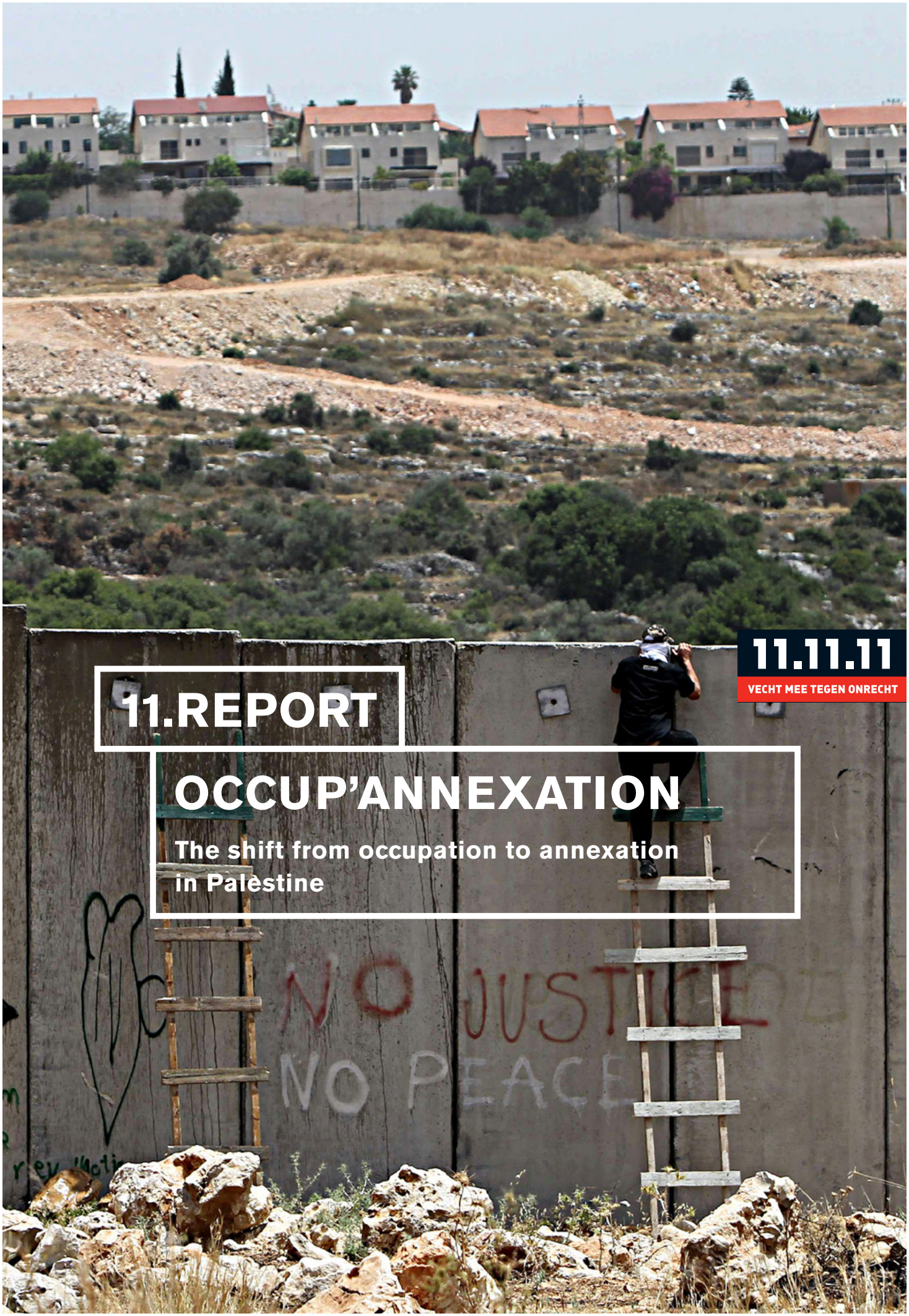

11.11.11

VECHT MEE TEGEN ONRECHT

11.REPORT

OCCUP'ANNEXATION

The shift from occupation to annexation in Palestine

CONTENT

COLOFON

This report is published by: 11.11.11, CNCD-11.11.11, Algemene Centrale ABVV, Association Belgo-Palestinienne, Broederlijk Delen, Geneeskunde voor de Derde Wereld, Intal, Palestina Solidariteit, Pax Christi Vlaanderen, Solidarité Socialiste, Vrede Vzw

Research: Willem Staes, Nathalie Janne d'Othée • **Redaction:** Kenan Van De Mieroop

Lay out and design: Metronoom - Betty Bex • **Foto cover:** © Abbas Momani - Getty Images

INTRODUCTION

The 5th of June 2017 marks the 50th anniversary of the start of the Six Day War of 1967. In 6 days Israel conquered the West Bank, East Jerusalem, the Gaza Strip, the Sinai and the Golan Heights. The subsequent Israeli occupation of the West Bank and Gaza, the annexation of East Jerusalem and the Golan Heights, and the separation of Gaza from the West Bank have lasted until today. Over the past 50 years Israel has violated international law on an enormous scale.

Meanwhile, on several occasions, the international community has tried to revive a "Middle East Peace Process", without much success. 24 years after the signing of the Oslo Accords the hope for peace has all but evaporated. Still, the international community continues to promote the same strategy. At the same time a disincentive strategy is not seriously discussed. Parties are not held accountable for their non-compliance with international law or previous agreements, and impunity reigns.

Meanwhile the creeping annexation of Palestine continues. In the past 50 years Israel has pursued a "facts on the ground" policy aimed at the permanent annexation of Palestinian land. As this report will demonstrate, this shift from occupation to annexation has been dramatically accelerated over the past years, both in facts on the ground and in official rhetoric. The shift from temporary occupation to permanent annexation, "Occup'Annexation", is a game-changer. While the international community has been talking for 50 years about dividing the land, Israel is annexing it every day. The need for international action is thus urgent.

While the international community has been talking for 50 years about dividing the land, Israel is annexing it every day

Yet the international community -the European Union and its member states in particular- has not matched its condemnatory rhetoric with concrete action. The pursuit of dialogue has become a goal in itself instead of a means to achieve a policy goal. The EU tried dialogue and the carrot for decades, and the result has been continued occupation and a shift to open annexation. If a policy didn't work for so many years it is time to reconsider it. Unless urgent action is taken, the occupation and annexation of Palestine will just continue. Words and condemnations alone will not change anything. Meanwhile the EU and EU member states continue to pay the bill of the Israeli occupation, 1 billion euro a year.

This report aims to show how the shift from occupation to permanent annexation has materialized over the past years, a trend which is heavily influenced by the rise of the settler movement in Israeli politics and society. It will compare the passive EU response to the Israeli occupation and annexation of Palestine with the EU reaction to the Russian occupation and annexation of Crimea and Sevastopol. After comparing the EU responses it will make the case for a consistent "law-first" EU policy regarding situations of occupation and annexation. The EU must take urgent action to end the occup'annexation of Palestine.

1

OCCUP'ANNEXATION

THE SHIFT FROM OCCUPATION TO ANNEXATION

Since 1967 international law has been violated on an enormous scale in the occupied Palestinian territory. Israel has implemented a deliberate "facts on the ground" policy aimed at the permanent annexation of Palestinian lands. In recent years this shift towards annexation has been accelerated. This can be seen in recent developments on the ground, several legislative proposals by the Israeli Parliament, and in the discourse of many high-level Israeli officials.

1.1. – International law violations under Israeli occupation

1.1.1. Israeli settlement expansion and land takeover

Since the conclusion of the Oslo Accords the illegal settlement expansion in Area C and East Jerusalem has more than doubled. According to the Israeli Central Bureau of Statistics (ICBS), by the end of 2015, 594.000 settlers (including 208.000 settlers in East-Jerusalem) lived in 130 Israeli settlements and 100 outposts. As stated in the most recent report by the UN Secretary General on Israeli settlements (March 2017), the expansion of the Israeli settlement enterprise has resulted in the total fragmentation of the West Bank, demographic changes, illegal exploitation of natural resources, severe access restrictions for Palestinians and the total denial of Palestinian development.[1]

Since the conclusion of the Oslo Accords Israeli settlement expansion has more than doubled

This Israeli land takeover and designation of Palestinian land for exclusive Israeli use has manifested itself in various ways:[2]

- **Declaration of state land and land allocations to settlements:** over one third of Area C has been designated "state land" by the Israeli authorities. These "state lands" are almost exclusively allocated to Israeli settlers, even though international law clearly states that an occupying force is required to use the land for the benefit of the local (occupied) population.[3] Moreover, in addition to the actual build-up area of settlements (2 percent of Area C), local and regional settlement councils also include farmland, industrial zones, parks, access roads and security buffers. As such the actual footprint of settlements comprise approximately 63 percent of Area C.[4]
- **Active support to illegal outposts:** a 2017 report by Peace Now documents the direct complicity of Israeli authorities in the establishment of illegal outposts by settlers. Peace Now identifies 10 steps in the development of illegal outposts: 1) the creation of facts on the ground through mobile homes or a road; 2) the acquisition of fictitious land rights; 3) the financing and creation of plans without the need for approvals; 4) the issuance of fictitious construction permits; 5) the financing and building of illegal infrastructure; 6) the purchase of illegal housing units; 7) the maintenance and development of illegal outposts; 8) the strengthening of illegal outposts by the Amana organization; 9) the retroactive legalization of the illegal construction; and 10) the lack of law enforcement against settler violence. Throughout this process 3 main bodies (Settler Regional Councils, the Settlement Division and the Amana Organization) are active that cooperate directly with Israeli authorities.[5]

Land ownership and control in Palestine from 1946 to 2012

© Act Alliance

- **Declaration of closed military zones:** large tracts of West Bank lands have been declared closed military zones, in which Palestinian presence is prohibited without a special permit. As such Palestinian residents risk eviction and demolition, while also facing settler violence and army harassment. A 2012 UN OCHA report described how all these factors are creating a coercive environment which pressures Palestinian residents to leave.[6] Research by Israeli NGO Kerem Navot showed that in 2015 almost 1.765 million dunams (approximately one-third of the total West Bank) were considered closed military areas. Over half of the closed military zones have been declared training areas by the Israeli army, although approximately 78 percent of these supposed training areas have actually not been used for training purposes.[7] In 2014 an Israeli military official admitted that Israeli firing zones are being used in the Jordan Valley to reduce the number of Palestinian residents.[8]

- **Impunity and state support for informal takeovers of Palestinian land:** settler violence and "agricultural invasions" of Palestinian land by settlers have become a central mechanism to expand settler control beyond the settlement jurisdiction areas. The lack of Israeli law enforcement against violent settlers has indeed created a climate of impunity, thereby allowing such practices to continue.[9] UN OCHA recorded 221 and 107 incidents of settler violence in 2015 and 2016, down from 397 incidents in 2013. Under international law Israel has an obligation to protect Palestinians against such violence. However, data provided by Israeli human rights organization Yesh Din, shows that 85 percent of investigations into settler violence are closed without any prosecution.[10]

70%

The parts of Area C that are off-limits for Palestinian construction and development

- **Declaration of national parks and archaeological sites:** Approximately 14 percent of Area C has been classified as national parks, thereby consolidating Israeli control over such areas. Additionally the development of tourism heritage sites in the Historic Basin (East Jerusalem) has significantly altered the shape and character of the area surrounding the Old City of Jerusalem.[11] Such "hidden settlement" expansion has also profoundly affected Palestinian's freedom of movement and development opportunities in East Jerusalem.[12] Many archaeological and tourist sites are run by private settler groups with close links to the government. A prominent example is Elad, which is active in the Historic Basin.[13] A report by the Israeli state comptroller revealed the lack of governmental oversight of Elad's activities and lack of transparency about the relations between the group and the Israeli government.[14]

- **The encouragement of economic activities in the settlements:** The UN has documented how Israeli authorities are encouraging economic activities within and around the settlements.[15] Almost all settlement industrial zones are designated as National Priority Areas (NPAs). As such individuals and businesses are offered reductions in the price of land, grants for the development of infrastructure and tax breaks. A report by Human Rights Watch shows that the footprint of Israeli business activity in the West Bank is actually 1.7 times larger than the footprint of residential settlements.[16]

As a result of all these different restrictions, approximately 70 percent of Area C (compromising itself 60 percent of the West Bank) is off-limits for Palestinian construction and development.[17] In particular, Israel has taken control of most natural resources in the West Bank. Both agricultural lands and water resources are confiscated by Israel, and are almost exclusively used for the needs of the settlements. This has been extensively documented by the Independent UN Fact Finding Mission[18], the UN Secretary General[19], Palestinian NGO Al Haq[20], Israeli NGOs Kerem Navot[21] and B'tselem[22] and by Oxfam International[23].

Additionally, a landmark 2013 report by the World Bank estimated that if Israeli access restrictions to Palestinians in Area C would be lifted, Palestinian GDP would increase by 35 percent. *'Unleashing the potential from that*

'restricted land,' – access to which is currently constrained by layers of restrictions – and allowing Palestinians to put these resources to work, would provide whole new areas of economic activity and set the economy on the path to sustainable growth', the World Bank noted.[24] Also a 2016 report by the United Nations Conference on Trade and Development (UNCTAD) stated that without the Israeli occupation the Palestinian economy would at least double.[25]

1.1.2. Forced displacement of Palestinians

The Special UN Rapporteur on the situation of human rights in the Palestinian Territories has identified nine triggers that lead to the forcible transfer of Palestinians: evictions and land appropriation, military incursions, the expansion of settlements and related infrastructure, the construction of the Wall, violence and harassment by settlers, the revocation of residency rights in East Jerusalem, the discriminatory denial of building permits and house demolitions, and the system of closures and other restrictions on the freedom of movement.[26]

Demolitions have been the defining characteristic of the Israeli policy of forced displacement

Demolitions and threats of demolitions have been the defining characteristic of the Israeli policy of forced displacement. 94 percent of Palestinian building permit applications are rejected by the Israeli authorities, which leaves Palestinians in Area C little choice than to build without permit.[27] As such in the period between 1988 and 2016 Israeli authorities have issued demolition orders for 16.000 Palestinian structures in the West Bank. In 2016 874 and 190 Palestinian structures in Area C and East Jerusalem were demolished, the highest number since UN OCHA started recording demolitions in 2009.[28] Between 2009 and mid-2016, approximately 170 EU-funded humanitarian structures were demolished by Israeli authorities, including 91 structures in the first half of 2016. Additionally Israeli authorities have recently re-instated a policy of "punitive demolitions" directed towards the families of Palestinians suspected of terrorist activities, which amounts to collective punishment.

