Exploiting and Preventing the Development Of Oil and Gas in the Occupied Palestinian Territory

AL-HAQ
AUGUST 2015
ACKNOWLEDGMENTS

The author would like to thank:


and all the Al-Haq team

Without their assistance and support this report would not be possible.

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Dedicated to the Memory of
Yousra Mahmoud Husdein
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GlOssary

Annexation: The unilateral forcible acquisition of the territory of one State by another State. Article 2(4) of the United Nations Charter prohibits the threat or use of force against the territorial integrity of another State and the acquisition of territory by force.

Appropriation: Defined as the exercise of control over property; a taking of possession.

Area A: The 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) divided the West Bank into three Areas. Area A includes those parts of the West Bank that are under full Palestinian civil and security control. In Area A, which includes (parts of) six major West Bank cities, the Palestinian authorities assumed “the powers and responsibilities for internal security and public order;” and the administration of civil spheres, such as health, education, policing and other municipal services. However, since 2002, Israel has retained responsibility for overall security in all areas of the West Bank, and does not abdicate full authority over Area A.

Area B: Includes those parts of the West Bank that are under full Palestinian civil control and joint Israeli-Palestinian security control. Within Area B, which encompasses many Palestinian villages and towns, the Palestinian authorities were vested with the same functional authorities as in Area A, including public order for Palestinians. However, Israel retained overriding responsibility for security.

Area C: Includes those parts of the West Bank that are under full Israeli civil and military control, including land registration, planning, building and designation of land use. It contains the bulk of Palestinian agricultural and grazing land, water sources and underground reservoirs. Area C includes more than 61 percent of the West Bank.

Dunums: A dunum (or dönüm, dunam) is a unit of land equal to 1,000 square meters. Land area in the West Bank, Gaza Strip and Israel has been measured in dunums since the era of the British Mandate of Palestine.

Exclusive Economic Zone: The exclusive economic zone is an area beyond and adjacent to the territorial sea over which the coastal State has rights and duties regarding the exploration, exploitation and conservation of natural resources, including energy production from water and wind.

Expropriation: Defined as a governmental taking or modification of an individual’s property rights, especially for public use or in the public interest.

Fracking (Frac’ing): Hydraulic fracturing or ‘fracking’ or ‘frac’ing’ is the process of drilling and injecting fluid into the ground at high temperatures to recover oil and gas from shale rock.

Green Line: The 1949 Armistice Line, which is internationally accepted as the boundary between Israel and the OPT. Its name derives from the green ink used to draw the line on the map during the peace talks.

Hydrocarbon: Organic compounds composed of hydrogen and carbon.

Israeli Civil Administration: The body responsible for the implementation of Israel’s government policy in the West Bank. It is part of the Coordinator of Government Activities in the Territories, which is a unit in the Israeli Ministry of Defense.

Liquefied Natural Gas: Natural gas that has been cooled to -162˚ shrinking the gas volume 600 times for storage and transportability.

Occupied Palestinian Territory (OPT): The OPT refers to the territory occupied by Israel since the 1967 Six Day War. It is now composed of two discontinuous regions, the West Bank, including East Jerusalem, and the Gaza Strip. This land encompasses only 6,200 square kilometers (km²) and is only 22 percent of historic Palestine under British mandate.

Operation Cast Lead: The 2008-2009 Israeli wide-ranging military offensive against the Gaza Strip, launched on the morning of 27 December 2008 and lasting for 22 days.

Operation Protective Edge: The large scale Israeli military offensive on the occupied Gaza Strip between 8 July and 26 August 2014, which escalated on 17 July with an Israeli ground invasion.

Subsea Tieback: This is where additional risers are attached to a platform or floating vessel in offshore oil and gas upstream activities.

Thermogenic Gas: Gas formed at great depths through thermal cracking of sedimentary organic matter into hydrocarbon liquids and gas, or through the thermal cracking of oil into gas at high temperatures.
MW – Mega watt
NEDCO – Northern Electricity Distribution Company
NEPCO – Jordanian National Electric Power Company
NPV10 – Net present value at ten per cent incremental costs
Nm – Nautical miles
  • 1 nautical mile = 1.15078 miles
  • 1 nautical mile = 1.852 kilometers
  • 1 league – 3 nautical miles
OSC - Outer Continental Shelf
PA – Palestinian Authority
PADICO – Palestine Development and Investment Company
PEC – Palestine Electric Company
PEI – Palestinian Economic Initiative
PETL – Palestinian Electricity Transmission Company
PIF – Palestine Investment Fund
PCI – Projects of Common Interest
PLC – Palestinian Legislative Council
PLO – Palestinian Liberation Organisation
PNA – Palestinian National Authority
PPGC – Palestine Power Generation Company
SELCO – Southern Electric Company
Tcf – Trillion cubic feet
Tscf – Trillion standard cubic feet
Tscm – Trillion standard cubic meters
TW – Terrawatts
UNCTAD – United Nations Conference on Trade and Development
UNTAET – United Nations Transitional Administration in East Timor
USD – United States Dollars
VAT – Value Added Tax

AGP – Arab Gas Pipeline
Bbl – Barrel (unit)
Bcm – Billion cubic meters
BG Group – British Gas Group
Btu – British thermal unit
CCC – Consolidated Contractors Limited
EEZ – Exclusive Economic Zone
EMG – East Mediterranean Gas
FCO – Foreign and Commonwealth Office (United Kingdom)
FPSO – Floating Production Storage and Offloading Platform
GEDCO – Gaza Electricity Distribution Company
GWh – Gigawatt-hour (1 million kWh)
ICCP – International Covenant of Civil and Political Rights
ICESCR – International Covenant of Economic, Social and Cultural Rights
ICI – International Court of Justice
IEC – Israel Electric Corporation
IEI – Israeli Energy Initiatives
IHCJ – Israeli High Court of Justice
IHL – International Humanitarian Law
IHRL – International Human Rights Law
JDECO – Jerusalem District Electric Company
Km - Kilometers
KWh – Kilowatt hour
LNG – Liquefied Natural Gas
LNG FPSO – Liquefied natural gas floating production storage and offloading
MM Bbl – Million barrels
MM cfd – Million Standard Cubic Feet per Day
MM Stb – Million stock barrels
EXECUTIVE SUMMARY

