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**Detailed Scrutiny – Control of Economic Activity (Occupied Territories) Bill, 2018 [Seanad] [PMB]
– Written Submission of Al-Haq**

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Al-Haq wishes to thank the Select Committee on Foreign Affairs and Trade and Defence for the invitation to submit a written communication for the detailed scrutiny process on the Control of Economic Activity (Occupied Territories) Bill, 2018. Al-Haq strongly welcomes the introduction of the Bill as a timely and important step in support of the human rights of the Palestinian people, and urges Members of the Oireachtas to progress it as a matter of urgency. The basis of this support is outlined below, in response to the questions in the detailed scrutiny schedule most relevant to our work.

Al-Haq

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), the organisation has special consultative status with the United Nations Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, irrespective of the identity of the perpetrator, or the victim, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. The organisation conducts research; prepares reports, studies and interventions on breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to promote the Rule of Law, and ensure that international human rights standards are reflected in Palestinian law and policies.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva and is a member of the International Network for Economic, Social and Cultural Rights (ESCR-Net), the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), the Palestinian Human Rights Organisations Council (PRHOC), and the Palestinian NGO Network (PNGO). In December 2018, Al-Haq and Israeli NGO, B'Tselem, were jointly awarded the prestigious 2018 Human Rights Award of the French Republic.

PART A: Policy and Legislative Analysis

The 'policy issue' and the policy and legislative context

1. Define the Problem? The policy issue which the Bill is designed to address

According to the preamble of The Control of Economic Activity Bill (Occupied Territories) Bill 2018 (hereafter Occupied Territories Bill), the proposed legislation is:

“An Act to give effect to the State’s obligations arising under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War and under customary international law; and for that purpose make it an offence for a person to import or sell goods or services originating in an occupied territory or to extract resources from an occupied territory in certain circumstances; and to provide for related matters.”

Al-Haq strongly welcomes the Occupied Territories Bill 2018, which gives effect to Ireland’s obligations under Common Article 1 of the Geneva Conventions, which requires State parties to “respect and to ensure respect for” the Fourth Geneva Convention in all circumstances. Critically, the most recent ICRC Commentary to common Article 1, of the First Geneva Convention underscores the preventative nature of the obligation, whereby “States have recognized the importance of adopting all reasonable measures to prevent violations from happening in the first place”.¹ It is important to note that the obligation relates not only to the provisions of the Geneva Conventions, “but to the entire body of international humanitarian law binding upon a particular State”.² For example, in its Advisory Opinion on the Wall in the Occupied Palestinian Territory (2004), the International Court of Justice outlined:

“Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. *They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction*”³ (emphasis added)

¹ Article 1, Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949, Commentary of 2016, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD>

² Ibid.

³ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Advisory Opinion, ICJ Rep 2004 136, International Court of Justice, para. 159.

The obligation to “ensure respect” includes the broad requirement “to suppress all other breaches of the Conventions”. Al-Haq considers that the introduction of the Occupied Territories Bill, fulfills this direct requirement of common Article 1.

Al-Haq and Palestinian civil society partners view with the utmost seriousness, the continued appropriation of private and public Palestinian lands wherein Israeli and international companies are located, the pillage of natural resources, and export of products and services from the settlements for profit, into the Irish and European market. In 2015, [the Government of Israel] estimated that the annual value of industrial products produced in settlements and exported to Europe is \$300 million per annum, while the sale of agricultural products in the Jordan Valley is the main source of income for the settlements, with 66 percent of the produce being exported.⁴

It is clear that revenues from industrial, agricultural and touristic settlements are the oxygen for Israel’s settlement enterprise and in many cases, individuals and corporations are complicit in aiding and abetting war crimes and crimes against humanity carried out in the OPT. For this reason, Al-Haq along with Palestinian Center for Human Rights, Al-Mezan and Addameer, have submitted six communications to the Office of the Prosecutor of the International Criminal Court for consideration for the ongoing preliminary examination.⁵ It must be noted that two of the communications pertain to illegal acts amounting to war crimes, crimes against humanity and grave breaches related to the settlement regime⁶, and second, the role of corporate actors in aiding and abetting *inter alia*, the commission of pillage⁷, in relation to the exploitation of natural and agricultural resources in the OPT.

The Occupied Territories Bill 2018, fulfills Irelands international law obligations, under the Fourth Geneva Convention to criminalise the reception of settlement goods and services, and natural resources pillaged from occupied territory, entering the Irish market in order to prevent grave breaches of the Convention.

⁴ UN Secretary General, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the occupied Syrian Golan, UN Doc. A/HRC/34/39 (16 March 2017) at para. 35

⁵ Office of the Prosecutor, “Report on Preliminary Examination Activities 2018”, available at: <https://www.icc-cpi.int/itemsDocuments/181205-rep-otp-PE-ENG.pdf>

⁶ Al-Haq, “Palestinian Human Rights Organisations Submit Evidence to the ICC Prosecutor on Crimes Committed in West Bank” (20 September 2017), available at: <http://www.alhaq.org/advocacy/targets/international-criminal-court-icc/1140-palestinian-human-rights-organisations-submit-evidence-to-the-icc-prosecutor-on-crimes-committed-in-west-bank>

⁷ Al-Haq, “Palestinian Human Rights Organisations Submit File to ICC Prosecutor: Investigate and Prosecute Pillage, Appropriation and Destruction of Palestinian Natural Resources” (26 October 2018), available at: <http://www.alhaq.org/advocacy/targets/international-criminal-court-icc/1314-palestinian-human-rights-organisations-submit-file-to-icc-prosecutor-investigate-and-prosecute-pillage-appropriation-and-destruction-of-palestinian-natural-resources>

2. To What Extent is it an Issue Requiring Attention?

a. Products, Services, and Natural Resources Exported to Third States Incentivises Continuing Crimes

Al-Haq considers that the removal of Palestinians from their villages and lands, to expand the State of Israel has resulted in the ethnic cleansing of Palestinians to facilitate the Israeli colonisation of the territory. In 2014, the UN Special Rapporteur on the Situation in Palestine recommended the General Assembly refer the situation of Palestine to the International Court of Justice for an Advisory Opinion given that the **“prolonged occupation possesses legally unacceptable characteristics of ‘colonialism’, ‘apartheid’ and ‘ethnic cleansing’”** (emphasis added).⁸

According to Peace Now, Israel began construction of 1,814 new housing units between September 2015 and June 2016, representing a 34 percent increase of construction starts compared to the previous year.⁹ Meanwhile, the Israeli organization B’Tselem identified, as of 31 January 2017, approximately 67 kilometers of roads in the occupied West Bank that ‘Israel had classified for the sole, or practically sole, use of Israelis, first and foremost settlers.’¹⁰

For the past 51-years, the continuing settlement expansion, appropriation of Palestinian land for Israeli settler roads, the appropriation of Palestinian lands and natural resources for the benefit of settlers, Israeli national and international corporations, destruction of Palestinian properties and forced displacement of Palestinians by the Israeli military, has resulted in catastrophic alteration of the facts on the ground. This has been buttressed by systematic discrimination, and collective penalties inflicted by Israel to suppress Palestinians who attempt to mobilise to assert their rights.¹¹ Penalties include, mass arrests and detentions¹², forced residency revocations¹³,

⁸ A/HRC/25/67, “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk” (2014) 21.

⁹ Peace Now, Peace Now’s Annual Settlement Construction Report 2016: Stark increase in Settlement Construction (May 2017), available at: <http://peacenow.org.il/wp-content/uploads/2017/05/annual-construction-report-2016-1.pdf>

¹⁰ B’Tselem, Checkpoints, Physical Obstructions, and Forbidden Roads, 8 February 2017 (hereinafter B’Tselem, Forbidden Roads), available at: http://www.btselem.org/freedom_of_movement/checkpoints_and_forbidden_roads

¹¹ Human Rights Council, Resolution adopted by the Human Rights Council on 18 May 2018 S-28/1. Violations of international law in the context of large-scale civilian protests in the Occupied Palestinian Territory, including East Jerusalem (22 May 2018)

¹² Addameer, *Joint report estimates that 3880 Palestinians arrested in June 2017, 16 July 2017, 9 August 2017*, available at: <http://www.addameer.org/news/joint-report-estimates-388-palestinians-arrested-june-2017><http://www.addameer.org/news/joint-report-estimates-880-palestinians-arrested-july-2017>

¹³ Al-Haq and other Palestinian Human Rights Organisations, *Residency Revocation Infographic*, June 2017, available at: <http://www.alhaq.org/publications/papers/VP-ResidencyRevocation-FINAL-20170612.pdf>

punitive house demolitions¹⁴, and siege and blockade of large parts of the territory¹⁵ and wilful killing.¹⁶

Israel and international companies are not only profiting from the colonisation, but have an integral role in fuelling the settlement expansion. For example, most of the large industrial settlements are located within or near settlement cities and are linked by settler only roads, and accessed through military and security checkpoints:

- Etzion Industrial Zone¹⁷: Located near settlements, Alon Shvut, Migdal Oz, Efrat, Kfar Etzion
- Atarot Industrial Zone¹⁸: Within access of settlement blocs in occupied Jerusalem
- Barkan Industrial Zone¹⁹: Near the settlements of Barkan, Kiryat Netafim
- Ariel-West Industrial Zone²⁰: Near the settlements of Ariel and Barkan
- Bustani Hefetz: Near the settlement of Avnei Hefetz

The Occupied Territories Bill 2018, will prevent the goods and services from these companies located in illegal settlements, being imported into Irish territory. Such a measure, which targets the commercial basis of the illegal settlement enterprise, is hugely important. It is a meaningful

¹⁴ Al-Haq, *Action Alert: Palestine on the Brink*, 10 October 2015, (hereinafter Al-Haq, *Palestine on the Brink*), available at: <http://www.alhaq.org/advocacy/topics/wall-and-jerusalem/965-al-haq-action-alert-palestine-on-the-brink>