Moreover, over the years Israeli authorities have publicly expressed their intention to **relocate or evict** thousands of Palestinians in Area C. Between 1997 and 2007 Israeli authorities forcibly displaced 150 Bedouin families in the Jerusalem governorate to Al Jabal.[29] In 1999 700 Palestinian herders in the Massafer Yatta area (Hebron) were forcibly displaced as well. More recently plans have been introduced to relocate 7.500 Palestinian Bedouin and herders and to evict 1.000 Palestinians from 46 communities across Area C.[30] In East Jerusalem's Historic Basin at least 55 Palestinian families have been evicted from their houses in 2015-2016.[31] Another 300 Palestinian families in this area are under the threat of eviction or house demolition.[32]

Systematic intimidation and violence by Israeli settlers have also significantly increased the overall coercive environment. Settler violence occurs in a climate of near-total impunity. According to Israeli human rights organization Yesh Din between 2013 and 2016 only 8.2 percent of investigation files on ideologically motivated settler violence resulted in an indictment.[33]

Israel has created two separate legal systems that discriminate between Palestinians and Israeli settlers

Additionally Area C communities located inside or nearby **"firing zones"** witness frequent military trainings where live fire is being used. According to UN OCHA such practices have contributed to the forced displacement of Palestinians.[34] Moreover, **restrictions in free movement (closures, checkpoints) and limited access to natural resources and basic services** have also contributed directly to the coercive environment in the West Bank and East Jerusalem.[35]

1.1.3. Creating a discriminatory regime

Israel has created two separate legal systems in Area C of the West Bank that discriminate between Palestinians and Israeli settlers. Israeli domestic laws are applied to Israeli settlers living in the West Bank, while Palestinians living in Area C of the West Bank are subject to Israeli military rule. As such Israel applies two different legal systems in the same territory on the basis of nationality or origin, a **discriminatory situation** that violates the principle of equality and the right to a fair trial.

In 2012 the UN Committee on the Elimination of Racial Discrimination stated that Israel clearly breached the international prohibition on racial

segregation. The UN Committee called Israeli policies and practices *'de facto segregation'* and showed great concern about Israel's discriminatory planning policy and stated policy of maintaining a *'demographic balance'*.[36] Similar observations have been made by Human Rights Watch and two UN Special Rapporteurs on the human rights situation in occupied Palestinian Territory.[37]

1.1.4. The Annexation Wall

In June 2002 Israel started to build a "Separation Wall" to separate the occupied Palestinian territory from Israel proper. As extensively documented by Palestinian human rights organization Al Haq, the Wall and its associated regime (gates and checkpoints, permit systems, ID cards and property destruction and confiscation) had a *'devastating impact upon the fundamental human rights of the Palestinian population in the occupied territory'*.[38] The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism in 2007 expressed his grave concern about *'the impact of the barrier and accompanying measures upon the freedom of movement, right to property, right to work, right to health, right to education, the right to private and family life, the right to non-discrimination and the human dignity of all persons'*.[39] As a result of the construction of the Wall Palestinian water wells and drainage systems have been destroyed and vital water resources annexed, thereby exacerbating the on-going water crisis in the Palestinian territory.[40]

9.4%

The parts of the West Bank that are annexed by the Israeli Separation Barrier

The area between the Green Line and the Wall encompasses 9.4 percent of the West Bank and East Jerusalem, Palestinian lands that are de facto annexed to Israel. When completed, approximately 85 percent off the Wall will have been built within the West Bank. As such former UN Special Rapporteur on the Situation of Human Rights in the Occupied Palestinian Territories, John Dugard, has called the Wall an "Annexation Wall".

In its *Advisory Opinion on the Legality of the Wall* (2004), the International Court of Justice (ICJ) has also ruled that construction of the Wall is illegal under international law because of the specific route it follows. The court stated that the construction of the Wall *'would be tantamount to de facto annexation'*, thereby amounting to the prohibited act of the acquisition of territory through the use of force. As such the ICJ ordered Israel to stop construction of the Wall, dismantle the sections already built, undo all legislative and regulatory acts related to the construction of the Wall and to provide reparations for all damage caused. In addition, the UN General Assembly has also declared construction of the Wall illegal.[41]

Israel has repeatedly claimed that security is the reason for construction of the Wall. However in 2004 the ICJ dismissed the Israeli argument that construction of the Wall was *'the only way for the State to safeguard an essential interest against a grave and imminent peril'*. The court specified that the route of the Wall was not proven necessary to attain the security objectives invoked by Israel. Former Israeli Shin Bet director Avrham Shalom also dismissed such security claims by arguing that the Wall *'creates hatred, expropriates land and annexes hundreds of thousands of Palestinians to the state of Israel. The result is that the fence achieves the exact opposite of what was intended'*.[42]

The UN Special Rapporteur has called the Separation Barrier an Annexation Wall

Construction of the Wall is also in direct contradiction to the 1995 Oslo Interim Agreement, in which all parties agreed that *'neither side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiation'*.[43]

1.1.5. The Gaza blockade

The Israeli government has restricted movement between Gaza and the West Bank for more than two and a half decades.[44] When Hamas took over control of the Gaza Strip in 2007, Israel severely tightened its land, sea and air blockade. The implementation of the blockade constitutes a collective punishment and is in breach of Israel's obligations to provide for the wellbeing of the Palestinian population.[45] According to the Fourth Geneva Convention, Israel, as the occupying power, remains responsible for ensuring the welfare of the Palestinian civilian population and has the primary duty of providing for their basic needs.[46]

By isolating Gaza from the West Bank and East Jerusalem, the Israeli government has been implementing a separation policy that has resulted in the political, social and economic fragmentation of the occupied Palestinian territory.[47] The blockade has also produced a catastrophic humanitarian situation. A 2012 UN Report warned that *'the Gaza Strip will become uninhabitable in 2020 if current conditions persist'*.[48] Gaza's population is expected to reach 2.1 million people by 2020 and 80 percent of the population is dependent on humanitarian aid. Infrastructure is collapsing and 96 percent of the available water is undrinkable. Furthermore, Israel controls the movement of people and goods into and out of Gaza and all crossings between Gaza and the West Bank.

The blockade also impacts the internal division of Palestinian factions on a political level and complicates the movement of Palestinian government representatives between the West Bank and Gaza. This makes it impossible to govern effectively.[49] Furthermore, by pursuing a policy of isolation with regard to Hamas, Israel and the international community's actions further entrench the already-problematic political split between the Palestinian Authority in Ramallah and the de facto Hamas authorities in Gaza.[50]

The separation policy has also devastated Gaza's economy. Since the start of the blockade 90 percent of Gaza's factories were closed. Exports are less than two percent of the pre-blockade levels, due to heavy restrictions on the transfer of agricultural produce and other goods to Palestinian markets in the West Bank. More than 45 percent of the working age population, including 67 percent of the Gaza youth, is unemployed.[51] Currently Gaza is also facing a severe electricity crisis, further affecting the catastrophic humanitarian situation in Gaza.[52]

© Un Ocha

In addition to ten years of economic blockade, Gaza has witnessed three military operations during the past eight years. At least 2.100 Palestinians were killed and more than 500.000 were displaced as a result of Israel's military operation in the summer of 2014. More

The Israeli collective punishment of Gaza is illegal under international law

than 20.000 Palestinian homes, 148 schools, 15 hospitals and 45 health care centers were damaged or destroyed.[53] In September 2014 Israel, the Palestinian Authority (PA) and the UN agreed to establish the Gaza Reconstruction Mechanism (GRM), a temporary measure to facilitate reconstruction work. However, according to Oxfam International *'two and a half years on, vital water recovery and development remains hampered and fully controlled by the Government of Israel, demonstrating the extent to which Israeli government policies continue to undermine humanitarian response, cause de-development and exacerbate the separation of the Gaza Strip from the rest of the Occupied Palestinian Territory and the world'.*[54]

The GRM was presented as a way to address Israel's security concerns while allowing the import of cement and other "dual use" construction materials. The Wassenaar Arrangement has defined dual-use items based on clearly agreed criteria, in particular their inclusion in the globally accepted munitions list and *'the ability to make a clear and objective specification of the item for military purposes.'* However, as pointed out in a 2015 AIDA report *'aggregate, steel bars and cement (ABCs), which are essential for large-scale reconstruction, are not listed as prohibited materials, yet Israel continues to define these and many other essential goods as 'dual-use' in order to restrict their entry into Gaza.'*[55]

Military or security requirements do not justify the Israeli failure to fulfill the humanitarian principles of International Humanitarian Law. In fact the ongoing blockade, which prevents third states and aid agencies from delivering effective assistance, is in breach of Article 59 of the Fourth Geneva Convention. The latter clearly states that *'if the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal [...].'*[56]

Finally, it should be noted that several high-level Israeli security and political figures have argued that allowing the entry of construction materials is important in preventing or at least delaying insecurity and further escalation. Thus preventing the entry of these materials into Gaza is in fact detrimental to Israeli security.[57]

1.2. – Open shift to annexation

1.2.1. Temporary occupation vs permanent annexation

One of the fundamental principles of international law is that military occupation must be temporary. As such, measures undertaken by the occupying power must be temporary in nature and the occupying power is prohibited to make long-term changes in the occupied territory. A situation where an occupation is maintained for the purpose of territorial acquisition, rather than for reasons of military necessity, is *'no different from outright annexation.'*[58]

In clear contravention of this key principle of international law Israel has undertaken a variety of measures since 1967 to permanently alter the status of the occupied Palestinian territory. As such the continued Israeli occupation of Palestinian territory triggers legal consequences beyond international humanitarian law.

This illegal annexation policy has been accelerated dramatically over

One of the fundamental principles of international law is the temporary nature of occupation, but since 1967 Israel has taken several measures to permanently annex Palestinian lands

the past years. A 2015 study for the Directorate-General for External Policies of the European Parliament noted that *'temporary occupation is not necessarily illegal as such. However occupation is illegal (...) if the occupying power has acted contrary to the basic principle that an occupation shall be a temporary affair, by annexing the territory as well as – arguably – if it pursues a policy aiming at its annexation'.*[59]

The Israeli annexation of occupied Palestinian territory has manifested itself in several ways. The most important examples include the expansion of illegal Israeli settlements, the declaration of Palestinian land as "state land" and adoption of the Regulations Bill, the construction of the Wall, the extension of Israeli law to Area C and a public shift in Israeli policy and discourse.

Moreover it should be stressed that Israel *already* de jure annexed East-Jerusalem and the Golan Heights in 1967. Immediately after seizing East Jerusalem in the Six Days War Israel annexed an area of 70.5 square kilometres in and around East Jerusalem, and extended the municipal boundaries of West Jerusalem to this area. In 1980 the Israeli Knesset passed a Basic Law stating that *'Jerusalem, complete and united, is the capital of Israel'.* UN Security Council resolution 478 (1980) determined that

all Israeli measures to alter the character and status of Jerusalem are *'null and void and must be rescinded forthwith'*.[60]

1.2.2. Israeli settlement activity, declaration of "state lands" and construction of the wall

Israeli settlement activity, declaration of "state lands" and construction of the wall in the West Bank are among the most significant examples of Israel's creeping annexation of Palestinian lands. Such acts openly place Palestinian land under Israeli sovereignty and jurisdiction, undermine the development of a viable Palestinian economy, violate the Palestinian right to self-determination, lie at the core of a range of human rights violations and contribute to a general coercive environment that put Palestinians at risk of forcible transfer.

34%

The increase in settlement construction in 2016

Over the past years there has been a significant increase in the rate of settlement expansion. According to Israeli organization Peace Now, in 2016 construction started on 1.814 settlement housing units in the West Bank, a 34 percent increase from the number of construction starts in 2015 (1.350 housing units). Moreover, in 2016 plans for 2.657 housing units were advanced and two new outposts were created in the northern Jordan Valley.[61] In the first weeks of 2017, the Israeli government announced more than 6.000 new housing units in the West Bank and East Jerusalem and on the 30th of March 2017 the Israeli government – for the first time since 1991 – announced the establishment of a new settlement (Geulat Zion) and published tenders for 1.992 housing units.[62]

In addition to this settlement expansion, Israel continued to declare large swaths of the West Bank "state lands". On the 30th of March 2017 977 dunams were declared state lands. In March 2016 around 2.342 dunams (580 acres) near Jericho were declared "state land", and in April 2016 another 5.000 dunams (1.250 acres) near Nablus were confiscated. In 2014 3.799 dunams (988 acres) between the Etzion settlement bloc and Jerusalem were designated as "state land" by the Israeli authorities, the largest such declaration in 30 years. Moreover the so-called "Blue Line Team", a special Israeli unit tasked with reviewing and delineating existing and potential state land declarations, reportedly started mapping areas in Hebron and Givat Eitam. The Jerusalem 2020 Master Plan also aims to extend the metropolitan area of Jerusalem towards Bethlehem, Ramallah and Jericho in some suggested scenarios.

Efforts by private settler groups in East Jerusalem, which receive significant government funding, have also grown significantly. In the city's Historic Basin the number of settlers have increased by 25 percent between 2009 and October 2016.[63]

On the legal level, in February 2017 the so-called **"Regulations Bill"** was adopted. By allowing the confiscation of private Palestinian lands the bill aims to retroactively legalise Israeli settlement outposts that were built in direct violation of Israeli law, thereby dismissing Palestinian claims to the lands in question. Furthermore the Regulations Bill is the first time the Israeli Parliament has adopted legislation that applies directly to an occupied territory where it has no jurisdiction. *'Retroactive authorization entails theft of private Palestinian property and its transfer to those parties who illegally invaded their lands, often using violence. The policy of retroactive authorization rewards dispossession and land grab'*, Israeli human rights organization Yesh Din stated. Israeli peace organization Peace Now described the bill as a *'grand land robbery'* and *'another step towards annexation'*. According to estimates by Peace Now (November 2016) the Regulations Bill would legalize at least 3.921 housing units by expropriating 8.183 dunams of private Palestinian lands. 55 illegal outposts that are located deep in the West Bank would become official settlements. Additionally the bill would allow for the future expropriation of another 3.043 housing units on 3.173 dunams of private Palestinian lands.[64] The Special UN Envoy for the Middle East Peace Process has stated that the bill *'opens the potential for the full annexation of the West Bank'*.[65]

The Regulations Bill retroactively legalizes the theft of private Palestinian land

In a related development, a draft bill that would block NGOs from filing High Court petitions on behalf of Palestinian communities was discussed on 14 May 2017. The bill would provide that no individual, organization or public agency could petition the High Court to challenge a government action, unless this action directly harms the petitioner.[66]

1.2.3. Extension of Israeli law to Area C and other legislative proposals

The worrying trend towards increasing annexation is also clearly visible in the recent moves to extend the application of Israeli domestic law extra-territorially to Area C of the West Bank. The so-called **"Norms Law"**, which was approved by the Israeli Ministerial Committee for Legislative Affairs in November 2014, states that new Knesset Legislation will automatically apply in the West Bank. The draft bill was re-tabled in June 2015 and has remained under consideration since. In May 2016 Israeli Justice minister Ayelet Shaked told the settler group "Legal Forum for Israel" that passing an adopted Norms Bill is a priority.

In addition to the Norms Law, the Israeli Knesset has also attempted to extend specific Israeli laws to the West Bank. Examples include the "Museums Law", which states that specific Israeli law applicable to museums within Israel will also apply to Israeli museums in the West Bank. The current Agriculture Minister Uri Ariel said *"the bill is the first in a series whose purpose is to strengthen Israeli sovereignty over the West Bank"*. Also, in June 2014 the Knesset House Committee stated it has oversight over civil issues in the West Bank and can thereby summon army representatives in the West Bank to discuss such issues directly.