Since 1967 Israel has occupied the Gaza Strip and West Bank including East Jerusalem (OPT). During this time, the occupied Palestinian population has been governed under emergency military rules of belligerent occupation, a legal framework originally intended to regulate short-term military occupations of a few years. The OPT is rich in oil, gas and shale oil resources which, if developed, would make Palestine economically self-sufficient negating its reliance on international aid. However Israel has systematically prevented Palestine’s development of oil and gas in the OPT by curtailing Palestinian freedom of movement, appropriating Palestinian resource rich land and sea resources, forcibly stagnating the Palestinian economy and manipulating Palestinian energy dependence for private commercial profit.

ENERGY ANNEXATION FOR PROFIT

Israel’s governance of natural resources in the OPT has exceeded the parameters of occupation law. Article 43 of the Hague Regulations (1907) requires the military commander to maintain as far as possible the laws in force in the occupied country, subject to military necessity and humanitarian considerations. However in the OPT, the military commander does not govern natural resources instead these are administered directly from Israel’s government ministries. This allows Israel to make decisions on the development of natural resources in the OPT based on Israel’s local government policy formulated in the interest of Israeli citizens and corporations. This is contrary to the military commanders permitted but limited administration of natural resources, which under international law is subject to military necessity and the humanitarian guarantees of the occupied population.

In 1967, Israel terminated local Palestinian supply agreements for electricity and granted new concessions to the Israel Electric Corporation (IEC) allocating control over the Palestinian electricity grid to the IEC. Through its policies and practices Israel has made the OPT almost completely dependent on Israel for its energy supply. Israel profits substantially from Palestine’s energy subjugation. The arrangement is exacerbated by a ‘customs union’ started illegally under military order during the 1970’s and later effectively rubber stamped by the Oslo Accords. Israel controls Palestinian revenues, profiting from customs collected on international imports of oil, gas, petroleum and fuel, among other commodities, collected at its borders but destined for the Palestinian market. These fiscal leakages deprive the Palestinian economy of millions of US dollars (USD) in revenues and amount to an illegal appropriation of Palestinian sovereign wealth in violation of international humanitarian law.

In addition, Israel ensures that the OPT remains fragmented and unable to develop its own energy, targeting and destroying power plants and energy infrastructure across the Gaza Strip.

BLOCKING GAS DEVELOPMENT IN THE MEDITERRANEAN SEA

Both Israel and the OPT have large gas reserves in the Mediterranean Sea. In 1999, gas deposits were discovered off the coast of Palestine and leased by the Palestinian Authority (PA) for development to British Gas Group (BG). Since this time, Israel has forcibly prevented Palestinian and BG access to the\n
Gaza Marine and Border gas fields and intervened politically to obstruct their development. In 2000, large natural gas deposits were discovered in Israel’s maritime space at the Noa and Mari-B fields bordering Palestinian waters, located 13 nautical miles (nm) from the Palestinian coast. Israel’s gas fields in inter alia the Mari-B, Noa, Tamar and Leviathan leases are operated by US company Noble Energy who enjoys a monopoly over Israel’s gas resources.

Israel has closed off access to Palestine’s territorial waters to protect Israeli gas platforms and export pipelines. In 2005, Israel concluded an agreement with Egyptian company East Mediterranean Gas (EMG) to route a gas pipeline across Palestine’s maritime space from Ashkelon in Israel to El-Arish in Egypt. This transpired in the absence of an agreement with the PA required under the Oslo Accords and international law. In particular, pipelines entering territorial waters are subject to the domestic laws of the coastal State. Israel has employed severe security measures to protect its Mari-B gas platform and the El-Arish pipeline by imposing a lethal naval closure of Palestine’s maritime zone and occupying the Palestinian continental shelf. Israel routinely attacks, injures and kills Palestinian fishermen fishing within Israel’s unilaterally imposed 6 nm coastal limit, governed by Israeli Ministry of Transport and Road Safety mariner notices.

While the maritime closure ensures that Palestinian gas resources remain undeveloped, Israel has unilaterally exploited the Noa gas field, geologically contiguous to Palestine’s Border gas field. Generally, when several corporations have an interest in a geologically contiguous structure, a lead operator is appointed between corporations to extract migratory gas from all areas of the geological structure from one well. This is the most economical way of managing the resource. The Oslo Accords requires joint cooperation for the development of contiguous geological resources. Additionally, any exploitation of migratory Palestinian gas would violate Article 55 of the Hague Regulations, which prohibits the exploitation of new wells in occupied territory and customary international law requiring joint cooperation.

Israel has awarded exploration leases to international companies in its declared Exclusive Economic Zone (EEZ). However, title to sea resources in the EEZ have been disputed by Lebanon and leases bordering Palestinian maritime waters may be subject to future legal challenge, should Palestine choose to delimit its EEZ. Israel unilaterally delimited coordinates of an EEZ adjacent to the Palestinian coast and allocated Palestine a small portion of maritime space from the EEZ, a practice with no basis in international law. The State of Palestine may declare a much-expanded EEZ with rights to overlapping maritime areas to which Israel has declared exclusive rights and leased to international gas companies.