¹⁵ Al-Haq, “Gaza Siege: Human Rights Council Must Act to End Israeli Impunity” (2010), available at: <http://www.alhaq.org/advocacy/topics/gaza/160-gaza-siege-human-rights-council-must-act-to-end-israeli-impunity>

¹⁶ Al-Haq, “Escalations in Killings in the Occupied West Bank (Reporting Period: 4 March 2019 – 17 March 2019)”, available at: <http://www.alhaq.org/documentation/weekly-focuses/1388-escalations-in-killings-in-the-occupied-west-bank-reporting-period-4-march-2019-17-march-2019>

¹⁷ Gush Etzion Industrial Zone, available at: <http://economy.gov.il/English/Industry/DevelopmentZoneIndustryPromotion/ZoneIndustryInfo/Pages/Etzion.aspx>

¹⁸ Atarot Industrial Zone, available at: <http://economy.gov.il/English/Industry/DevelopmentZoneIndustryPromotion/ZoneIndustryInfo/Pages/Atarot.aspx>

⁶ The following businesses are located in the Barkan Industrial Zone:

Achva/Halva: <http://www.progressiveisrael.org/list-of-settlement-products/?print=pdf>;
Distek: <https://whoprofits.org/company/distek/>
<https://settlementproductshebrew.fandom.com/he/wiki/%D7%AA%D7%A2%D7%A9%D7%99%D7%94-%D7%9B%D7%9C%D7%9C%D7%99> <https://www.distekinc.com/>;
Isratoys: http://mp100.info/industry/share_website.php <https://www.isratoys.co.il/>; Keter Plastic: <https://whoprofits.org/company/keter-plastic-keter-group/>; Shamir Salads: <https://corporateoccupation.wordpress.com/2010/05/21/working-for-shamir-salads-in-barkan-industrial-zone/> http://mp100.info/industry/share_website.php

²⁰ Ariel-West Industrial Zone, available at: <http://www.arielip.co.il/>

step towards cutting off a vital artery sustaining the viability of the settlements. Likewise, the Bill will criminalise and prevent the importation into Ireland, of agricultural produce grown in illegal agricultural settlements on Palestinian lands in the occupied Jordan Valley. This will prevent settlement dates, olives, citrus fruits, figs, pomegranates, guavas, melons, watermelons, grapevines, peppers, cucumbers, onions, herbs, cherry tomatoes, eggplants, organic melons, sweet potatoes and flowers, from entering the Irish market.²¹ Meanwhile online booking platforms based in Ireland, will be prohibited from providing bed and breakfast and other touristic services²² to settlements located in the West Bank.

Most of Palestine’s natural resources are located in Area C, which constitutes over 60 percent of the West Bank.²³ According to the World Bank, the land, stone and Dead Sea mineral deposits in Area C could boost the Palestinian economy by \$1.7 billion each year, if Palestinians had access to them.²⁴ An additional \$1.7 billion would follow from the subsequent construction, tourism and telecommunications booms, which would in turn reduce poverty, unemployment and dependence on foreign aid. The Occupied Territories Bill 2018, will prevent Irish citizens ordinarily resident in Ireland from exploiting the resources of the occupied territory in violation of international law, ensuring that revenues from Palestine’s natural resources are used for the benefit of the protected Palestinian population.

Al-Haq considers that the forced de-development of the Palestinian economy under Israel’s military occupation coupled with the haemorrhaging of Palestinian national resources from the territory, is detrimental to the viability of an independent Palestinian State. In an authoritative study on ‘Area C and the Future of the Palestinian Economy’, the World Bank concluded that Israel’s policies and practices in Area C, restricting Palestinian access to resources and production had cost Palestine, “some USD 3.4 billion—or 35 percent of Palestinian GDP in 2011”, and that “tapping this potential output could dramatically improve the PA’s fiscal position”.²⁵

²¹ Al-Haq, “Feasting on the Occupation” (2013) 12, available at:

<http://www.alhaq.org/publications/Feasting-on-the-occupation.pdf>

²² Al-Haq, “Business and Human Rights Focus Settler Tourism in the Occupied West Bank and Israel’s Unlawful Appropriation of the ‘Ein Fara Spring” (3 April 2019), available at:

<http://www.alhaq.org/advocacy/topics/business-and-human-rights-focus/1383-business-and-human-rights-focus-settler-tourism-in-the-occupied-west-bank-and-israels-unlawful-appropriation-of-the-ein-fara-spring>

²³ Al-Haq, “Facts on the Ground” (2015) 5, available at:

<http://www.alhaq.org/publications/facts.on.the.ground.pdf>

²⁴ Ibid.

²⁵ World Bank Study, “Area C and the Future of the Palestinian Economy” (2013) 5, available at:

<http://documents.worldbank.org/curated/en/257131468140639464/pdf/893700PUB0978100Box385270B00PUBLIC0.pdf>

b. The Illegality of Settlements under International Law, requires States to prohibit the import and sale of settlement goods and provision of settlement services

Al-Haq strongly supports the adoption of the Occupied Territories Bill 2018. In particular, Al-Haq considers the criminalization of the importation of settlement goods, sale of settlement goods, and provision of settlement services as consistent with Ireland's requirement to respect and ensure respect for the Fourth Geneva Convention, and obligations to provide effective penal sanctions for grave breaches of the Geneva Conventions.

In 1967, following the Six Day War, Israel on the basis of its military presence and substitution of governing authority *de facto* became the belligerent occupant of the Palestinian territory, i.e. the Gaza Strip and West Bank including East Jerusalem. As such, Israel under the framework of occupation law as provided for under the Hague Regulations (1907), the Fourth Geneva Convention (1949), the customary provisions of Additional Protocol 1 (1977) and general international law, assumed the function of administrative authority in the occupied territory. According to the principles of occupation law, the Occupying Power's administration of occupied territory is meant to be temporary and conservationist in nature, with the belligerent maintaining the *status quo ante bellum* of the territory, subject to the humanitarian provisions of the Fourth Geneva Convention and considerations of military necessity.²⁶ This significantly limits the occupant's competence to radically alter the laws in force in the occupied territory. Importantly, because the Occupying Power is not sovereign, it does not have the competence to alienate the public immoveable property of the occupied territory, a function of State held in abeyance throughout the occupation, for the returning sovereign.²⁷

A number of key provisions of the Hague Regulations limit the belligerent occupants use of public and private property and therefore protect the land of the ousted sovereign and protected occupied population from confiscation for the purposes of settlement. For example, Article 46 of the Hague Regulations finds that private property cannot be confiscated, a provision that also protects private real estate in the occupied territory.²⁸ In addition, property is divided into moveable or immoveable property for consideration, where immoveable property can only be subject to the temporary use, or usufruct of the Occupying Power and where the capital of the property must be safeguarded for the returning sovereign *post bellum*.²⁹ This means that public lands remain under the ownership of the ousted sovereign.³⁰ The Occupying Power can

²⁶ Article 43, Hague Regulations (1907)

²⁷ Allan Gerson, "War Conquered Territory, and Military Occupation in the Contemporary Legal System" 18 *Harv. Int'l. L. J.* 525 1977, p. 535.

²⁸ Article 46, Hague Regulations (1907).

²⁹ Article 55, Hague Regulations (1907).

³⁰ Allan Gerson, "War, Conquered Territory, and Military Occupation in the Contemporary International Legal System" 18 *Harv. Int'l L. J.* 525 1977, 537.

temporarily use the fruits of the land, such as continuing mining or other functions, where to not do so, would impair the value of the stock. However, the Occupying Power is prohibited from permanently alienating public lands or allocating the land and resources of the occupied territory under long term lease for resource exploitation, or from developing public land for residential housing estates for the benefit of a foreign population for example, as this would amount to a significant breach of the temporary and *usufructuary* limitations inherent in Article 55 of the Hague Regulations.³¹

Accordingly, a number of the underlying acts involved in constructing settlements in occupied territory, amount to grave breaches of the Fourth Geneva Convention (1949). The latter obliges High Contracting Parties “to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches”.³² The grave breaches include *inter alia*, unlawful deportation or transfer and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly. As such, the displacement of the protected population in the occupied territory and the resulting transfer in of the nationals of the Occupying Power to settle or colonise territory, amount to grave breaches of the Geneva Conventions subject to penal sanction. Similarly, the appropriation of land not carried out for the purposes of military necessity during military operations, but rather for long term residential, industrial and agricultural settlement amounts to the grave breach of extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.

Notably elements of the settlement enterprise may also amount to war crimes and crimes against humanity under the Statute of the International Criminal Court, including the crimes of forcible transfer and transfer in³³, extensive appropriation and destruction of property³⁴, pillage³⁵ and also supporting crimes to ensure the maintenance of the settlement regime such as the crimes of wilful killing³⁶, persecution³⁷, and apartheid³⁸. Al-Haq recalls that an Irish national who does any act which amounts to a war crime or crime against humanity is guilty of an ‘International Criminal Court offence’, under Article 12(1) of the International Criminal Court Act, 2006 and is liable to the penalty provided for it. In this respect, Al-Haq contends that the criminalization of the importation of settlement goods, the sale of settlement goods, and provision of settlement services is consistent with Ireland’s obligations under the Article 25 of the International Criminal

³¹ Pieter Bekker, The Legal Status of Foreign Economic Interests in Occupied Iraq, ASIL Insights, July 2003.

At <http://www.asil.org/insigh114.cfm> (Last visited 27 November 2010).

³² Article 146, Fourth Geneva Convention (1949)

³³ Article 8(2)(b)(viii) of the Rome Statute.

³⁴ Article 8(2)(a)(iv) of the Rome Statute.

³⁵ Article 8(2)(b)(xvi) of the Rome Statute.