Several legislative proposals have recently been issued to annex Palestinian lands

In January 2017 legislative proposals were also made to annex the settlement of Ma'ale Adumim. If enacted, the **Ma'ale Adumim Annexation Bill** would effectively split the West Bank in two and cut off East Jerusalem from the West Bank, thereby rendering any two-state solution impossible.[67] Similarly in 2013, The Ministerial Committee for Legislation supported a **bill that would annex the Jordan Valley**.[68] The bill was proposed by then-member of Knesset Miri Regev, who currently holds the Culture and Sport portfolio in the Israeli cabinet. In February 2014 the Ministerial Committee for Legislation rejected a draft **"Annexation Bill"** (also submitted by Regev) that would annex the whole West Bank to Israel.

1.2.4. Silent adoption of the "Levy Report"

In February 2012 the Israeli government mandated a committee headed by former Supreme Court Justice Edmund Levy to examine the legal status of Israeli settlement activities in the West Bank. The "Levy Report" was published in June 2012 and argued that the laws of occupation do not apply in the West Bank, and that therefore settlement construction is not illegal.[69] The report went on to make several recommendations for changing the legal framework in the West Bank and to support settlement expansion and the retroactive legalization of all previous construction. In December 2012 a recording of then deputy Prime Minister Shalom was leaked, in which he said that the committee members were chosen in order to reach conclusions favoured by the Israeli government.[70]

Although the Israeli government has never formally adopt the Levy Report,

The Levy Report prepares the ground for the annexation of the West Bank

since 2012 it has adopted a policy of de-facto implementation of the report. This is problematic since several of the Levy recommendations are clearly aimed at preparing the ground for annexation. *'This institutionalization of land grab and dispossession reinforces the impression that Israel is planning to reduce the number of Palestinians in Area C (...), by forcing them out of the area. This raises the concern that Israel's ultimate goal is to facilitate the official annexation of Area C to Israel'*, Israeli human rights organization Yesh Din noted in a 2016 report.[71]

To demonstrate this claim, Yesh Din listed the main recommendations of the Levy Report and showed how the Israeli government has been implementing these suggestions since 2012.[72]

1.2.4.1. The Regulation Bill

The most problematic recommendation of the Levy Report was the suggestion that *'even if private ownership over land on which a Jewish settlement had been built is proven, possible defences by the party in possession and alternative solutions that are preferable to evacuation and demolition should be considered, for instance payment of compensation to the owners'*. The direct implementation of this recommendation can be seen in the February 2017 adoption of the "Regulation Bill". This bill grants Israeli authorities the power to force Palestinian private landowners to waive their land rights and enter into


© Loay Abu Hayke • Reuters

© Nathalie Janne d'Othée

compensation agreements, while retroactively authorizing illegal construction on private Palestinian land. Even if Palestinians can prove that Israeli construction on their land is unlawful, authorities would not necessarily evacuate settlers or demolish the illegal Israeli structures that have been built there.

Several recent developments raise the concern that Israel's ultimate goal is to facilitate the official annexation of Area C to Israel

The new Regulation Bill is a blatant violation of the prohibition, under International Humanitarian Law, on 1) the transfer of the civilian population of the occupying power into the occupied territory and 2) the prohibition on damaging the property of protected persons in the occupied territory. Additionally, as the occupying power is only supposed to have *temporary* administrative powers, existing law in the occupied territory must remain in effect. The occupying power is only allowed to issue specific legal provisions that are required for maintaining public power and safety and for the security needs of its own forces and civilians. However, the Israeli Knesset is not the legislative power in the West Bank, where the Israeli military commander has *temporary* and *exclusive* legislative powers. Applying Knesset legislation to parts of the occupied Palestinian territory is thus a clear indication of the de facto annexation of this territory. Additionally, the regulation bill violates several Israeli High Court decisions that protect the right to property of Palestinians in the West Bank.[73]

1.2.4.2. New doctrine regarding illegal outposts

The Levy report claims that the construction of unofficial "outposts" (settlements that were constructed without governmental approval) is *not* unlawful because such settlements were *'carried out with the knowledge, encouragement and tacit agreement of the most senior political level'*. This argument is based on the "administrative promise doctrine", according to which a promise by a government agent is binding under certain conditions. Among these conditions is that the official had the authority to make such promises, that the promise was made with the intent to be legally binding, and that the official was capable of fulfilling the promise. If these conditions are met, authorities would be obliged to fulfil the promise made by the government agent, even if it does not wish to do so.

Consequently the Levy Report claims that no further government decision is required to immediately and retroactively authorize the status of the outposts. The retroactive authorization of outposts comprises three elements: a political element (a government decision), a proprietary element (the registration of the land as state land instead of private Palestinian land) and a planning element (the advancement of planning procedures and validation of master plans and building permits). With regard to the first two elements the Levy Report claimed that a government decision was already made (under the "administrative promise doctrine") and that there are no legal constraints on constructing settlements on Israeli state lands. According to the Levy Report the only outstanding problem limiting the retroactive authorization of all outposts is that they were not assigned a jurisdiction area, and that this should be retroactively corrected.

Since the publication of the Levy Report in 2012 there has been a sharp

Israel is silently implementing several measures aimed at de facto annexation

increase in the number of outposts that were retroactively authorized by the Israeli government, clearly suggesting they have adopted the Levy doctrine on retroactive legalization. In the past years about a third of the illegal outposts have been authorized or are in the process of being authorized.[74] Almost all such outposts are authorized as "neighbourhoods" of existing settlements, rather than independent settlements with a separate area of jurisdiction and master plan. This pattern shows the Israeli government's preference for avoiding the announcement of the creation of new settlements. Indeed the retroactive authorization of outposts as "neighbourhoods" of existing settlements often does not lead to an international outcry (in sharp contrast to announcements of a new settlement) and thus entails a lower political price.

1.2.4.3. Establishment of a new land tribunal

The Levy Report recommended the establishment of special courts to settle land disputes in the West Bank. Since 2013 both the Coordinator for Government Activities in the Territories (COGAT) and the Military Advocate General's Corps (MAG Corps) have begun implementing this recommendation. Such land tribunal would be part of the military court system and be exclusively composed of Israeli judges, raising serious questions regarding the Palestinian right to a fair trial. The tribunal would circumvent and undermine existing Israeli High Court decisions that repeatedly ruled Palestinian property rights may not be violated and Israeli construction on private Palestinian land is unlawful and must be demolished. According to Yesh Din the main goal of these tribunals is to introduce serious delays in proceedings on the removal of illegal Israeli construction on private Palestinian land, while in the meantime Israeli settlers can create more "facts on the ground".

1.2.4.4. Advancement of a land registration process

If the land tribunal is established, it could be granted powers to initiate a land registration process in the West Bank. Recommendation 10 of the Levy Report is to advance a process in which Palestinian and Israeli residents of the West Bank are *'encouraged to register their rights in the land within a predetermined period of time (four to five years seems reasonable), after which, those who do not register will have forfeited their rights, inasmuch as they had such'*. According to Yesh Din a comprehensive land registration process would constitute a long-term change, thereby violating the key international law obligation that an occupying power must act as temporary trustee of the occupied territory.[75] If such process would take place Israel could register any land that is not claimed or registered by others as "state land". Consequently Palestinians whose land is not registered in their name would lose their title to the land.

1.2.4.5. Establishment of a land regulation committee

In July 2016 Israeli Prime Minister Netanyahu mandated a new "land regulation committee" to *'outline a process for the legalization of Jewish structures and neighbourhoods built in Judea and Samaria with the involvement of the authorities'.* The committee was initiated by Justice minister and prominent Jewish Home party member Ayalet Shaked, who stated that *'it is time to clear the legal fog and let residents who live in Judea and Samaria (...) stop worrying about a constant threat to the ownership of their homes'*.[76] Such comprehensive "regulation" of West Bank lands, aimed at establishing the permanency of Israeli settlements, is a clear breach of international law in that it violates the prohibition against making long-term changes in the occupied territory.

1.2.4.6. Settlement construction in military zones

The Levy Report also recommended cancelling any prohibition on additional construction within the bounds of a settlement built on certain Palestinian lands. This recommendation referred to private Palestinian land that was seized in the 1970s for imperative and urgent military needs but has not been used by the Israeli military since. The fact that these lands have not been used for military purposes clearly invalidates Israeli claims regarding "military necessity". By suggesting that the construction of Israeli settlements on such lands should be allowed, the Levy Report revealed its intention to *permanently* seize the land in question Such a seizure would be illegal under international law and would indicate that Israel's policy is one of annexation. The Israeli government has already showed that its intention is to implement this recommendation. In July 2015, an Israeli government committee approved planning guidelines for the retroactive authorization of two residential structures built on private Palestinians land that was seized by military order in 1979.

PUBLIC SHIFT IN ISRAELI POLICY AND DISCOURSE

In November 2015, a new policy directive, entitled "Israeli settlement and International Law", was published by the Israeli Ministry of Foreign Affairs. This policy directive claims that the Fourth Geneva Convention does not apply to the Israeli occupation of Palestinian land.[79] This directive clearly demonstrates that Israel's intention is to put significant parts of the West Bank under direct Israeli sovereignty, thereby achieving a de facto annexation of these territories.

Several prominent Israeli officials have also openly declared their support to the annexation of (parts of) the West Bank. Israeli minister for Education and head of the extreme-right "Jewish Home" Party Naftali Bennett said, in October 2016, Israelis *"must give their lives"* for the annexation of the West Bank.[80] Bennett reportedly proposed the gradual implementation of Israeli sovereignty over parts of the West Bank to advisers of US President Donald Trump.

Meanwhile deputy Foreign Minister Tzipi Hotovely openly supports the annexation of the Ma'ale Adumim settlement (which would cut off East Jerusalem from the West Bank and split the West Bank into two), while in January 2017 Naftali Bennett announced the submission of a bill to the Knesset that would annex Ma'ale Adumim.[81] Advancement of this draft bill was postponed on 23 January 2017, but this delay coincided with an announcement of Prime Minister Netanyahu that all restrictions on settlement building in East Jerusalem would be lifted. *'We can build where we want and when we want'*, Netanyahu stated, adding that *'my vision is to enact sovereignty over all the settlements'*.[82] Bennett reiterated his uncompromising stand on 15 May 2017: *'No Palestinian state will arise between the sea and the Jordan river, and Jerusalem will be the united capital of Israel, under Israeli sovereignty for eternity. Only Israeli sovereignty'*.[83]

The idea of annexation has gained an unprecedented level of support among top Israeli officials over the past years

Indeed the idea of annexation has gained an unprecedented level of support among top Israeli officials over the past years. At least 10 current Israeli ministers openly call for (partial) annexation of the West Bank. Justice minister Ayaled Shaket calls for the gradual Israeli annexation of Area C. Israeli President Reuven Rivlin, deputy foreign minister Tzipi Hotovely and veteran Likud leader Moshe Arens support annexing the West Bank, while being in favor of granting equal rights to Palestinians.[84] Additionally, Knesset Speaker Yuli Edelstein and Minister of Jerusalem Affairs and Environmental Protection Zeev Elkin support the gradual annexation of the West Bank. Other current members of the Israeli cabinet that support full or partial annexation are Tourism minister Yariv Levin (Likud), National Infrastructure minister Yuval Steinitz (Likud), Social Equality minister Gila Gamliel (Likud) and Welfare and Social Services minister Haim Katz (Likud).

Additionally, on the 17th of May 2017, 800 members of Likud's Central Committee signed a petition calling for the full annexation of the West Bank. They constitute 25 percent of the top decision-making body of the Likud party of Prime Minister Netanyahu.[85] At a religious Zionism conference in May 2017 deputy speaker of the Knesset Betzalel Smotrich presented his "subjugation plan". The plan, which bases itself on the Book of Joshua, gives Palestinians 3 choices: leave the country, live in Israel with the status of "resident alien" or resist and face the power of the Israeli army. When asked if the latter would imply wiping out whole families, Smotlich relied *'in war, as in war'*.[86]

Defense minister Lieberman opposes annexing the whole West Bank, warning that the international community will never accept such an annexation.[87] Instead Lieberman's Yisrael Beytenu party favors the annexation of the large settlement blocs that are located closer to the Green Line. Similarly current Intelligence and Transportation minister Yisrael Katz (Likud) has called for the annexation of all settlement blocs around Jerusalem, while in February 2017 Internal Security minister Gilad Erdan (Likud) called for annexing the settlement blocs.[88] It should be noted, however, that there does not exist Israeli consensus on what exactly constitutes the settlement blocs.

1.2.4.7. Revocation of the "Order concerning Interfering Use in Private Land" and the land dispute procedure

The Levy Report suggested that the "Order concerning Interfering Use in Private Land" should be revoked. The order, which was issued in 2007, was intended to protect Palestinians against settler attacks on agricultural properties ("agricultural invasions"). But since 2012 the use of this order has almost ceased (although no formal decision has been made to cancel the order altogether), leaving Palestinians with no effective remedy against agricultural invasions. The recommendation (and de facto implementation) to revoke the order also contradicts a ruling by the Israeli High Court, which states that the order serves the military commander's duty to maintain public order and safety and to protect Palestinian properties.

At least 10 Israeli ministers openly call for annexing the West Bank into Israel

In addition to the revocation of the 2007 order, the Levy Report also recommended revoking a specific procedure that rapidly settles private land disputes. Currently the Legal Adviser in Judea and Samaria (LA-JS) is empowered to issue summary administrative decisions. Both the "Order concerning Interfering Use" and the LA-JS procedure are meant to prevent situations in which "faits accomplis" are established during a lengthy court procedure. As such the revocation of both procedures would further expose Palestinians to violent agricultural invasions by Israeli settlers. Although this recommendation was not officially adopted, the Israeli MAG Corps (including the LA-JS) is currently developing alternative land dispute mechanisms.

1.2.4.8. Completion of the land survey process in the West Bank

The Levy Report recommended accelerating the land survey process in the West Bank, in order to determine the legal status of all the lands in question. This is problematic because such surveys are used to declare additional "state lands". Once designated as "state lands", the area is often retroactively authorized. Indeed many surveys are currently being executed in areas where there are pending High Court petitions concerning unlawful Israeli construction on private Palestinian land. *'One of the reasons the State has undertaken land surveys and blue line reviews in recent years, despite there being no apparent shortage of state land and that many areas declared state land are not utilized, is that it seeks to retroactively authorize construction on unregistered land seized by Israeli settlers'*, Yesh Din concluded.[77]

This conclusion is supported by official Israeli statements and by facts on the ground. In 2014 the head of the Israeli survey team testified that the decision to conduct a land survey in Kafr' Aqab (south of Ramallah) was ordered by the Israeli Defence Ministry, because the latter was looking for ways to avoid removing illegal settler construction in the area. Between 2012 and 2015 the Israeli "Blue Line" team declared over 63.000 dunams as "state lands", the vast amount of which was later allocated to the settlement enterprise.[78]

1.3. – Rise of the Settlers (1967-today)

Since 1967 subsequent Israeli governments, both on the left and the right, have been promoting settlement expansion. The expansion of the settlement enterprise has always been promoted by the national religious settler movement, whose prominence and influence has only increased over the past decades. The rise of the settlers has been a key factor in the accelerated annexation of Palestine.

