rarely demolished the buildings. In some cases they have retroactively approved their construction or connected them to the road network, electricity and water supply and provided security forces to guard them. There are currently about 100 settlement outposts built without the required permits (while all settlements, whether with permits or not, are illegal under international law).²⁶

Demolitions also affect projects funded by European governments on behalf of the Palestinians. During 2011 and the first half of 2012, at least 62 structures funded by European donors were demolished in Area C; including water cisterns, animal shelters, and agricultural and residential structures. At least another 110 structures funded by European donors are under threat of demolition, having received demolition or "stop work" orders from Israeli authorities.²⁷ There are no known cases where European donors have received any compensation from the Israeli authorities for the damage to their projects.

Checkpoints, roadblocks and the separation barrier

Since the 1990s Israel has put in place an extensive network of obstacles blocking Palestinian movement within the West Bank, including checkpoints, roadblocks and the separation barrier, accompanied by a restrictive system of permits. Despite some easing of the physical restrictions in the last four years, Palestinians still face major difficulties in travelling between different West Bank cities, accessing their workplaces, farmland, schools and hospitals, and visiting their family relatives.²⁸

According to recent UN figures, there are approximately 542 roadblocks and checkpoints obstructing Palestinian movement in the West Bank. Approximately 70 communities with a combined population of 190,000 are forced to use detours that are two to five times longer than the direct route to the closest city.²⁹

Most of the restrictions on Palestinian movement in the West Bank are intended to protect the Israeli settlers' security and to facilitate their movement.³⁰ In contrast to the Palestinians, settlers have easy access to special roads that bypass Palestinian populated areas and connect settlements to the road network and cities inside Israel and to other settlements.

The separation barrier is a major additional obstacle to Palestinian movement. The route of the barrier deviates from the internationally accepted pre-1967 'Green Line' for 85% of its 700km route, making the barrier illegal under international law, as stated by the International Court of Justice.³¹ Cutting deep into the West Bank, the barrier is dividing Palestinian communities from one another, isolating some 11,000 Palestinians on the 'Israeli' side, and separating farmers from their lands. The route of the barrier is primarily determined by the location of the settlements, as it keeps 85% of the settlement population including areas planned for future settlement expansion on the 'Israeli' side of the barrier.³²

²⁵ UN OCHA, 'The Planning Crisis in East Jerusalem: Understanding the phenomenon of "illegal" construction' (April 2009): <http://www.ochaopt.org/documents/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf>.

²⁶ B'Tselem, 'Human Rights in the Occupied Territories', op. cit., p. 32.

²⁷ Displacement Working Group oPt, (May 2012).

²⁸ This is compounded by the near total impossibility of Palestinian travel between West Bank and Gaza.

²⁹ UN OCHA, 'West Bank Movement and Access Update', op. cit.

³⁰ UN OCHA, 'The Humanitarian Impact of Israeli Settlement Policies', op.cit.

³¹ International Court of Justice (ICJ), 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory', Advisory Opinion (9 July 2004): <<http://www.icj-cij.org/docket/files/131/1671.pdf>>.

³² UN OCHA, 'West Bank Movement and Access Update', op.cit.

Access to East Jerusalem also remains a major problem. Israel obliges any Palestinian who does not have residency rights in Jerusalem or Israeli citizenship to apply for a permit through a complicated and time-consuming process. This is also the case for medical patients accessing Palestinian hospitals in East Jerusalem. 19% of patients and their companions in the West Bank who applied for healthcare access in 2011 had their permits denied or delayed.³³ In a vast majority of ambulance transfers, patients must be moved from a Palestinian ambulance to an Israeli ambulance at a checkpoint before entering Jerusalem.³⁴

Unequal access to water

Israel maintains a hugely unequal division of water resources in the West Bank to the benefit of settlers and at the expense of Palestinians. Israel has been extracting West Bank water at such a rate that it has led to a decline in water available to Palestinians.³⁵ At the same time, Israeli-imposed restrictions prevent Palestinians from drilling new wells and developing their water sector to meet their needs.³⁶

Under the Oslo Agreement, which was meant to be temporary and transitional, Israelis were allocated four times more water from the shared West Bank aquifers than Palestinians. In practice, Israel has been extracting up to 80% more than this allocation agreed under Oslo. As a result of the Israeli over-extraction, combined with restrictions on Palestinian drilling and water sector development, the amount of water Palestinians extracted from 1995 to 2007 decreased by 4%, even as the Palestinian population increased by half, according to the World Bank.³⁷

Average Palestinian water consumption in the West Bank is about 73 litres a day per person – well below the 100 litres per capita daily recommended by the World Health Organisation (WHO) as the minimum quantity for basic consumption. Per capita water use for Israelis – including settlers – is three and half times higher.³⁸

The unequal access to water keeps Israeli settlement farms well irrigated and lush, while the Palestinian agricultural sector could support up to 110,000 more jobs with adequate access to water.³⁹

In the Jordan Valley, Israel has drilled deep wells to service water-intensive export-oriented agriculture in settlements. Fewer than 10,000 settlers in the area use one-quarter the total amount of water consumed by the entire Palestinian population of the West Bank, some 2.5 million people.⁴⁰ In some cases, pumping of water from Israeli wells in the occupied territory to irrigate settlement agriculture for export has dried up nearby Palestinian wells, limiting Palestinians' ability to cultivate their own lands.⁴¹ While in 1967, there were 209 active Palestinian wells in the Jordan Valley alone; today there are only 89.⁴²

³³ Vitullo, A. et al, 'Barriers to the access to health services in the occupied Palestinian territory: a cohort study' (abstract). In: The Lancet, 'Health in the Occupied Palestinian Territory 2012' (8 October 2012):

<<http://download.thelancet.com/flatcontentassets/pdfs/palestine2012/palestine2012-12.pdf>>.

³⁴ UN OCHA, 'West Bank Movement and Access Update', op. cit.

³⁵ World Bank, 'Assessment of Restrictions on Palestinian Water Sector Development' (April 2009):

<<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WaterRestrictionsReport18Apr2009.pdf>>.

³⁶ B'Tselem, 'The Shared Water Sources and the Control over Them' (January 2011):

<http://www.btselem.org/water/shared_sources>.

³⁷ World Bank, 'Assessment of Restrictions on Palestinian Water Sector Development', op.cit.

³⁸ B'Tselem, 'The Gap in Water Consumption between Palestinians and Israelis' (January 2012):

<http://www.btselem.org/water/consumption_gap>.

³⁹ World Bank, 'Assessment of Restrictions on Palestinian Water Sector Development', op.cit.

⁴⁰ HRW, 'Separate and Unequal', op.cit., p. 62.

⁴¹ World Bank, 'Assessment of Restrictions on Palestinian Water Sector Development', op.cit.

⁴² B'Tselem, 'Dispossession and Exploitation: Israel's Policy in the Jordan Valley and Northern Dead Sea' (May 2011): <http://www.btselem.org/sites/default/files/201105_dispossession_and_exploitation_eng.pdf>.

Water cisterns used by Palestinian farmers to collect rainwater are frequently demolished by the Israeli authorities (46 in 2011 alone), further limiting their ability to grow crops.⁴³ In addition, a growing number of water springs on Palestinian land in the vicinity of settlements have been taken over in recent years by settlers who have subsequently blocked Palestinian access to them.⁴⁴

Many Palestinian farmers have no choice but to purchase water from mobile tankers that is up to five times more expensive than water from a regular supply, making their produce more expensive and less competitive.⁴⁵ Overall, the lack of access to water has led to a fall in the viability of farming and a loss of livelihoods.

Israel's exploitation of water resources of the occupied territory at the expense of local population is an ongoing violation of international law.⁴⁶ By importing agricultural crops grown on settlements and dependent on extraction of water Europe is contributing to this ongoing violation.

Case Study: Bardala and Mehola

The Palestinian community of Bardala in the northern Jordan Valley was once a thriving agricultural area. In 1969, Israel established the Mehola settlement, allocating agricultural land privately owned by Palestinians for the exclusive use of Israeli settlers.

Since then, the demand from the settlements for water to grow crops and service their homes has had a directly negative impact on Palestinians' access to water. Deep, high-volume wells drilled by the Israeli water company Mekorot in the 1960s and 70s, caused shallower Palestinian wells and springs to dry up.⁴⁷ In principle Mekorot agreed to provide water from its wells to affected Palestinians but Bardala residents told Human Rights Watch that they have no control over the operation of the Israeli wells and have suffered severe shortages in summer.⁴⁸ Farmers from Bardala said they could only cultivate one-third to one-half as much land as they used to, due to lack of irrigation water.⁴⁹ Some farmers have resorted to purchasing portable water tankers for irrigation, though Israeli forces have in some cases confiscated the water tanks and fined the owners.

Meanwhile, the settlers have no problem with access to water: in addition to a swimming pool, Mehola's generous water supply allows it to grow crops for export. According to the Israeli group Who Profits, Mehola produces melons and dates for export to Europe.⁵⁰

Settler violence

The presence of illegal settlements in the occupied territory is a source of extreme tension that often leads to violence on both sides. Palestinians living in the vicinity of settlements located throughout the West Bank have been subjected to increasing numbers of violent attacks committed by settlers.

⁴³ UN OCHA, 'Demolitions and Forced Displacement in the Occupied West Bank', op.cit.

⁴⁴ UN OCHA, 'How Dispossession Happens: the Humanitarian Impact of the Takeover of Palestinian Water Springs by Israeli Settlers' (March 2012): <http://www.ochaopt.org/documents/ocha_opt_springs_report_march_2012_english.pdf>.

⁴⁵ Ibid.

⁴⁶ Article 55 of the Hague Regulations limits the right of occupying states to utilise the water sources of occupied territory to military needs. Hague Regulations, 'Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land', Article 55 (October 1907): <<http://www.icrc.org/ihl.nsf/FULL/195?OpenDocument>>.

⁴⁷ According to the World Bank, the Bardala 1 (drilled in 1968) and Bardala 2 (1979) wells caused the water level in the Palestinian wells to drop at the rate of 2 metres a year. World Bank, 'Assessment of Restrictions on Palestinian Water Sector Development', op.cit., p. 12. The wells desiccated springs used by Bardala and a nearby community, Ein al-Beida; Mekorot allocated water from the wells to both villages. See B'Tselem, 'Thirsty for a Solution: The Water Shortage in the Occupied Territories and its Solution in the Final Status Agreement' (July 2000), p. 31: <http://www.btselem.org/publications/summaries/200007_thirsty_for_a_solution>.

⁴⁸ In 2008, Mekorot pumped 8.3 million m³ of water from the two wells, and supplied Bardala and another Palestinian community, Cardala, with 4.7 million m³. See B'Tselem, 'Dispossession and Exploitation', op. cit., p. 21.

⁴⁹ HRW, 'Separate and Unequal', op.cit., p. 78.

⁵⁰ Who Profits, 'Jordan River Herbs': <<http://whoprofits.org/company/jordan-river-herbs>> accessed 23 October 2012.