³⁶ Article 8(2)(a)(i) of the Rome Statute.

³⁷ Article 7(1)(h) of the Rome Statute.

³⁸ Article 7(1)(j) of the Rome Statute.

Court Act, 2006, to hold persons criminally responsible for "the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission".³⁹

Although Israel is not party to the Hague Regulations, they apply as customary international law to Israel's administration of the OPT, prohibiting Israel from appropriating public and private land in the occupied territory.⁴⁰ Notably, under Proclamation No 3, the military commander of Israel's occupying forces determined that it would 'observe the provisions of the Geneva Convention for the Protection of Civilians in Time of War'.⁴¹ However, despite Israel's ratification of the Fourth Geneva Convention, and initial commitment to apply the Geneva Conventions, it has limited the application of the Convention, to an undefined list of humanitarian norms applied on an ad hoc basis.⁴² In addition, the Israeli High Court of Justice, has ruled that issue of settlements is non judiciable before the Israeli courts and is a matter for political resolution, granting the State a *carte blanche* to continue the colonial settlement enterprise.⁴³

Specifically, the appropriation of land for settlements by the military force, infringes the principle of territorial integrity and amounts to an acquisition of territory by use of force, in violation of principles of international law, enshrined in Article 2(4) of the Charter of the United Nations. State parties have an obligation to not recognize as lawful, a situation (such as the creation of settlements) created by the illegal use of force or other serious breaches of a *jus cogens* obligation.⁴⁴

Finally, Al-Haq highlights the UN Security Council Resolution 2334 (2016) mandate calling on all States, "to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967". Accordingly, in December 2018, UN Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary General, Nickolay Mladenov, in a Security Council briefing, mentioned the Occupied Territories Bill in relation to

³⁹ Article 25 (3)(c), International Criminal Court Act, 2006, available at:
<http://www.irishstatutebook.ie/eli/2006/act/30/enacted/en/print>

⁴⁰ Article 46, 52, 55, of the Hague Regulations (1907).

⁴¹ Addameer, "Military Courts in the Occupied Palestinian Territory" (23 October 2018).

⁴² HJ 698/80, Kawasma v. Minister of Defence; HJ 5973/92 Association for Civil Rights in Israel et al. v. Minister of Defence et al.; Yoram Dinstein, *The International Law of Belligerent Occupation*, Cambridge, 2009.

⁴³ HJ 390/79, 'Izzat Muhammad Mustafa Duweikat et 16 al. v. Government of Israel et al., At the Supreme Court Sitting as the High Court of Justice (6 September 1979), available at:
http://www.hamoked.org/files/2010/1670_eng.pdf

⁴⁴ Article 41(2), The Articles of the International Law Commission (ILC) on the Responsibility of States for Internationally Wrongful Acts (ILC Articles on State Responsibility).

Resolution 2334 as a measure of State practice distinguishing between the OPT and the State of Israel.⁴⁵

3. What is the Scale of the Problem and Who is Affected?

a. Immediate Settlement of West Bank in 1967

Almost immediately following the Six Day War and in the first months of the occupation, Israel began to implement its policy and plan to appropriate large tracts of Palestinian land for the purposes of settlement. On 11 June 1967, the second day of the occupation, Israel demolished the entire Magharib quarter of the Old City of Jerusalem with dynamite and bulldozers, destroying 135 homes and forcibly displacing 650 people, designating the entire area for ‘Jewish Quarter redevelopment’.⁴⁶ In the same month, Israel altered and expanded the municipal boundaries of Jerusalem to include 28 Palestinian villages in the West Bank.⁴⁷ According to Meron Benvenisti, the mayor of Jerusalem at the time, the expanded boundary was intended to incorporate ‘a maximum of vacant space with a minimum of Arabs’.⁴⁸ The following year, Israel issued a military order expropriating 29 acres of land in the south of the Old City for ‘public purposes’. Jewish families were transferred into the area to establish a Jewish presence thus altering the demography of the Old City. Between September 1967 and 1968, Israel authorized and constructed Gush Etzion, a Jewish settlement in Hebron, alongside settlements in the Jordan Valley, East Jerusalem and the Dead Sea. By the end of 1967, Yigal Allon, the Head of Israel’s Ministerial Committee for Settlements began to plan an official settlement map for Jewish settlements in the Eastern part of the West Bank.⁴⁹

On 14 September 1967, Theodor Meron, Legal Advisor in Israel’s Ministry of Foreign Affairs warned that ‘in our settlement in Gush Etzion, evidence of intent to annex the West Bank to Israel can be seen’. Noting the absolute prohibition on settlement building under Article 49 of the Fourth Geneva Convention he suggested that settlements be carried out by military rather than civilian entities on a temporary basis, but warned that the international community had not

⁴⁵ Security Council Briefing on the Situation in the Middle East, Reporting on UNSCR 2334 (As Delivered by UN Special Coordinator NICKOLAY MLADENOV), (18 December 2018), available at: <https://unsco.unmissions.org/security-council-briefing-situation-middle-east-reporting-unscr-2334-delivered-un-special-0>

⁴⁶ Michael Dumper, ‘Israeli Settlement in the Old City of Jerusalem’ XXI (4) Journal of Palestine Studies (1992) 38.

⁴⁷ Abdel Monem Said Aly, Shai Feldman, Khalil Shikaki, Arabs and Israelis: Conflict and Peacemaking in the Middle East (Palgrave MacMillan, 2013) 130

⁴⁸ Hani Faris, The Failure of the Two-State Solution: The Prospects of One State in the Israel Palestine Conflict (I.B Taurus, 2013) 37.

⁴⁹ Paul Rivlin, The Israeli Economy from the Foundation of the State through the 21st Century (Cambridge University Press, 2011) 143.

accepted Israel's arguments that 'the West Bank is not "normal" occupied territory'.⁵⁰ It was evident that the Ministry of Foreign Affairs and the Political Secretary to the Prime Minister were put on notice that the colonisation was unlawful but it continued regardless with the support of all organs of the State, including the judiciary. Indeed, Israel's courts uphold the colonisation of the occupied territory, deliberately refusing to apply Article 49 of the Fourth Geneva Convention to the occupied territory, perpetuating the colonisation under a veneer of legality.⁵¹

In June 1969, Israel's Prime Minister Gold Meir argued against the very existence of the Palestinian people, stating 'It was not as though there was a Palestinian people in Palestine considering itself as a Palestinian people and we came and threw them out and took their country away from them. They did not exist'.⁵² The statement cut to the core of Israel's colonising ideology.

While Israel's colonising plans in occupied territory were immediately apparent beginning in 1967, also immediately apparent was the international community's failure to intervene to protect the occupied Palestinian population from the colonisation. Apart from a myriad of General Assembly and Security Council resolutions, and an Advisory Opinion from the International Court of Justice on nuanced issues relating to the conflict, the international community has failed to trigger the necessary mechanisms at its disposal to counter the illegal appropriation of Palestinian territory. No economic sanctions were authorized against Israel, no multinational forces were sent into the OPT to end the occupation, and Israel has been allowed to act for fifty-one years with impunity under the shield of a non-existent 'peace process'. Third States similarly failed Palestine for fifty-one years in their obligations 'to respect and ensure respect' for the Fourth Geneva Convention 'in all circumstances' failing to intervene to halt the colonisation.⁵³

b. Who is affected by the Settlement problem?

The protected Palestinian population under the effective control of the Israeli military authority, are affected by land appropriations carried out for settlement construction.⁵⁴ The denial of freedom of movement in the West Bank, creation of enclaves to contain Palestinian

⁵⁰ Ministry of Foreign Affairs, Settlement in the Administered Territories (18 September 1967)

⁵¹ HCJ 698/80, Kawasma v. Minister of Defence; HCJ 5973/92 Association for Civil Rights in Israel et al. v. Minister of Defence et al.; YoramDinstein, *The International Law of Belligerent Occupation*, Cambridge, 2009.

⁵² Carol Bisharat, 'Palestine and Humanitarian Law: Israeli Practice in the West Bank and Gaza' 12 *Hastings International and Comparative Law Review* (1988-1989) 325.

⁵³ See, Ardi Imseis, *The United Nations and the Question of Palestine: A Study in International Legal Subalternity* (Doctoral thesis) (2019), available at: <https://doi.org/10.17863/CAM.37976>

⁵⁴ Article 4, Fourth Geneva Convention (1949).

communities⁵⁵ and the creation and expansion of settlements, directly and singularly impacts the protected Palestinian population. Critically the Palestinian population has the right to self-determination and permanent sovereignty over their national and natural resources, inalienable rights which are being violated by corporate exploitation and illegal settler trade with third countries.

4. What is the Evidence Base for the Bill?

a. The Current Rate of Expansion of Settlements in the West Bank including East Jerusalem in 2019

Israel has radically amended the planning and zoning laws in the OPT to facilitate settlement construction. Under Military Orders 313,⁵⁶ and 418,⁵⁷ Israel altered the Jordanian Planning of Cities, Villages and Construction Law No. 79 of 1966, allocating the competence for planning, zoning and the construction process to the military commander and out of the control of Palestinian Village Councils. The military orders, issued for purposes unrelated to military necessity and ensuring the humanitarian guarantees of the Fourth Geneva Convention, breach Article 43 of the Hague Regulations. Israel now controls all planning and zoning in the West Bank, conferring competence to build in settlement areas, from the Palestinian Village Councils, to the Military Commander. At the same time, Israel has prohibited Palestinian construction on so-called state and survey land in declared firing zones, nature reserves or national parks, and on land that falls within the jurisdiction of settlement local and regional councils.⁵⁸

⁵⁵ Al-Haq, “Al-Haq welcomes the appointment of the Fact-Finding Mission to Investigate Impact of Israeli Settlements” (2012), available at: <http://www.alhaq.org/advocacy/targets/united-nations/598-al-haq-welcomes-the-appointment-of-the-fact-finding-mission-to-investigate-impact-of-israeli-settlements>

⁵⁶ Order concerning Monitoring of Construction Works (West Bank) No. 393, 1970.