1.3.1. Birth of a movement

Nowadays the Israeli national religious settler movement is best represented by Naftali Bennett's "Jewish Home" party, but its origins goes back to the first half of the twentieth century. Born in the 1920s, the nationalist-religious movement (currently approximately 10 percent of the Israeli population) saw the establishment of a Jewish State as a step in a divine plan. Followers of Rabbi Kook (the most influential current within the broader nationalist-religious movement) are convinced that full redemption can only be reached when the entire people of Israel live in the land of Israel under full Jewish sovereignty. The establishment and constant expansion of settlements is thus an intrinsic part of the nationalist-religious project.[89]

Three moments are key in the recent history of the nationalist-religious movement. The victory in the **1967 War** lead to a euphoric and messianistic mood among the religious nationalists. *'There had been a historic event of biblical proportions: the state of Israel had returned the people of Israel to the land of Israel',* settler leader Rabbi Joel Bin Nun told Israeli journalist Ari Shavit in 2013.[90] The

The rise of the settlers has been a key factor in the accelerated annexation of Palestine

idea of establishing a "Greater Israel" gained further traction in the years following the 1967 war, but settlement expansion remained relatively modest. By 1973 approximately 3.000 settlers lived in Gush Etzion and Hebron.

The **Yom Kippur War (1973)** traumatized many Israelis. In the early stages of the war defeat seemed inevitable. Although in the end the Israeli army successfully defeated the Arab coalition, many Israelis were traumatized by the "near-defeat" of 1973. Israel underwent a deep crisis of leadership, confidence and national identity. National-religious leaders established the extra-parliamentary Gush Emunim movement ("bloc of the faithful") in reaction to what they saw as the failures of the secular Zionist leadership. In the years following the 1973 war settler leaders like Bin Nun, Pinchas Wallerstein and Yehuda Etzion successfully advocated for the establishment of new settlements. In April 1975 they (unlawfully) established the settlement of Ofra to the north of Ramallah. In 1977 the Labor Government was replaced by a new right-wing Likud government, which regularized the Ofra settlement and approved further settlement expansion. In 1980 the Yesha Council was established as an umbrella organization for settlement municipal councils in the West Bank and Gaza. However in the years since the nationalist-religious movement has always been prone to internal strife, divisions and polarization.[91] However, the failure of the 2000 Camp David and 2001 Taba talks and the outbreak of the Second Palestinian Intifada led to an increased popularity of the nationalist-religious movement.

The **2005 Gaza Disengagement** proved to be another trauma for the nationalist-religious movement. The forced removal of approximately 8.000 Israeli settlers from Gaza was seen as a public humiliation and demonstration of their impotence. It was also considered a theological setback for their belief that a divine hand was driving the land of Israel's destiny. The Gaza disengagement further strengthened a generational schism among the movement, in which the settler establishment was increasingly criticized by an even more radical and confrontational younger generation. Beginning in 2005, a second wave of "Hilltop youth" increasingly confronted state authority and engaged in violent "price tag attacks" against Palestinians. From 2007 to 2011 the number of such price tag attacks more than tripled.[92] In 2011 a senior army official stated that *'today, a third of the IDFs presence in the territories is aimed at Jewish Terror'*.[93]

1.3.2. Infiltrating the state and the people

Most importantly, the 2005 Gaza Disengagement led to much soul-searching among the nationalist-religious movement. Disappointed by the lack of Israeli public support for their cause, the nationalist religious movement start-

© Willem Staes

ed a coordinated attempt to infiltrate the Israeli state and the Israeli public opinion. *'Because establishing facts on the ground had not carried the day, religious Zionists since 2005 have focused on amassing power within state bodies and mainstream political parties as well as on public campaigns to convince others of their political positions'*, the International Crisis Group noted in a 2013 report.[94] In 2013 extreme-right politician and current minister of Education Naftali Bennett pointedly summarized this approach: *'For the sake of the land of Israel we need first to change the people and the state of Israel'*.[95]

National religious Israelis have managed to significantly infiltrate the Israeli army

Two main tactics were employed in order to achieve this change in the State of Israel: infiltrating the Israeli army and the national police forces and joining the ruling Likud party. Firstly, national religious Israelis have managed to significantly infiltrate the Israeli army (IDF). In the period between 2000 and 2012 national religious' representation in the officer training courses increased from 15 to 43 percent.[96] This increase has gone hand in hand with a more prominent role for the army's chief rabbinate. In addition national-religious leaders are actively encouraging their youth to enlist in the national Israeli police, and plans are reportedly underway to infiltrate the attorney-general's office. Secondly, since 2006 the Likud party has seen an influx of national-religious Israelis and the creation of four internal national religious blocs. Indeed many national religious individuals have registered as Likud voter and consequently participate in determining Likud's internal mechanisms, while still voting for national religious parties during elections. *'We have to be proud of them. It is not chance, because the gaps between the national religious camp and the Likud are disappearing'*, Prime Minister Netanyahu declared in 2009.[97]

Since 2005 the national religious movement has also invested in a hearts and minds campaign.[98] Firstly, the national religious leadership started to reach out to the Israeli media and Israeli public opinion. For example, in 2008 an advocacy unit was created within the Yesha Council that has undertaken several attempts to influence the public and political debate. Secondly, the leadership encouraged national-religious families to move to underdeveloped urban communities inside Israel proper. Such "seed communities" play an important role in strengthening religious Jewish identity, and receive significant state support. Thirdly, educational programs and outreach activities were set up across Israel to promote religious observance.

1.3.3. The Annexation Agenda

The national religious movement has always been the most vocal adversary of the two-state solution. It has openly promoted plans to fully or partially annex the West Bank into Israel. Several annexation plans have been openly promoted in the past 15 years. In 2003 the Yesha Council proposed the annexation of the whole West Bank and Gaza into Israel, while Palestinians would be granted citizenship and political rights. In 2006 former Yesha Council director Adi Mintz presented his "Peace in the Land" plan, in which Area C of the West Bank would be annexed by Israel. In 2007 this was followed by the "Israeli Initiative", in which chair of the National Union Party Benny Alon called for the full annexation of the West Bank and for the Palestinians to take Jordanian citizenship.[99]

Several annexation plans have openly been promoted in the past 15 years

On the other hand, a 2009 plan by Gush Emunim co-founder and former Netanyahu chief of staff Uri Elitzur and a 2012 plan by then-minister of Housing and Construction Uri Ariel[100] called for full annexation but also full citizenship for Palestinians in the annexed territory. At the same time Ariel called for adjusting electoral regions to ensure *'a democratic Jewish majority will be maintained in the Knesset'*. Finally, in February 2012 Naftali Bennett presented his 'Israel Stability Initiative'. Bennett called for the unilateral extension of Israeli sovereignty over Area C, full naturalization of all Palestinians in Area C[101], full PA autonomy in Area A and B, blocking the entry of any Palestinian refugee into the West Bank, continued Israeli army control over the West Bank, the separation of Gaza and the West Bank (in direct violation of the Oslo Accords) and *'massive economic investment in coexistence on the ground'*.[102] In 2014 Israeli politicians Orit Struck (Jewish Home) and Yariv Levin (Likud) proposed a gradual 10-step plan to annex the West Bank, beginning with the annexation of the Ma'ale Adumim settlement near Jerusalem.[103]

2

THE LEGAL FRAMEWORK

WHAT DOES INTERNATIONAL LAW SAY?

Both International Humanitarian Law and International Human Rights Law contain specific provisions regarding the behaviour of an occupying power. International law also prohibits the permanent acquisition of territories by the threat or use of force. In such cases, third parties (including the EU and its member states) have an obligation to not recognize an illegal situation and to not render aid or assistance to the maintenance of such illegal situation.

2.1. – Occupation and international law

2.1.1. International Humanitarian Law

International Humanitarian Law (IHL) or *jus in bello* regulates the behaviour of parties that are engaged in an armed conflict or occupation. IHM aims to minimize the suffering in armed conflicts, while also outlining the occupying power's responsibilities towards the occupied population and territory. The two main IHL instruments are the 1949 Fourth Geneva Convention and the 1907 Hague Regulations.

International Humanitarian Law prohibits the transfer of the population of the occupying power to the territory it occupies. Article 49(6) of the Fourth Geneva Conventions states that '*the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies'*. This is explicitly listed as a war crime in article 8(b)(viii) of the Rome Statute that established the International Criminal Court (1998) and in article 85(4)(a) of the First Additional Protocol to the Geneva Conventions (1977). The illegality of settlements has been reiterated several times by the International Court of Justice, the UN Security Council, the UN General Assembly and the High Contracting Parties to the Fourth Geneva Convention.[104] Most recently, UN Security Council resolution 2334 (December 2016) confirmed that Israeli settlements have *'no legal validity and constitute a flagrant violation under international law'*.[105]

International law prohibits the transfer of the population of the occupying power to the territory it occupies

International Humanitarian Law also prohibits the forcible transfer of protected persons within or from the occupied territory. Article 49 of the Fourth Geneva Convention prohibits the "individual or mass forcible transfer" of protected persons, an illegal act that constitutes a "grave breach" of the Fourth Geneva Convention.[106] An occupying power is only permitted to (temporarily) evacuate an area for imperative military reasons or if the security of the civilian population is threatened. However in such cases the occupying force must ensure access to proper accommodation, hygiene, health, safety and nutrition; ensure that family members are not separated; inform the protecting power; and return evacuated persons to their homes as soon as military operations in the area cease.[107]

Additionally, under International Humanitarian Law the occupying power is prohibited from confiscating or destroying public and private property. Article 46 of the Hague Regulations prohibits the confiscation of private property, while article 53 of the Fourth Geneva Convention prohibits the destruction of public and private property. Article 53 does provide for an exception in cases *'where such destruction is rendered absolutely necessary by military operations'*.[108] This provision of military necessity needs to respect the principle of proportionality and should therefore be applied very restrictively. IHL also contains limitations on how the occupying power can use public property[109], while also prohibiting damaging or depleting of natural resources in the occupied territory.[110] Pillaging is strictly prohibited and may amount to a war crime.[111] The occupying power may only use the resources of the occupied territory under the strict condition that this benefits the occupied population.

There is also an absolute prohibition of torture under international law[112], as well as guarantees of a fair trial.[113] Moreover, an occupying power has responsibilities to provide food, medical services and shelter to the population in the occupied territory.[114] Collective punishment is also prohibited under article 33 of the Fourth Geneva Convention and article 50 of the Hague Regulations.

2.1.2. International Human Rights Law

Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) protect several human rights relevant to the Israeli occupation of Palestinian territory. The right to self-determination, which is a general principle enshrined in article 1 and 55 of the UN Charter, is common to article 1 of both the ICCPR and the ICESCR and has been recognized by the International Court of Justice as an obligation *erga omnes*. As such it is considered a peremptory norm of international law.

Freedom from arbitrary detention, freedom of movement and the right to non-interference with family and home are guaranteed by articles 9, 12 and 17 of the ICCPR. In addition, the right to work (article 6), right to food and housing (article 11(1)), right to the highest attainable standard of physical and mental health (article 12), the right to education (article 13) and the right to take part in cultural life (article 15(1a)) are covered by the ICESCR.

These human rights are also enshrined in the Universal Declaration on Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child. In 2004 the International Court of Justice confirmed that human rights treaties such as the ICCPR and ICESCR apply to the occupied Palestinian territory.

2.2. – Third state responsibility

The numerous *jus cogens* Israeli violations of international law result in *erga omnes* obligations on the part of third states, including EU member states, to cooperate to bring such illegal situation to an end. As the 2004 Advisory Opinion of the International Court of Justice and the International Commission of Jurist's *Draft Articles on Responsibility of States for Wrongful Acts* confirmed, third states have an obligation 1) to ensure respect for international humanitarian law, 2) to no recognize an illegal situation, and 3) to not render aid or assistance in maintaining an illegal situation.[126] Ensuring respect for the conventions must be done predominantly through diplomatic protest and collective measures.[127]

Under common article 1 of all the Four Geneva Conventions of 1949 all High Contracting Parties '*undertake to respect and to ensure respect for the present Convention in all circumstances'*. According to the authoritative 1958 International Committee of the Red Cross (ICRC) commentary, this demands that State Parties *'should do everything in their power to ensure that the humanitarian principles underlying the Conventions are applied universally'*.[128] In March 2016 the ICRC re-confirmed the obligation to ensure respect for international humanitarian law and the absolute prohibition for third states to render aid or assistance to violations.[129]

Third states have legal obligations to ensure respect for international law and to not recognize and aid an illegal situation

Most legal experts and legal bodies consider that third states do have an obligation to enforce other states' compliance with IHL.[130] Most significantly, the International Court of Justice in 2004 confirmed that third states are *'under an obligation (...) to ensure compliance by Israel with international humanitarian law as embodied (in the Fourth Geneva Convention)'* and *'to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end'*.[131] Furthermore the obligation to ensure Israeli respect for international humanitarian law has been confirmed by the UN General Assembly[132], the UN Security Council[133] and the Conference of the High Contracting Parties to the Fourth Geneva Convention.[134] In all these instances, EU member states have expressed their support.

Article 146 of the Fourth Geneva Convention also states that High Contracting Parties to the Convention have an obligation to *'undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article'*. It also mentions that *'each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts'*.

Furthermore, according to the International Law Commission the obligation of non-recognition *'applies to situations created by these breaches, such as, for example, attempted acquisition of sovereignty over territory through the*

ANNEXATION AND INTERNATIONAL LAW

In addition to jus in bello/IHL, *jus ad bellum* regulates the conditions under which states are allowed to resort to armed force. International law prohibits the permanent acquisition of territories by the threat or use of force. Under international law, annexation can only be carried out after a peace treaty, and preferably after a referendum.[115] The prohibition on the acquisition of territories by the threat or use of force is derived from Article 2(4) of the United Nations Charter[116] and is considered customary international law.[117]

The acquisition of territory by force is considered a violation of a peremptory or *jus cogens* norm, a fundamental principle of international law from which no derogation is permitted. Other generally recognized violations of such *jus cogens* norms are breaches of the basic rules of international humanitarian law, genocide, slavery, racial discrimination, aggression and the impediment of the right to self-determination.[118]

According to international law, an occupation is not illegal as such but has to be temporary and be justified by military necessity[119]. Under the Hague Regulations of 1907 an occupying power must respect the existing laws and institutions of the territory it occupies.[120] It is only allowed to administer an occupied territory on a *temporary* basis and as such, is prohibited from transferring sovereignty over the occupied territory. This commitment has been clearly recognized by the Israeli High Court of Justice in 1983.[121] UN General Assembly resolution 3314 also considers *'any annexation by the use of force of the territory of another State or part thereof'* as an act of "aggression".

