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Al-Haq submission to the European External Action Service regarding the 2012 EU Progress Reports on the implementation of EU-Israel Action Plan.

I. Introduction

As a Palestinian organisation dedicated to the promotion and protection of human rights in the Occupied Palestinian Territory (OPT), we wish to bring to the attention of the European External Action Service (EEAS) several issues which are of central importance to the upcoming review of the progress made in the implementation of the EU-Israel Action Plan.

As noted in the EU-Israel Action Plan, the relationship between the EU and Israel “will depend on the degree of commitment to common values,”¹ most notably the respect for fundamental freedoms, human rights and international humanitarian law.² It is therefore imperative that progress reports thoroughly consider Israel’s compliance with its international human rights and humanitarian law obligations *vis-à-vis* the occupied Palestinian population. This submission firstly addresses the structure and language of the 2011 Progress Report on Israel. It then seeks to raise some of the more pertinent issues relating to Israeli violations of international law during the year 2012; most notably Israel’s unlawful exploitation of Palestinian natural resources, a violation which gravely infringes upon the Palestinian right to self-determination.

II. Comments on the 2011 Progress Report

2.1. Human Rights in the Occupied Palestinian Territory

We welcome the inclusion of the new section on “Israel in the Occupied Territories” and consider it a positive step towards comprehensively addressing Israel’s human rights and humanitarian law obligations towards the occupied Palestinian people. It is however regrettable that the new section is separated from the section titled “Other human rights and governance-related issues,” which explicitly addresses Israel’s human rights obligations. We are particularly concerned that the EEAS has failed to comprehensively

¹ EU-Israel ENP Action Plan (2006), p.1 <http://ec.europa.eu/world/enp/pdf/action_plans/israel_enp_ap_final_en.pdf>

² EU-Israel ENP Action Plan, p.4

address Israel's full range of legal obligations in an adequate manner. This is exacerbated by:

- using headings which separate Israel's obligations in the OPT from its human rights obligations towards its own population;
- putting the section on the OPT last in the report; and
- by omitting to clearly state that Israel has international human rights and humanitarian law obligations towards the OPT and its occupied people in the section on "Israel in the Occupied Palestinian Territories."

It is essential that the report uncompromisingly reaffirm that Israel has human rights and humanitarian law obligations towards the OPT and its occupied people, especially in light of Israel's persistent stand against complying with these obligations, despite authoritative legal opinions to the contrary.³

2.2. Settlements.

We also note with dismay that the 2011 Progress Report failed to state that Israeli settlements in the OPT constitute a violation of international humanitarian law. In the 2011 Progress Report, the EEAS merely mentioned settlements as an obstacle to peace under the section on "Regional and international issues." Settlements must be viewed in the correct legal framework: as a violation of international law, with the legal consequence that they must be dismantled.

Israel recently announced that 851 new units would be built in settlements in the West Bank and the Finance Committee of the Israeli Parliament approved a budget of NIS 44 million (USD 11.4 million) for settlement projects.⁴ There has also been a significant increase in settler violence toward Palestinians in the OPT.⁵ The spokesperson of the High Representative of the Union for Foreign Affairs and Security

³ Numerous UN treaty bodies have expressed authoritative opinions on Israel's human rights obligations. These could provide a strong measuring tool for use by the ENP in assessing Israel's progress on human rights issues. In particular the reports of the UN Committee on the Elimination of Racial Discrimination, the UN Committee on Civil and Political rights, the UN Committee Against Torture, the Committee on the Rights of the Child, as well as the UN Committee on Economic, Social and Cultural Rights, clearly outline Israel's obligations and their failure to comply with international law. The reports of the Special Rapporteur on the situation of human rights on Palestinian territories occupied since 1967 also provide an invaluable source of information on Israel's humanitarian and human rights obligations.

⁴ Human Rights Council 'Report of the Secretary-General on the implementation of Human Rights Council resolution 19/17: Advance Unedited Version' UN Doc A/HRC/20/13 (29 June 2012), 4

⁵ The OCHA OPT report has noted a 46% increase in settler violence over 2010, and 165% increase over 2009. [OHCHA *Occupied Palestinian Territory 2012 Consolidated Appeal* <http://www.ochaopt.org/documents/ochaopt_cap_2012_full_document_english.pdf> accessed 17 October 2012.]

Policy recently condemned the building of settlements as illegal under international law.⁶ This acknowledgement of the illegality of settlements should be clearly included in the Progress Report as an issue of major relevance, with view to adopting mechanisms to reverse the illegal policies of settlement expansion.