PLUNDER AND PREVENTED DEVELOPMENT OF OIL

In 2003, Israel unlawfully appropriated Palestinian village land containing oil deposits at Rantis and forcibly blocked Palestinian entry to the land. An Annexation Wall was built forming an enclave around the village. The illegal requisition violated Article 46 and Article 52 of the Hague Regulations and Article 53 of the Fourth Geneva Convention, while similarly violating Palestinian human rights to self-determination and permanent sovereignty over natural resources. On the Israeli side of the Green Line, a massive oil field located at Rosh Haayin extends into Palestinian territory at Rantis. Israel has leased
rights to commercially exploit the Meged-5 well at Rantis without securing PA cooperation required under the Oslo Accords and further violating Article 55 of the Hague Regulations. Together, Israel’s policies and practices of appropriating, exploiting and preventing Palestinian development of natural oil and gas resources and revenues in the OPT amounts to an energy annexation. In general, Israeli practices have led to the systematic eroding of the Palestinian productive base, making prospects for development almost impossible.

CONCLUSION

Israel’s unlawful appropriation, exploitation and prevented development of oil and gas resources, constitute plunder and further breach Palestine’s right to self-determination, a peremptory norm of international law. By their actions, international corporations and States including EU members, concluding pipeline agreements to export gas from Israel’s Tamar and Leviathan fields which connect to the Mari-B platform, will effectively support and profit from Israel’s continued illegal closure of Palestinian maritime waters to secure its gas distribution network. In particular, the seizure of Palestine’s maritime space and prevented commercial development of its natural gas resources in the continental shelf amount to a violation of Article 43 and Article 55 of the Hague Regulations. International corporations must ensure that they are not aiding and abetting state violations of international humanitarian law.

Notably the EU has set out Guidelines on Promoting Compliance with International Humanitarian Law. High Contracting Parties to the Geneva Conventions are reminded of their obligations to ensure that Israel respects the Conventions and that States themselves are not complicit in sustaining and supporting ongoing violations of international humanitarian law. States have a customary and treaty law duty to not recognize as lawful situations where peremptory norms of international law are breached. Further, they must not render or assist the unlawful situation and must actively work to bring it to an end.

1. INTRODUCTION

There are massive commercial quantities of oil, gas and shale oil deposits located in the OPT. In March 2010, the United States Geological Survey estimated that the Levant Basin Province contained “a mean of 1.7 billion barrels of recoverable oil and a means of 122 trillion cubic feet of recoverable gas” making the region one of the most important sources of natural gas in the world.¹ The Levant Basin Province spans from the Nile Delta Cone below the south west of Israel and the occupied Gaza Strip, to the Tartus Fault north of Lebanon. In the northwest of Cyprus, it spans from the Eratosthanes Seamount in the Mediterranean Sea and the Levant Transform Zone, which borders the West Bank, Israel, Jordan, Lebanon and Syria.² Notably the Geological Survey indicated that there were a number of gas fields off the coast of Gaza; one gas field on the border of the West Bank, and potentially two or more oil fields bordering the northern and southern boundaries of the Gaza Strip as well as a potential cluster of gas and oil deposits around the Dead Sea.³ Despite the presence of substantial

² Ibid., p. 1.
³ There are also two more potential oil fields, one near Qalqilya and another near Hebron. Similar to Meged-5, the oil field near Qalqilya is located near the Israeli border and could potentially be exploited from the Israeli side. United Press International, ‘Palestinians say there is oil in West Bank’ (9 May 2013).
Palestinian hydrocarbons: Israel has systematically prevented the occupied Palestinian population from developing their natural oil and gas resources.

In order to develop and secure Israel’s gas platforms bordering Palestinian territorial waters and gas export pipelines running through Palestine’s continental shelf, Israel has inflicted a lethal naval closure on the Gaza Strip preventing Palestinian access to its Gaza Marine and Border Field gas resources.1 Israel’s Mari-B and Tamar gas platforms are located approximately 13.49 nautical miles (nm) off Israel’s coast, placing them only marginally beyond Israel’s 12 nm territorial sea. The distance is significant in terms of the level of energy security that Israel can legally maintain under international law. While States may apply quite liberal energy security measures within their territorial sea, beyond distances of 12 nm they are limited by international law obligations to facilitate international maritime navigation. Under international law, the maximum safety zone permitted around oil and gas platforms outside the territorial sea is a radius of 500 meters.2

Israel has not only employed a 500 meter radius safety zone around the Tamar and Mari-B platforms and connecting pipelines, but has also cut off Palestinian access to the entire Mediterranean Sea beyond Israel’s 12 nm territorial sea. Beyond Israel’s territorial sea, Israeli energy security measures are arbitrary. Vessels operating outside the territorial sea cannot legally be restricted to 500 meters. Israel’s business newspaper Globes published a special report on the Navy’s protection of Israel’s gas rigs:

> You have to be there, more than ten nautical miles offshore, to understand how small is the distance a determined terrorist from Gaza has to cover to attack one of the platforms. Only there, a few hundred meters from the two huge platforms that rise from the sea, is it possible to grasp just how difficult, but how critical, it is to protect them…

> …two Wasps,-small patrol boats of the Ashdod Patrol Squadron, which are headed to link up for training with a Navy missile corvette at sea, simulate terrorist suicide boats, giving the Shaldag crew an impromptu exercise of an attack that they must frustrate - immediately. There is no time for questions or thought: the machine gun is armed and manned, the combat center already understands the picture and knows where the targets are.3

The Israeli navy intercepts vessels breaching its illegally imposed naval closure warning any fishing vessel advancing within 7 nm of the platforms (a distance of under 6 nm from the Gaza coast inside Palestinian territorial waters) and operating a shoot to kill policy (see section 6.2) of those that continue to fish inside Palestinian territorial waters. According to the Israeli Navy:

> Vessels that approach within seven miles of the platforms will be intercepted by one of the Navy’s patrol boats. The intruder will be ordered to leave and if it refuses, warning shots will be fired. This happens on a daily basis, because Gaza fishermen like to insist on their right to fish wherever they feel like it. If we were not in the sector, the Palestinian fishermen would sail directly to the platforms to fish beneath them. With motorized vehicles they could reach the platforms within minutes. They don’t go there only because we’re in the fields. They sometimes sail toward the platforms like a swarm of zealots to take them over.4

This policy has had a devastating impact on the freedom of movement and right to livelihood of Palestinian fishermen in Gaza.