The prohibited act of annexation of a territory can take place in two ways[122]. In the case of a **de jure annexation** the occupying power formally incorporates the occupied territory into its own territory. The formal Israeli annexation of East Jerusalem and the Golan Heights are examples of de jure annexation. Immediately after the end of the Six Day War (1967) the Israeli Knesset announced it would apply its *'law, jurisdiction and administration to East Jerusalem'*.[123] In 1980 the so-called "Basic Law" was adopted in which Jerusalem was declared the united capital of Israel. This illegal annexation has never been internationally recognized[124], but the international community has failed to put sufficient pressure on Israel to annul this illegal act. Alternatively, **de facto annexation** applies when the occupying power does not formally incorporate the occupied territory but still enjoys the effective exercise of sovereignty over the occupied territory, as is the case in the occupied Palestinian territory.

The International Court of Justice, in its Advisory Opinion on the Legality of the Wall (2004) ruled that *'the construction of the wall and its associate regime created a "fait accompli" on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation'*. The same reasoning also applies to the Israeli settlement expansion, which indeed creates "facts on the ground" and aims to create permanent changes in the status of the occupied territory. Indeed, already in 2003 the UN Special Rapporteur on Human Rights in the Palestinian territories stated that the situation in the occupied Palestinian territory amounts to a de facto annexation.[125]

denial of the right of self-determination of peoples'.[135] Similarly the authoritative UN Friendly Relations Declaration stated that *'no territorial acquisition resulting from the threat or use of force shall be recognized as legal'*.[136]

Third states are also under an obligation to not render aid or assistance to the maintenance of an illegal situation. This obligation was explicitly confirmed in the Advisory Opinion of the International Court of Justice (2004). It should be emphasized that the UN General Assembly, including *all* EU member states, adopted a resolution that *'acknowledged'* the Advisory Opinion of the International Court of Justice and called *'upon all States Members of the United Nations to comply with their legal obligations as mentioned in the advisory opinion'*.[137] As such the EU and its member states confirmed they are legally bound to ensure Israeli respect for IHL, to not recognize the illegal situation created by Israel, and not to render aid or assistance to illegal Israeli acts. The above-mentioned 2016 ICRC Commentary also confirmed the third state obligation to not render aid or assistance.[138]

The obligation not to render assistance to illegal Israeli settlements has also been specifically addressed by UN Security Council resolution 465 (1980), which *'calls upon all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories'*.[139] UN Security Council resolution 2334 (2016) also calls upon UN member states to *'distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967.'*[140]

3

THE EU RESPONSE

ISRAELI EXCEPTIONALISM

The passive EU response to grave Israeli breaches of international law stands in stark contrast to the EU reaction to the illegal Russian occupation and annexation of Crimea and Sevastopol. Such inconsistency contradicts the EU's own regulations and undermines European credibility on the world stage. Instead of applying double standards, the EU must adopt a consistent "law-first" foreign policy towards situations of occupation and annexation.

3.1. – EU response to occupation and annexation of Palestine

3.1.1. Current EU policy in Palestine

3.1.1.1. EU position on the Middle East Peace Process

The EU and its member states have repeatedly stated their objective of a *'two-state solution with an independent, democratic, viable and contiguous Palestinian state living side by side in peace and security with Israel and its other neighbours'*. To achieve this objective, the EU and EU member states aims to re-launch peace negotiations based on the following parameters[141]:

- An agreement on the borders of the two states, based on 4 June 1967 lines with equivalent land swaps as may be agreed between the parties. The EU will recognize changes to the pre-1967 borders, including with regard to Jerusalem, only when agreed by the parties.
- Security arrangements that, for Palestinians, respect their sovereignty and show that the occupation is over; and, for Israelis, protect their security, prevent the resurgence of terrorism and deal effectively with security threats, including with new and vital threats in the region.
- A just, fair, agreed and realistic solution to the refugee question.
- Fulfillment of the aspirations of both parties for Jerusalem. A way must be found through negotiations to resolve the status of Jerusalem as the future capital of both states.

In January 2016 the EU Foreign Affairs Council (FAC) reiterated its call to all parties involved to forgo any actions that undermine the viability of the two-state solution, and threatened '*further action'* in case of non-compliance: *'To this end, the EU will continue to closely monitor developments on the ground and their broader implications and will consider further action in order to protect the viability of the two-state solution, which is constantly eroded by new facts on the ground'.* At the same time the EU also reiterated its 2013 offer to both parties of a Special Privileged Partnership with the EU in the event of a final peace agreement.[142]

The EU routinely condemns Israeli settlement expansion, but fails to act upon these condemnations

During a recent UN Security Council meeting EU High Representative Mogherini once more reiterated that the Middle East Peace Process *'remains a top priority for the European Union'* and that *'the EU will not recognize any changes to the pre-1967 borders including with regard to East Jerusalem, others than those agreed by the parties'.*[143] Mogherini and individual member state officials routinely condemn Israeli settlement expansion, but have so far failed to act upon these condemnations. According to a European diplomat based in East Jerusalem: *'We are not dealing with settlement expansion beyond issuing statements, let's face it. Our current objective is safeguarding the status quo, while trying to contribute constructively to any peace process'.*[144]

Recently the EU increased its verbal condemnations of the annexation of occupied Palestinian territory. For example, on the 6th of February 2017, EU High Representative Mogherini condemned the adoption of the Regulation Law: *'This law crosses a new and dangerous threshold (...) In passing this new law, the Israeli parliament has legislated on the legal status of land within occupied territory, which is an issue that remains beyond its jurisdiction. Should it be implemented, the law would further entrench a one-state reality of unequal rights, perpetual occupation and conflict'.*[145]

Since 2002 the EU is also a member of the so-called "Quartet" (together with

the United States, United Nations and Russian Federation). The Quartet released its latest report with recommendations for re-launching the Middle East Peace Process (MEPP) in July 2016. However, the report did not include any new recommendations that would make this re-start meaningful. Indeed, the Quartet report limited itself to repeating previous recommendations that were never implemented, while failing to credibly threaten further action in case of non-compliance.[146] A message that did not go unnoticed: since publication of the Quartet Report, Israel has announced thousands of new settlement housing units.

Meanwhile the EU and EU member states are the largest donors to the Palestinians. The combined contribution of the European Commission (EC) and EU member states has reached 1 billion euro per year.[147] However, this financial assistance has not translated into political influence. Recent interviews with European diplomats and local activists in the occupied Palestinian territory confirmed this picture. The EU and EU member states are considered "a payer but not a player" and are accused by many Palestinian and Israeli activists of paying the bill for the Israeli occupation.[148] *'We are paying because we cannot solve it politically. We are basically subsidizing the occupation'*,

© Ammar Awad · Reuters

Many accuse the EU of paying the bill for the Israeli occupation

one diplomat from a large EU member state told 11.11.11.[149] Another European diplomat agreed: *'Through our financial support to the Palestinian Authority we make it very cheap for Israel to maintain the occupation, but do we really have another choice?'*[150]

Many observers and local activists have also accused the EU of only passively following the US position in the Middle East Peace Process. *'Mogherini made a huge strategic mistake when she entered office in 2014. She desperately wanted a place at the adult table. Mogherini figured that for that to happen the EU needed to adopt the US stance: do not disturb Israel in any way. Despite this we are still sitting at the children's table, while we are basically paying for the occupation. The Israelis love it'*, said another European diplomat in conversation with 11.11.11.[151]

3.1.1.2. Nascent EU differentiation policy

Since 1967 the EU and EU member states have consistently joined the broad international consensus regarding the legal status of the entire Palestinian territory.[152] The EU and its member states have never recognized Israeli sovereignty over occupied Palestinian territory. Neither have they ever recognized the annexation of East Jerusalem, referring to the principle of the inadmissibility of acquisition of territory by force'.[153]

As a result of its non-recognition policy the EU has adopted a "differentiation" policy that distinguishes between Israel and Israeli settlements.[154] Since 2012 the EU Foreign Affairs Council has reiterated several times *'its commitment to ensure that – in line with international law – all agreements between the State of Israel and the EU must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967'*.[155] For example, in 2013 the European Commission issued "Guidelines regarding the eligibility of Israeli entities and their activities in the occupied territory for grants, prizes and financial instruments funded by the EU from 2014 onwards". The 2013 Guidelines were meant to ensure that EU funding and programmes do not contribute to Israeli entities and activities in settlements. Yet, this policy often fails to be sufficiently implemented in a consistent way.

3.1.1.3. EU-Israel Association Agreement and Association Council

Since the creation of the European Community, Israel has enjoyed privileged relations with the European countries. In 1995, the EU-Israel Association Agreement was signed in the framework of the Euro-Mediterranean partnership and entered into force in 2000. Its stated objectives are the promotion of free trade, political dialogue and economic cooperation. The agreement stipulated that Israeli products entering the EU market enjoy preferential tariffs and customs conditions.

The EU-Israel Association Agreement is supposedly based on mutual respect for international law. Under **Article 2** of the Agreement respect of human rights and democratic principles are designated as fundamental values on which the Association Agreement is based: *'Relations between the parties as well as all the provisions of the agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of the agreement'*. Additionally **article 79** clarifies that the EU can take measures if the provisions under article 2 are not respected: *'The Parties shall take any general or specific measures required to fulfill their obligations under the Agreement. They shall see to it that the objectives set out in the Agreement are attained. If either Party considers that the other Party has failed to fulfill an obligation under the Agreement, it may take appropriate measures'*.[156]

The EU-Israel Association Agreement is supposedly based on mutual respect for international law

As such the EU is clearly allowed to suspend the EU-Israel Association agreement in response to grave Israeli human rights violations. In 2002 the European Parliament adopted a resolution calling for the suspension of the Association Agreement, but this move was subsequently blocked in the EU Foreign Affairs Council.[157]

In December 2004, a EU-Israel Action Plan was signed in the framework of the new European Neighbourhood Policy. Accordingly ten technical committees and one overall Association Committee were created. Israeli policies in the occupied Palestinian territory are discussed during the subcommittee on

political dialogue and cooperation and during Association Councils, which are the highest forum of EU-Israel relations. In June 2008 the EU and EU member states stated their intention to upgrade EU-Israel relations. At the same time a limited form of conditionality between the upgrade and the situation on the ground was introduced. Following the extreme and disproportionate Israeli use of force during the 2008-2009 Gaza war, the EU and EU member states decided to freeze the upgrading process. In doing so the EU explicitly referred to the lack of respect for human rights and international humanitarian law, and made an upgrade conditional to progress in the Middle East Peace Process.

Therefore the 2004 Action Plan remained the basis for EU-Israel relations, although relations with Israel have effectively been enhanced since the 2009 "freeze". Several agreements were concluded with Israel in what has been called a process of "silent upgrade". Since 1996, Israel has also become a full participant in EU Research and Development Framework Programmes. It has contributed and participated in the fourth, fifth, sixth and seventh Framework Programmes. Most recently Israel was allowed to participate in the Horizon 2020 programme, the eighth framework programme covering the period 2014-2020. The 2013 EU Guidelines prevented EU funding from being allocated to Israeli projects or entities (except public institutions) that are based in Israeli settlements. As such Israel's participation in Horizon 2020 has been the first application of the 2013 Guidelines.

Holding an Association Council now would send a very counterproductive signal to Israel

In February 2017 a new Association Council, the first since 2012, was scheduled to discuss possible new "Partnership Priorities". Following the adoption of the Israeli "Regulation Bill" the Association Council was postponed, but the EU and several member states still intend to organize the council meeting. If this meeting were to take place it would be deeply troubling. Holding the Association Council and further developing bilateral relations in the current context would send a very counterproductive signal to Israel that its annexationist policies and numerous international law violations will be tolerated by the EU and its member states. It would also directly contradict the 2009 decision to make enhanced cooperation conditional on progress in the Middle East Peace Process and on Israeli respect for international law.

Several EU member states claimed they want to use the council meeting as a forum for dialogue on Israeli violations, and that postponing a council meeting would be counterproductive. This reasoning has been met by a lot of scepticism on the ground: *'Organizing an Association Council now would send a very clear signal to Israel: you can just continue, there will be no consequences and no price to pay for your continued occupation and annexation'*, one Palestinian activist explained. Asked about the need for such a high-level dialogue with Israel, the activist remained skeptical: *'Can you please tell me exactly what the EU got out of all these dialogues in the past three decades?'*[158] Martin Konecny (EuMEP) also stresses that leading EU representatives have been regularly speaking and meeting with the Israeli Prime Minister, without having to organize an Association Council in order to have a political dialogue with Israel. The latter, however, is not only about political dialogue but primarily about discussing and advancing bilateral relations.[159]

Indeed, several other Palestinian and Israeli activists asked whether dialogue should be a goal in itself, or a means in realizing a certain policy perspective. A young Palestinian policy analyst summarized a widespread feeling when saying: *'The EU tried dialogue and the carrot for decades and the result has been continued occupation and a shift to open annexation. If a policy did not work for so many years it is time to reconsider it. Why would you want to spend all this EU money, get nothing in return and don't learn anything?'*[160]

3.1.1.4. EU economic links with the settlements

The EU is Israel's main trading partner. In 2015 trade amounted to over 32 billion euro, while the value of exports of settlement goods to the EU in 2012 was estimated at 230 million euro a year. If goods that were partially produced in the settlements are also included, the increased estimate amounts to 5.4 billion a year.[161] Although settlement exports represent a relatively small proportion of the total Israeli export, they still amount to a substantial quantity in absolute terms and are of vital importance for the economic viability of many settlements. Furthermore, a 2012 study showed that the EU imports approximately 15 times more from the Israeli settlements than from the Palestinians themselves.[162]

As stated above the EU-Israel Association Agreement provided for preferential treatment of Israeli goods on the EU market. Although a 2005 technical arrangement clarified that Israeli products originating from the settlements are not entitled to preferential treatment, in practice settlement goods can still enter the EU market with preferential access. *'Products that are wholly or partially produced in settlements are frequently labeled as coming from Israel, obscuring their actual origin. This allows the exports to be covered under preferential trade agreements with the EU that exclude settlements'*, the UN Secretary General noted in his latest report on Israeli settlements in March 2017.[163]

The EU imports 15 times more from Israeli settlements than from the Palestinians

In November 2015, the European Commission adopted a *'Interpretative notice on indication of origin of goods from the territories occupied by Israel since June 1967'.* Previously several EU member states had published equivalent notices to retailers, including the UK (2009), Denmark (2012) and Belgium (2014).

While the 2015 Notice does not concern any new legislation, it helps European member states to interpret the already existing EU law on the indication of origin of products in order to guarantee that the consumer can make an informed choice. While the notion reflects the European Commission's understanding of the relevant EU legislation, enforcement remains the primary responsibility of member states.[164] This means that member states have the responsibility to ensure that retailers understand their duties regarding Consumer Protection Law in order to label settlement products correctly. However, in order to implement and control the 2015 guidelines, European governments have to rely on the information given to them by the Israeli custom services, who often avoid maintaining clear territorial differentiation between Israeli and settlement products. The case of Brita/Sodaclub (CJEU, C-386/08, 2010) shows that Israeli customs services consider the settlements as a part of Israel. UK Customs services controls in the period January-April 2009 showed that at least 529 settlement products were not correctly designated.

Aside from the difficulties regarding the implementation of the 2015 guidelines, questions arise as to the actual legality of bringing settlement products to EU markets. Israel's settlement policy is illegal and constitutes a serious violation of international law. The strong economic infrastructure in the Israeli settlements plays an important role in the consolidation and expansion of settlements.[165] Having this in mind, the UN Human Rights Council decided to gather a list of companies operating in settlements, which will be published by the end of 2017.