⁵⁷ Order concerning Towns, Villages and Buildings Planning Law (West Bank) No. 418, 1971. On file with Al-Haq.

⁵⁸ Survey land: This term describes a category of land, which was not declared as state land. The status of this category of land is being examined by the Israeli occupying authorities, with a view that the land is kept as property of the government, which enables the occupying authorities to use it. This category makes up 20 percent of the land in Area C.

Firing zones: This category concerns lands that are declared but not necessarily used as firing fields. This land makes up 30 percent of area C and 18 percent of the West Bank. This land is mostly located in the Jordan valley and the eastern slopes of Bethlehem and Hebron governorates.

Nature reserve or national parks: This category makes up 14 percent of Area C. Lands under the jurisdiction of settlements’ local and regional councils: This land constitutes 63 percent of Area C. Another 3.5 of percent Area C is located between the Annexation Wall and the Green Line.

According to the Israeli Civil Administration, Palestinians submitted 1,624 applications for building permits between January 2000 and September 2007.⁵⁹ Of these applications only 91 were approved.⁶⁰ During the same period the Civil Administration issued demolition orders for 4,820 houses owned by Palestinians in Area C.⁶¹ Between 2000 and 2016, Al-Haq documented the demolition by Israeli occupying forces of 3,025 structures in the West Bank, leaving 8,608 Palestinians displaced. There was a marked escalation in demolitions in 2016 whereby 73 percent of structures were demolished and an increase by 143 percent on the number of displaced people compared to 2015.

In March 2019, citing the lack of building permits, the Israel Occupying Force (IOF) demolished 23 structures across the OPT, including 12 homes, one mosque, and 10 private properties. In relation to the 12 demolished structures, two families were displaced for a second time after their homes were demolished.⁶² Of all affected structures, nine were houses and three Bedouin dwellings. All these were located in the vicinity of the settlements, settlement planned areas or settler bypass roads. Five families were unable to remove their belongings prior to demolitions. While three demolished structures were under construction, all other homes were inhabited. Al-Haq documented the use of Hyundai, Caterpillar, JCB and Volvo equipment to demolish the structures.⁶³ Demolitions resulted in the displacement of 54 persons, including 27 women, 23 children, and two persons with disabilities. Meanwhile in March 2019, plans for the construction of 4,500 settlement units in the West Bank were reported in the Israeli media.⁶⁴

Currently, there are approximately 250 settlements and outposts located in the West Bank, including East Jerusalem.⁶⁵ Of these, there are 131 settlements officially authorized by the Israeli Ministry of the Interior, 110 outposts and 11 settlement enclaves annexed to the Jerusalem municipality.⁶⁶ As of 2018, 628,000 Israeli settlers have been transferred into the West Bank,

⁵⁹ BIMKOM, *The Prohibited Zone: Israeli Planning Policy in the Palestinian Villages in Area C*, June 2008, page 10, (hereinafter BIMKOM *The prohibited Zone*), available at: <http://bimkom.org/eng/wp-content/uploads/ProhibitedZone.pdf>

⁶⁰ BIMKOM *The Prohibited Zone*, 10.

⁶¹ BIMKOM, *The Prohibited Zone*, 7.

⁶² Al-Haq, "Israeli Occupying Forces Kill 21 Palestinians in March 2019 - Al-Haq Field Report March 2019", available at: http://www.alhaq.org/images/stories/PDF/March%20Report.English%20Translation_sp.pdf

⁶³ Ibid.

⁶⁴ Middle East Monitor, "Israel to approve 4,500 new settlement units in West Bank" (30 March 2019), available at: <https://www.middleeastmonitor.com/20190330-israel-to-approve-4500-new-settlement-units-in-west-bank/>

⁶⁵ UN OCHA, Humanitarian Impact of Settlements, available at: <https://www.ochaopt.org/theme/humanitarian-impact-of-settlements>

⁶⁶ B'Tselem, "Settlements" (16 January 2019), available at: <https://www.btselem.org/settlements>

including 209,270 settlers in East Jerusalem.⁶⁷ The settlements comprise, not only the extensive city settlements, Maale Adumim, which, for example, has a population of 37,525 Israeli settlers, but also the surrounding Palestinian lands held ‘temporarily’ as military zones, but which are in fact intended to absorb future settlement expansion, and also lands appropriated for agricultural⁶⁸ and industrial settlements, land appropriated by Israel under military order for nature reserves, archaeological excavation, military zones and military training or firing zones.

Meanwhile industrial zones are established in close proximity to residential settlements to provide employment to the settlers in Israeli and international corporations located therein, including for example Siemens, Coca Cola, Volvo, Mercedes.⁶⁹ In the Dead Sea region in the Jordan Valley, the cosmetics company Ahava owned by the Chinese company Fosun, operates from the Mitzpe Shalem settlement.⁷⁰ Ahava has held the only Israeli granted license for extracting Dead Sea muds and minerals used in Dead Sea cosmetics, from the Palestinian Dead Sea coast.⁷¹ Notably, while tourists flock on package holidays to the Dead Sea settlement resorts such as Kalia Beach and tourist settlement sites on Palestinian lands such as Qumran, a military checkpoint on the main and only coast road to the sites, restricts Palestinian access to Ahava and the Mitzpe Shalem settlement area.

Today the rapid expansion of settlements, has resulted in the mass appropriation of public and privately owned Palestinian land across the West Bank including East Jerusalem. Israel has appropriated on mass, communal Palestinian village lands including *Waqf*,⁷² *Mulk*,⁷³ *Miri*,⁷⁴

⁶⁷ Human Rights Watch, Israel and Palestine, Events of 2018, available at: <https://www.hrw.org/world-report/2019/country-chapters/israel/palestine>; B’Tselem, “Statistics on Settlements and Settler Population” (16 January 2019), available at: <https://www.btselem.org/settlements/statistics>

⁶⁸ Kerem Navot, “Israeli Settlers Agriculture as a Means of Land Takeover in the West Bank” (August 2013), available at: <https://www.diakonia.se/globalassets/blocks-ihl-site/ihl-file-list/ihl--reports/israeli-settlers-agriculture-as-a-means-of-land-takeover-in-the-west-bank.pdf>

⁶⁹ Al-Haq, “Business and Human Rights” (2016) 21, available at: <http://www.alhaq.org/publications/publications-index/item/business-and-human-rights-in-palestine>; Companies on file with Al-Haq.

⁷⁰ See, A/GRC/40/73, “Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967” (15 March 2019), available at: <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24349&LangID=Epara.26-28>

⁷¹ Al-Haq, “Pillage of the Dead Sea: Israel’s Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory” (2012) 21 (footnote 41), available at: <http://www.alhaq.org/publications/publications-index/item/pillage-of-the-dead-sea-israel-s-unlawful-exploitation-of-natural-resources-in-the-occupied-palestinian-territory>

⁷² Article 4, Ottoman Land Code; Raja Shehadeh, *The Land Law of Palestine*, page. 86; B’Tselem, *Under the Guise of Legality*, page. 22.

⁷³ Article 2(ii), Ottoman Land Code

⁷⁴ Raja Shehadeh, *The Land Law of Palestine*, page 94; B’Tselem, *Under the Guise of Legality*, page. 20.

Matrouk land,⁷⁵ *Mawat*⁷⁶ lands, each held under varying relationships of public or mixed public and private ownership, which were classified for public use under the Ottoman Land Laws (1858). Israel has categorised all uncultivated Palestinian lands, as no man's land, and absorbed it into the Israeli State portfolio, in stark violation of the *usufructuary* limitations of Article 55 of the Hague Regulations. Through this means alone, since 1967, Israel has declared approximately 755,000 dunams (186,564.563 acres) of the lands of the West Bank as Israeli state lands.⁷⁷

The situation on the ground can only be described as dire. As Israel's impunity continues, buttressed by the support of the United States and inaction of the international community, tensions have escalated on the ground, with new peaks in settler violence against Palestinian communities. In January 2019, Israel unilaterally withdrew from the Temporary International Presence in Hebron (TIPH), a monitoring agency which had been present in Hebron for over twenty years to protect the Palestinian community against settler attacks with a mandate of "preventing violence and promoting a feeling of security for the population in Hebron". Prime Minister of Israel, Netanyahu withdrew arguing that Israel "will not allow the continued presence of an international force that acts against us".⁷⁸ In a statement, the EU spokesperson warned that the removal of the TIPH "risks further deteriorating the already fragile situation on the ground".⁷⁹

Throughout April 2019, Al-Haq documented serious incidents of settler violence escalating across the West Bank. On 3 April 2019, Muhammad Abdel Mun'em Abdel Fatah, 23, was fatally shot by two Israeli settlers, at the Beita roundabout, south of Nablus.⁸⁰ On Saturday 13 April 2019, about 17 masked Israeli settlers from the settlement of Yitzhar, attacked Ziyad Abdel 'Aziz Shehadah and his family in the driveway of their home, in 'Urif village, south of Nablus.⁸¹ At the time, Ziyad's wife, Raja', and their five-year old son, two-year old daughter and three-month old baby, were all in the family car, about to leave the house to attend a wedding. On Monday 29 April 2019, at approximately 5:20 pm, about 10 Israeli settlers, ages ranging between 15 and 18, from the Giva't

⁷⁵ Article 5(ii) of the Ottoman Land Code.

⁷⁶ Article 103 of the Ottoman Land Code; B'Tselem, *Under the Guise of Legality*, page 29.