2011 saw a record number of settler attacks resulting in Palestinian casualties and property damage: 32% more than in 2010, and 144% more than in 2009. Nearly 250,000 people live in communities vulnerable to settler violence.⁵¹

In addition, about 10,000 Palestinian-owned trees, primarily olive trees, were damaged or destroyed by Israeli settlers last year, significantly undermining the livelihoods of hundreds of families.⁵² Other acts of settler violence against Palestinians have included stone throwing, blocking roads, torching fields and other damage to property.

Under international law, Israeli authorities are obliged to secure law and order and to investigate and prosecute crimes. Still, settlers committing violent attacks enjoy almost total impunity. According to the Israeli rights group Yesh Din, over 90% of complaints regarding settler violence filed by Palestinians with the Israeli police in recent years have been closed without indictment.⁵³ Out of 162 complaints filed by Palestinians against incidents of vandalism of their trees by settlers over the past seven years, only one resulted into an indictment.⁵⁴

Palestinian labour in settlements

The space for Palestinian economic activity and employment is severely constrained by sweeping Israeli restrictions. As a result, many Palestinians have little option but to seek employment in the same settlements, which are the very reason for their poverty and lack of opportunity. This is despite the policy of the Palestinian Authority, supported by Palestinian trade unions, that discourages Palestinians from working in the settlements.

The Israeli settlement economy, on the other hand, benefits from the exploitation of Palestinian labour. Palestinians working in settlements are employed mainly in construction, agriculture and in the industrial zones.

At least 9,500 Palestinians are working in settlement farms, which in some cases have been built on land expropriated from them. In a harsh irony, some Palestinian farmers have become, in effect, tenant workers on what used to be their own land.⁵⁵ Palestinian workers often face discrimination, and violations of their rights. While the minimum wage in Israel is currently \$6.00 per hour, Palestinians working on Israeli settlements in the Jordan Valley are paid only an average of \$2.00–\$4.80 per hour. None of the Palestinian workers interviewed in a recent survey received the benefits that Israeli workers are entitled to by law, including holidays, overtime pay, health insurance or sick pay.⁵⁶

According to Kav LaOved, an Israeli NGO protecting labour rights, children as young as 12 also work seasonally on the Jordan Valley settlement farms, mainly when dates, peppers and tomatoes are harvested.⁵⁷

⁵¹ UN OCHA, 'Israeli Settler Violence in the West Bank' (November 2011):

<http://www.ochaopt.org/documents/ocha_opt_settler_violence_FactSheet_October_2011_english.pdf>.

⁵² Ibid.

⁵³ Yesh Din, 'Law Enforcement upon Israeli Civilians in the West Bank' (March 2012): <http://www.yesh-din.org/userfiles/file/datasheets/LawEnforcement_datSheet_Eng_March_2012_Final.pdf>.

⁵⁴ Yesh Din, 'Police investigation of vandalization of Palestinian trees in the West Bank' (October 2012): <<http://www.yesh-din.org/userfiles/file/datasheets/DS%20Trees%20Oct,%202012%20Eng.pdf>>.

⁵⁵ Oxfam International, 'On the Brink. Israeli settlements and their impact on Palestinians in the Jordan Valley' (July 2012), p. 17: <http://www.oxfam.org/sites/www.oxfam.org/files/bp160-jordan-valley-settlements-050712-en_1.pdf>.

⁵⁶ Ibid.

⁵⁷ Kav LaOved (Worker's Hotline), 'Working for Survival: Labor conditions of Palestinians working in settlements' (15 December 2010): <http://www.kavlaoved.org.il/media-view_eng2f0a.html?id=3048>. See also: Kav LaOved, 'Employment of Palestinians in Israel and the Settlements: Restrictive Policies and Abuse of Rights' (August 2012): <<https://docs.google.com/file/d/0B7QADw8e4Uf-b2FxaVBUDC1nbmc/edit?pli=1>>.

1.2 Settlements, trade and international law

Why are settlements illegal?

As the occupying power, Israel is obliged to respect international humanitarian law as set forth, *inter alia*, in the Fourth Geneva Convention (1949) and the Hague Regulations (1907).

The Fourth Geneva Convention prohibits an occupying power from transferring its citizens into the occupied territory (Article 49). The Hague Regulations prohibit an occupying power from undertaking permanent changes in the occupied area unless these are due to specific military needs, or unless they are undertaken for the benefit of the local, in this case Palestinian, population.⁵⁸

By seeking to prevent *de facto* annexation, these prohibitions reinforce the basic principle that an occupier only acquires temporary authority over an occupied territory, not permanent sovereignty.⁵⁹ They are also in accordance with the principle of “inadmissibility of the acquisition of territory by war”.⁶⁰

The creation of settlements for Israeli civilians in the occupied Palestinian territory violates these international laws, as concluded by the UN Security Council, confirmed by the International Court of Justice, and repeatedly stated by the EU.⁶¹ Settlements also breach the Palestinian right to self-determination.⁶²

A number of related Israeli practices are also illegal under various provisions of international humanitarian and human rights law, including:

- the appropriation of Palestinian land for settlements, and the exploitation of Palestinian non-renewable natural resources;⁶³
- unjustified changes in pre-existing laws on water distribution and planning;⁶⁴
- demolitions of Palestinian structures and forcible displacement of Palestinians;⁶⁵
- construction of the separation barrier where it deviates from the pre-1967 Green Line;⁶⁶
- movement restrictions linked to settlements.⁶⁷

What are the obligations of European governments?

⁵⁸ B'Tselem, ‘Land Expropriation and Settlements in the International Law’ (January 2012): <http://www.btselem.org/settlements/international_law>.

⁵⁹ Hague Regulations, Article 43, *op.cit.*

⁶⁰ United Nations Security Council (UNSC), Resolution 242 (S/RES/242) (22 November 1967): <<http://unispal.un.org/unispal.nsf/0/7D35E1F729DF491C85256EE700686136>>.

⁶¹ ICJ, ‘Wall case’, *op. cit.* para.120; UNSC, Resolution 446 (S/RES/446) (22 March 1979), paras. 1 and 3: <<http://unispal.un.org/UNISPAL.NSF/0/BA123CDED3EA84A5852560E50077C2DC>>; Council of the EU, ‘Council Conclusions on the Middle East Peace Process’ (14 May 2012): <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130248.pdf>.

⁶² James Crawford SC, ‘Third Party Obligations with respect to Israeli Settlements in the Occupied Palestinian Territories’ (January 2012), par. 70: <<http://www.tuc.org.uk/tucfiles/342/LegalOpinionIsraeliSettlements.pdf>>.

⁶³ Hague Regulations, Articles 53 and 55 *op. cit.*; International Committee of the Red Cross (ICRC), ‘Customary IHL Study: Rule 51’: <http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule51>; International Covenant on Civil and Political Rights (ICCPR), Article 1 (March 1976): <<http://www2.ohchr.org/english/law/ccpr.htm>>.

⁶⁴ Hague Regulations, Article 43, *op.cit.*; Theo Boutruche and Marco Sassoli, ‘Expert Opinion On International Humanitarian Law Requiring of the Occupying Power to Transfer Back Planning Authority to Protected Persons Regarding Area C of the West Bank’, esp. p.25 – 26 (February 2011): <<http://rhr.org.il/hebrew/wp-content/uploads/62394311-Expert-Opinion-FINAL-1-February-2011.pdf>>.

⁶⁵ Geneva Convention (IV), Articles 49 and 53, *op.cit.*; Council of the EU, ‘Council Conclusions’ (8 December 2009), *op. cit.*, par. 6.

⁶⁶ ICJ, ‘Wall Case’, para.163, at 3(A), *op.cit.*; Council of the EU, ‘Council Conclusions’ (8 December 2009), *op. cit.*, par. 6.

⁶⁷ ICCPR, Article 12, *op.cit.*; ICRC, Commentary on Geneva Convention (IV) Article 27, para.1, at 1(A): <<http://www.icrc.org/ihl.nsf/COM/380-600032?OpenDocument>>.

Under international law, third states including European governments have the following obligations with regard to serious breaches of international law:

- duty not to recognise as lawful a situation arising from a breach of international law (duty of non-recognition);
- duty not to render aid or assistance in maintaining the illegal situation; and
- duty to ensure compliance by all signatories, including Israel, with international humanitarian law (i.e. to exert influence, to the degree possible, to stop its violations).⁶⁸

In a recently published legal opinion, James Crawford, professor of international law at Cambridge University, argues that allowing trade with settlements does not violate the duty of third states not to aid or assist breaches of international law, as the link between the third state's conduct and the illegal conduct of Israel is insufficient.⁶⁹ However, referring to the principles established by the International Court of Justice in relation to South Africa's occupation of Namibia in 1971, Crawford argues that allowing trade with settlements might in some cases breach the third states' duty of non-recognition, depending on the specific facts.⁷⁰

According to another view, third states do have an obligation to end all trade with settlements, as states permitting entry of settlement products to their markets are implicitly recognising, aiding and assisting settlements.⁷¹

Even if states are not obliged to stop the import of settlement products, Crawford points out that if an EU Member State wished to do so, this would be permissible under EU and World Trade Organisation law.⁷²

Crawford further argues that third states' purchase of agricultural produce from settlements by third states (e.g. through public procurement) would breach their obligation not to aid or assist the ongoing commission of an internationally unlawful act. This is because settlement agriculture is heavily dependent on water and water distribution in the West Bank is regulated by Israel military orders that contravene the occupier's duty to respect pre-existing laws.⁷³

Crawford also argues that financing construction of settlement-related infrastructure (e.g. the Jerusalem light rail) may breach the duty of non-recognition, since it contributes to making the occupation permanent.⁷⁴

In the last chapter, this report puts forward concrete measures the EU needs to take if it is serious about its obligation to effectively oppose the settlements and associated violations of international law.

⁶⁸ ICJ, 'Wall Case', para.163, at 3(D); ICRC, 'Customary IHL Study: Rule 144': <http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule144>.

⁶⁹ Crawford, 'Third Party Obligations', par. 91, op. cit.

⁷⁰ In the case of Namibia, the ICJ stated that third states must "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." ICJ, 'Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970)', Advisory Opinion (21 June 1971) paras.124 – 125: <<http://www.icj-cij.org/docket/files/53/5597.pdf>>. According to Crawford, there is an inherent flexibility to this principle and the question whether particular transactions breach the duty of non-recognition depends on the facts of the specific case. "Economic and other dealings ... might be permitted as long as they do not serve to "entrench" authority over the territory; can be considered as routine government administration; or serve to benefit the local (i.e. Palestinian) population."

Crawford, 'Third Party Obligations', paras. 49, 51 and 91, op.cit.

⁷¹ Al Haq, 'Illegality of Settlement Produce: An International and EU Law Perspective', Legal Brief, forthcoming.

⁷² Crawford, 'Third Party Obligations', para.125, op.cit.

⁷³ Hague Regulations, Article 43, op.cit.; Crawford, 'Third Party Obligations', paras.87 – 88, op.cit.

⁷⁴ Crawford, 'Third Party Obligations', para. 90, op.cit.

Chapter 2 – The two economies of the West Bank: lavish subsidies vs. crippling barriers

Farmers and manufacturers operating in settlements benefit from wide-ranging government incentives as well as from easy access to international markets via special roads that bypass Palestinian populated areas. In stark contrast, the Palestinian economy and trade are severely restricted by multiple physical and administrative obstacles imposed by the Israeli authorities. This makes the Palestinians dependent on funds from the EU and other foreign donors.