2.3. The Annexation Wall.

The Annexation Wall was not mentioned at all in the previous Progress Report, despite a longstanding and authoritative finding by the International Court of Justice (ICJ) that the construction of the Annexation Wall on occupied land is a violation of international law.⁷ As of April 2012, 438 kilometres (61.8 per cent) of the Annexation Wall had been completed, with a further 8.2 per cent (60 kilometres) currently under construction and 213 kilometres (30 per cent) still planned for construction. When completed, approximately 85 per cent of the Wall will have been built on occupied territory.⁸ The Annexation Wall has therefore resulted in the illegal appropriation of Palestinian land, the forcible displacement of Palestinians, infringements on the freedom of movement, the separation of families and has caused incalculable social and economic harm to the Palestinian people.

The finding by the ICJ places an obligation on all States, including EU member States, to cooperate to bring this violation to an end.⁹ Israel has neither stopped building, nor attempted to dismantle the Annexation Wall. Instead Israel has continued with construction despite the ICJ opinion, which reflected customary international law. The EU is therefore under a legal obligation to address Israel's continued violation of international law in constructing the Annexation Wall. This should be raised in all reviews of Israel's actions.

Based on the above we urge the EEAS to adopt clearer wording on Israel's continued violations of international humanitarian law and international human rights law in the OPT.

⁶ "Statement by the spokesperson of the High Representative on the expansion of the Israeli settlement of Gilo" (European Union, Brussels, 19 October 2012) Doc A 463/12

<http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/133038.pdf> accessed 22 October 2012

⁷ *Legal Consequences of the Construction of a Wall* (Advisory Opinion) 2004 <<http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>> accessed 17 October 2012

⁸ Al-Haq "The Annexation Wall and its Associated Regime" (2012) <http://www.alhaq.org/publications/publications-index?task=callelement&format=raw&item_id=44&element=304e4493-dc32-44fa-8c5b-57c4d7b529c1&method=download> accessed 24 October 2012

⁹ *Legal Consequences of the Construction of a Wall* (Advisory Opinion), para's 149 and 156.

III. Natural Resources as a Specific Area of Concern

3.1. Water Resources.

Israel has intentionally created an artificial scarcity of water in the OPT by preventing Palestinians from accessing water resources in the West Bank, and by preventing any transfer of water into the Gaza Strip. At the same time Israel continues to divert vast quantities of water from the OPT to the Israeli settlements – which are illegal under international law – while refusing Palestinians permission to develop a water network. The Israeli settlements receive an average of more than 350 litres of water per capita daily (lpcd) whilst Palestinians only have access to an average of 70 lpcd, well below the 100 lpcd recommended by the WHO. Furthermore, 14,000 Palestinians in Area C survive on only 30 lpcd.¹⁰ Gaza has access to a higher volume of water but it is estimated that 90-95 per cent of this water is polluted and unfit for human consumption.¹¹ This has led to a sharp rise in waterborne diseases, which have become a major cause of death in the refugee population of the Gaza Strip.¹² Unless Israel allows indispensable building materials to be brought into the Gaza Strip, it is estimated that the quality of water in the Coastal Aquifer will continue to deteriorate and may become unusable by 2016. Should this occur the Gaza Strip could become unfit for human habitation.¹³

Israel's use of the artificial water shortage, as a tool to forcibly transfer Palestinians, has been documented in the previous submission by the Palestinian Council for Human Rights Organisations (PCHRO) to the EEAS.¹⁴ This process has continued throughout the current reporting period and constitutes a serious

¹⁰ United Nations Office for the Coordination of Humanitarian Affairs Occupied Palestinian Territory, *How Dispossession Happens, The Humanitarian Impact of the takeover of Palestinian Water Springs by Israeli Settlers* (March 2012), 14; and World Health Organisation, *Technical Note No 9 – Minimum water quantity needed for domestic use in emergencies* (2011); and Amnesty International, *'Troubled Waters: Palestinians Denied Fair Access to Water'* (October 2009) 4.

¹¹ Amnesty International, *'Troubled Waters: Palestinians Denied Fair Access to Water'* (October 2009) 29 <<http://www.amnesty.org/en/library/asset/MDE15/027/2009/en/e9892ce4-7fba-469b-96b9-c1e1084c620c/mde150272009en.pdf>> accessed 1 November 2012. UN Office for the Coordination of Humanitarian Aid (UN OCHA), *'How Dispossession Happens, The Humanitarian Impact of the Takeover of Palestinian Water Springs by Israeli Settlers'* (2012) 13 <http://www.ochaopt.org/documents/ocha_opt_springs_report_march_2012_english.pdf> accessed 1 November 2012. See also Palestinian Water Authority (PWA) *'Water Supply Report 2010'* (March 2012) 13 <[http://pwa.ps/Portals/PWA/Supply%20water%20report%20to%20print%20\(2\).pdf](http://pwa.ps/Portals/PWA/Supply%20water%20report%20to%20print%20(2).pdf)> accessed 1 November 2012.