⁷⁷ Kerem Navot, *Blue and White Make Black. The Work of Blue Line Team in the West Bank*, December 2016, page 32, available at: <http://www.keremnavot.org/blueandwhitemakeblack>

⁷⁸ Reuters, "Netanyahu to eject foreign observers in flashpoint Hebron" Ynet (28 January 2019), available at: <https://www.ynetnews.com/articles/0,7340,L-5454258,00.html>

⁷⁹ European Union External Action, "Statement by the Spokesperson on the Israeli Government's decision not to renew the mandate of the Temporary International Presence in Hebron" (1 February 2019), available at: https://eeas.europa.eu/headquarters/headquarters-homepage/57554/statement-spokesperson-israeli-government%E2%80%99s-decision-not-renew-mandate-temporary-international_en

⁸⁰ Al-Haq, Special Focus: Israeli Settlers Wilfully Kill a Palestinian, Attack Palestinian Homes and Families - Reporting Period: 1 April - 15 April 2019, available at: <http://www.alhaq.org/advocacy/topics/settlements-and-settler-violence/1412--qq->

⁸¹ Ibid.

Ronin outpost, attacked Muhammad Yousef Omran, 38, in the eastern side of Burin, south of Nablus.⁸²

In Jerusalem, following the recognition by the U.S. of Jerusalem as the capital of Israel in December 2017, and subsequent relocation of the U.S embassy in May 2018, the situation has become progressively worse, with a marked acceleration in house demolitions, accompanied by approved settlement expansion. Between 2016 and 2018, Al-Haq documented 787 Palestinians in East Jerusalem⁸³ displaced as a result of administrative and punitive demolitions carried out by the Israeli occupying authorities. Since the start of 2019, Al-Haq's has recorded a rising number of demolitions in East Jerusalem, with 75 structures demolished in four first months of 2019. This included 19 structures in January, 11 structures in February, 9 structures in March and 36 in April.⁸⁴ Meanwhile on 14 May, Israel's Local Planning and Building Committee of the Jerusalem Municipality approved 940 housing units in East Jerusalem settlement blocs.⁸⁵

5. Is there a Wider EU/International Context

a. International Context: Consistency with Two State Solution

Israel is clear in its policy to continue settlement expansion, despite the 'two State solution', the Security Council mandated Roadmap for Peace⁸⁶, the Oslo Accords, and attempted peace initiatives such as the Kerry Economic Peace Plan. In 2000, the Guidelines of the first Netanyahu government described its sixth strategic goal of government as:

Settlement in the Negev, the Galilee, the Golan Heights, the Jordan Valley, and in Judea and Samaria and Gaza is of national importance, to Israel's defence and an expression of [sic] Zionist fulfilment. The Government will

⁸² Ibid.

⁸³ Al-Haq, <http://www.alhaq.org/advocacy/topics/wall-and-jerusalem/1335-special-focus-highest-rate-of-demolitions-in-shufat-refugee-camp-in-15-years>

⁸⁴ Figures on file with Al-Haq. According to UN OCHA, by 30th April, 2019, there were 111 structures demolished in East Jerusalem. In the first four months of 2019, the demolition rate was higher than the number of demolitions for the whole year of 2018. In April 2019 alone, 56 Palestinian-owned structures were demolished, including one donor-funded structure. See UNOCHA, available at: <https://app.powerbi.com/view?r=eyJrljoioGFIMmRhYjgtYmMxMC00YTYYLTg3ZmEtZGY1ZDEwODk5ZDU5IiwidCI6IjBmOWUzNWRiLTU0NGYtNGY2MC1iZGNjLTVIYVY0XmU2ZGM3MCIslmMiOjh9>

⁸⁵ Middle East Monitor, "Israel approves 940 housing unit in East Jerusalem settlements" (14 May 2019), available at: <https://www.middleeastmonitor.com/20190514-israel-approves-940-housing-unit-in-east-jerusalem-settlements/>

⁸⁶ UNSC/RES/1515 (2003).

alter the settlement policy, act to consolidate and develop the settlement enterprise in these areas, and allocate the resources necessary for this.⁸⁷

Successive Israeli governments are following this course at full throttle. In August 2017, Israeli Minister for Education, Naftali Bennett told settlers in the West Bank that ‘we shouldn’t need permits, building in Judea and Samaria should be unrestricted. The freedom to build in **our country...**(emphasis added)⁸⁸ In 2018, the Israeli Minister for Defense Avigdor Lieberman, announced the construction of 3,900 settlement units in 30 settlements across the West Bank.⁸⁹ In April 2019, in a pre-election promise Prime Minister Netanyahu clarified that he would not remove “a single person” illegally transferred into the settlements and clarified, “I know what I said: I said there can’t be the removal of even one settlement, and [that Israel insists on] our continued control of all the territory to the west of the Jordan”.⁹⁰

In December 2016, the preamble to UNSC Resolution 2334, affirmed that:

“the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace”

As the years have passed, 51-years now into Israel’s belligerent occupation, the longest occupation in recorded history since the Hague Regulations (1907), the occupation has taken on a number of permanent elements. In its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, the International Court of Justice (ICJ) proposed that the Wall represented a *de facto* annexation of the territory, in that it created a *fait accompli* on the ground that could well become permanent.”⁹¹

In February 2017, a radical and transformative law was passed at the Israeli Knesset detailing Israel’s new procedure for the expropriation of Palestinian land for settlement. The stated objective of the law is to “regularize settlement in Judea and Samaria, and to enable it to continue

⁸⁷ Guidelines of the 27th Government of Israel, available at www.likud.org/govt/guidelines.html (Copy of Guidelines on File with Al-Haq).

⁸⁸ Berger, Netanyahu Vows to Never Remove Israeli Settlements.

⁸⁹ Madeeha Araj/ NBPRS, “Report: Settlement expansion growing after referral of Israeli Crimes to ICC” (28 May 2018), available at: <http://english.pnn.ps/2018/05/28/report-settlement-expansion-growing-after-referral-of-israeli-crimes-to-icc/> The settlements include, Ariel, Ma’aleh Adumim, Kiryat Arba and Kfar Atzion.

⁹⁰ Times of Israel, “Netanyahu: If I’m re-elected, I’ll extend sovereignty to West Bank settlements” (6 April 2019), available at: <https://www.timesofisrael.com/netanyahu-if-im-re-elected-ill-extend-sovereignty-to-west-bank-settlements/>

⁹¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ Reports 136 <www.icj-cij.org/en/case/131> [121].

to strengthen and develop”.⁹² Where there is “doubt” over the ownership of land located in the West Bank and the settlement has been constructed in “good faith”, the State will register the property as belonging to the Government of Israel. Additionally, in 2017, a number of bills⁹³ were tabled before the Israeli Knesset to expand the Jerusalem municipality and absorb the settlement blocs, in an attempt to extend Israeli sovereignty over the settlements. Palestinian protests against the alteration of the status of Jerusalem, including the relocation of the US Embassy on 14 May 2018, were met with one of the worst days of violence in the OPT, with Israeli soldiers opening fire on and killing 61 and injuring 1,861 civilian protestors in the Gaza Strip.⁹⁴ In July 2018, Israel adopted the Nation State Law. Article 1(c), holds that the right to national self-determination in the State of Israel is singularly “unique to the Jewish People”.⁹⁵

Meanwhile Israel has accelerated attempts to transform the Jerusalem periphery and absorb the so-called E1 area located in the West Bank, into the State of Israel. The “E1” area, encompassing 22,000 dunums (5,436 acres) of appropriated Palestinian land, is strategically located between the Ma’ale Adumim city settlement and Jerusalem.⁹⁶ For Israel, construction in the “E1” area translates into guaranteed contiguity between the Ma’ale Adumim settlement, Jerusalem, as well as Israel.⁹⁷ The military authorities have targeted entire Bedouin villages in the area with demolition orders, to force their removal.⁹⁸

In light of the failure of the international community to intervene, due in part to the United States veto block in the Security Council, the situation in the occupied West Bank is now veering dangerously close to a full scale annexation. In 2017, United Nations Special Rapporteur

⁹² Law for the Regularization of Settlement in Judea and Samaria, 5777-2017, Available at: https://www.adalah.org/uploads/uploads/Settlement_Regularization_Law_English_FINAL_05032017.pdf

⁹³ See Greater Jerusalem Bill, P/20/4158, Proposed Greater Jerusalem Law, 2017 – 5777. Submitted to the Knesset Chairman and deputies and presented to the Knesset’s table on the date of 22 March 2017 [24th of Adar, 5777].

⁹⁴ Al-Haq, “‘Bloody Monday’ - Documentation of the Shoot-to-kill, Egregious Killings Committed by the Israel Occupying Force (IOF) on 14 May 2018”, available at: <http://www.alhaq.org/advocacy/topics/gaza/1262-bloody-monday-documentation-of-the-shoot-to-kill-egregious-killings-committed-by-the-israel-occupying-force-iof-on-14-may-2017>

⁹⁵ Article 1(c), Basic Law: Israel - The Nation State of the Jewish People, available at: <https://knesset.gov.il/laws/special/eng/BasicLawNationState.pdf>

⁹⁶ Al-Haq, Virtual Field Visit: E1 Area, 28 January 2014, available at: <http://www.alhaq.org/advocacy/topics/settlements-and-settler-violence/774-virtual-field-visit-e1-area>.

⁹⁷ Jonathan Lis, Israeli Bill to Annex Jerusalem-area Settlement Will Include Controversial E1 Area (Haaretz, 19 January 2017), available at: <https://www.haaretz.com/israel-news/.premium-israeli-bill-to-annex-settlement-to-include-controversial-e1-area-1.5487449>.