2.1 Benefits for settlements

Settlements have established modern agribusinesses and industrial zones that produce high value goods for export to the EU and international markets. This is partly due to the special incentives provided by the Israeli government.

Most settlements are classified by Israel as “national priority areas” which entitles them to a wide range of financial benefits and subsidies, including for housing construction, education, and local development. The benefits provided to settlers are significantly higher than benefits for Israelis living within the pre-1967 lines. According to the Israeli NGO Peace Now, the Israeli government spends at least 1.6 billion shekels (€330 million) annually on benefits for settlers over and above the level of benefits provided to citizens inside Israel proper. This does not include the significant security funds spent on settlements. Government grants for local authorities in settlements were more than twice as high per capita than inside Israel, while spending on education per pupil was 63% higher in settlements.⁷⁵

A number of benefits directly affect the industrial and agricultural businesses operating in settlements, including those exporting to Europe, and give them significant competitive advantage. Some of these benefits include:

- state investment in development of industrial areas that have been built in settlements;
- a 69% discount on lease of land intended for industrial use, tourism, and trade;
- benefits for factories including grants of 24% of the investment, income tax benefits, grants for research and development of up to 60% of the cost of every project, and assistance in hiring workers in certain areas of activity;
- benefits for agriculture including grants of up to 25% of the investment for the establishment of agricultural enterprises, and tax benefits on profits ranging from 25-30% and on investments – used especially by settlement farms in the Jordan Valley that produce mainly for export to Europe.⁷⁶

The Israeli government is also spending considerable funds on building settlement infrastructure, including the previously mentioned special roads that facilitate rapid and unfettered access by settlers to both Israeli and external markets.

The Israeli government even has a special subsidy for reimbursing settlement exporters obliged to pay EU import duty. This compensation was introduced when the EU and the European Free Trade Association (EFTA) decided to exclude imports of settlement products from tariff-free treatment in 2005 (see chapter 4.1). For 2012, the Israeli government budgeted 10.8 million shekels (€2.2 million) for these reimbursements.⁷⁷

In 2005, the EU heads of states jointly called “for the abolition of financial and tax incentives and direct and indirect subsidies [by the Israeli government], and the withdrawal of exemptions benefiting

⁷⁵ Peace Now, ‘Instead of tax hikes, stop indulging the settlements. Peace Now’s proposal to save NIS 1.6 billions’ (July 2012): <<http://settlementwatcheastjerusalem.files.wordpress.com/2012/07/peacenowsavingsplan.pdf>>.

⁷⁶ B’Tselem, ‘By Hook and By Crook’, op.cit., p. 42.

⁷⁷ Peace Now, ‘Instead of tax hikes, stop indulging the settlements’, op.cit.

the settlements and their inhabitants”.⁷⁸ However, the appeal went unheeded by the Israeli government.

2.2 Restrictions on Palestinian economy and trade

According to the Paris Protocol, signed in 1994 as part of the Oslo peace process and recognised by Israel as the formal basis of economic relations with the Palestinian Authority, Palestinians have the right to export their products without restrictions and should be given equal treatment to Israeli exporters.

The EU and EFTA both have trade agreements with the Palestinians granting them preferential access to the European market, including duty-free access for industrial products.⁷⁹ In 2011, the EU extended the duty-free access to most Palestinian agricultural exports, in what the EU has called “one of the most generous [agreements] that the EU has ever signed in the field of agriculture”.⁸⁰

However, the difference between theory and reality could not be greater. Wide-ranging Israeli restrictions effectively invalidate the EU’s agreement with the Palestinians, affect every aspect of their business activity, and keep their exports to Europe to a minimum. The restrictions include:

- **Constraints on access to land and water:** These restrictions are particularly crippling for the Palestinian agricultural sector. According to UNCTAD, “the economy has lost access to 40% of West Bank land, 82% of its ground water, and more than two thirds of its grazing land” and the impact on Palestinian agriculture “has been devastating”.⁸¹ Restrictions on access to water make Palestinian produce much more expensive than produce from settlements.⁸²
- **Ban on dual-use items:** Israel bans Palestinians from importing a range of “dual-use” items including chemicals and fertilisers used in factories and agriculture. While Israeli settlers have full access to these materials, Palestinians are forced to turn to more expensive or less effective alternatives that further increase the cost of production and often have greater negative long-term impact on the environment.⁸³ It is estimated that the fertilizer restrictions lead to losses of between 20% and 33% in agricultural productivity.⁸⁴
- **Obstacles to movement of goods:** While settlers enjoy easy and direct access to Israeli and international markets, all Palestinian goods destined for Israel or further export must pass through Israeli checkpoints where they are unloaded from Palestinian vehicles and extensively checked before they can be re-loaded onto an Israeli vehicle on the other side (the so-called ‘back-to-back’ system). This is extremely time-consuming and often damages the products. Palestinian goods destined for international markets then pass through Israeli port and airport terminals where they face further disadvantages, obstacles and excessive time

⁷⁸ ‘European Council, ‘Presidency Conclusions’, Annex IV, Declaration on the Middle East Peace Process (16 and 17 June 2005): <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/85349.pdf>.

⁷⁹ Interim Association Agreement the European Community and the Palestinian Liberation Organisation (PLO)(July 1997): <http://trade.ec.europa.eu/doclib/docs/2004/june/tradoc_117751.pdf>; Interim Agreement between EFTA and the PLO (1998): <<http://www.efta.int/~media/Documents/legal-texts/free-trade-relations/palestinian-authority/EFTA-Palestinian%20Authority%20Free%20Trade%20Agreement.pdf>>.

⁸⁰ European Parliament, ‘Statement of Dacian Cioloş, EU Commissioner for Agriculture’ (26 September 2011): <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20110926+ITEM-017+DOC+XML+V0//EN>>.

⁸¹ United Nations Conference on Trade and Development (UNCTAD), ‘Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the occupied Palestinian territory’ (13 July 2012): <http://unctad.org/meetings/en/SessionalDocuments/tdb59d2_en.pdf>.

⁸² Oxfam International, ‘On the Brink’, op.cit.

⁸³ Ibid, p.11

⁸⁴ UNCTAD, ‘Report on UNCTAD assistance to the Palestinian people’, op.cit.

delays. All these obstacles significantly reduce the competitiveness of Palestinian products and increase unpredictability of their delivery times and quality.⁸⁵

- **Gaza closure:** Compared to the West Bank, the Gaza Strip has been subject to even more stringent restrictions, especially since the takeover by Hamas in 2007. Exports from Gaza, a territory inhabited by 1.6 million Palestinians, have been banned almost entirely, contributing to the low volume of overall Palestinian exports. Despite the easing of some restrictions by Israel since 2010, the volume of exports from Gaza is still less than 2% of the pre-2007 levels.⁸⁶ EU imports from Gaza over the five years of blockade have been limited to a few shipments of agricultural produce to the Netherlands and two trucks of garments to the UK.⁸⁷

Altogether, the Israeli restrictions “remain the major impediment to sustainable economic growth” in the occupied Palestinian territory, according to the World Bank.⁸⁸ A Palestinian study cited by the World Bank estimated the total cost of the Israeli restrictions at \$6.9 billion (€5.2 billion) in 2010, or 85% of the total Palestinian GDP. In other words, if the restrictions were lifted, the Palestinian economy would be almost double in size than it is today.⁸⁹

Quotes:

“Very few economies have faced such a comprehensive array of obstacles to investment – not just of physical impediments to movement, but also comprehensive institutional and administrative barriers. ... The numerous Israeli road blocks, closed areas, restricted roads, and growing settlements have cut the Palestinian communities into isolated cantons, raising transportation costs and significantly limiting the ability of Palestinian enterprises to achieve economies of scale.” World Bank⁹⁰

“The increased restrictions on the movement of goods and people across the Israel/WBG borders since the mid-1990s, culminating in the blockade on Gaza and completion of the Separation Barrier, led to a decline in exports to less than 15 percent of GDP in recent years. This is down from over half of GDP in the 1980s, when Palestinians enjoyed mostly free and unhindered trade with Israel.” International Monetary Fund⁹¹

2.3 EU funding and Palestinian aid dependency

Israeli settlement policy and the associated restrictions placed on the Palestinian economy make the Palestinian Authority (PA) dependent on funds from the EU and other foreign donors for approximately one-third of its expenditure.⁹² The EU is the largest donor to the Palestinians: it gave approximately €5 billion between 1994 and 2011⁹³, and allocated €525m in 2011 alone⁹⁴; this does not include additional assistance provided by individual member states.

⁸⁵ Oxfam International, ‘On the Brink.’, op.cit. .

⁸⁶ Gisha – Legal Center for Freedom of Movement, ‘The Gaza Cheat Sheet’: <http://www.gisha.org/content-moduls.asp?lang_id=en&p_id=1232> accessed 23 October 2012.

⁸⁷ Personal communication with the Israeli organisation Gisha - Legal Center for Freedom of Movement (22 October 2012).

⁸⁸ World Bank, ‘Fiscal Crisis, Economic Prospects’, op. cit.

⁸⁹ ARIJ, ‘The Economic Costs of the Israeli Occupation’, op. cit.; World Bank ‘Fiscal Crisis, Economic Prospects’, op. cit.

⁹⁰ World Bank, ‘Palestinian Economic Prospects: Gaza Recovery and West Bank Revival. Economic Monitoring Report to the AHLC’ (June 2009):

<<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCJune09Reportfinal.pdf>>.

⁹¹ International Monetary Fund, ‘Macroeconomic and Fiscal Framework for the West Bank and Gaza’, op. cit..

⁹² World Bank, ‘Fiscal Crisis, Economic Prospects’, op. cit.

⁹³ European Commission, Development and Cooperation - EuropeAid, ‘Occupied Palestinian Territory’:

<http://ec.europa.eu/europeaid/where/neighbourhood/country-cooperation/occupied_palestinian_territory/occupied-palestinian-territory_en.htm>, accessed 22 October 2012.

⁹⁴ Personal communication with the European Commission (25 October 2012). A small proportion of this amount goes to Palestinian refugees in Lebanon, Syria and Jordan through EU funding for UNRWA.

Although Palestinians are among the highest per capita recipients of foreign aid in the world, foreign funding is unable to compensate for the paralysing impact of Israeli constraints on access to markets and resources. The PA is currently facing an acute fiscal crisis and protests against the dire economic situation have spread across the West Bank. At \$1.14 billion (€0.9 billion), expected foreign aid this year is not sufficient to cover the PA's projected \$1.5 billion (€1.2 billion) budget deficit.⁹⁵ The European Commission recently announced new funding of €100 million for the Palestinians.⁹⁶

The PA's fiscal crisis and its dependency on large amounts of foreign funding would be significantly alleviated or even entirely prevented if the Israeli government lifted its debilitating restrictions on the Palestinian economy. A recent estimate cited by the World Bank shows that if Israeli barriers to the development of Palestinian agriculture were removed to allow the cultivation of only an additional 3.5% of Area C in the Jordan Valley, the Palestinian economy could gain \$1bn a year – comparable to the entire annual foreign aid budget to the PA.⁹⁷

The expansion of settlements and associated displacement of Palestinians from Area C have undermined the effectiveness of EU aid and obstructed the stated goal of this funding: Palestinian statehood as part of a two-state solution. By trading with settlements and contributing to their permanence, the EU is undermining its own investment in Palestinian state-building efforts.