¹² UNRWA, *'Epidemiological Bulletin for Gaza Strip'* (February 2009) <http://www.who.int/hac/crises/international/wbgs/gaza_unrwa_epi_15feb2009.pdf> accessed 11 November 2011).

¹³ UN Country Team in the occupied Palestinian territory, *'Gaza in 2020: A Liveable Place?'* (August 2012) 3, 11 <<http://reliefweb.int/report/occupied-palestinian-territory/gaza-2020-liveable-place>> accessed 1 November 2012.

¹⁴ PCHRO *The Right to Water - A Policy of Denial and Forced Displacement in the Occupied Palestinian Territory: Palestinian Council for Human Rights Organisations (PCHRO) contribution to European External Action Service regarding implementation of EU-Israel Action Plan in 2011* (29 November 2011) <<http://www.alhaq.org/advocacy/targets/european-union/501-the-right-to-water-a-policy-of-denial-and-forced-displacement-in-the-occupied-palestinian-territory>> accessed 17 October 2012

violation both of the right to water and of Israel's obligations as an Occupying Power under international humanitarian law.

3.2. Self Determination

Israel's policies to completely integrate the OPT's water system into its own demonstrates the existence of a governmental policy aimed at dispossessing the Palestinian population of its natural wealth. As such, this constitutes an infringement on the right of the Palestinian people to self-determination and to permanent sovereignty over their natural resources.¹⁵ The principle of permanent sovereignty over natural resources prohibits the Occupying Power from exploiting and disposing of natural resources. It is an essential and inherent element of sovereignty, which protects the occupied populations' ability to freely dispose of their natural wealth and resources in accordance with their interests of national development and well-being.

The right of the occupied population to permanent sovereignty over their natural resources becomes even more relevant when considering the situation of prolonged occupation. Allowing Israel *carte blanche* to use Palestinian resources effectively results in an incentive to prolong the occupation in order to maintain control over the water resources located in the OPT.

3.3. Destruction of EU Projects

The lack of access to water by Palestinians is a key concern, particularly considering the projects implemented by various European States and their partner organisations for providing water in the OPT. Between 2001 and 2011, Israel destroyed 82 EU funded development projects in the OPT, at an estimated cost of EUR 49.14 million.¹⁶ Such deliberate actions by Israel to deny Palestinians their right of access to water¹⁷ and to destroy EU funded projects, must be a serious concern for EU-Israeli cooperation.

We therefore strongly recommend that the enforced water shortage in the OPT by Israel, in violation of its human rights obligations, be raised directly in the progress report, and that Israel's destruction of EU projects in the OPT should be highlighted as an area of special concern.

¹⁵ Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v Uganda) ICJ Rep 2005, paragraph 242 - 246

¹⁶ The estimated EU- funded share in the loss amounts to EUR 29.37 million [Answers given by Mr Füle on behalf of the Commission (12 March 2012) <<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-000053&language=EN>> accessed 17 October 2012]

¹⁷ The ICESCR has stated that "[t]he human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." [Committee on Economic, Social and Cultural Rights, General Comment No. 15, UN Doc. E/C.12/2002/11(2002) at paragraph 2.]

3.4. Pillage of the Dead Sea

The Dead Sea has recently become a focal point for the illegal appropriation of Palestinian natural resources by Israel. As an Occupying Power in the OPT, Israel does not become the owner of the natural resources of the occupied territory and is obliged to administer them in accordance with the rules of usufruct.¹⁸ Accordingly, Israel is prohibited from exploiting them in a way that undermines their capital and results in economic benefits for Israeli citizens, including settlers, or for its national economy. In violation of its obligations, Israel is directly encouraging the exploitation of the mineral wealth of the occupied Dead Sea area.

IV. Recommendations

Based on the above we call on the EEAS to:

- explicitly affirm that Israel has obligations, both under international human rights law and international humanitarian law, towards Palestinians in the OPT;
- address Israel's denial of access to water for the Palestinian people, as a violation of their human rights obligations, in particular as a violation of their right to self-determination, including the right to permanent sovereignty over natural resources;
- address Israel's pillage of the natural resources from the Dead Sea as grave violations of international law; and
- place increased emphasis on the section dealing with "Israel in the Occupied Territories", and specifically mention Israel's human rights and humanitarian law obligations thereunder, including its obligation to dismantle its settlements in the West Bank (including occupied East Jerusalem) and the sections of the Annexation Wall built on occupied Palestinian territory.

¹⁸ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. [The Hague, 18 October 1907] ('the Hague Regulations'), Article 55.