In the West Bank, Israel has appropriated land belonging to the Palestinian village of Rantis containing lucrative oil deposits. Israel has also physically prevented the Palestinian population from accessing and developing their sovereign oil wealth by means of the illegal Annexation Wall. In the meantime, Israel has commercially exploited the Meged-5 oil field extending into the Palestinian territory by applying its domestic petroleum law to facilitate the exploitation of Palestinian natural resources by Israeli and international oil companies.

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5 Article 60(5), United Nations Convention on the Law of the Sea (1982), “5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorised by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.” Article 5(3), Convention on the Continental Shelf (1958).


8 In 2014, Israeli police used a large surveillance drone as a platform to track Palestinian fishermen off the Gaza coast. The drone could be controlled remotely and was equipped with a laser and a camera to identify and record Palestinian boats. This was a clear violation of the freedom of movement of the Palestinian fishermen and a clear indication of the Israeli military’s determination to prevent them from accessing the sea. In 2015, Israel established a new naval base in Rant’is, a village with a large Palestinian population, and began to use it as a staging area for naval operations targeting Palestinian fishermen.

9 ibid.
Israel's control over Palestinian oil and gas resources is extremely lucrative. The occupied Palestinian population imports approximately 70 percent of its goods and services from Israel including oil, petroleum and gas. In 2007 alone, Palestine imported 100 percent of its petroleum and 92 percent of its electrical energy from the Israel Electric Corporation averaging a cost of 385 million euro. In this manner, Israel has made the occupied Palestinian population completely energy-dependent upon it.

Chapter Overview

This Report broadly examines Israel's annexation of Palestinian energy resources through the lens of territorial, administrative and economic annexation. The Report demonstrates how annexation pierces all facets of natural resource governance whereby Israel directly administers natural resources in the OPT from its internal government ministries, breaching the limited competence allocated to the military commander under occupation law. Chapter 2 touches on the assimilation of Palestine's energy economy into Israel's under a distorted application of the so-called Oslo 'customs union'. It demonstrates how Israel's energy annexation is executed for the benefit of Israeli and international corporate interests in violation of customary and international law. (While this touches on interesting but ancillary economic questions, any economic analysis is beyond the remit of this Report).

Chapters 3 – 7 examine Israel's policies and practices of forcibly preventing the development of Palestinian oil and gas resources. Israel has illegally exploited contiguous Palestinian gas resources off the coast of Gaza and oil resources in the West Bank. Chapter 5 examines how Israel's prolonged illegal naval closure of the Gaza coast is enforced to secure Israel's gas fields and forms part of Israel's long-term energy security strategy. This effectively amounts to an annexation of Palestine's continental shelf and all the natural resources contained therein, violating Palestinian territorial sovereignty for the benefit of international corporations.

The devastating impact of Israel's energy security on the OPT is the central focus of this Report. However Israel cannot exploit its gas resources without securing gas export markets. For this reason, Chapter 6 outlines in depth Israel's actual and planned gas export agreements with Egypt, Jordan, Cyprus, Greece and the EU. Israel has annexed Palestine's maritime waters to ensure the security of its gas platforms and pipelines at Mari-B and Tamar and has plans to route additional pipelines through Palestinian waters for its Leviathan field. European and regional agreements to purchase gas from Israel will effectively facilitate the continuation of Israel's illegal energy security policies and practices in Palestinian maritime waters, violating the Palestinian right to self-determination and permanent sovereignty over its natural resources.

Chapter 7 examines Israel's appropriation of Palestinian land at Rantis for 'military training zones' and how Israel's construction of the Annexation Wall severs the Palestinian population's access to their oil fields amounting to an illegal annexation of Palestinian territory. Chapters 8-9 primarily analyses Israel's prevented access and exploitation of Palestinian resources in light of international law. In addition, and for completeness, the provisions of the Oslo Accords and rulings of the Israeli High Court of Justice (IHCJ) are also considered. However, striking a note of caution, the rulings of the IHCJ are not impartial (see section 2.1 and 8.2.2(ii)). In addition, it must be stressed that the Oslo Accords were negotiated between unequal parties and many provisions of Oslo are incompatible with international law.

10 Eng Basel T Q Yasen, Renewable Energy Applications in Palestine/Palestinian Energy and Environment Research Centre, Energy Authority, 52.
11 By Israel Defense Forces from Israel (Chief of Staff Visits Navy, Jan 2011) [CC BY 2.0 (http://creativecommons.org/licenses/by/2.0)], via Wikimedia Commons.

Source: Oil and Gas Wells in Israel

Source: Israeli Navy Missile Corvette
Overall the Report underscores the right of the Palestinian people to develop their natural resources during belligerent occupation. Notwithstanding, Israel’s deliberate restrictions imposed on Palestinian development in the Gaza Marine, is a manifest violation of its obligations under Article 55 of the Hague Regulations. Israel must continue the functioning of public immovable property already in operation during belligerent occupation. BG Group had already drilled Gaza Marine Wells 1 and 2 in 2000 and therefore Israel is obliged to continue the administration of these wells, to comply with its obligations as belligerent occupant to safeguard the gas wells for the Palestinian population.

Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip in 1967. In so doing, it imposed a military authority and concentrated all governing competence in the hands of the area commander. A series of military orders were adopted for the administration of natural resources in the West Bank, placing them under military control.

On 19 June 1970, Israel introduced Order Concerning the Investment of Natural Resources (West Bank) (No. 389) vesting the governance of the natural resources sector in the ‘competent authority’ appointed by the military commander. Order No. (389) effectively annexed Palestinian natural resources transferring sovereign rights over Palestine’s natural resources to the appointed ‘competent authority’ substantially exceeding the limitations imposed under Article 55 of the Hague Regulations.