Furthermore, while the EU's aid has been crucial to address the urgent needs of Palestinians living in poverty, it has also effectively relieved the Israeli government of its obligation as the occupying power to ensure the welfare of the occupied population.

If EU aid is to have lasting impact and not only perpetuate the status quo, governments need to invest not only money but also political will to address the root causes of Palestinian poverty and aid dependency.

Quote

"At present, international donors meet most of the bill for the consequences of occupation that should be met under the Geneva convention by Israel. ... If Israel continues, as its prime minister says it will, to build settlements, making an agreement on a viable Palestinian state all but impossible, should the international community simply shrug its shoulders and write more cheques? The money that I spent in Palestine on behalf of European voters and taxpayers over five years as a European commissioner has drained away into the blood-soaked sand."

Chris Patten, former EU Commissioner for External Relations⁹⁸

⁹⁵ World Bank, 'Fiscal Crisis, Economic Prospects', op. cit.

⁹⁶ European Commission Press release, 'The European Commission announces new large-scale support the Occupied Palestinian Territory' (14 September 2012): < http://europa.eu/rapid/press-release_IP-12-964_en.htm>

⁹⁷ World Bank, 'The Underpinnings of the Future Palestinian State: Sustainable Growth and Institutions. Economic Monitoring Report to the AHLC' (September 2010): <<http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WorldBankSep2010AHLReport.pdf>>.

⁹⁸ Financial Times, 'Europe's road to a new Jerusalem' by Chris Patten (14 December 2009); <<http://www.ft.com/intl/cms/s/0/91a8f82e-e8e4-11de-a756-00144feab49a.html>>.

Chapter 3 – Europe’s economic links with settlements

While condemning the illegal Israeli settlements and supporting Palestinian statehood, the EU is concurrently importing fifteen times more from the settlements than from the Palestinians. In addition, some European companies have invested in settlements and related infrastructure or are providing services to them. These economic links help ensure that settlements are financially viable and can grow further. As most settlement products are sold under the misleading label “Made in Israel”, many European consumers are also unwittingly supporting the settlement enterprise.

The EU is Israel’s leading trade partner receiving 20% of total Israeli exports. The EU’s importance may be even higher in the case of settlements, because of the higher proportion of fresh agricultural products in their export. 66% of fruit and vegetables exported by Israel are sent to the European market, a figure that can be expected to be similar for fresh produce from settlements.⁹⁹ Europe is also the main export market for two significant manufacturing companies in the settlements, Ahava (cosmetics) and SodaStream (home carbonation devices).

3.1 Volume of settlement trade with the EU

It is difficult to determine the exact volume of exports from the settlements to the EU, as the EU does not collect separate trade data for settlements. The Israeli Ministry of Foreign Affairs has, however, recently informed the World Bank that settlement exports to the EU amount to \$300 million per year (€230 million).¹⁰⁰ This represents approximately 2% of total Israeli exports to the EU.¹⁰¹

This is lower than the share of settler population in the total Israeli population (c. 7%) and than the share of the settlement economy in Israel’s GDP, estimated by the OECD at 3.9%.¹⁰²

It is likely that if the value of settlement exports to Europe were adjusted to include products wholly or partially produced or packed in settlements, the figure would be significantly higher.

While settlement exports may represent a relatively small proportion of total Israeli exports, they still amount to a considerable quantity in absolute terms and are of vital importance for the economic viability of many settlements. Trade with settlements bolsters their economy and contributes to their permanence and growth, thereby helping to perpetuate the associated impacts on Palestinian communities.

Exports from settlements to the EU also vastly exceed Palestinian exports to the EU, which have had an average value of €15 million a year over the past five years.¹⁰³ Indeed, using the figure provided to the World Bank, the value of exports from illegal settlements to the EU is approximately fifteen times the value of the Palestinian exports.

⁹⁹ Who Profits, ““Made in Israel”: Agricultural Export from Occupied Territories. A flash report”- Appendix (May 2012): <http://whoprofits.org/sites/default/files/agricultural_export_flash_report_0.pdf>; Sponser, ‘Export Institute: export of fresh fruits and vegetables amounted in 2011 to approximately NIS 996 million’ (8 February 2012): <<http://www.sponser.co.il/Article.aspx?ArticleId=20947>>.

¹⁰⁰ World Bank, ‘Fiscal Crisis, Economic Prospects’, op. cit., p.13; personal communication with the World Bank (October 2012).

¹⁰¹ In 2010, total exports from Israel to the EU amounted to EUR 11.1 billion or USD 15.35 billion. European Commission DG Trade, ‘EU Bilateral Trade with Israel’ (21 March 2012):

<http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113402.pdf>; Israeli Central Bureau of Statistics, ‘Exports to European Union, by Industry’: <http://www.cbs.gov.il/hodaot2011n/16_11_205t2.htm> accessed 23 October.

¹⁰² The OECD figure includes the whole population of East Jerusalem and the occupied Golan Heights. In sectoral terms, according to the OECD, these areas represent 7.8% of Israel’s agricultural output and 2.4% of its manufacturing output, which reflects the large volume of agricultural production in the settlements of the Jordan Valley. OECD, ‘Study on the Geographic coverage of Israeli data’: <<http://www.oecd.org/els/48442642.pdf>>.

¹⁰³ Five-year average for 2007-2011. European Commission DG Trade, ‘EU Bilateral Trade with the Occupied Palestinian Territories’ (21 March 2012): <http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113382.pdf>

More than four million Palestinians and over 500,000 Israeli settlers live in the occupied territory. Therefore, in per capita terms, the EU imports at least 100 times more per settler than per Palestinian. This is despite the EU's condemnations of the illegal settlements and its significant financial support for the economic viability and development of the Palestinian Authority

The discrepancy is largely driven by Israel's generous incentives for settlement businesses and the crippling restrictions imposed on the Palestinian economy described in the preceding chapter. By importing vastly more from settlements that are taking advantage of the occupation than from producers living under the occupation, Europe is helping entrench the discriminatory two-tier system in the West Bank.

3.2 Most common settlement products sold in Europe

Agricultural products

Agricultural products grown in the settlements include dates, grapes, peppers, fresh herbs, cut flowers, avocados, citrus fruits, tomatoes, aubergines, cucumbers, and potatoes.¹⁰⁴

The products are most likely to be found on the shelves of European retailers during winter months when they are out of season in Europe. In most European countries where there are no clear labelling guidelines and where supermarkets continue sourcing settlement goods, it is usually impossible for the consumer to tell whether fruits and vegetables marked as 'Israel' are from Israel or from the settlements.

Fresh agricultural produce from settlements is exported to Europe by Israeli companies that source from both Israel and from settlements. Mehadrin is currently the largest Israeli company exporting fruits and vegetables to the EU and worldwide, followed by Arava Export Growers. Both companies are known to be active in the settlements of the Jordan Valley. Hadiklaim is the main Israeli exporter of dates, a large share of which comes from settlements.¹⁰⁵

Apart from fresh produce, a number of Israeli wines sold in Europe are made from grapes grown in settlements. According to the Israeli NGO Who Profits, all of the major Israeli wineries exporting to Europe have vineyards in the occupied Golan Heights and most also in the West Bank.¹⁰⁶ Food processing companies based in the West Bank settlements and exporting to Europe include Achdut (producer of Achva halva) and Adanim Tea (herbal teas).¹⁰⁷

Box - Occupied Jordan Valley: farming injustice

Due to its climate and rich water resources, the Jordan Valley is the main agricultural region in the West Bank and could be the breadbasket of a future Palestinian state. However, Israeli settlers now control and exploit most of its land and water resources. Settlers have established modern farms that generate large volumes of produce, predominantly for export:

- The value of agricultural production in the Jordan Valley settlements is estimated at about

¹⁰⁴ Who Profits, "'Made in Israel' report", op. cit.

¹⁰⁵ Ibid; Who Profits, 'Mehadrin Group': <<http://www.whoprofits.org/company/mehadrin-group>>; Who Profits, 'Arava Export Growers': <<http://www.whoprofits.org/company/arava-export-growers>>; Who Profits, 'Hadiklaim - Israeli Date Growers Cooperative': <<http://www.whoprofits.org/company/hadiklaim-israel-date-growers-cooperative>>; all accessed 23 October 2012.

¹⁰⁶ Who Profits, 'Forbidden Fruit. The Israeli Wine Industry and the Occupation' (April 2011): <<http://whoprofits.s483.sureserver.com/sites/default/files/WhoProfits-IsraeliWines.pdf>>.

¹⁰⁷ Prosper Palestine, 'Unveiled: European Trade & Investment Relationships with Companies in Israeli Settlements in the Occupied Palestinian Territories' (July 2011).

500 million shekels (€100 million) per year.¹⁰⁸

- The main agricultural products include dates, grapes, peppers and fresh herbs.¹⁰⁹
- More than 80% of dates from the Jordan Valley settlements are grown for export.¹¹⁰
- About 70% of grapes produced by the Jordan Valley settlements are directed for export and make up approximately half of all grapes exported by Israel.¹¹¹
- Fresh herbs from the Jordan Valley settlements are all for export and constitute about half of total Israeli exports of fresh herbs; 80% of them are exported to Europe (mainly France, Switzerland, the Netherlands and Scandinavian countries).¹¹²

While providing most of the agricultural settlement produce exported to Europe, the Jordan Valley is also an area where settlement expansion has made life particularly difficult for Palestinian communities and where the inequities between settlers and Palestinians are most extreme. Israeli settlers make up 13% of the population of the Jordan Valley but effectively control 86% of its land. Appropriations of land, demolitions and displacement have accelerated in recent years. The Israeli government has also discussed a plan to increase the allocation of land available for cultivation by settlers in the Jordan Valley by 130%, and their water allocation by 20%.¹¹³ European demand for settlement fruits and vegetables is contributing to these developments.

Manufactured goods

Settlements in the West Bank produce a range of industrial goods, mostly manufactured in purpose-built industrial zones. Like the settlements themselves, the industrial zones are a violation of international law, which prohibits the occupying power from constructing permanent infrastructure in occupied territory, unless it is for military use or serves the interests of the occupied population.¹¹⁴ Examples of industrial products manufactured in settlements and sold in Europe include:

Ahava cosmetics:

Ahava – Dead Sea Laboratories is a cosmetics company that operates in the West Bank. It manufactures all of its products in Mitzpe Shalem, an Israeli settlement in the occupied Jordan Valley, on the shore of the Dead Sea. According to Who Profits, the company also has a license to extract mud from the occupied area of the Dead Sea in some of its products - a breach of international law, which prohibits exploitation of natural resources of an occupied territory for commercial purposes. Ahava exports a significant share of its products overseas including to some 20 European countries.¹¹⁵

Ahava made \$17 million in profit from exports in 2008. Products of the company are sold across Europe in branded Ahava stores as well as in pharmacies and retail chains. Despite being produced in a settlement in the West Bank, Ahava products are labelled "Made in Israel", thus misleading consumers. About 45% of the company's shares are owned by two settlements, which means that revenues from the sale of Ahava products directly support their continued existence and development.¹¹⁶

SodaStream carbonation devices:

¹⁰⁸ Jordan Valley Regional Council, 'The Jordan Valley – A General Description': <www.jordanvalley.org.il/?categoryId=38842> accessed 19 October 2012.