Simply labeling settlements products is not sufficient to meet the EU's legal obligations regarding illegal situations

Furthermore, according to professor of international law François Dubuisson, labelling guidelines for products from the settlements cannot be seen as sufficient means to meet the requirements of the EU's obligations of non-assistance and non-recognition.[166] Tom Moerenhout, researcher at the Graduate Institute of International and Development Studies in Geneva, confirmed this in a more recent legal opinion. Moerenhout states that UN Security Council resolution 2334 (2016), which calls upon UN member states to *'distinguish in their relevant dealings between the territory of the State of Israel and the territories occupied since 1967'*, confirms the legal obligation to not trade with Israeli settlements.[167]

Additionally a 2015 open letter by 40 legal experts, including two former UN rapporteurs, a former President of the International Law Commission and a former ICTY judge, called upon the EU and its member states to stop trading with settlements in compliance with its international legal obligations.[168]

3.2. – EU response to occupation and annexation of Crimea/ Sevastopol

In stark contrast to the passive EU response in Palestine, the EU and its member states have adopted several measures in reaction to the illegal[169] Russian occupation and annexation of Crimea/Sevastopol. After a referendum was held on the 16th of March 2014 and Crimea and Sevastopol were officially annexed on 18 March, the European Council declared on the 20th of March 2014 that it *'strongly condemns the illegal annexation of Crimea and Sevastopol to the Russian Federation and will not recognise it. The European Council asks the Commission to evaluate the legal consequences of the annexation*

of Crimea and to propose economic, trade and financial restrictions regarding Crimea for rapid implementation'.

By the summer of 2014 the EU and its member states had indeed developed a broad package of different measures aimed at reversing the illegal annexation of Crimea. The EU has since reiterated that these measures are *'part of the EU's non-recognition policy of the illegal annexation of Crimea and Sevastopol'*.[170]

3.2.1. Diplomatic measures

On the 6th of March 2014 the EU suspended the preparations for a G8 meeting in Sochi. Instead, a G7 meeting was held in Brussels in June 2014. Discussions on a new EU-Russia agreement and talks on visa matters were also suspended, while on 20 March an upcoming EU-Russia summit was cancelled. EU member states collectively supported the suspension of negotiations with Russia on future OECD and IEA membership, while bilateral and regional cooperation programmes with Russia were also suspended. Additionally the EU asked the European Investment Bank to suspend new financing operations in Russia and requested the European Bank for Reconstruction and Development to suspend the financing of new operations in Russia.

In stark contrast to the passive EU response in Palestine, the EU and its member states have adopted several measures against the Russian occupation/ annexation of Crimea

OCCUPATION/ANNEXATION AND THE EU'S RESPONSE

WHAT DOES THE EU SAY?	WHAT DID THE EU DO IN CRIMEA?	WHAT DID THE EU DO IN PALESTINE?
– *'The EU will consider further action in order to protect the viability of the two-states solution, which is constantly eroded by new facts on the ground'.* (EU Foreign Affairs Council) – *'The EU's foreign policy shall be guided by (...) respect for the United Nations Charter and international law (...) The Union shall ensure consistency between the different areas of its external action'.* (Treaty of the European Union) – *'Sanctions are an effective means of promoting compliance with International Humanitarian Law'*. (EU Guidelines on Promoting Compliance with International Humanitarian Law)	**Economic measures** – Import ban on Crimean goods. – Comprehensive prohibition on European investments in Crimea. – Prohibition to buy real estate or to provide tourist services in Crimea. – Export ban on goods and technology for transport, telecom and energy sectors. – Information note to EU businesses operating in Crimea and Sevastopol. – Asset freezes and visa bans. – Economic sanctions on Russia. **Diplomatic measures** – Suspension of Russia from G8. – Suspension of new EU-Russia agreement and visa talks. – Cancelling of EU-Russia Summit. – Suspension of negotiations on Russian OECD and IEA membership. – Suspension of cooperation programs with Russia.	– Condemnations of Israeli settlement expansion. – Offering "Special Privileged Partnership" in the event of a final peace agreement. – 2013 Guidelines excluding settlements from EU grants, prizes and financial instruments. – 2015 (non-binding) Interpretative Notice on the labeling of settlement products. – Publication of "business advisories" by 18 EU member states. – 2009 freeze on upgrading bilateral relations.

3.2.2. Economic sanctions

The EU issued several economic sanctions to ensure that its policy of non-recognition of the annexation of Crimea and Sevastopol would also have practical consequences. Such restrictive measures included an import ban on Crimean goods (unless they have Ukrainian certificates) and a prohibition on investments in Crimea. The European Council decision and subsequent Regulation explicitly stated that the import ban on Crimean goods was an integral part of the EU's non-recognition policy.[171]

Additionally Europeans and EU-based companies are not allowed to buy real estate or entities in Crimea, finance Crimean companies or supply related services. They can also not invest in infrastructure projects in the following sectors: transport, telecommunications, energy and the prospection, exploration and production of oil, gas and mineral resources. In addition the EU has issued a ban on providing tourism services in Crimea, and an export ban on goods and technology for the transport, telecommunications and energy sectors. Also, the EU issued an "Information Note to EU businesses operating and/or investing in Crimea/Sevastopol".[172]

Moreover on 29 July 2014 the EU imposed direct economic sanctions on Russia (also related to the situation in Eastern Ukraine). Such sanctions included a ban on the trade of financial instruments related to certain Russian banks, energy and defence companies; a ban on EU loans to five state-owned Russian banks; an embargo on the import and export of arms and dual use goods; and a ban on the export of several products and services related to the energy industry (deep water oil, artic oil, shale oil).[173]

Also on 17 March 2014 the EU issued asset freezes and visa bans against *'persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine as well as persons and entities associated with them'*. Currently 150 individuals and 37 entities are subject to a freeze of their EU assets and a prohibition on receiving any payments. Among these individuals are 8 members of the State Duma from Crimea and Sevastopol.

3.3. – Towards a consistent "law-first" European policy

3.3.1. Putting international law first

Serious breaches of international law connected to the Israeli settlement and annexation agenda entail legal obligations for the EU and its member states. Under international law they are obliged to ensure respect for international humanitarian law and the Palestinian right to self-determination, not to recognize the illegal Israeli settlement policy and annexation agenda, and not to render aid or assistance to the maintenance of the Israeli settlement enterprise. However, although the EU has recently taken modest steps to strengthen its non-recognition policy of the Israeli settlements[174], it clearly fails its obligations to ensure respect for international humanitarian law and the Palestinian right to self-determination and its obligation to not render aid or assistance to an illegal situation.

Firstly, the continued refusal to ban the import of settlement goods strongly

The refusal to ban settlement goods strongly contrasts with the principled European rhetoric about promoting international law

contrasts with the principled European rhetoric about the promotion of international law. By engaging in trade with Israeli settlements or economic entities whose activities are closely linked to the settlements, the EU and EU member states are failing to uphold their legal obligation not to render aid or assistance to the illegal Israeli settlement enterprise. As professor Francois Dubuisson stated in his 2014 study on the EU's legal obligations towards the Israeli settlement policy:[175]

'Unquestionably, trade and economic activities conducted by Israeli settlements strengthen and perpetuate the settlement of the occupied Palestinian territory, which constitutes the main obstacle to the economic development of Palestinians. By allowing the trading and importation of goods from Israeli settlements, the member states of the European Union incontrovertibly contribute to their economic prosperity thereby undeniably providing "aid" and "assistance" in maintaining the illegal situation created by Israel's settlement policy'.[176]

In addition, the International Court of Justice in its 1971 Advisory Opinion regarding the South African presence in Namibia clarified that the obligation of non-recognition also touches upon economic relations:[177]

'The restraints which are implicit in the non-recognition of South Africa's presence in Namibia (...) impose upon Member States the obligation to abstain from entering into economic and other forms of relationship or dealings with South Africa on behalf of or concerning Namibia which may entrench its authority over the Territory'.

Thus, if the EU and EU member states want to respect their third state obligations they have a clear obligation to refrain from any form of trade or economic relations with Israeli companies established or conducting activities in Palestinian territory, and must issue a prohibition on the import of settlement products.[178] Two precedents show that such a prohibition is feasible. First and foremost, in June 2014 the European Council issued a prohibition on the import of goods originating from Crimea and Sevastopol.[179] Secondly, in 2010 the European Parliament and European Council prohibited the import of wood originating from illegal sources.[180]

The continued refusal to suspend the EU-Israel Association Agreement is yet another indication of the failure to match principled rhetoric with concrete action'

Secondly the continued European refusal to suspend the EU-Israel Association Agreement as a result of Israel's continued international law violations, is yet another indication of the European failure to match principled rhetoric with concrete action. Moreover, instead of holding Israel accountable for its grave breaches of international law, the EU and EU member states are actually considering to strengthen bilateral relations through organizing the first EU-Israel Association Council since 2012 and developing new Partnership Priorities with Israel. As stated above, deepening relations in the current context would further undermine the EU's stated goal of achieving a two-state solution and directly contradict article 2 of the EU-Israel Association Agreement. If the EU and EU member states want to respect their own agreements and stated policy objectives, they must cancel the upcoming Association Council and suspend the EU-Israel Association agreement until Israel complies with international law.

3.3.2. Need for consistent EU foreign policy

In theory the EU and EU member states aim to have a consistent foreign policy but in practice, as demonstrated above, this is not the case. While in Crimea the EU and EU member states have consistently enforced their non-recognition policy of the illegal Russian occupation and annexation, in Palestine this did not happen.[181] This inconsistent policy takes place while the situation in the occupied Palestinian territory actually involves broader violations of international law than the situation in Crimea.

Such inconsistency stands in direct contradiction to the EU's stated policy goals and policy documents. According to **article 21 of the Treaty on the European Union (TEU)** the EU's foreign policy:

'Shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.'

'(...) The Union shall ensure consistency between the different areas of its external action and between these and its other policies'.[182]

The 2005 **EU Guidelines on Promoting Compliance with International Humanitarian Law** (updated in 2009) also offers guidance on how to ensure respect for IHL. The Guidelines consider the use of sanctions as *'an effective means of promoting compliance with IHL'* and a *'means of action'* in relations with third countries.[183]

At the Annual NGO Forum in 2011 NGOs cited three key obstacles to putting the Guidelines into practice: a lack of political will, a lack of consistency (double standards) in the European foreign policy, and the failure to back up words with actions.[184] In a recent interview with 11.11.11, an Israeli activist insisted that: '*All the beautiful EU words should be matched with the situation on the ground. Make up your mind and finally match your rhetoric with concrete action'.*[185]

Such foreign policy inconsistencies and double standards are not only morally wrong, they also significantly undermine European credibility on the world stage. Since international law governing occupation and annexation is the same everywhere, it is crucial that the European response to such developments is the same as well.

4

CONCLUSION AND RECOMMENDATIONS

END
THE DOUBLE
STANDARD

The shift from occupation to annexation has been dramatically accelerated in recent years. This is a game-changer in the Israeli-Palestinian conflict. The EU and its member states must avoid being accused of double standards and adopt a consistent "law first" policy. Urgent action is needed to stop the occup'annexation of Palestine. The counter-productive policy of only offering "carrots", paying the bill of the occupation and refusing to use "sticks" needs to stop.

The 5th of June 2017 marks the 50th anniversary of the start of the Six Day War of 1967. In six days Israel conquered the West Bank, East Jerusalem, the Gaza Strip, the Sinai and the Golan Heights. The subsequent Israeli occupation of the West Bank and Gaza, the annexation of East Jerusalem and the Golan Heights, and the separation of Gaza from the West Bank have lasted until today.

After 50 years it is time to re-frame the discussion about Israel and Palestine and start talking about occup'annexation

Over the past 50 years Israel has violated international law on an enormous scale. Israel has committed grave breaches of the Fourth Geneva Convention (1949), the Hague Regulations (1907), the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Universal Declaration of Human Rights and other human rights treaties. In doing so it has ignored multiple UN Security Council resolutions, UN General Assembly resolutions and an advisory opinion by the International Court of Justice.

After 50 years it is time the re-frame the discussion about Israel and Palestine. Israel has undertaken a de facto and de jure annexation of large parts of the occupied Palestinian territory. It is therefore time to no longer only talk about occupation, but start talking about the occup'annexation of Palestine. Under international law an *occupation* is supposed to be *temporary*, but in the past 50 years Israel has pursued a "facts on the ground" policy aimed at the *permanent annexation* of Palestinian land. Such annexation policies are explicitly prohibited under the UN Charter. The prohibition on the acquisition of territory by the use of force is considered a fundamental and absolute principle of international law, from which no derogation is permitted. As such the continued Israeli occupation and creeping annexation of Palestinian territory triggers legal consequences *beyond* international humanitarian law.

As this report has demonstrated, the shift from occupation to annexation has been dramatically accelerated over the past years, both in facts on the ground and in official rhetoric. Following the 1967 war East Jerusalem and the Golan Heights were formally annexed to Israel. Yet in recent years Israel has dramatically accelerated its illegal settlement policy, declared Palestinian lands "state land" and has constructed an illegal Annexation Wall. It has adopted a "Regulations Bill" which retroactively legalizes the theft of private Palestinian land, and is considering a new "Norms Law" that would extend Israeli domestic law to Area C of the West Bank. Meanwhile it has silently adopted several recommendations of the Levy Report (2012), which are clearly preparing the ground for annexation. Moreover, at least 10 current Israeli ministers have publicly stated their support to full or partial annexation of the West Bank. During the past 15 years several annexation plans have been promoted by high-ranking Israeli officials.

These developments are a game-changer in the Israeli-Palestinian context: while the international community has been talking for 50 years about dividing the land, Israel is annexing ever more of it every day. Urgent action is needed to halt and reverse this on-going process of annexation. Yet the international community – the European Union and its member states in particular – have not matched their condemnatory rhetoric with concrete action to stop the occupation and annexation of Palestine. In doing so, the EU and its member states have failed to meet their legal obligations to ensure respect for international humanitarian law, to not recognize an illegal situation


© Willem Staes

and to not render aid or assistance to the maintenance of this illegal situation.

It is telling that the passive European response to the Israeli occup'annexation contrasts strongly with the European reaction to the illegal Russian annexation of Crimea and Sevastopol. Since 2014 the EU imposed economic sanctions on Crimea (import ban on goods, investment prohibitions, ban on providing tourism services, export ban on several goods and technology) and on Russia. The EU and its member states have also taken several diplomatic measures against Russia. Among others, discussions on a new EU-Russia agreement and an upcoming EU-Russia summit were cancelled, while EU member states have collectively supported the suspension of OECD and IEA membership negotiations with Russia. Bilateral and regional cooperation programmes with Russia were also suspended.