13 R Shehadeh, From Occupation to Interim Accords and the Palestinian Territories (Klewer Law International, 1997) 85.
14 Order Concerning the Investment of Natural Resources (West Bank) (No. 389), 1970. Published in Proclamations, Orders and Appointments (Israel Occupation, West Bank) issue No. 23, 30/07/1970 at page 810; Order Concerning the Law on Regulation of the Affairs of Natural Resources (West Bank) (No 487), 1971, Published in Proclamations, Orders and Appointments (Israel Occupation, West Bank) issue No. 29, 12/09/1972 at page 1118. (This Order amended Article 19 on the Law on Regulation of the Affairs of Natural Resources No. (37) of 1966, governing water and irrigation projects); Order Concerning Law on Regulation of the Affairs of Natural Resources (Amendment) (West Bank) (No 1110), 1984. Published in Proclamations, Orders and Appointments (Israel Occupation, West Bank) issue No. 66, 17/08/1984 at page 55. (This Order amended Order No. (487) relating to licensing and permits, for water and irrigation projects).
15 Article 2, Order No. (389), Order Concerning the Investment of Natural Resources (19 June 1970).
This arrangement has continued beyond the Oslo Accords, where the military commander administers the territory within the parameters of military necessity. This type of governing structure is more akin to an annexation than temporary belligerent occupation over natural resources, from the military commander back into the Israeli government and ministries. Following the adoption of the military orders, the administration of the natural resources sector in the Occupied Palestinian Territory (OPT) was fragmented and absorbed into the Israeli Civil Administration (ICA). The ICA maintained authority for zoning, construction and infrastructure in Area C. However, the regulation of the energy sector was further fragmented with competence for marketing, pricing and ownership allocated between various departments outside of the ICA including the Petroleum Commissioner, the Ministry of Energy and Water Resources, the Antitrust Authority, the Ministry of Environmental Protection, the Ministry of Finance, the Inter-Ministerial Prices Committee and the Planning Authorities. As such, this saw the absorption of competence over natural resources, from the military commander back into the Israeli government and ministries. This type of governing structure is more akin to an annexation than temporary belligerent occupation where the military commander administers the territory within the parameters of military necessity. This arrangement has continued beyond the Oslo Accords.

### 2.1 FORCED ENERGY DEPENDENCE

"Like any country we want to have energy independence."  
(Inc. Omar Kittaneh, Palestinian Energy Authority, 2005)

Since 1967, Israel has made the occupied Palestinian population energy dependent upon it. Prior to the occupation, the Palestinian Electricity Company for the Jerusalem District supplied electricity to the West Bank under a concession agreement from the Jordanian government. Following the establishment of the illegal settlement of Kiryat Arba on the outskirts of Hebron, the military commander issued military orders conferring powers for the generation, supply and sale of electricity to the Israeli Civil Administration. ICA authorized the IEC to supply and sell electricity to the Hebron municipality. This involved the construction of a permanent high voltage line, which the Israeli High Court of Justice found fulfilled the "obligation of the government to look after the economic welfare of the area’s population". 

This decision was taken despite the manifest illegality of altering prior electricity supply arrangements. Furthermore the Israeli High Court factored in the interests of illegal settlers in its appraisal of the "economic welfare of the area’s population" thus distorting Israel’s international humanitarian law obligations to protect the economic welfare of the occupied population. This reasoning follows a long line of Israeli High Court of Justice jurisprudence supporting the interests of illegal Israeli settlers over protected Palestinian persons in the OPT, while refusing to rule on the legality of settlements deferred instead to Israeli government policy.

Israel further terminated a concession agreement with the Jerusalem Electricity Company granted by Jordan in 1967 for the supply of electricity to the West Bank, including East Jerusalem, purchased the plant and granted a new concession to the IEC. This measure effectively linked the energy economy of Jerusalem to Israel. The IEC currently owns the electrical grid in the West Bank and supplies 95 percent of the West Bank’s electricity to three electricity distribution companies. These companies include the Jerusalem District Electric Company (JDECO), the Northern Electricity Distribution Company (NEEDCO) and the Southern Electric Co. (SELCO). In the meantime, Jordan supplies 5% of electricity to Jericho in the West Bank.

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16 Article 42(1), Law No. (37) of 1966.  
17 Article 42(2)(b), Law No. (37) of 1966.  
22 D Kretzmer, The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories (State University of New York Press, 2002) 64.  
23 HCJ 2567/72, Jerusalem District Electricity Co. Ltd. v. Minister of Defense et al., 27(1) PD 124, 136  
24 Ibid  
26 D Kretzmer (n 22) 66.  
28 Palestinian Market Briefs, Energy (Oil and Gas Electrical Power).  
Two thirds of the electricity supply to the Gaza Strip (120 MW) originates from Israel through electricity feeder lines located at a 10-20 meter distance from the fence enclosing the Gaza Strip. The lines are maintained both by the IEC and the Gaza Electricity Distribution Company (GEDCO). However GEDCO requires coordination with the Israeli army to carry out repairs and maintenance on the line, with Israel maintaining ultimate control. The remainder of the electricity is supplied by Egypt (27 MW) and the Palestine Electric Company (PEC) (65 MW).

In addition to the OPT being dependent on the IEC for the majority of its electricity supply, Palestinians are prevented from developing their potential oil and gas reserves inland and off the coast of Gaza. Should gas be supplied from the Gaza Strip to power electricity stations in the West Bank, Palestinians could become economically self-sufficient. By maintaining control over Palestinians’ electricity supply, Israel can cut off or reduce this supply as a coercive and punitive measure.

Israel profits from Palestine’s energy dependence. The Palestinian economy is deeply embedded within the Israeli economy, with Israel retaining full control over the monetary system, customs and trade, import and export regulations and tax clearance revenues. The Protocol on Economic Relations (Paris Protocol) signed between Israel and the PLO in 1994 attempted to create a customs union ([a free trade area with a common external tariff] for a strong Palestinian economy, but in effect created a ‘semi-customs union’. Indeed, Israel maintains effective control over trade policies beyond the terms of the Protocol and the Hague Regulations, akin to an economic annexation. Accordingly, Israel applies its tax rates, tariffs and technical standards to the occupied territory.