¹⁰⁹ Research and Development Center in the Jordan Valley, 'Agriculture in the Valley': <http://www.mop-bika.org.il/130651/haklaut_babika> (in Hebrew) accessed 19 October 2012.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid; Who Profits, "'Made in Israel' report", op. cit.

¹¹³ Oxfam International, 'On the Brink', op. cit.

¹¹⁴ Hague Regulations, Article 53 and 55, op. cit.

¹¹⁵ Who Profits, 'Ahava: Tracking the Trade Trail of Settlement Products' (April 2012):

<http://whoprofits.org/sites/default/files/ahava_report_final.pdf>; Who Profits, 'Ahava Dead Sea Laboratories':

<<http://www.whoprofits.org/company/ahava-dead-sea-laboratories>> accessed 19 October 2012.

¹¹⁶ Ibid.

SodaStream produces home devices for carbonation of water and soft drinks. SodaStream products, also known under the brand name Soda Club, are sold at more than 35,000 stores worldwide, and 68% of sales are in Europe. SodaStream devices are especially popular in Sweden; it is estimated that one of every five Swedish households owns a SodaStream device.¹¹⁷

The main factory is in the Mishor Adummim industrial zone in the West Bank. Mishor Adummim is part of Ma'ale Adummim, one of the largest settlements strategically located east of Jerusalem, the establishment of which is considered one of the largest expropriations of private Palestinian land during the occupation.¹¹⁸ SodaStream pays taxes to Ma'ale Adummim Municipality; its revenues are thus directly funding this settlement, which effectively bifurcates the West Bank and is considered to be a major obstacle to any future peace agreement.¹¹⁹

The company also has a production facility in Israel proper and has been recently giving contradictory statements about where different devices for different markets are manufactured. The products are usually sold abroad under the label "Made in Israel".¹²⁰

Keter plastics:

The Israeli company Keter Plastic is a large manufacturer of indoor and outdoor plastic furniture and household products that operates in 90 countries worldwide. Keter and its subsidiary Lipski, operate two factories in the Barkan industrial zone in the West Bank, but it also has a number of other factories in Israel and abroad. It is unclear which of the Keter products are manufactured in the two settlement factories.¹²¹

Other manufacturing companies based in settlement industrial zones and exporting to Europe include Barkan Mounts (television mounts), Ofertex (textile products), Supergum (car plastics), Tip Top Toys Star (Interstar toys), Twitoplast (plastic accessories), and Yardeni Locks (locking mechanisms). Many of these companies deliver components that are sold on international markets under different brands.¹²²

Box - Dates from the Jordan Valley

Dates from the occupied Jordan Valley are one of the most prominent agricultural settlement products, and can be found on supermarket shelves across the world.

More than 80% of dates from the Jordan Valley settlements are grown for export.¹²³ In 2011, global Israeli date exports reached 25,000 tons, of which 12,000 were produced in the Jordan Valley settlements. Many of these are the popular Mejdool dates. Israel produces over 50% of the world's Mejdool dates, half of which are grown in the Jordan Valley settlements.¹²⁴

In contrast to the volumes of dates from Israeli settlements, Palestinians produce some 2,500 tons of dates in the occupied territory, of which about 300 tons are exported, most of them to the Gulf states.¹²⁵

¹¹⁷ Who Profits, 'SodaStream: A Case Study for Corporate Activity in Illegal Israeli Settlements' (January 2011): <<http://www.whoprofits.org/sites/default/files/WhoProfits-ProductioninSettlements-SodaStream.pdf>>; Who Profits, 'SodaStream (The Soda Club Group)': <<http://www.whoprofits.org/company/sodastream-soda-club-group>> accessed 19 October 2012.

¹¹⁸ B'Tselem, 'The Hidden Agenda: The Establishment and expansion plans of Ma'ale Adummim and their Human Rights ramifications', p. 9 (December 2009): <http://www.btselem.org/download/200912_maale_adummim_eng.pdf>.

¹¹⁹ Who Profits, 'SodaStream report', op. cit.

¹²⁰ Ibid.

¹²¹ Who Profits, 'Keter Plastic (Keter Group)': <<http://www.whoprofits.org/company/keter-plastic-keter-group>> accessed 24 October 2012; Prosper Palestine, 'Unveiled', op. cit.

¹²² Who Profits: <<http://www.whoprofits.org/>> accessed 24 October 2012; Prosper Palestine, 'Unveiled', op. cit.

¹²³ Research and Development Center in the Jordan Valley, 'Agriculture in the Valley' op. cit.

¹²⁴ Who Profits, "'Made in Israel" report', op. cit.

¹²⁵ Interview with an official from the Palestinian Ministry of Agriculture, January 2012.

The main Israeli exporter of dates is the company Hadiklaim. Hadiklaim appears to mark all dates as Israeli produce, making it difficult for the consumer to distinguish between dates from Israel proper and from the occupied Jordan Valley.

Story of a Palestinian date farm in the Jordan Valley: growing in an unfair field¹²⁶

16 kilometres north of the Dead Sea, Zuhair Al-Manasreh runs the largest Palestinian agricultural development project in the West Bank. Nakheel Palestine for Agricultural Investment is cultivating date trees on 750 acres around the city of Jericho in the Jordan Valley. With 20,000 trees, the three-year-old company expects to produce between 400 and 600 tons of high quality Mejdool dates for export this year.

But this is just a tiny fraction of what his Israeli competitors in the Jordan Valley are currently exporting. With large government subsidies, Israeli settlers have been able to establish industrial-scale date farms, and are flooding markets.

In contrast, Palestinians in the Jordan Valley face restrictions on the use of land, water, and on building, which means that companies like Nakheel Palestine are not competing on a level playing field. Without proper methods for storing and refrigerating, Palestinian farmers need to sell quickly before their products spoil. Israeli checkpoints and restrictions on moving goods to markets make this challenging.

In spite of this, Al-Manasreh says growing dates is a strategic choice to keep the Palestinian presence and agriculture in the Jordan Valley alive. Without adequate water, there are few other crops that Palestinians can cultivate. Whereas settlement farms are allowed to drill new, deep wells, restrictions on Palestinians' water use means that they are left with older, shallow wells with salinated, brackish water. Dates are one of the few agricultural products that can withstand this low quality water. Since dates are mostly sold as semi-dried fruit, they have a longer shelf life and can withstand the lengthy delays faced by Palestinian export goods at Israeli checkpoints and in port terminals.

"Palestinian investment in dates is the right choice for the Jordan Valley given the situation we are facing right now," Al-Manasreh explains. "There is a lot of agricultural land in the Jordan Valley that has been abandoned by Palestinian farmers because they can't access water. When land lays fallow, it can easily be confiscated by settlement farms. Our strategy is not just about making money, it is also about keeping Palestinian production going and giving farmers incentives to grow."

With the goal of providing a solid alternative to employment on settlement farms, Nakheel Palestine currently employs 40 full time and 100 seasonal workers. With plans to plant an additional 24,000 date trees in the next two years, Al-Manasreh expects to triple its workforce.

Still, until Israeli constraints on Palestinians in the Jordan Valley are removed, it is unlikely the company will be able to unleash its full potential. The company's farms are spread across land that falls in Area C. Given the restrictions and lack of development in Area C, the company has had to build from the ground up, often without permits which are almost impossible to obtain. In order to move workers and goods between the farms and to markets, Nakheel Palestine had to build its own agricultural roads. They have also had to install their own electrical grid, costing over \$100,000, to power workstations and irrigation systems. The company also faces restrictions on building warehouses, and has outstanding demolition orders against one of its reservoirs, a well, a storage facility, a resting house for field workers and a computer work station. Nakheel Palestine has brought three cases challenging the demolition orders to the Israeli Supreme Court.

¹²⁶ Based on fieldwork by European development organisations, 2012.

3.3 Involvement of European companies

Beyond the trade in settlement goods, some international companies operate in settlements including through the provision of services and support to associated infrastructure. These activities include construction of transport infrastructure, provision of transport services to settlements, delivery of equipment for checkpoints, provision of security services to settlement businesses, extraction of non-renewable resources, and investment in settlement factories. Below are several prominent examples, based on recent information from multiple sources:

- **G4S**, the British-Danish multinational company, has been providing, through its Israeli subsidiary, security services and equipment to Israeli checkpoints, to prisons detaining Palestinians from the OPT inside Israel, and to private businesses in settlements. Following civil society pressure, G4S stated that it would end some of the controversial contracts between 2012 and 2015.¹²⁷
- **Alstom**, the French multinational company, has been involved in the light rail project that connects Jerusalem with nearby settlements in violation of international law and that started operating in 2011. In late 2011, Alstom announced it would sell its stake in the project consortium, but has not yet succeeded to do so. Alstom also remains involved in ongoing maintenance as the provider of the train units.¹²⁸
- **Veolia**, the French multinational company, has also been involved in the Jerusalem light rail project, including through a majority share in the company operating the trains. Following campaigns and negative publicity Veolia declared it would sell its shares but thus far has been prevented from doing so by the Jerusalem public transportation authorities with whom it has contractual obligations. Through its Israeli subsidiaries, Veolia also has a contract for waste collection services from an Israeli army base in the Jordan Valley.¹²⁹
- **Heidelberg Cement**, the German cement producer, owns a sand and gravel quarry and two concrete plants in the West Bank, through its Israeli subsidiary Hanson Israel. Quarry activities carried out for the benefit of Israeli industry rather than the occupied population are contrary to international law. Heidelberg Cement has tried to sell its West Bank operations, but so far without success.¹³⁰

Some European companies have already ceased their activities in the West Bank in recent years after they were alerted to their international law aspects by civil society and, in some cases, also by their governments:

- **AssaAbloy**, the Swedish manufacturer of locks, relocated the factory of the Israeli company Mul-T-Lock, owned by AssaAbloy, from the Barkan industrial zone in the West Bank to a

¹²⁷ Dan Watch, 'G4S retreat from settlements drags out' (17 October 2011): <<http://www.danwatch.dk/en/articles/g4s-retreat-settlements-drags-out/105>>; Who Profits, 'Group4securicor (G4S)':

<<http://www.whoprofits.org/company/group4securicor-g4s>> accessed 23 October 2012; G4S, 'G4S Update – April 2012' (April 2012): <http://www.business-humanrights.org/media/documents/company_responses/g4s-israel-apr-24-2012.pdf>.

¹²⁸ Globes, 'Alstom to bid in Tel Aviv light rail tenders' (11 October 2012):

<<http://www.globes.co.il/serveen/globes/docview.asp?did=1000789231&fid=1724>>; Who Profits, 'Alstom':

<<http://www.whoprofits.org/company/alstom>> accessed 11 October 2012; Methodist Church in Britain, 'Report of the Joint Advisory Committee on the Ethics of Investment (JACEI)' (2012):

<<http://www.methodistconference.org.uk/media/118236/29%20jacei.pdf>>.