⁹⁸ B’Tselem, “ Three Israeli Supreme Court justices greenlight state to commit war crime” (27 May 2018), available at: https://www.btselem.org/communities_facing_expulsion/20180527_supreme_court_greenlights_war_crime_in_khan_al_ahmar

announced that “Israel’s role as occupier in the Palestinian Territory – the West Bank, including East Jerusalem, and Gaza – has crossed a red line into illegality”.⁹⁹ In April 2019, two weeks after the United States formally recognised Israel’s annexation of the occupied Syrian Golan, Israel’s Prime Minister promised to annex the West Bank.¹⁰⁰

Al-Haq urges the full support of the Irish State in adopting the Occupied Territories Bill, 2018, as an important first step in stemming the annexationist measures of Israel, by removing profits from trade as an incentive for settlement expansion while retaining necessary Palestinian territory for the purpose of a ‘two State solution’.

Implications and implementation of the Bill’s proposals

Policy implications / implementation

6. How is the approach taken in the Bill likely to best address the policy issue?

a. The Bill removes the incentive to profit from unlawfully appropriated and pillaged goods

Al-Haq considers that the adoption of the Bill will have an important chilling effect on the export of goods, services and the extraction of natural resources unlawfully produced in the occupied territory. Al-Haq strongly welcomes the adoption of the Bill into law, and views Ireland’s initiative as a pivotal first step in international State practice to provide for what the International Committee of the Red Cross has termed as, the minimum fundamental humanitarian guarantees of the Fourth Geneva Convention.¹⁰¹ The Bill will ensure that Ireland upholds its obligations under international law, and removes the incentive for Irish citizens ordinarily resident in the State and companies to profit and trade in unlawfully appropriated and pillaged goods, which are the property of the Palestinian people and State of Palestine.

⁹⁹ UN Human Rights Office of the High Commissioner, “Israel must face new international legal push to end illegal occupation of Palestine, UN expert says”, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22315>

¹⁰⁰ Times of Israel, “Netanyahu doubles down on West Bank annexation after ex-generals speak out” (21 May 2019), available at: <https://www.timesofisrael.com/netanyahu-doubles-down-on-west-bank-annexation-after-ex-generals-speak-out/>

¹⁰¹ 3, available at: https://www.icrc.org/en/doc/assets/files/other/law10_final.pdf

b. The Bill Represents a Pivotal First Step in International State Practice

During and since the passing of the Bill through the Seanad, Al-Haq has received delegations of parliamentarians from a number of States, including the Netherlands, Norway and Chile who are observing the Irish process and have expressed an appetite for pursuing similar legislative measures to prohibit the import of settlement goods, engage in the provision of settlement services and extraction of natural resources from the occupied territory.¹⁰² In April 2019, the Palestinian Division at the United Nations in New York invited Senator Frances Black and Mr. Conor O’Neil to present on the Bill, underscoring the importance and esteem that the Bill is regarded, as an issue that is at the forefront of the Palestinian national agenda.¹⁰³

7. Could the Bill have unintended policy consequences?

a. Palestinian Unions representing Palestinian workers fully support the Bill

One of the arguments against the Bill has been a concern that the Bill might negatively impact Palestinian workers in settlements. Al-Haq emphasises the full commitment by all sectors of Palestinian civil society for the Occupied Territories Bill. On Friday, 23 November 2018, the Palestinian Human Rights Organisations Council (PHROC) communicated a letter to members of the Seanad in Ireland, showing appreciation for their support of the (Occupied Territories) Bill. The letter further stressed the importance of the continued support of the Bill by Members of the Seanad and Dáil.

The Occupied Territories Bill is supported by Adaleh Coalition, an umbrella group of sixty unions and labour organisations in the OPT, representing every industry in Palestine including, for example, the Private Health Sector Workers Union, the Pharmaceutical Industry Workers Union, New Labour Union Federation, Financial Sector Workers Union, The National Society of Democracy and Law and the Union of Social Workers and the Union of Agricultural Committees. In January 2019, Adaleh Coalition wrote a statement in support of the Bill. According to Adaleh Coalition:

“The Control of Economic Activity (Occupied Territories) Bill 2018 represents a laudable and historic first step towards the implementation of third State obligations under

¹⁰² Al-Haq, “Al-Haq Welcomes Chilean Parliament Resolution Calling on the Government to Review Treaties with Israel” (6 December 2018), available at: <http://www.alhaq.org/advocacy/targets/third-party-states/1331-al-haq-welcomes-chilean-parliament-resolution-calling-on-the-government-to-review-treaties-with-israel>

¹⁰³ United Nations, “Speakers Consider Proposed Law in Ireland to Ban Imports from Illegal Settlements, as United Nations Forum on Question of Palestine Discusses de Facto Annexation” (4 April 2019), available at: <https://www.un.org/press/en/2019/gapal1424.doc.htm>

international law, by prohibiting the import and sale of illegal settlement goods and services....

Most notably this occupation has manifested itself in the aggressively expanding settlement enterprise, in violation of international law and through the denial of Palestinian rights of self-determination and permanent sovereignty over their natural wealth and resources. This has left Palestinians with few resources to develop an independent and viable economy. It has significantly contributed to high unemployment rates among Palestinians in the OPT, who are left with no other option than to seek work in Israel and Israeli settlements, working on land that had been forcibly taken from them, to secure their livelihoods. Meanwhile, Israel's colonisation and annexationist measures are fueled and sustained by profits from its illegal settlement activity in the West Bank, including East Jerusalem. The denial of access to land and natural resources, accompanied by Israel's obstruction of Palestinian territorial contiguity, due to the building of the Annexation Wall and its associated regime, imposition of a discriminatory and segregationist ID system, appropriation of Palestinian lands and denial of freedom of movement, has caused irreparable losses for the Palestinian economy. In turn, this has negatively affected the rights of Palestinians generally and workers and the labour market condition specifically. In the case of Palestinian workers in Israeli settlements, labour rights and regulations are non-existent, exacerbating violations against the workers, which often go without accountability.

Palestinian workers in Israeli settlements are treated under a different legal regime to Israeli workers. Working conditions and the labour rights of Palestinians have declined as Israel's settlement enterprise flourishes; exploiting the Palestinian labour force that often enjoys no protection when working in Israeli settlements. For this reason, Palestinians often receive lower wages, no benefits or healthcare, and are not afforded workplace safety measures – especially when compared to their Israeli counterparts. In addition, Palestinian workers who seek jobs in Israeli settlements often go through a rigorous, long and humiliating process in order to acquire a permit from the Israeli authorities to be able to access their place of work in Israeli settlements. These permits can be revoked at any time, whereas the workers' dependency on these permits limits their choice of employment.

Ireland is the first country to take a step towards preventing grave breaches of international law, by prohibiting the import of goods and services stemming from Israel's illegal settlement enterprise, including the appropriation of land, unlawful exploitation of natural resources, and the forcible transfer of the protected Palestinian population. Adaleh Coalition stresses that by adopting the Bill, Ireland is further strengthening prospects of economic independence, stability and sustainable development for the Palestinian people.”

Please find two letters of support in the Annexes from the Palestinian Human Rights Organisations Council and Adaleh Coalition, together expressing the support of seventy Palestinian civil society organisations representing all facets of Palestinian life.

Part B – Legal Analysis

8. Is the draft PMB compatible with EU legislation and human rights legislation (ECHR)

a. Occupied Territories Bill is compatible with EU legislation

Al-Haq considers that the Occupied Territories Bill is consistent with the wider EU context. At the EU level, the European Commission has issued several Notices to Importers¹⁰⁴ and an Interpretative Notice¹⁰⁵ stating that the Israeli settlements are illegal under international law. The EC’s Interpretative Notice also stated that goods produced in those settlements are not covered by the EU-Israel Association Agreement of 2000. Despite these declarations, illegal settlement goods continue to reach the EU market.

In addition, the ECJ has held that Israeli settlement goods are not protected by the EU-Israel Association Agreement because those goods are not technically produced in Israel. The ECJ’s Brita decision provides some clarity on the place of exported settlement goods vis-à-vis EU trade agreements.¹⁰⁶ First, the Court affirmed that the rules of customary international law are binding on EU institutions and Member States, regardless of whether the documents establishing those rules bind those institutions and States.¹⁰⁷ Second, the Court held that products obtained in

¹⁰⁴ 1997 O.J. (C 338) 13, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1997:338:FULL&from=EN>; 2001 O.J. C (328) 6, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001XC1123\(02\)&qid=1527493813804&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52001XC1123(02)&qid=1527493813804&from=EN); 2005 O.J. (C 20) 2, available at: http://trade.ec.europa.eu/doclib/docs/2006/march/tradoc_127720.pdf; 2012 O.J. (C 232) 5, available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012XC0803\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012XC0803(02)&from=EN).

¹⁰⁵ European Commission, *Interpretative Notice* C(2015) 7834 final, available at: https://eeas.europa.eu/sites/eeas/files/20151111_interpretative_notice_indication_of_origin_en.pdf.

¹⁰⁶ Case C-386/08, Brita GmbH v. Hauptzollamt Hamburg-Hafen, 2010 E.C.R. I-01289, available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=72406&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=152024> (hereafter Brita).

¹⁰⁷ See, e.g., *id.* at para. 42 (“even though the Vienna Convention does not bind either the [EU] or all its Member States, a series of provisions in that convention reflect the rules of customary international law which, as such, are binding upon the [EU] institutions and form part of the [EU] legal order.”); see also *id.* At para. 40 (“the fact that that Vienna Convention does not apply to international agreements concluded

locations under Israeli occupation since 1967 do not qualify as being obtained in Israel under the EU-Israel Association Agreement.¹⁰⁸ The Court did not specifically address the legality of Israel's use of the OPT for settlement industry *per se*; rather, the Court reasoned that the existence of both the EU-Israel Association Agreement and the separate EU-Palestinian Authority Interim Agreement¹⁰⁹ logically implies that each agreement must apply to different territories. Thus, the "territory of Israel" in the EU-Israel Association Agreement necessarily does not include "the West Bank and Gaza Strip" in the EU-Palestinian Authority Interim Association Agreement.¹¹⁰

The EU's 2015 Interpretative Notice likely harmonizes standards for how Israeli settlement products are to be labeled for import into the EU common market.¹¹¹ However Article 36 of the Treaty on the Functioning of the EU provides that "Nothing in this Agreement shall preclude prohibitions or restrictions on imports, exports or goods in transit justified on the grounds of public morality, public policy or public security".¹¹² Thus, the option is still open for a Member State to implement a national provision to prohibit the import of goods from Israeli settlements in the OPT based on public policy or public security grounds, even in light of harmonized place of origin standards.