The EU policy of Israeli exceptionalism needs to stop

In stark contrast to the way they proceeded in Crimea, the EU and its member states refuse to prohibit the import of illegal settlement goods, refuse to suspend the EU-Israel Association Agreement, and refuse to cancel a upcoming EU-Israel Association Council. These refusals not only violate the European third state obligations under international law, they also run counter to the EU's stated policies on consistency in external affairs. According to article 21 of the Treaty on European Union (TEU) the EU *'shall ensure consistency between the different areas of its*

RECOMMENDATIONS

11.11.11, CNCD-11.11.11 and the undersigning organizations recommend the following actions to the EU and its member states:

• CANCEL AND SUSPEND

The EU and its member states should cancel the upcoming Association Council and suspend the Association Agreement under article 2 of the agreement. At a very minimum, they should publicly define annexation red lines that, if crossed, would trigger immediate European action.

• GO AFTER THE SETTLEMENTS

The EU and its member states should issue an import ban on settlement goods, prohibit all European investments and financial transactions benefitting the illegal Israeli settlement enterprise, and issue a visa ban on settler leaders.

• SUPPORT LOCAL CIVIL SOCIETY

The EU and its member states must continue to support the work of Palestinian and Israeli civil society organizations that document violations of international law in the occupied Palestinian territory and that support the resilience of the Palestinian population in occupied territory.

• DEFEND THE INDEPENDENCE OF THE INTERNATIONAL CRIMINAL COURT

The EU and its member states should actively defend the independence of the preliminary ICC investigation on the occupied Palestinian territory. They should refrain from pressuring the ICC not to open a full investigation and encourage other countries not to interfere with the ICC's process.[187]

external action and between these and its other policies'. Thus, while the EU aims to have a consistent foreign policy in theory, in practice this has clearly not been the case. While in Crimea the EU and EU member states have consistently enforced their non-recognition policy of the illegal Russian occupation and annexation, they have failed to do so in Palestine. The EU and EU member states clearly lack political will, lack a consistent policy and are failing to back up words with actions.

The European foreign policy inconsistency and double standards are significantly undermining European credibility on the world stage. As international law governing occupation and annexation is the same everywhere, it is crucial that the European response to such developments is consistent as well. The former UN Special Rapporteur John Dugard has quite rightly observed that *'the EU claims to be an upholder of the Rule of Law but unfortunately, under the influence of the United States, it has adopted a policy of exceptionalism in respect of Israel's violations of international law'*.[186]

This policy of Israeli exceptionalism needs to stop. Instead of its current inconsistent policy towards occupation and annexation, the EU and EU member states must change course and adopt a consistent "law-first" policy. The serious breaches of international humanitarian law connected to Israeli settlement construction, the denial of the Palestinian right to self-determination and Israel's policies of annexation trigger legal third state obligations for the EU and its member states. Under international law the EU and EU member states are obliged to ensure respect for international humanitarian law and the Palestinian right to self-determination, to not recognize the illegal Israeli settlement policy and annexation agenda, and not to render aid or assistance to the maintenance of the Israeli settlement enterprise.

50 years after the start of the occupation and annexation of Palestine, Palestinians need to be sent a clear message that the EU and EU member states are willing to finally enforce international law. The EU must use the 50th anniversary of the Israeli occupation to make clear to Palestinians that a peaceful solution based on international law is still possible. For this to happen, the EU and European member states must not only offer carrots but also be willing to use a stick. Only by robustly promoting international law and finally increasing the cost of the illegal Israeli occupation and annexation of Palestine, the EU can contribute to a meaningful Israeli-Palestinian peace process.

REFERENCES

1 United Nations Human Rights Council (2017): 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan - Report of the Secretary-General', A/HRC/34/39, p. 4.

2 For a comprehensive overview, see See Yesh Din (2016): 'Land Takeover Practices Employed by Israel in the West Bank'; B'tselem (2013): 'Acting the Landlord. Israel's Policy in Area C, the West Bank'.

3 See also B'tselem(2010): 'By Hook and By Crook. Israeli Settlement Policy in the West Bank', pp. 21-35.

4 United Nations Human Rights Council (2017): 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan - Report of the Secretary-General', A/HRC/34/39, p. 5.

5 See Peace Now (2017): 'Unraveling the Mechanism behind Illegal Outposts'.

6 UN OCHA oPt (2012): 'The Humanitarian Impact of Israeli-declared Firing Zones in the West Bank'.

7 Kerem Navot (2015): 'A Locked Garden. Declaration of Closed Areas in the West Bank'.

8 'IDF uses live-fire zones to expel Palestinians from areas of West Bank, officer admits', 21 May 2014, Haaretz.

9 See also 'Summary of the Opinion Concerning Unauthorized Outposts', Talya Sasson, 2005 ("The Sasson Report"); Yesh Din (2013): 'The Road to Dispossession. A Case Study - The Outpost of Adei Ad'.

10 Yesh Din (2015): 'Mock enforcement: The failure to enforce the law on Israeli civilians in the West Bank'.

11 For in-depth research on the politization of archaeology, see the publications of Israeli NGO Emek Shavek.

12 United Nations General Assembly (2015): 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan. Report by the Secretary-General', A/70/351; See also 'Onzichtbare nederzettingen in Jeruzalem: het Israëlische nationale parkenplan', 17 November 2013, MO* Magazine (in Dutch).

13 See for example Greenberg, R. (2009): 'Towards an Inclusive Archaeology in Jerusalem: The Case of Silwan/The City of David', Public Archaeology Vol 8 No 1, p. 35-50.

14 United Nations Human Rights Council (2017): 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan - Report of the Secretary-General', A/HRC/34/39, p. 6. See also Ir Amim and Peace Now (2016): 'Broken Trust: State Involvement in Private Settlement in Batan al-Hawa, Silwan'.

15 United Nations General Assembly (2016): 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan. Report by the Secretary-General, A/71/355.

16 Human Rights Watch (2016): 'Occupation, Inc. How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights'.

17 United Nations Human Rights Council (2017): 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan - Report of the Secretary-General', A/HRC/34/39, p. 4.

18 United Nations Human Rights Council (2013): 'Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem', A/HRC/22/63, paras 68 and 71;

19 United Nations General Assembly (2012): 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan. Report by the Secretary-General', A/67/375, para 14.

20 Al Haq (2013): 'Water for One People Only'.

21 Kerem Navot (2013): 'Israeli Settler Agriculture as a Means of Land Takeover in the West Bank'.

22 B'tselem (2011): 'Dispossession and Exploitation. Israel's Policy in the Jordan Valley and the Northern Dead Sea'.

23 Oxfam Briefing Paper (2012): 'On the Brink. Israeli Settlements and Their Impact on Palestinians in the Jordan Valley'.

24 'Palestinians Access to Area C Key to Economic Recovery and Sustainable Growth', 8 October 2013, The World Bank.

25 'The staggering economic cost of occupation: The Palestinian economy would be at least twice as large without Israeli occupation, UNCTAD report says', 6 September 2016, United Nations Conference on Trade and Development.

26 United Nations Human Rights Council (2009): 'Human Rights Situation in Palestine and Other Occupied Arab Territories', A/HRC/10/22, p. 27.

27 Association of International Development Agencies (2013): 'Failing to Make the Grade: How the EU can pass its own test and work to improve the lives of Palestinians in Area C', p. 3.

28 United Nations Human Rights Council (2017): 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan - Report of the Secretary-General', A/HRC/34/39, p. 12.

29 United Nations Relief and Works Agency for Palestine (2013): 'Al Jabal: a Study on the Transfer of Bedouin Palestine Refugees'; Boutruche, T. and Sassoli, M. (2014): 'Expert Opinion on the Displacements of Bedouin Communities from the Central Wast Bank under International Humanitarian Law'.

30 United Nations Office for the Coordination of Humanitarian Affairs (2013): 'The Massafer Yatta communities'; 'Firing Zone 918 – What's the Deal?', 7 March 2013, The Association for Civil Rights in Israel.

31 Ir amim newsletter 14 October 2016 (cited in A/HRC/34/39, p. 12).

32 United Nations Office for the Coordination of Humanitarian Affairs (2016): 'East Jerusalem Mapping of Evictions'.

33 Yesh Din (2017): 'Law Enforcement on Israeli Civilians in the West Bank. Yesh Din Monitoring Update 2005-2016'.

34 See for example United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Bulletin October 2016.

35 United Nations Human Rights Council (2016): 'Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the Occupied Syrian Golan - Report of the Secretary-General', A/HRC/31/43.

36 United Nations Committee on the Elimination of Racial Discrimination (2012): 'Consideration of reports submitted by States parties under article 9 of the Convention: concluding observations of the Committee on the Elimination of Racial Discrimination', para 24-25.

37 Human Rights Watch (2010): 'Separate and Unequal. Israel's Discriminatory Treatment of Palestinians in the Occupied Palestinian Territories'; United Nations Human Rights Council (2007): 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard', A/HRC/4/17; United Nations Human Rights Council (2011): 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk', A/HRC/16/72.

38 Al Haq (2012): 'The Annexation Wall and its Associated Regime'.

39 United Nations Human Rights council (2007): 'Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism', A/HRC/6/17/Add1.

40 See also B'tselem (2012): 'Arrested Development: The Long Term Impact of Israel's Separation Barrier in the West Bank'; HaMoked (2013): 'The Permit Regime: Human Rights Violations in West Bank Areas Known as the Seam Zone'.

41 United Nations General Assembly resolution ES-10/13, 21 October 2013, 'Illegal Israeli actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory'.

42 'Ex-Security Chiefs Turn to Sharon: Government Policies 'Create Hatred' Israeli Newspaper is told', 14 November 2003, The Washington Post.

43 Interim Agreement on the West Bank and the Gaza Strip, article XXXI, para 7.

44 Gisha (2015): 'Seperating land, seperating people'.

45 Association for International Development Agencies (2015): 'Charting a New Course – Overcoming the stalemate in Gaza'.

46 Articles 55,56 and 59 Fourth Geneva Convention (1949).

47 Oxfam International (2017): 'Treading Water, The worsening water crisis and the Gaza Reconstruction Mechanism'.

48 United Nations Relief and works Agency (2012): 'Gaza in 2020: A liveable place?'.

49 Herremans B. (2016): 'The EU's Self-Defeating Aid Policy towards Palestine'.

50 Association for International Development Agencies (2015): 'Charting a New Course – Overcoming the stalemate in Gaza'.

51 Oxfam International (2016): 'Challenging the separation policy between Gaza and the West Bank and investing in more sustainable models of aid that connect Gaza with the West Bank'.

52 'With Gaza's electricity crisis worsening, residents face imminent danger', 3 May 2017, Gisha- Legal Center for Freedom of Movement.

53 Herremans B. (2016): 'The EU's Self-Defeating Aid Policy towards Palestine'.

54 Oxfam International (2017): 'Treading Water, The worsening water crisis and the Gaza Reconstruction Mechanism'.

55 Association for International Development Agencies (2015): 'Charting a New Course – Overcoming the stalemate in Gaza'.

56 Article 59 of the Fourth Geneva Convention (1949).

57 'Quotes by Israeli security and political figures about the connection between reconstruction in Gaza and Israel's interests', (undated), Gisha- Legal Center for the Freedom of Movement.

58 Benvenisti, E. (2011): 'The International Law of Occupation', Oxford University Press, p. 349.

59 European Parliament Directorate-General for External Policies Policy Department (2015): 'Occupation/annexation of a territory: Respect for international humanitarian law and human rights and consistent EU policy', p. 22.

60 United Nations Security Council resolution 478, 20 August 1980, para 33.

61 'Annual Construction Reports Shows a 34% Increase in Construction Starts in the Settlements', 21 May 2017, Peace Now.

62 'Israeli Cabinet Approves New Settlement', 31 March 2017, Peace Now.

63 Ir Amim and Peace Now (2016): 'Broken Trust: State Involvement in Private Settlement in Batan Al-Hawa, Silwan'.

64 Peace Now (2016): 'The Grand Land Robbery: Another Step towards Annexation', p. 1-2.

65 'UN: Israeli 'Settlements Law' crosses red line, opens door for annexation', 7 February 2017, The Jeruzalem Post.

66 'Israeli Cabinet Panel to Consider Bill Barring High Court Petitions on Behalf of Palestinians', 12 May 2017, Haaretz.

67 'The Ma'ale Adumim Bill: A Reckless Step towards Full Annexation', 22 January 2017, Peace Now.

68 'Ministers Approve Jordan Valley Annexation', 29 December 2013, Israel National News.

69 'The Levy Commission Report on the Legal Status of Building in Judea and Samaria' (the "Levy Report"), 21 June 2012. See also an in-depth legal critique of the main arguments of the Levy Report in: Yesh Din and the Emile Zola Chair for Human rights (2014): 'Unprecedented: A Legal Analysis of the Report to Examine the Status of Building in the Judea and Samaria Area (the West Bank)'.

70 'Minister Shalom Admits: The Justice was Appointed because he is a Likud man', 10 december 2012, Walla.

71 Yesh Din (2016): 'From Occupation to Annexation. The Silent Adoption of the Levy Report on Retroactive Authorization of Illegal Construction in the West Bank', p. 6.

72 The following is based on the analysis in Yesh Din (2016): 'From Occupation to Annexation. The Silent Adoption of the Levy Report on Retroactive Authorization of Illegal Construction in the West Bank'.

73 HCJ 8887/06 Yusef Musa Abd a-Razeq al-Nabut et al. v. Minister of Defense et al. Judgment, August 2, 2011 (outpost of Migron); HCJ 5023/08 Sa'id Zahdi Muhammad Shehadeh et al. v. Minister of Defense et al. Judgement February 8, 2015 (nine houses in Ofra); HCJ 9949/08 Maryam Hassan Abd alKareem Hamad v. Minister of Defense, Judgment December 25, 2014 (outpost of Amona); HCJ 9669/10 Abd al-Rahman Qassem Abd al-Rahman v. Minister of Defense, Judgment, September 8, 2014 (Dreinoff compound, Beit El).

74 'Under the Radar: Israel's silent policy of transforming illegal outposts into official settlements', 11 March 2015, Yesh Din.; Email correspondence 11.11.11 with Yesh Din, 29 May 2017.

75 Articles 43 and 55 of the Regulations concerning the Laws and Customs of War on Land annexed to Hague Convention (IV) respecting the Laws and Customs of War on Land (1907).

76 'New Israeli Panel Eyes Legalizing West Bank Outposts', 22 July 2015, Haaretz.

77 Yesh Din (2016): 'From Occupation to Annexation. The Silent Adoption of the Levy Report on Retroactive Authorization of Illegal Construction in the West Bank', p. 24.

78 For in-depth research on the work of the Blue Line Team, see: Kerem Navot (2016): 'Blue and White Make Black. The Work of Blue Line Team in the West Bank'.

79 'Israeli Settlements and International Law', 30 November 2015, Israel Ministry of Foreign Affairs.

80 'Bennett: We Must Act Now and 'Give Our Lives' for the Annexation of the West Bank', 6 October 2016, Haaretz.

81 'Far-right Israeli minister plans bill to annex one of biggest settlements', 3 January 2017, The Guardian; 'Ma'ale Adumim and the 'Creeping Annexation' of the West Bank', 26 January 2017, Muftah.

82 'Israel lifts restrictions on building more homes in East Jerusalem', 23 January 2017, Reuters.

83 'Bennett: Trump has changed his tune on Israel since the elction and its not clear why', 15 May 2017, Haaretz.