2.2 ECONOMIC ANNEXATION AND GAS REVENUES

“The Palestinian fiscal situation represents a core challenge. The full, timely and predictable transfer of Palestinian tax and customs revenues by Israel in accordance with the provisions of the Paris Protocol on Economic Relations is essential in order for the Government of the State of Palestine to be able to meet its financial obligations. Key among these is the payment of salaries to civil servants, who have launched strikes in protest against non-payment... Ultimately, private-sector-led economic growth will enable the growth of a vibrant economy, which will benefit Palestinians and provide the tax base necessary to end the cycles of fiscal crisis.”

(Report of the Secretary-General, Status of Palestine in the United Nations, 2013)36

Israel controls access to international borders collecting tax and customs clearance revenues on items earmarked for import to Palestine. In this manner, approximately 38 percent of imports from third countries are re-exported into Palestine as Israeli ‘indirect imports’.37 Israel resells the goods to Palestinian consumers within the framework of the Paris Protocol customs union. The United Nations Conference on Trade and Development (UNCTAD) estimates that such fiscal leakages cost the


32 Palestinian Economic Policy and Research Institute, ‘Electricity Crisis in Gaza: Causes, Consequences and Treatments’ (November 2013) 3.

33 R Bryca (2)10.


35 T Pileggi, Israel cuts power to West Bank cities for second time ‘The Times of Israel’ (25 February 2015).


40 Palestinian Ministry of National Economy, ‘Economic Costs of the Israeli Occupation for the Occupied Palestinian Territory’ (September 2011) 32.

41 Ibid, p. 33.
Palestinian economy approximately USD 300 million annually.42 However, the majority of fiscal leakages stem from direct imports between Israel and Palestine.43 The relationship is extremely lucrative for Israel as Palestine imports approximately seventy percent of its goods and services from it. 44 In the West Bank, revenues from petroleum taxes and fuel imports have increased by 48 percent.45 Although Palestine derives its taxes from VAT at 16 percent and revenues from third country imports,46 Israel continues to control the collection of VAT on goods and services sold in Israel for the Palestinian market including inter alia electricity, petroleum, gas and fuel imports.47 According to Palestine’s Minister of Economy “the energy bill constitutes the highest contributor to Palestine’s trade deficit with Israel”.48

Israel routinely suspends the transfer of collected revenues to the PA for punitive purposes and prioritizes the use of tax revenues to pay monies owed to Israeli corporations, leaving the PA unable to pay public sector salaries.49 In 2011, Israel suspended the transfer of revenues to collectively punish the Palestinian population for a reconciliation agreement signed between Fatah and Hamas.50 In September 2014, Israel deducted $55 million from Palestinian tax revenues to pay off the IEC debt owed by the PA.51 Israel seized a further $400 million from Palestinian tax revenues in response to Palestinian accession to the Rome Statute of the International Criminal Court in late December 2014.52

2.2.1 Divide and Conquer: An Economic Punishment for the Gaza Strip

Israel purposefully deprived the economy of the Gaza Strip to the “brink of collapse without quite pushing it over the edge”, as a stated security measure of the prolonged occupation.53 Businesses in the Gaza Strip are blocked from exporting goods54 to the West Bank and Israel, accounting for 85 percent of the import export market. The closure of international borders, economic siege on the Gaza Strip and restrictions on freedom of movement, ensures the economic division of the West Bank and Gaza Strip, in violation of the Paris Protocol customs union.55 In February 2014, Dr. Salem Salama of the Palestinian Legislative Council announced the discovery by fishermen of a new gas field off the Gaza coast. This gas field, located within 200-300 meters of the central province coastline, was reportedly verified through testing by the Islamic University.56 Considering its location, the new field could make gas accessible for exploration and development within the limits of Israel’s imposed six nautical mile naval closure. However, Israel’s continued land, sea and air closure makes it impossible to import the materials necessary to develop the gas infrastructure. Israel’s severe restrictions on importing certain materials under the pretext of “dual use” items, restricts Palestinians from competing in local and regional markets. To the South of Gaza, Egypt who has gas deposits nearby and gas import agreements with Israel, has enforced a 1-kilometre wide buffer zone along the Gaza border making access impossible.57

Even if Palestinians had access to their natural resources, these economic measures are designed to ensure the crippling of the Palestinian economy. As such, Palestinians can neither access their resources, such as gas fields off Gaza’s coast, nor import the materials necessary to make use of such resources.
3. BLOCKING THE DEVELOPMENT OF PALESTINIAN GAS: A TWISTED PLAY OF POLITICS

3.1 THE GAZA MARINE

In November 1999, a consortium comprised of Consolidated Contractors Company (CCC), the British Gas Group (BG) and the Palestine Investment Fund (PIF) concluded an agreement with Yasser Arafat, for the development and commercialization of the Gaza Marine fields. The Gaza Marine is located 36 kilometers west of Gaza City in the Mediterranean Sea, 603 meters below sea level, within the contiguous zone attached to Palestinian territorial waters. In 1999, the Palestinian Authority (PA) granted a twenty-five year exploration license with 90 percent equity to British Gas. The terms of the exploratory license have not been publicly released, but have instead been withheld under various exempted provisions of the UK Freedom of Information Act. After receiving security clearance from former Israeli Prime Minister Ehud Barak in 2000, BG drilled two wells in the Gaza Marine finding substantial reserves estimated at 1.4 trillion cubic feet (tcf).

There have been serious political and military impediments to the development of Palestine’s gas. In order to make gas production viable it is imperative to secure an export market. Initially the PA had planned to export gas to Egypt where it would be converted for international export into liquefied natural gas (LNG). However, Israel blocked the development of the pipeline at political levels.