Critically Member States have the power to enforce a unilateral prohibition on the import of settlement goods, services and natural resources under the public policy exception of Article 27 of the EU-Israel Association Agreement.¹¹³ States' unilateral power to enforce such a restriction derives from the Treaty of Lisbon Articles 3 and 215, granting Member States the power to enforce the EU's common policies.¹¹⁴ Article 215 of the Treaty on the Functioning of the European Union (TFEU) allows the EU to adopt "restrictive measures" against "third countries,... natural or legal

between States and other subjects of international law is not to affect the application to them of any of the rules set forth in that convention to

¹⁰⁸ Brita (n 68) at para. 64 ("the customs authorities of the importing Member State may refuse to grant preferential treatment provided for under the [EU]-Israel Association Agreement where the goods concerned originate in the West Bank.").

¹⁰⁹ Euro-Mediterranean Interim Association Agreement, 1997 O.J. (L 187) 3, available at: http://trade.ec.europa.eu/doclib/docs/2004/june/tradoc_117751.pdf.

¹¹⁰ Brita (n 68) at para. 47 ("[e]ach of [the EU-Israel Association Agreement and the EU-PA Interim Association Agreement] has its own territorial scope. Under Article 83 thereof, the [EU]-Israel Association Agreement applies to the 'territory of the State of Israel.' Under Article 73 thereof, the [EU-PA Interim] Association Agreement applies to the 'territories of the West Bank and the Gaza Strip.'").

¹¹¹ The fuzzy harmonization process in the EU makes it difficult to know whether the 2015 Interpretative Notice harmonizes the rules of origin for settlement goods. Taking the more legally conservative approach, the rest of this section proceeds from the assumption that harmonization has been achieved.

¹¹² EU-ISR Agreement, art. 27.

¹¹³ Euro-Mediterranean Agreement, 2000 O.J. (L 147) 3, available at: http://eeas.europa.eu/archives/delegations/israel/documents/eu_israel/asso_agree_en.pdf.

¹¹⁴ Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 215(1)-(2), 13 December 2007, 2007 O.J. (C 306) 1, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=EN>.

persons and groups of non-State entities.” The European Court of Justice has reaffirmed Member States’ duty to abide by and enforce international law (such as the UN Charter)¹¹⁵ in their institutional dealings, particularly when those dealings involve occupying third-states.¹¹⁶

Notably, trade with Israel (as prescribed by the EU-Israel Association Agreement) is unaffected. Only products originating from settlements that are illegal under international law may be prohibited from entering the EU market. Accordingly, Al-Haq considers the restriction on settlement goods and services, including natural resources entering the Irish market, as consistent with EU law.¹¹⁷

Al-Haq also notes the publication of several legal opinions eminent scholars, which address the capacity of an EU Member State to implement a unilateral ban on settlement goods on the basis of the aforementioned ‘public policy’ exemption in EU law. Al-Haq would urge the Members of the Committee to give due regard to these opinions, authored by Professor Takis Tridimas, Professor James Crawford and Michael Lynn SC.

9. Is there ambiguity in the drafting which could lead to the legislation not achieving its objectives and/or to case law down the line?

a. Pillage

In terms of reliance on the Fourth Geneva Convention, it would be useful to have some clarity on whether the Bill pertains to the entirety of the Fourth Geneva Convention, or refers more narrowly to the criminal aspect of the Fourth Geneva Convention, i.e. grave breaches in Articles 146 and 147. For example, pillage of natural resources is a violation of Article 33 of the Fourth Geneva Convention, but is not specifically criminalised under the grave breaches provision, which refers more narrowly to extensive destruction and appropriation. The 1958 Commentary to the Fourth Geneva Conventions explains that “appropriation and destruction mentioned in this Convention” as distinct from pillage, “must be treated as a special offence”.¹¹⁸ While the 1916 Commentary to the First Geneva Convention treats pillage and ‘appropriation and destruction of

¹¹⁵ United Nations, *Charter of the United Nations* arts. 25, 48(2), 103, 24 October 1945, available at: <http://www.refworld.org/docid/3ae6b3930.html>

¹¹⁶ Case C-266/16, *Western Sahara Campaign UK*, 27 February 2018 (unpublished), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0266>.

¹¹⁷ See, Al-Haq, “Brief In Support Of Unilateral Action By A European Union Member State To Prohibit The Importation Of Israeli Settlement Goods” (July 2018), available at: <http://www.alhaq.org/images/thumbnails/images/stories/Images/1280.pdf>

¹¹⁸ Article 147, Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, Commentary of 1958, available at: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=659A26A51BB6FE7AC12563CD0042F063>

property' interchangeably, it should be emphasized that these are treated as two distinct crimes in the Statute of the International Criminal Court.

- Al-Haq recommends including reference to the Statute of the International Criminal Court, which criminalises pillage, and which has also been incorporated into Irish law under the Statute of the International Criminal Court (2006).

b. Expanding the Terminology of “Illegal Settler”

Al-Haq wishes to draw attention to the limitations of referring to the “illegal settler” in the interpretation of the Occupied Territories Bill (Article 2 and Article 11, Occupied Territories Bill). While Al-Haq considers that illegal settlers, who are the nationals of the Occupying Power transferred into the occupied territory, are indeed producing settlement goods and services in the OPT, they are by no means the only actors. For example, Carmel Agrexco which operates on Palestinian lands in the Jordan Valley, produces agricultural produce such as herbs, packaged by migrants from Asian countries who work and live in the settlements. International corporations such as Siemens¹¹⁹ and Coca Cola¹²⁰ operate in industrial settlements such as Atarot, on Palestinian village lands outside Ramallah¹²¹ inside the Jerusalem municipality.¹²² In particular, international corporations operating in industrial settlements in occupied territory, are not necessarily considered nationals of the Occupying Power transferred into the occupied territory, for the purposes of the Bill.

Notably, the authoritative 2016 ICRC Commentary on the Article 50 Grave Breaches provision of the First Geneva Convention (common to the four Geneva Conventions) makes specific reference to “industrialists and businessmen” as potential perpetrators of grave breaches making an important reference in the footnotes to the *Flick, Farben and Krupp cases* before the US Military Tribunal at Nuremberg. Significantly, the latter were industrialists and businessmen prosecuted at Nuremberg for *inter alia* the systematic economic exploitation of occupied territory, amounting to pillage.

- Al-Haq recommends including individuals such as corporate agents from third States who are actively producing goods and services in occupied territory and are as such, not

¹¹⁹ Documentation on File with Al-Haq.

¹²⁰ Who Profits, “The Central Bottling Company - CBC (Coca Cola Israel), available at: <https://whoprofits.org/company/the-central-bottling-company-cbc-coca-cola-israel/>

¹²¹ Israel Ministry of Economy and Industry, Jerusalem-Atarot Industrial Area, available at: <http://economy.gov.il/English/Industry/DevelopmentZoneIndustryPromotion/ZoneIndustryInfo/Pages/Atarot.aspx>

¹²² Al-Haq, “Development of Atarot threatening Palestinian neighborhoods of East Jerusalem” (23 June 2016), available at: <http://www.alhaq.org/advocacy/topics/wall-and-jerusalem/1054-development-of-atarot-threatening-palestinian-neighborhoods-of-east-jerusalem>

members of the civilian population of the Occupying Power. In doing so, drawing on the terminology of “ industrialists and businessmen” as referenced by the ICRC Commentary.

In addition, Al-Haq considers that the Bill should be expanded more broadly to include, legal persons, in addition to “illegal settler” as natural persons, who are actively producing goods and services in occupied territory. In the 2018 Report of the United Nations High Commissioner of Human Rights on the mandate of the Human Rights Council to compile a Database on all business enterprises active in the settlements and involved in “listed activities”,¹²³ the report highlighted the integral role that businesses play in actively maintaining and expanding the illegal settlement regime:

“Businesses play a central role in furthering the establishment, maintenance and expansion of Israeli settlements. They are involved in constructing and financing settlement homes and supporting infrastructure, providing services to the settlements, and operating out of them. In doing so, they are contributing to Israel’s confiscation of land, facilitate the transfer of its population into the Occupied Palestinian Territory, and are involved in the exploitation of Palestine’s natural resources”.

Al-Haq considers that this central tenet, the role that businesses play in producing the goods and services in question to sustain and prolong the occupation, is not adequately addressed in the Bill.

- Al-Haq recommends the expansion of the Interpretation of the Act, to include other actors besides “illegal settlers” such as Israeli national and international corporations as legal persons who may be complicit in producing goods or services in occupied territory.