¹²⁹ Veolia Environnement, 'The Jerusalem Light Rail Transit (JLRT)': <<http://www.veolia.com/en/medias/focus-on/jlrt.htm>> accessed 11 October 2012; Who Profits, 'Veolia Environnement': <<http://www.whoprofits.org/company/veolia-environnement>> accessed 11 October 2012; Methodist Church in Britain, 'Report of the JACEI' op. cit.

¹³⁰ Heidelberg Cement, personal communication (October 2012). Who Profits, 'Heidelberg Cement': <<http://www.whoprofits.org/company/heidelberg-cement>> accessed 11 October 2012.

site within the Green Line. AssaAbloy announced the move in 2008 due to criticism in a report from Swedish NGOs echoed by the Swedish government. The company completed the relocation in 2011.¹³¹

- **Deutsche Bahn**, the German state-owned railway company, pulled out of the above-mentioned high-speed railway project linking Jerusalem and Tel Aviv. This happened in March 2011 after an intervention by the German government. The Minister of Transport defined the project as "problematic for foreign policy and potentially in violation of international law".¹³²
- **Unilever**, the UK and Dutch multinational company, is in the process of moving the factory of the Israeli company Beigel & Beigel, owned by Unilever, from the Barkan zone to Israel proper in 2012. Beigel & Beigel is a major producer and exporter of pretzels, crackers and biscuits. The move should be completed by December 2012.¹³³

These examples show the path to follow for the companies still doing business in the settlements. They also show that governments can play a constructive role in stopping and preventing companies' involvement in settlements and the occupation.

Businesses that are involved in violations of international law may face the risk of legal action. Companies also increasingly commit to, and hence are increasingly held accountable to international frameworks of corporate social responsibility (CSR) that have emerged in recent years. These include the 'Ruggie Guidelines' (The UN Guiding Principles on Business and Human Rights) and the OECD Guidelines for Multinational Enterprises. Both these frameworks recommend that companies assess the human rights impact of their operations (including potential breaches of international humanitarian law) as part of their CSR policies. They advise businesses to avoid adverse human rights impacts connected to their operations, even if they do not contribute directly to those impacts. These frameworks also require governments to provide effective guidance to companies.¹³⁴

The trade and investment linkages between Europe and settlements support the latter's economic viability and further growth. If European governments are serious about their commitment to international law and Middle East peace, they need to urgently move beyond rhetoric and tackle these economic linkages.

¹³¹ The company followed all the report's recommendations, except to arrange financial compensation for the Palestinian family on whose land its facilities had been located. Information provided by Diakonia (October 2012). See: Diakonia, 'Illegal Ground: Assa Abloy's business in occupied Palestinian territory' (October 2008): <http://www.diakonia.se/Documents/public/IN_FOCUS/Israel_Palestine/Report_Illegal_Ground/Report_Mul-T-lock_081021.pdf>; Who Profits, 'Removing Mul-T-Lock and Assa Abloy from Who Profits' Database': <<http://www.whoprofits.org/content/removing-mul-t-lock-and-assa-abloy-who-profits%E2%80%99-database>> accessed 11 October 2012.

¹³² Financial Times, 'Deutsche Bahn pulls out of Israel project' (9 May 2011): <<http://www.ft.com/intl/cms/s/0/4b6b59fc-7a4b-11e0-bc74-00144feabdc0.html>>; Corporate Watch, 'Deutsche Bahn withdraws new railway line project from Tel Aviv to Jerusalem' (10 May 2011): <<http://www.corporatewatch.org/?lid=3979>>; Letter from the German Minister of Transportation, Dr. Peter Ramsauer, to the CEO of the Deutsche Bahn AG, Dr. Rüdiger Grube concerning the engagement of DB International GmbH in Israel (16 February 2011).

¹³³ Unilever, personal communication, October 2012. Who Profits, 'Unilever': <<http://www.whoprofits.org/company/unilever>> accessed 24 October 2012.

¹³⁴ "In meeting their duty to protect, States should ... Provide effective guidance to business enterprises on how to respect human rights throughout their operations". 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework'. Report of the Special Representative of the Secretary-General, John Ruggie (21 March 2011): <http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf>; 'OECD Guidelines for Multinational Enterprises. 2011 Edition': <<http://www.oecd.org/investment/investmentpolicy/48004323.pdf>>.

Chapter 4 – European policies vis-a-vis settlements

The European Union regularly criticizes and condemns the Israeli settlement policy. Yet simultaneously it supports the viability of settlements by purchasing their products. Moreover, by accepting imports of settlement goods designated as originating in “Israel”, Europe is tacitly accepting Israel’s creeping expansion of sovereignty. And by permitting the sale of settlement products mis-labelled as “Made in Israel”, governments are failing to protect consumers’ legal right to make an informed choice about purchasing settlement goods. There is a growing awareness among European governments of the need to rectify these inconsistencies.

4.1 Settlement goods and preferential market access

Products from Israeli settlements in the occupied Palestinian territory are not entitled to benefit from preferential access to the EU market. The EU-Israel association agreement allows Israeli products to enter the EU market with reduced import tariffs, but as settlements are not recognised by the EU as part of Israel, settlement products may not benefit from the agreement. The European Court of Justice confirmed this in 2010.¹³⁵ The very same situation applies for the European Free Trade Association (EFTA)-Israel free trade agreement.

However, Israel, which treats settlements as an integral part of its territory, designates the origin of all exported products, including those from settlements, as ‘Israel’. This makes it difficult for the EU and EFTA to respect their own legal obligation to exclude settlement goods from preferential treatment.

Since 2005, the EU and EFTA have operated a so-called Technical Arrangement enabling European customs authorities to identify settlement goods and exclude them from preference. The customs authorities have to check goods arriving from Israel against a list of postcodes of settlements in order to determine whether the place of origin is in Israel proper or in a settlement.¹³⁶

The Technical Arrangement puts the burden of identifying settlement goods on the European customs, rather than on Israel as the exporting country. It requires the customs and importers to manually check every single piece of documentation for every item imported from Israel and it is at odds with the normal processing of imports by European customs that is carried out through automated IT systems. For most European customs authorities checking settlement goods is not a priority and given the volume of imports from Israel, adequate resources to do so are not available.

It appears that the Technical Arrangement is not sufficiently reliable to prevent settlement goods entering the EU and EFTA markets and falsely claiming preferential access. Customs inspections in the UK have detected significant numbers of false claims, including cases where the postcodes given were of head offices in Israel and not the actual place of production in settlements.¹³⁷

Recently, the European Commission has implicitly recognised the problem by extending the responsibility for checking the products’ place of origin from customs authorities to importing companies.¹³⁸ This amendment of the Technical Arrangement may improve the overall effectiveness of the system and decrease the number of settlement products evading import duty, but it is no substitute for a legally sound solution.

¹³⁵ Judgment of the European Court of Justice (Fourth Chamber), ‘Brita GmbH v Hauptzollamt Hamburg-Hafen’ (25 February 2010): <<http://curia.europa.eu/juris/celex.jsf?celex=62008CJ0386&lang1=en&type=NOT&ancre>>.

¹³⁶ European Commission, ‘EU-Israel Technical Arrangement’:

<http://ec.europa.eu/taxation_customs/customs/customs_duties/rules_origin/preferential/israel_ta_en.htm>

¹³⁷ See debate at the House of Commons on the EU-Israel Trade Agreement, Column 313 WH (27 January 2010):

<<http://www.publications.parliament.uk/pa/cm200910/cmhansrd/chan31.pdf>>.

¹³⁸ Official Journal of the European Union, ‘Notice to importers. Imports from Israel into the EU. (2012/C 232/03)’ (3 August 2012): <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:232:0005:0005:en:PDF>>.

By putting the burden of identifying settlement goods on the European side, the Technical Arrangement still allows Israel to continue treating settlements as an integral part of its territory. By accepting imports of settlement products with origin designated as 'Israel', the EU and EFTA are acquiescing to Israel's creeping expansion of sovereignty.

To rectify this, the EU and EFTA would need to oblige Israeli exporters to conform to EU regulations by correctly designating the origin of settlement products and ceasing to designate them as 'Israel' – as called for also by the European Parliament.¹³⁹ This would shift the responsibility for distinguishing settlement goods onto Israel as the exporter and ease the burden on European customs and importers.

4.2 Consumer labelling

Besides the problem with identifying the origin of products when they enter the EU market, there is a second problem with labelling of those goods at the point of sale to the consumer. Clear and accurate labelling at the point of sale is the responsibility of the retailer.

Under international law, settlements are not part of the State of Israel, but settlement products, agricultural as well as industrial, are often sold as "made in Israel", thus misleading consumers. An increasing number of consumers wish to avoid settlement products on ethical grounds due to the circumstances of their production. Yet their right to exercise that choice is being denied, in defiance of EU consumer protection legislation.

In 2009 the UK government responded to these concerns by adopting labelling guidelines advising retailers that food products from settlements be labelled as "Produce of the West Bank (Israeli settlement produce)" and Palestinian produce as "Produce of the West Bank (Palestinian produce)".¹⁴⁰ Although voluntary, the guidelines were welcomed by food retailers and appear to be observed by major supermarkets. Moreover, it appears that following the introduction of the guidelines, most major UK supermarkets have decided to stop sourcing own-branded food products from the settlements.¹⁴¹

In May 2012, Denmark announced it would adopt similar labelling guidelines. The guidelines have been issued in October 2012.¹⁴² An increasing number of European governments are considering similar action. In May 2012, EU Foreign Ministers made a public commitment to "fully and effectively implement existing EU legislation and the bilateral arrangements applicable to settlement products" – which also implies correct labelling of settlement goods in line with EU legislation.¹⁴³

In Switzerland, the biggest retail chain Migros announced that it would introduce correct labelling of all settlement products, agricultural as well as industrial, by 2013.¹⁴⁴ Outside Europe, South Africa's

¹³⁹ This revision is urgent before the Convention on pan-Euro-Mediterranean preferential rules of origin is implemented, otherwise settlement products could be traded as "Israeli" via another regional country and enter the EU on preferential terms. European Parliament, 'European Parliament resolution on the proposal for a Council decision on the conclusion of the regional Convention on pan-Euro-Mediterranean preferential rules of origin (2012/2519(RSP))' (10 February 2012): <<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2012-0061&language=EN>>.

¹⁴⁰ UK Department for Environment, Food and Rural Affairs, 'Technical advice: labelling of produce grown in the Occupied Palestinian Territories' (10 December 2009): <<http://archive.defra.gov.uk/foodfarm/food/pdf/labelling-palestine.pdf>>.

¹⁴¹ The Ecumenical Council for Corporate Responsibility, 'UK and Irish supermarkets' policies and practices regarding the sourcing of goods produced in Israeli settlements in the occupied Palestinian territories' (June 2011): <http://www.eccr.org.uk/module-Downloads-prep_hand_out-lid-33.html>.

¹⁴² Danish Ministry of Food, Agriculture and Fisheries, 'Labelling of foods from Israel and the Occupied Palestinian Territories' (5 October 2012):

<http://www.foedevarestyrelsen.dk/Foedevarer/Maerkning/Oprindelsesmaerkning_af_foedevarer/Maerkning%20af%20f%C3%B8devarer_fra_Israel_hhv_de_besatte_palaestinsiske_omraader/Sider/forside.aspx> (in Danish).