In addition to Palestinian and international markets, one alternative presented was that gas from the Gaza Marine could be sold to Israel. On the recommendations of BG’s technical review this would involve developing the Gaza Marine field with a pipeline supplying an onshore processing terminal. Although the PA approved the plan in 2002, Israel once again politically impeded its development. In 2003, Israeli Prime Minister Ariel Sharon blocked a government proposal that would have facilitated the purchase of Gaza gas by Israel worth $50 million USD per year to the Palestinian economy. Sharon argued that Israel would not have full oversight over gas revenues. However BG Group had proposed that gas revenues would be deposited into a special account used for tax revenues, that Israel already exercised full control over. In 2007, gas export negotiations between BG, Israel and Egypt collapsed. BG withdrew from negotiations and closed its office in Israel. BG retained the licensing rights over the Gaza Marine however the two exploratory wells remained undeveloped.

60 V. Kattan, (n 34) 2.
61 Under Article 27 of Law No. (1) of 1999 for Natural Resources, licenses can be obtained for periods of not more than thirty years, but these may be subject to renewal within one year of the contract expiry date. Article 27. Natural Resources Law (No. 1). 1999. Published in Palestinian Gazette (Palestinian National Authority). Issue No. 28, 13/03/1999 at page 10.
63 V. Kattan, (n 34) 2; A. Antreasyan, (n 59) 31.
65 Palestinian Ministry of National Economy, ‘Economic Costs’ (n 40) 27.
66 S. Henderson (n 64) 2.
67 R. Bryce, (n 21) 10. This was the second time since 2001 that President Sharon vetoed decisions to purchase Palestinian gas. Under the terms of the 1994 Paris Protocol, Israel collects three kinds of payments on behalf of the PA: direct taxes – income tax on the wages of Palestinians working in Israel or in settlements; indirect taxes – VAT, purchase taxes and any other taxes, excise or levies on goods traded between Israel and the OPT; import taxes – levied on OPT imports from the international market via Israel. Palestine Economic Policy Research Institute (MAS), Background Paper: On the Clearence of Tax Revenue between Israel and the Palestinian Authority, 2013; Articles 3, 5 & 6, and Appendices 1 & 2. Protocol on Economic Relations 1994 (Paris Protocol), annexed to The Palestinian-Israeli Interim Agreement on the West Bank & The Gaza Strip 1995 ( Oslo II).
3.2 THE PALESTINIAN ECONOMIC INITIATIVE (PEI)

Following the recognition of the State of Palestine in 2012, as a non-member observer State by the General Assembly, the development of an independent Palestinian energy sector was recognized as a vital step for an independently functioning economy and sustainable economic development. At the domestic level, the Palestine Investment Fund (PIF) launched its economic plan for the development of the energy sector. Meanwhile at the international level, John Kerry spearheaded the Palestinian Economic Initiative (PEI) fostering a radical transition towards private sector orientated development for Palestine.

At the heart of the Initiative, *inter alia* energy and water were identified as key areas for economic development. In anticipation of the Initiative, a national governmental company, the Palestinian Electricity Transmission Company (PETL) was established to become the sole designated buyer of electricity transmitted to the Palestinian market. The strategy behind the establishment of PETL was to resolve an Israel Electric Corporation (IEC) debt and conclude a new commercial contract between PETL and IEC. In so doing, long-term gas supply contracts could be concluded either with the IEC or Palestinian gas companies. Gaza would solely receive its electricity supply from Israel “through new and improved high-voltage transmission lines, upgrading the distribution network.”

Significantly, the Gaza Marine was earmarked for development and would “ensure security of supply of gas-generated power plants in the Palestinian Territories”. Hydrocarbons were also slated for development and exploration, including the Rantis oil field, and potential oil shale in the Palestinian Territory. The development of oil and gas resources would supply Palestine’s electricity, enabling Palestine to extricate itself from energy dependence on Israel, thereby providing the key for an independent and viable Palestinian state.

However the PEI suffered significant defects, namely the radical transformative neo-liberal agenda that was intended to take place in the context of an ongoing belligerent occupation. Even minor resource development would necessitate cooperation by Israel, and long-term agreements would continue to bind the State of Palestine *post bellum*. For example, any attempts by the State of Palestine to renationalize later on might prove difficult, especially where a concession agreement is subject to arbitration under international investment law, which in practice has generally tended to find against

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70 Nasir Group, ‘The launching ceremony of the Palestinian Electricity Transmission Company Ltd. (PETL) was held Monday in Ramallah and was attended by Palestinian high-ranking officials and an EU representative’ (3 February 2014) <http://www.nasir.com/latest-news/27-latest-news/palestine-news/71-140007> accessed 9 May 2015.

71 Ad Hoc Liaison Committee Meeting, (n 45) 38

72 Ibid. p. 5.

73 Ibid. p. 10.

74 Ibid. p. 57.

75 Ibid.


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3.3 ISRAEL’S PLANNED UNILATERAL GAS DEVELOPMENT OFF THE GAZA COAST

In March 2013, while the Kerry peace negotiations were ongoing, Israel engaged in talks with BG over the development of Gaza Marine 1 and 2. Such development would benefit the Palestinian economy and supply excess gas for sale to Israeli domestic and regional markets. Quarter Middle East Envoy Tony Blair and Israel’s Adv. Yitzhak Molcho hosted the talks in the absence of the PA and the Consolidated Contractors Company (CCC). There was significant political pressure on the IEC to engage with the discussions, despite its reluctance to consent to a gas purchase agreement for Palestinian gas that would cost 25 percent more than Israeli gas. On 27 November 2013, talks resumed between the IEC negotiating team, BG and Adv Yitzhak Molcho, at the request of Israeli Prime Minister Netanyahu. At that point, the development of the Gaza Marine was considered a matter of some urgency. Following delays in securing permits to produce gas from Israel’s Leviathan field, Noble Energy and Delek Working Group delayed the production and supply of gas to the Israeli market and at that time, Israel potentially faced substantial gas shortages by 2015.