¹²³ In resolution 31/36, the Council defined the parameters of activities to be reflected in the database by reference to the list compiled by the mission in its report, which comprised: (a) The supply of equipment and materials facilitating the construction and the expansion of settlements and the wall, and associated infrastructures; (b) The supply of surveillance and identification equipment for settlements, the wall and checkpoints directly linked with settlements; (c) The supply of equipment for the demolition of housing and property, the destruction of agricultural farms, greenhouses, olive groves and crops; (d) The supply of security services, equipment and materials to enterprises operating in settlements; (e) The provision of services and utilities supporting the maintenance and existence of settlements, including transport; (f) Banking and financial operations helping to develop, expand or maintain settlements and their activities, including loans for housing and the development of businesses; (g) The use of natural resources, in particular water and land, for business purposes; (h) Pollution, and the dumping of waste in or its transfer to Palestinian villages; (i) Use of benefits and reinvestments of enterprises owned totally or partially by settlers for developing, expanding and maintaining the settlements; (j) Captivity of the Palestinian financial and economic markets, as well as practices that disadvantage Palestinian enterprises, including through restrictions on movement, administrative and legal constraints.

c. S. 3 Occupied Territory

Al-Haq welcomes the application of the Bill to “relevant occupied territory” in Article 3(1), but would recommend that the Committee consider whether the insertion of the Fourth Geneva Convention is the most appropriate basis for establishing occupation. Critically, Article 42 of the Hague Regulations *de facto* establishes “Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.” While Article 2 of the Fourth Geneva Convention applies to “all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”¹²⁴, this does not provide the test for when territory is considered occupied.

In this vein, the United States military manual asserts that Article 42 of the Hague Regulations which “provides a standard for when the law of belligerent occupation applies, is regarded as customary international law”.¹²⁵ To quote two international law experts, Ginnane and Yingling, “While the Civilian Convention contains no definition of ‘occupation,’ probably nothing could be added to the principle in Hague Article 42 that ‘Territory is considered occupied when it is actually placed under the authority of the hostile army’”.¹²⁶

Notably, the preamble to the Bill already mentions that the Bill gives effect to the States obligations under customary international law (CIL). While the Hague Regulations comprise CIL, it is not immediately clear why the Hague Regulations are not mentioned here, as the specific law which establishes when territory can be considered occupied.

- Al-Haq recommends that Article 42 of the Hague Regulations be specifically mentioned as the law governing the standard for when an occupation is considered to apply, with a linking reference to Articles 2 and 154 of the Fourth Geneva Convention, the latter which considers the Convention “supplementary to Sections II and III of the Regulations annexed to the above-mentioned Conventions of The Hague.”

Al-Haq cautions that while court cases may recognise a situation of occupation, the characterisation of occupation is always premised on an appraisal of the facts on a case by case basis, examining whether military presence and substitution of governing authority has been established. Nevertheless, there are other instruments which may also recognise a situation of

¹²⁴ Notably, this is also the definition of occupation in Article 5 of the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention) Act 2017.

¹²⁵ Department of Defense, Law of War Manual, (June 2015, updated December 2016) p. 757, available at: <file:///C:/Users/susan.power/Desktop/DoD%20Law%20of%20War%20Manual%20-%20June%202015%20Updated%20Dec%202016.pdf>

¹²⁶ Raymund T. Yingling and Robert W. Ginnane, The Geneva Conventions of 1949, 46 AJIL 393, 417 (1953)

occupation, which should be considered, including the rulings of regional courts¹²⁷, domestic courts¹²⁸, Security Council resolutions¹²⁹, General Assembly resolutions¹³⁰, Human Rights Council resolutions¹³¹ etc.

d. Extraction of Resources from a Relevant Occupied Territory

During prolonged occupation, a situation may arise whereby neighbouring States are unwilling to conclude an agreement for the delimitation of the exclusive economic zone with the occupied State during belligerent occupation or where the belligerent occupant is the neighbouring State.¹³² In 2005, Israel and Egypt bypassed Palestine and concluded a Memorandum of Understanding for the laying of the El Arish gas import pipeline in the OPT, some 13 nm off the Gaza coast (and along the entire 40km Palestinian), to pipe gas from Egypt to Israel, in an area that falls outside the territorial sea, but lies in the contiguous zone.¹³³

In 2011, Noble Energy, a Houston based company, began extracting gas from the Israeli side of a shared contiguous gas resources, straddling Israeli and Palestinian waters. The gas field is located approximately 20 nautical miles out at sea, beyond the territorial waters but within the Gaza Maritime Zone agreement concluded under the Oslo Accords.¹³⁴ The latter requires joint cooperation for the exploitation of contiguous resources. The issue of exploitation of contiguous resources, especially when these are contiguous to the territory of the Occupying Power, is a particular problem evident in the Palestinian context.

¹²⁷ ECHR, Case of “Chiragov and others v. Armenia”, Application no. 13216/05, Strasbourg, 16 June, 2015, Available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-155353%22%7D>

¹²⁸ Yesh Din – Volunteers for Human Rights, et. al. v. Commander of the IDF Forces in the West Bank, et. al., Israeli High Court of Justice, HCJ 2164/09, Judgment, 26 December 2011

¹²⁹ SC/RES/1483 (2003).

¹³⁰ A/HRC/34/L.41, 34/...Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan (2017)

¹³¹ Human Rights Council, Resolution adopted by the Human Rights Council on 18 May 2018 S-28/1. Violations of international law in the context of large-scale civilian protests in the Occupied Palestinian Territory, including East Jerusalem (22 May 2018)

¹³² For example, in 2006 the EU and Morocco concluded a “Fisheries Agreement”, whereby Morocco granted lucrative fishing licenses to EU Member States, to fish off the coast of both Morocco and occupied Western Sahara. In 2018, the European Court of Justice held that the “Fisheries Agreement” did not include the waters adjacent to the territory of Western Sahara, Judgment in Case C-266/16 The Queen, on the application of Western Sahara Campaign UK v Commissioners for Her Majesty’s Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs

¹³³ Memorandum of Understanding Relating to the Purchase and Transmission of Natural Gas Through a Pipeline Between the Government of the State of Israel and the Government of the Arab Republic of Egypt, available at: <https://www.jewishvirtuallibrary.org/jsource/Peace/mou2005.pdf>

¹³⁴ 1995 Israel Palestinian Interim Agreement.

It is evident in many contemporary occupations, that the belligerent occupant also establishes control over the sea, including the exclusive economic zone. On 4 November 2018, the Israeli Ministry of Energy announced that the second bidding round for oil and gas exploration licenses will soon be opened to “all the Israeli EEZ area”, including an area of the Mediterranean Sea encompassing disputed waters bordering Palestine, which have not yet been settled by a delimitation agreement between Israel and the State of Palestine.¹³⁵ Critically, Palestinians have the right to self-determination and permanent sovereignty over natural resources in the Palestinian continental shelf, including contiguous natural gas resources, and also potential claims to other natural resources in the disputed waters. The rights of a State over the continental shelf exist *ipso facto* and *ab initio* by virtue of its sovereignty over the land and according to the International Court of Justice, the State does not need to make a good claim over these areas.¹³⁶

- Al-Haq recommends that the provision for extraction from “associated territorial waters” outlined in Articles 9(1) and 9(2) be amended to include “associated territorial waters and continental shelf”.
- e. Prohibit and Criminalise the Import of Natural Resources from Relevant Occupied Territory and its Associated Territorial Waters and Continental Shelf

Al-Haq notes that the United Nations Fact Finding Mission on Settlements did not differentiate between settlement blocs and areas where natural resources are located in the West Bank:

“For the purpose of its work, the mission understands —Israeli settlement to encompass all physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the Green Line of 1949 in the Occupied Palestinian Territory (see annex I). 1 The mission did not differentiate between —settlement, —settlement block, —outposts or any other structures that have been erected, established, expanded and/or appropriated or any land or natural resources appropriated.”¹³⁷

Al-Haq observes that while Articles 9(1) and 9(2) make it an offence for a person to attempt to engage, or assist another person to engage in the extraction of resources from a relevant occupied territory or its associated waters, it does not explicitly prohibit and criminalise the import of the

¹³⁵ Ministry of Energy, “Bid Round Block Delineation” http://www.energy-sea.gov.il/English-Site/Pages/Offshore%20Bid%20Rounds/Tender_Block_Delineation.aspx

¹³⁶ North Sea Continental Shelf Cases, ICJ Reports 1969 p. 22, para. 19.

¹³⁷ Human Rights Council, “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” (7 February 2013), para. 4.

said extracted natural resources from a relevant occupied territory and its associated territorial waters (and continental shelf).

- Al-Haq recommends that the Bill clarify either in the Interpretation section, that “settlement goods” includes “natural resources”, or else adds an additional provision Article 9(3), making it an offense for a person to attempt to import natural resources from a relevant occupied territory or its associated territorial waters (and continental shelf).

f. Extraction of resources

It might be useful to qualify the offence “to engage or attempt to engage” in the extraction of natural resources. Article 55 of the Hague Regulations permits continued extraction of already operating resources in the occupied territory, in line with the *usufructuary* rights of the Occupying Power. In fact, the Occupying Power is obliged to continue the operations of already operating mines, to ensure their continued maintenance. However, the belligerent occupant is prohibited from opening and operating new mines in occupied territory, this being a function held by the ousted sovereign.

- Al-Haq recommends inserting the qualifications following Articles 9(1) and 9(2), “where to do so would breach Article 55 of the Hague Regulations” or “where to do so amounts to an excess *usufruct*”

Conclusion

In Palestine, there is widespread public support for the Bill, to the point where in July 2018, following the vote in the Seanad, the Irish flag was raised outside the Ramallah City Hall in solidarity for the passage of the Bill into law and a mark of gratitude and respect to the people of Ireland from the people of Palestine.¹³⁸

In a rapidly deteriorating environment, with eruptions of hostilities in Gaza, accelerated house demolitions, authorisations to provide for sweeping settlement expansion across the West Bank, including East Jerusalem, mass arrests and detentions, killings and the dangerous and real threat of full scale annexation, the Occupied Territories Bill provides a symbol of hope to the Palestinian people – hope for the rule of law, hope for the realisation of Palestinian human rights, hope for the creation of a viable Palestinian State and hope for the dream of peace to come to be enjoyed by future generations.

¹³⁸ See, <https://www.facebook.com/CWUIE/posts/2485089561508578/>

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Al-Haq strongly supports the passage of the Bill into law and urges the full and continued support of the Irish State.