¹⁴³ Council of the EU, 'Council Conclusions' (14 May 2012), op. cit.

¹⁴⁴ Migros Magazin, 'Migros deklariert Produkte aus israelischen Siedlungen' (28 Mai 2012): <<http://www.migrosmagazin.ch/migros-welt/migros-woche/artikel/migros-woche-22-2012>>.

government decided in August 2012 that it would issue a notice requiring correct labelling of settlement goods.¹⁴⁵

Box - Consumer protection laws and settlement goods

EU consumer protection legislation, including the EU Unfair Commercial Practices Directive (UCPD), gives consumers the right to the information they require to exercise choice.¹⁴⁶ UCPD has been transposed into national legislation in all EU member states and its relevance to settlement products has been confirmed by the European Commission¹⁴⁷ and others¹⁴⁸. The Foreign Affairs Council in May 2012 called for Member States to “fully and effectively implement European legislation ... applicable to settlement products”.

UCPD prohibits the provision of false, deceptive or potentially misleading information where it can cause the average consumer to make a choice he or she would not have made otherwise. Similarly, the Directive prohibits the omission of material information which the average consumer needs to make an informed choice.

Where a product from a settlement is labelled as “Product of Israel”, this is a case of misleading information prohibited under the Directive, given that settlements are not part of the territory of Israel under international law.

Where a settlement product is labelled “Product of the West Bank”, this too can be considered misleading information and a breach of the Directive.¹⁴⁹ Although the settlements are factually located in the West Bank, it can be argued that the average, reasonably well-informed consumer needs to be able to distinguish between products legitimately made by Palestinian producers living under occupation and products of Israeli illegal settlements taking advantage of the occupation, so that the consumer can make an informed decision on ethical grounds.

UCPD is supplemented by more detailed regulations relating to food products. For fresh produce, indication of the country of origin - in a way which does not mislead the consumer - is mandatory.¹⁵⁰ For other food items, based on a new regulation that must be applied from 2014, information on the country of origin or place of provenance must not be misleading, and is required where its absence is likely to mislead consumers.¹⁵¹

¹⁴⁵ South African Government, ‘Statement on the Cabinet meeting of 21 August 2012’ (21 August 2012): <<http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=30027&tid=80792>>.

¹⁴⁶ See European Commission, ‘Unfair Commercial Practices Directive (UCPD)’: <http://ec.europa.eu/consumers/rights/index_en.htm>

¹⁴⁷ European Parliament, ‘Answer given by Mr Füle on behalf of the Commission to written question E-2605/10’ (1 July 2010): <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-2605&language=EN>>.

¹⁴⁸ UK Under-Secretary for Business, Innovation and Skills – see UK Parliament House of Commons Hansard Written Answers, ‘Origin Marking: Israel’, Column 797W (17 July 2012):

<<http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120717/text/120717w0007.htm>>; Legal Opinion by Kieron Beal, Daniel Machover, Sarah McSherry, Phil Shiner and Rosa Curling, ‘Advice on the Labelling of goods from the Occupied Palestinian Territories’ (16 May 2009): <http://lphr.org.uk/old/publications/advice/Labelling_Advice_Beal.pdf>.

¹⁴⁹ Beal et al Opinion, op. cit., par. 3.11.

¹⁵⁰ Official Journal of the European Union, ‘Commission Implementing Regulation (EU) No 543/2011 of 7 June 2007 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors’, Annex I, Part A, para.4.: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:157:0001:0163:EN:PDF>>.

¹⁵¹ Official Journal of the European Union, ‘Regulation (EU) No 1169/2011 of 25 October 2011 on the provision of food information to consumers’, Articles 7(1)(a) and 26 (2)(a): <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0018:0063:EN:PDF>>; this regulation entered into force in December 2011 and must be applied from December 2014.

As far as cosmetic products are concerned – which is relevant for the case of Ahava products made in a settlement - a new EU cosmetics regulation that must be applied from 2013 will make origin labelling of cosmetics compulsory across the EU.¹⁵²

Quotes:

“Israeli settlements in the occupied territories are illegal and cannot be regarded as a part of the territory of Israel. Therefore, goods produced in these settlements by Israeli companies cannot be regarded as goods originating in Israel.”

European Commission¹⁵³

“This is a move that will clearly show consumers that this produce has been produced under conditions that not only the Danish government, but also the European governments have rejected. Then it is up to consumers whether they are prepared to buy the produce. (...) This is not targeted against Israel, but against illegal settlements.”

Danish FM Villy Søvndal announcing labeling guidelines.¹⁵⁴

“These actions should be applauded and other governments and companies should follow suit.” Labelling of settlement products is a “simple act [which] reminds us that settlements are a grave violation of international law and an instrument in a dangerous project of de facto annexation”.

Alon Liel, former Director General of the Foreign Ministry of Israel and Israel's former Ambassador to South Africa.¹⁵⁵

4.3 Discouraging private sector dealings with settlements

International frameworks for corporate social responsibility (CSR) provide a basis for possible more comprehensive government measures than correct labelling of settlement products. CSR guidelines including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises require governments to provide effective guidance to companies on how to respect human rights throughout their operations (see chapter 3.3).

Governments could encourage importers and other businesses, by means of formal advice, to refrain from any economic dealings with settlements including purchasing of settlement goods and investment in settlements. An existing example is the Norwegian government's position on Western Sahara that discourages “trade, investment, resource-extraction and other forms of commercial activity” in that territory.¹⁵⁶

Such government initiatives could build on steps already taken by the private sector in some cases. In Norway, two of the main importers of fruit and vegetables, BAMA and Coop, have written agreements with their suppliers in Israel stating that fruit and vegetables produced in settlements shall

¹⁵² Official Journal of the European Union, ‘Regulation (EC) 1223/2009 of 30 November 2009 on Cosmetic products’, Chapter 6, Article 19 (1)(a): <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:342:0059:0209:en:PDF>>.

¹⁵³ European Parliament, ‘Joint answer given by Mr De Gucht on behalf of the Commission’ (26 September 2012): <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-007239&language=DA>>.

¹⁵⁴ Politiken, ‘Israeli settlement produce label’ (18 May 2012): <<http://politiken.dk/newsinenglish/ECE1628790/israeli-settlement-produce-label/>>.

¹⁵⁵ The Guardian, ‘For Israelis, Palestinian oppression is out of sight and out of mind’, by Alon Liel (27 June 2012): <<http://www.guardian.co.uk/commentisfree/2012/jun/27/made-in-israel-erasing-green-line>>.

¹⁵⁶ “(...) Norway believes that the international community should stand united in its pressure on the parties to reach a solution. Norway considers it important to simultaneously refrain from actions that could be seen as legitimizing the situation in Western Sahara. In order to avoid trade, investment, resource-extraction and other forms of commercial activity that are not in accordance with the interests of the local population, and consequently may be in contravention of international humanitarian law, the Norwegian authorities discourage such activities in Western Sahara.” Unofficial translation from: Norwegian Embassy to Morocco, ‘Bakgrunn for bedrifter med interesse for virksomhet i Marokko; Vest-Sahara’: <<http://www.norvege.ma/Norsk/marokko/fakta/Samfunnsansvar/>> accessed 12 October 2012.

not be supplied to them. In March 2012, the VITA chain, which was the main retailer of Ahava cosmetics products in Norway, announced it would stop all sales of settlement products, citing Norway's official position on the illegality of settlements, and encouraged Ahava to relocate its factory to Israel proper. While settlement products are still being sold by other stores in Norway, the extent of Norway's trade with settlements has been reduced as a result of these private sector steps.¹⁵⁷

Similarly, as mentioned, most UK food retailers appear to have stopped selling own-brand settlement produce following the publication of the labelling guidelines by the government. Large retailers claim they are able to use their traceability mechanisms to confirm that goods are not sourced from settlements.

The UK Co-operative Group went a step further and ended all trade with suppliers that source produce from both Israeli settlements and Israel itself, citing the costs of tracing and auditing all their produce to ensure the exclusion of settlement goods. The Co-op cancelled its contracts (worth £350,000) with four of its Israeli suppliers (Agrexco, Mehadrin, Arava, and Adafresh) that are known to source produce from settlements but emphasised they would continue to use suppliers from inside Israel that do not source from settlements.¹⁵⁸

4.4 Banning imports of settlement products

While the introduction of labelling guidelines would enable consumers to choose whether they wish to buy settlement goods or not, it may not be sufficient to meet European governments' obligation to exert their influence, to the degree possible, to stop violations of international humanitarian law.¹⁵⁹

Permitting trade with settlements at all appears inconsistent with European governments' recognition of their illegality and the fact that all production and manufacturing within the settlements involves further breaches of international law. Under Article 215 of the EU Treaty the EU could adopt "restrictive measures" to ban the import of settlement products.

The Irish foreign minister has already called for an EU-wide ban on imports from settlements¹⁶⁰, but in the interim, individual governments could implement such an import ban unilaterally.

The European Commission has confirmed a member state can unilaterally adopt measures to restrict trade if on the basis of Regulation 260/2009 it "can justify its action on grounds of public morality, public policy or public security ... and in doing so it does not infringe EC law".¹⁶¹ James Crawford's legal opinion (see chapter 1.2) argues that an individual member state could lawfully ban trade with settlements and that such a measure would not breach World Trade Organisation regulations.

A ban on the import of Israeli settlement goods is not a ban or boycott on trade with Israel, which the signatories to this report do not advocate.

¹⁵⁷ Norwegian People's Aid, 'RAPPORT: Norske sparepenger investeres i okkupasjonen' (9 May 2012):

<<http://www.folkehjelp.no/no/nyheter/2012/?module=Articles&action=Article.publicShow&ID=19080>>.

¹⁵⁸ The Co-operative, 'The Co-operative and the illegal Israeli settlements': <<http://www.co-operative.coop/join-the-revolution/our-plan/tackling-global-poverty/ethical-trading-and-human-rights/the-co-operative-and-the-illegal-israeli-settlements>> accessed 22 October 2012.

¹⁵⁹ See ICRC, 'Customary IHL Study: Rule 144', op. cit.

¹⁶⁰ In October 2011, the Foreign Minister Eamon Gilmore announced in the Irish Parliament: "I would support any move at EU level to exclude settlement products from entry to the EU." Houses of the Oireachtas, 'Written Answers - Human Rights issues', para. 99 (25 October 2011): <<http://debates.oireachtas.ie/dail/2011/10/25/00070.asp>>. In May 2012, Gilmore announced, that if "matters continued to worsen" in the occupied Palestinian territories, Ireland may propose "the exclusion from the EU of settlement products". The minister added "we do not support bans or boycotts on Israel, and this is not in question, but the products of illegal settlements constitute a separate and specific matter". Houses of the Oireachtas, 'Priority Questions - Middle East Peace Process', para.103 (22 May 2012): <<http://debates.oireachtas.ie/dail/2012/05/22/00004.asp>>.

¹⁶¹ European Parliament, 'Answer to European Parliamentary Question E-000047/11' (7 February 2011): <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-000047&language=EN>>.