84 'Israel Elects a One-State President', 13 June 2014, The American Prospect; 'Is There Another Option?', 2 June 2010, Haaretz; See also 'Endgame', 15 July 2010, Haaretz.

85 '800 Likud activists sign petition calling for West Bank annexation', 17 May 2017, The Times of Israel.

86 'Why Religious Zionism is Growing Darker', 16 mei 2017, Haaretz.

87 'Liberman: Israeli annexation of West Bank will cause 'immediate crisis' with US', 6 March 2017, The Times of Israel.

88 'Challenging Netanyahu, senior minister floats annexation of Jerusalem-area settlements', 22 January 2017, The Times of Israel; 'Buoyed by Trump-Netanyahu summit, ministers openly scratch annexation itch', 13 February 2017, The Times of Israel.

89 International Crisis Group (2013): 'Leap of Faith: Israel's National Religious and the Israe

90 Shavit, A. (2013): 'Mijn Beloofde Land. De triomf en tragedie van Israel' (Dutch edition), p. 232.

91 International Crisis Group (2013): 'Leap of Faith: Israel's National Religious and the Israeli-Palestinian Conflict', Middle East Report N°147, pp. 1-13; Shavit, A. (2013): 'Mijn Beloofde Land. De triomf en tragedie van Israel' (Dutch edition), pp. 229-256.

92 Munayyer, Y. (2012): "When Settlers Attack".

93 'Who are the Hilltop Youth?', Channel 2, 26 December 2011.

94 International Crisis Group (2013): 'Leap of Faith: Israel's National Religious and the Israeli-Palestinian Conflict', p. 3.

95 Cited in International Crisis Group (2013), p. 22.

96 Gal, R. (ed) (2012): 'Between the Yarmulke and the Beret: Religion, Politics and the Military in Israel' (cited in International Crisis Group 2013, p. 22). See also Drory, Z. (2015): 'The 'Religionizing' of the Israel Defence Force: Its Impact on Military Culture and Professionalism'.

97 'Netanyahu: a Likudnik no longer walks with a Kipa in his pockets', 26 January 2009, YNET.

98 International Crisis Group (2013): 'Leap of Faith: Israel's National Religious and the Israeli-Palestinian Conflict', pp. 31- 32.

99 The full plan can be read on http://www.hayozma.org/SiteContent/Pdf/01_ltr.pdf.

100 Ariel, U. (2012): 'The Political Plan to End the Conflict', https://www.yumpu.com/en/document/view/11204207/mk-uri-ariel-political-plan-to-end-the-conflict/4.

101 Bennett mentions 'full naturalization of the 50.000 Arabs in Area C'. However, this is a gross underestimation. In 2015 UN OCHA estimated that 300.000 Palestinians live in Area C. See https://www.ochaopt.org/documents/ocha_opt_pressrelease_5_march_2014_en.pdf.

102 Bennett, N. (2012): 'The Israel Stability Initiative'; 'A Doable Plan for Managing the Israeli-PA Arab Conflict', 9 June 2014, Israel National News. See also https://www.youtube.com/watch?v=BeHT-9TlrARc and https://www.facebook.com/bennettnaftalienglish/videos/927248667406432/.

103 'Is Israel Moving Closer to Full Sovereignty in Judea-Samaria?', 20 October 2014, Israel National News.

104 International Court of Justice Advisory Opinon on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, 9 July 2004, para 120; United Nations Security Council resolutions 2334 (2016) and 465 (1980); United Nations General Assembly resolution 70/89; 'Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention', 5 December 2001; 'Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention', 17 December 2014.

105 'Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms', para 1, 23 December 2016, United Nations.

106 Article 49 and Article 147 of the Fourth Geneva Convention (1949); See also Rule 129 of Customary International Law, International Committee of the Red Cross.

107 Article 49 Fourth Geneva Convention (1949); For an in-depth discussion, see CIDSE (2017): 'No Place Like Home. A Reader on the Forced Internal Displacement of Palestinians in the Occupied Palestinian Territory and Israel'.

108 Articles 46, 47, 52-56 Hague Regulations (1907); Articles 33, 46 and 53 Fourth Geneva Convention (1949).

109 Articles 43, 55 Hague Regulations (1907); articles 53 and 64 Fourth Geneva Convention (1949).

110 Article 55 Hague Regulations (1907).

111 Article 47 Hague Regulations (1907).; article 33 Fourth Geneva Convention (1949).; article 8(2)(b)(xvi) Rome Statute of the International Criminal Court.

112 Article 32 Fourth Geneva Convention (1949).

113 Aricles 65-77 Fourth Geneva Convention (1949).

114 Articles 55-56 Fourth Geneva Convention (1949); articles 14 and 69 First Additional Protocol to the Geneva Conventions.

115 European Parliament Directorate-General for External Policies Policy Department (2015): 'Occupation/annexation of a territory: Respect for international humanitarian law and human rights and consistent EU policy', p. 14.

116 'Charter of the United Nations', 24 October 1945, Article 2(4); See also 'Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, United Nations General Assembly resolution 2625 (1970);

117 International Court of Justice (ICJ), Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, on the Wall, 9 July 2004, para 87.

118 International Law Commission (2001): 'Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries', article 40. .

119 See also Azarova, V. (2017): 'Israel's Unlawfully Prolonged Occupation: Consequences Under an Integrated Legal Framework', European Council on Foreign Relations, p. 2-4.

120 Article 43 Hague Regulations (1907).

121 HCJ 393/82 Gam'iyat Al-Iskan v Military Commander in the West Bank, 28 December 1983, para 20.

122 For a more in-depth discussion on de jure vs de facto annexation, see Hoffman, R. (2011): 'Annexation', Max Planck Encyclopedia of Public International Law.

123 Law and Administration Ordinance (Amendment No. 11) – 1948, Laws of the State of Israel No. 499, 28 June 1967, p. 74; The Law and Administration Order (No. 1) – 1967, Israeli Collection of Regulations No. 2064, 28 June 1967, p. 2690; Municipalities Ordinance (Amendment No. 6) – 1948, Laws of the State of Israel No. 499, 28 June 1967, p.74; Order by the Minister of the Interior, Israeli Collection of Regulations No. 2063, 28 June 1967, p. 2670.

124 See for example United Nations Security Council resolution 478 (1980).

125 United Nations Commission on Human Rights (2004): 'Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967', E/CN/.4/2004/6, para 6.

126 International law Commission (2001): 'Draft Articles on Responsibility of States for Wrongful Acts, Articles 40-42.

127 Common Article 1 Geneva Conventions; International Committee of the Red Cross (2005): 'International Review of the Red Cross. Customary Law', Rule 144.

128 Pictet, J.S. (ed) (1958): 'Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War', p. 16.

129 International Committee of the Red Cross, 'Commentary of 2016. Article 1: Respect for the Convention', para 153-163, https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1.

130 For an overview, see Dubuisson, F. (2014): 'The International Obligations of the European Union and Its Member States with Regard to Economic Relations with Israeli Settlements', p. 27.

131 International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, 9 July 2004, para 159.

132 United Nations General Assembly resolution 36/147 (1981); United Nations General Assembly resolution 47/64 (1992); United Nations General Assembly resolution ES-10/2 (1997); United Nations General Assembly resolution ES 10/15 (2004); United Nations General Assembly resolution 68/81 (2013).

133 United Nations Security Council resolution 681 (1990).

134 'Declaration of the High Contracting Parties to the Fourth Geneva Convention', 5 December 2001.

135 International Law Commission (2001): 'Draft Articles on Responsibility of States for Internationally Wrongful Acts with Commentaries', p. 114.

136 United Nations General Assembly resolution 2625 (XXV).

137 United Nations General Assembly resolution ES-10/15 (2004).

138 International Committee of the Red Cross, 'Commentary of 2016. Article 1: Respect for the Convention', para 153-163, https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1.

139 United Nations Security Council resolution 465, para 7. The same demand was reiterated in UN Security Council resolution 471 (1980), para 5.

140 A questionnaire was sent to the European External Action Service to clarify the EU's position on the Israeli annexation agenda (11 May 2017). No response was received, despite several reminders on 18, 23 and 30 May 2017.

141 'Council conclusions on the Middle East Peace Process', Foreign Affairs Council 22 July 2014, para 6.

142 'Council conclusions on the Middle East Peace Process', Foreign Affairs Council 18 January 2016, para 4 and 11.

143 'EU Statement- United Nations Security Council: Open Debate on the Middle East, including the Palestinian Question', 20 april 2017, European Union Delegation to the United Nations- New York.

144 Conversation with European diplomat, East Jerusalem, 21 March 2017.

145 'Statement by High Representative/Vice-President Federica Mogherini on the "Regularisation Law" adopted by the Israeli Knesset', 6 February 2017, European External Action Service.

146 For an in-depth analysis by 11.11.11 on the Quartet Report, see http://www.11.be/artikels/item/rapport-midden-oosten-opnieuw-woorden-maar-geen-daden (in Dutch).

147 Most EC assistance is channeled through the European Neighbourhood Instrument (ENI). The EU's development assistance is managed by the EC's Directorate-General for European Neighbourhood Policy and Enlargement Assistance (DG NEAR), while humanitarian assistance is managed by the Directorate-General for Humanitarian Aid and Civil Protection (ECHO). See https://ec.europa.eu/neighbourhood-enlargement/neighbourhood/countries/palestine_es.

148 Interviews with Palestinian and Israeli activists, Ramallah/Tel Aviv, 19-22 March 2017.

149 Conversation with European diplomat, East Jerusalem, 18 March 2017.

150 Conversation with European diplomat, East Jerusalem, 20 March 2017.

151 Conversation with European diplomat, 22 March 2017, East Jerusalem.

152 See for example 'Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention', 17 December 2014.

153 See for example 'Conclusions on the Middle East Peace Process', Foreign Affairs Council 8 December 2009; See also the EU Head of Mission in Jerusalem and Ramallah reports on East-Jerusalem.

154 See Lovatt, H. (2015): 'EU differentiation and Israeli settlements', European Council on Foreign Relations; Lovatt, H. (2016): 'EU Differentiation and the Push for Peace in Israel-Palestine', European Council on Foreign Relations.

155 See for example 'Council conclusions on the Middle East Peace Process', Foreign Affairs Council 18 January 2016.

156 Official Journal of the European Communities (2000): 'Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part', pp. 4, 17.

157 'EU parliament calls for suspending Israel pact', 10 April 2002, The Telegraph.

158 Interview with Palestinian human rights activist, Ramallah, 21 March 2017.

159 Email correspondence 11.11.11 and Martin Konecny, 30 May 2017.

160 Interview with Palestinian policy analyst, East Jerusalem, 19 March 2017.

161 The World Bank (2012): 'Fiscal Crisis, Economic Prospects. The Imperative for Economic Cohesion in the Palestinian Territories – economic monitoring report to the Ad Hoc Liaison Committee', p. 13. See also A/HRC/22/63, para 99; Who Profits: 'Ahava: Tracking the Trade Trail of Settlement Products'.

162 Crisis Action (2012): 'Trading Away Peace: How Europe helps sustain illegal Israeli settlements'.

163 United Nations Human Rights Council (2017): 'Israeli settlements in the Occupied Palestinian Territory,including East Jerusalem, and in the occupied Syrian Golan - Report of the Secretary-General', A/HRC/34/39, p. 9., Dutch

164 European Commission (2015): 'Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967';

165 Made in Illegality Campaign, Factsheet http://www.madeinillegality.org/IMG/pdf/en-madeinillegality-factsheet-2.pdf

166 Dubuisson, F. (2014): 'The international obligation of the EU and its member states with regard to economic relations with Israeli settlements'.

167 Moerenhout, T. (2017): 'The Consequence of the UN Resolution on Israeli Settlements for the EU: Stop Trade with Settlements'; See also Crawford, J. (2012): Third Party Obligations with Respect to Israeli Settlements in the Occupied Palestinian Territories'; UN Security Council Resolution 2334, para 5.

168 'European legal experts call on EU to stop trading with settlements', 23 December 2015, Mondoweiss.

169 UN General Assembly resolution A/RES/68/262.

170 'The EU non-recognition policy for Crimea and Sevastopol: Fact Sheet', 17 March 2017, European External Action Service.

171 See 'COUNCIL DECISION 2014/386/CFSP of 23 June 2014 concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol'; 'COUNCIL REGULATION (EU) No 692/2014 of 23 June 2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol'.

172 Council of the European Union (2014): 'Joint Staff Working Document - Information Note to EU business operating and/or investing in Crimea/Sevastopol'.

173 'EU-Ukraine relations, factsheet', 16 March 2015, European External Action Service.

174 Most significantly the '2013 Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards'. For a more in-depth discussion of the benefits and limitations of the Guidelines, see Dubuisson, F. (2014), pp 38-42.

175 Dubuisson, F. (2014): 'The international obligation of the EU and its member states with regard to economic relations with Israeli settlements', p. 45.

176 See also several case studies on economic activities inside the settlements: Who Profits (2012): 'Made in Israel: Agricultural Export from Occupied Territories'; Who Profits (2011): 'Forbidden Fruit: The Israeli Wine Industry and the Occupation'; Who Profits (2011): 'Sodastream: A Case Study for Corporate Activity in Illegal Israeli Settlements'; Who Profits (2017): 'Financing Land Grab: The Direct Involvement of Israeli Banks in the Israeli Settlement Enterprise'.

177 International Court of Justice, 'Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia, notwithstanding security council resolution 276', 21 June 1971.

178 See also Al Haq (2013): 'Feasting on the Occupation. Illegality of Settlement Produce and the Responsibility of EU Member States under International Law'.

179 Regulation 692/2014, European Council 23 June 2014.

180 Regulation 995/2010, European Parliament and European Council 20 October 2010.

181 See also European Parliament Directorate-General for External Policies Policy Department (2015): 'Occupation/annexation of a territory: Respect for international humanitarian law and human rights and consistent EU policy'.

182 See http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-european-union-and-comments/title-5-general-provisions-on-the-unions-external-action-and-specific-provisions/chapter-1-general-provisions-on-the-unions-external-action/101-article-21.html.

183 'Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL)', 15 December 2009, para 16.

184 13th Annual EU-NGO Forum on Human Rights on Boosting the Implementation of the EU Guidelines on International Humanitarian Law, 8-9 December 2011.

185 Interview with Israeli human rights activist, East Jerusalem, 19 March 2017.

186 Dubuisson, F. (2014): 'The international obligation of the EU and its member states with regard to economic relations with Israeli settlements', p. 3.

187 See in this regard 'Why the EU should stop blocking Palestinian membership of the ICC', 12 December 2014, Position paper from Amnesty International, Broederlijk Delen, Christian Aid, the International Federation for Human Rights (FIDH), Human Rights Watch, and Pax Christi Flanders.

THIS REPORT IS PUBLISHED BY:

11.11.11
VECHT MEE TEGEN ONRECHT

CNCD
11.11.11

CONTACT

11.11.11
Koepel van de Vlaamse Noord-Zuidbeweging
Vlasfabriekstraat 11
1060 Brussel

Willem Staes
Policy officer Middle East
(+32) (0)2 536 11 26
Willem.Staes@11.be

www.11.be