4.5 Excluding settlements from agreements and cooperation instruments with Israel

As in the case of the Technical Arrangement discussed above, Israel extends the territorial scope of its agreements with the EU to include the settlements, which it treats as an integral part of its territory in accordance with its domestic law. The EU, which does not recognise settlements as part of Israel, is obligated by its own law to restrict the territorial scope of its agreements and cooperation instruments to Israel within its pre-1967 borders. However, several examples show the EU's efforts to ensure that are still falling short of what is necessary:

- Under the EU's **research and development funding programme FP7** for 2007-2013, EU public funds worth €1.13m have been awarded for research carried out by the Ahava cosmetics company in a factory based in an illegal settlement.¹⁶² Under the same programme, the EU has also contributed €114,400 to the Israeli Antiquities Authority based in illegally annexed East Jerusalem.¹⁶³ In allowing its public funds to support activities in settlements, the EU risks breaching its duty not to aid and assist violations of international humanitarian law.
- The new **Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA)** that facilitates EU-Israel trade in industrial products does not include an adequate territorial clause to restrict its application to Israel proper. The agreement was ratified by the European Parliament in October 2012.¹⁶⁴ Unless Israel itself formally limits the application of ACAA to Israel proper, the agreement's implementation will lead the EU to formally recognise Israeli authorities' jurisdiction over the settlements. Implementing ACAA without obtaining such a binding territorial limitation from Israel would thus breach existing EU and international law and set a dangerous precedent.
- The **EU-Israel civil aviation agreement** signed in July 2012 also has a very weak territorial clause that entitles Israel to apply its provisions beyond the Green Line.¹⁶⁵

The problem can be solved if EU and national bilateral agreements with Israel include clear territorial provisions that explicitly restrict their application to Israel proper, regardless of Israeli domestic law. Similarly, regulations for cooperation programmes would have to contain legal safeguards that exclude participation of entities based or operating in settlements.

In case of the FP7 programme, the European Commission admitted the regulations did not prevent settlement entities from participating and tried to "filter out" ineligible entities using the list of settlement postcodes. Apart from imposing an additional bureaucratic burden on the Commission, this approach does not exclude entities such as the Ahava company that operates wholly in a settlement but uses a registration address within Israel. The successor to the FP7 programme, **Horizon 2020**, offers an opportunity to include a clear legal safeguard to prevent the problem from re-occurring. The draft regulation currently under discussion in the European Parliament does not contain an adequate provision.

As this chapter has shown, there are still many gaps between European governments' declaratory positions on settlements and their practice. Yet, the awareness of the need to rectify these inconsistencies is growing. The final chapter proposes concrete measures to bring the European policies closer in line with their rhetoric.

¹⁶² European Parliament, 'Answer to European Parliamentary Question P-006190/2011' (19 July 2011):

<<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-2011-006190&language=EN>>.

¹⁶³ European Parliament, 'Answer to European Parliamentary Questions E-009280/11, E-009975/11' (6 December 2011):

<<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-009975&language=EN>>.

¹⁶⁴ Agreement on Conformity Assessment and Acceptance of Industrial Products:

<<http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=14229>>.

¹⁶⁵ European Commission press release, 'Aviation: Israel to join Europe' (31 July 2012):

<http://ec.europa.eu/transport/modes/air/international_aviation/common_aviation_area/doc/2012-07-31-aviation-israel-to-join-europe.pdf>.

Chapter 5 – Recommended measures for European governments and the EU

As it is their stated position that “settlements are illegal and an obstacle to peace” European governments and the EU must adopt concrete measures to ensure their policies do not directly or indirectly support entrenchment and expansion of settlements. Both national governments and the EU have a number of feasible measures at their disposal.

These measures target only illegal settlements, not Israel. Adopting them would effectively re-emphasise the pre-1967 Green Line that is being eroded by settlement expansion and that is of critical importance for the viability of the EU-promoted two-state solution. It would also be a signal of intent that international law will be upheld.

A. Sales and imports of settlement products

1. **Ensure correct consumer labelling of all settlement products:** As a minimum measure in line with existing consumer protection legislation, European governments must issue guidelines to ensure all settlement products (including manufactured goods) are accurately labelled so that consumers are aware of their true origin and can make an informed choice. Settlement products should be labelled as, for example, “West Bank (Israeli settlements)” to clearly distinguish them from both products made in Israel and Palestinian products. The European Commission should also provide EU-wide guidance for correct labelling of settlement products to ensure harmonisation.
2. **Discourage companies from trading with and investing in settlements:** As a more comprehensive measure than correct consumer labelling, national governments should issue formal advice to importers and other businesses to refrain from purchasing settlement goods and to avoid all other commercial and investment links with settlements. OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights can be used as the relevant international framework. Companies involved in settlement-related economic activities should be called to account. The Norwegian government’s position on Western Sahara that discourages “trade, investment, resource-extraction and other forms of commercial activity” in that territory can serve as an example.¹⁶⁶
3. **Ban imports of settlement products:** As a further-reaching measure, governments could legally exclude settlement products from entry to the EU market. Trade in products of illegal settlements is inconsistent with EU foreign policy and, at least in cases of products involving the use of non-renewable resources such as water or minerals, may directly aid or assist ongoing breaches of international law. The Irish government has called for an EU-wide ban on imports from settlements¹⁶⁷, but in the interim, national governments can implement such a measure. A ban on the import of Israeli settlement goods is not a ban or boycott on trade with Israel, which the signatories to this report do not advocate.

B. Excluding settlements from EU and national relations with Israel

4. **Ensure settlement products do not benefit from preferential market access:** In complementarity with the above measures on sales and imports, the EU and EFTA must revise the ‘Technical Arrangement’ with Israel to guarantee all settlement products are effectively excluded from preferential treatment. In order to ensure that and to properly implement EU’s own regulations, Europe must insist Israeli exporters start correctly designating the origin of settlement products, and cease designating them as ‘Israel’.

¹⁶⁶ Norwegian Embassy to Morocco, op. cit.

¹⁶⁷ Houses of the Oireachtas (25 October 2011), op. cit., para. 99.

5. **Exclude settlements from bilateral agreements and cooperation instruments:** The EU and national governments must ensure agreements and cooperation instruments involving Israel cannot be applied to settlements:
- All agreements with Israel must include clear territorial provisions that explicitly restrict their application to Israel proper, regardless of Israeli domestic law. The EU's newly ratified **ACAA** agreement¹⁶⁸, which does not contain an adequate territorial clause, should only be implemented if Israel itself formally limits its application to Israel proper.
 - Regulations for cooperation programmes, including the EU-funded research programme **Horizon2020** currently under discussion, must include legal safeguards that exclude participation of entities based or operating in settlements.
 - National governments must apply the same provisions and safeguards in their bilateral relations with Israel.
6. **Exclude settlement products and companies from public procurement:** In tendering of public contracts, such as catering services or equipment supplies, EU institutions, governments, and state-funded bodies should specify that no settlement products or services may be supplied under the contract and that companies operating in settlements are excluded.¹⁶⁹ This must be done before Israel is allowed increased access to public procurement markets in the EU, as currently envisaged under the EU-Israel Action Plan.

C. Financial transactions to settlements

7. **Remove organisations funding settlements from tax deduction systems:** National governments must ensure that gifts to organisations that provide funds to Israeli settlements are not tax-deductible. The Norwegian government's decision in September 2012 to exclude the Karmel-instituttet, a Norwegian organisation that has collected donations for Israeli settlements, from its list of organisations eligible for tax deductible gifts, can serve as a model.¹⁷⁰
8. **Prevent financial transactions supporting settlements and related activities:** As a more comprehensive measure and as recommended by the EU's Heads of Missions in the OPT, governments should apply restrictive measures to all financial transactions from their citizens, organisations and businesses in support of settlement activities breaching international law.¹⁷¹ In the absence of common EU action, such measures can be implemented by national governments.

D. Other measures

9. **Discourage citizens from buying property in settlements:** National governments must issue formal advice to citizens not to buy property in settlements, alerting them to the illegality of settlements, the doubtful legal title of most settlement properties and their uncertain future if a Palestinian state is established. Several EU member states have already issued such advice, but it should be strengthened and implemented by all member states.

¹⁶⁸ Agreement on Conformity Assessment and Acceptance of Industrial Products, op. cit.

¹⁶⁹ European Parliament, 'Joint answer given by Mr De Gucht on behalf of the Commission', op. cit.

¹⁷⁰ The Norwegian Ministry of Finance stated its intention to ensure that the system of tax deductions does not benefit any organisations supporting or contributing to acts that are in contravention of international law. Norwegian People's Aid, 'No more tax deductibles for funding settlements in occupied territory' (20 September 2012):

<<http://www.npaid.org/en/news/?module=Articles&action=Article.publicShow&ID=19664>>; Norwegian Ministry of Finance, Press Release (20 September 2012): <<http://www.regjeringen.no/en/dep/fin/News/news/2012/karmel-instituttet-utelukkes-fra-gavefra.html?id=699411>>.

¹⁷¹ EU Heads of Mission, 'Report: East Jerusalem 2011' (January 2012).

10. **Issue guidelines for European tour operators:** As recommended by the EU's Heads of Missions in the OPT, national governments must compile guidelines for tour operators to prevent support for settlement businesses, including hotels, bus operators, archaeological sites, etc.¹⁷²
11. **Draw up a list of companies mis-stating the origin of settlement goods:** As requested by the European Parliament, the European Commission should draw up a list of companies exporting settlement products, which persist in mis-stating the non-preferential origin of those goods as Israel. This measure would be complementary to the revision of the Technical Arrangement (no. 4 above).¹⁷³
12. **Insist that Israel disaggregates settlement data for the OECD:** European governments and other OECD members must require that statistical data provided by Israel always distinguishes between Israel proper and the settlements, in order to avoid validating an internationally unlawful situation. During its accession to the OECD in 2010, Israel had to commit to provide disaggregated statistics when required to do so. Since then, however, the OECD has failed to request Israel to do so.

Quotes:

"We consider it necessary that the EU bring an end to the import of settlement products which are, in contradiction with EU labelling regulations, marketed as originating in Israel."

Javier Solana, Richard von Weizsäcker, Helmut Schmidt, Romano Prodi, Felipe Gonzales, Lionel Jospin and 20 other former European leaders¹⁷⁴

"Contrary to what you may think, EU member states which take these measures act in Israel's interest. They do so because they take steps that defend and reinforce the Green Line." Avraham Burg, former Speaker of the Knesset and Chairman of the Jewish Agency and the World Zionist Organisation, expressing support for the British and Danish moves on settlement products.¹⁷⁵

¹⁷² Ibid.

¹⁷³ European Parliament, 'Resolution on pan-Euro-Mediterranean preferential rules of origin' (10 February 2012), op. cit.

¹⁷⁴ Open letter to the President of the European Council, 'EU must sanction Israel over its refusal to obey international law and must recognize the State of Palestine' (2 December 2010): <http://www.romanoprodi.it/documenti/eu-must-sanction-israel-over-its-refusal-to-obey-international-law-and-must-recognize-the-state-of-palestine_2401.html>.

¹⁷⁵ The Independent, 'Even I – an Israeli – think settlement goods are not kosher' by Avraham Burg (7 June 2012).

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