It also transpired that the Tzemach Committee charged with developing Israel’s gas export policy, had failed to include the selling of 50 percent of gas needed to supply Jordan’s potential deficit in the electricity sector in its projections on cumulative demand between 2013-2040. Overall, by 2013 Israel was budgeting on gas exports it could not yet provide. At this time the possibility of developing the Gaza Marine to supply the Jordanian market took shape.
3.4 GAZA MARINE EXPORTS TO JORDAN - AN UNLIKELY DEAL

The possibility of exploiting Palestinian gas to bridge a gap in supply to Jordan was potentially an option, where Israel could not fulfill its export requirements. However by 2014, Israel’s domestic energy crisis was averted following a direction to accelerate gas production at the Yam Tethy’s fields. On 9 September 2014, The Jordan Times reported that the Jordanian National Electric Power Company (NEPCO) planned to sign a letter of intent for the supply of gas from BG for gas in the Gaza Marine.86 Jordan’s Minister of Energy and Mineral Resources announced that Jordan intended to import one third of its energy from the Gaza Marine, at a rate of 150-180 million cubic feet per day.87 The gas worth 6 billion USD would be exported through the Arab Gas Pipeline already linking Jordan and Egypt and bypassing Israel.88 However at that time, Jordan was concluding a massive gas deal with Israel for the supply of gas from its Leviathan field. The Palestinian dimension was in effect a sweetener to deflect from a publicly unpopular agreement with Israel. It later emerged that John Kerry who was instrumental in negotiating the gas deals between Israel and Jordan held over 1 million USD in Noble Energy shares.89

Despite political indications that Palestinian gas would be developed, by January 2014, it became clear that Palestine would continue to buy gas from Israel long term. On its website and in its Annual Report (2012), the PIF indicated that the future development of the Palestinian Power Generation Company (PPGC) in the West Bank and the modification of the PPGC in Gaza to gas-fired electricity generators would be critical for the utilization of newly explored gas of the Gaza Gas project (the Gaza Marine and the Border field).90 However, by January 2014, the PPGC concluded a gas supply agreement with Israel’s Leviathan partners to supply the future power plant in Jenin with Israeli gas for a twenty-year period, indicating that the Gaza Marine would not be developed during that time. The export of Leviathan gas to supply the Palestinian power plant at Jenin was designed to encourage future Israeli gas deals with Egypt and Jordan. In April 2014, Delek Group published its Bond Offering Procedure, stating, “it is unlikely that the Gaza Marine Field (30 BCM offshore Gaza) will be developed in the coming years”.91 Instead the Report forecast that Palestine would begin self-generating natural gas in 2030, around the same time the PPGC contract was expected to run out.92 This illustrated the effect that the PPGC contract had in dealing a blow to the development of the Gaza Marine.

However by March 2015, following serious national backlash, the PPGC cancelled the Leviathan deal, thus removing any Palestinian impediment to developing the Gaza Marine. In April 2015, in a radical new development, Royal Dutch Shell bought out BG taking over the reigns as primary operator of the yet to be developed Gaza Marine lease.93
4. ISRAEL’S EXPLOITATION OF PALESTINIAN GAS

4.1 RESTRICTING PALESTINIAN MARITIME ACCESS TO NATURAL RESOURCES UNDER THE OSLO ACCORDS

The Oslo Accords prevent Palestinian access to oil and gas resources in Palestinian maritime waters bordering Israel and Egypt. Article XI, Annex I, of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip Provide for Security Along the Coastline and in the Sea of Gaza, establish three maritime activity zones K, L and M. Currently Zone K extends 20 nautical miles (nm) into the sea from the northernmost part of Gaza and is 1.5 miles wide southward. Zone M extends 20 nm into the coast and is 1 nautical mile wide from Egyptian waters.

Zone L is located between Zones K and M and also extends 20 nm into the sea, spanning most of the Gaza coastline. Zone L, the largest zone, is “open for fishing, recreation and economic activities”. The Gaza Marine field is located under 20 nm offshore, bringing it just within the agreed area of economic development under the Interim Agreement. However Israel has prevented access to most of Zone L through an illegally imposed naval closure.

The two smaller zones, K and M, along the boundaries of Israel and Egypt are “closed areas, in which navigation will be restricted to activity of the Israel Navy”. However one of Palestine’s gas fields, the Border Field (an extension of Israel’s Noa South field) is located within Zone K. Palestinian access to contiguous geological resources in the Border field are restricted by the Zone K ‘closed area’ policy despite the Oslo Accords establishing Palestinian and Israeli rights to co-develop contiguous geological natural resources under cooperation agreements. This deprives Palestinians of an estimated 3 billion cubic meters (bcm) of natural gas. In this manner the Oslo Accords serve to buttress and legitimize the illegal situation where Israel prevents Palestinian access to develop their sovereign natural gas resources.
4.2 JOINT COOPERATION REQUIRED FOR JOINT GEOLOGICAL STRUCTURES

Despite some curtailment of freedom of movement in the Maritime Activity Zones, the Oslo Accords attempted to create energy independence for Palestine. Under Oslo I, the Palestinian Electricity Authority and the Gaza Sea Port Authority were established\textsuperscript{100} to ignite economic growth, subject to cooperation agreements with Israel. Both sides agreed to establish an Israeli-Palestinian continuing Committee for Economic Cooperation.\textsuperscript{102} Annex III provided for “cooperation in the field of energy, including an Energy Development Program” for the exploitation of oil and gas for industrial purposes “particularly in the Gaza Strip and in the Negev” and encouraged “joint exploitation of other energy resources”.\textsuperscript{103} The article further envisioned the construction of a petrochemical industrial complex in the Gaza Strip and the construction of oil and gas pipelines.\textsuperscript{104}

The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995), Oslo II superseded the Gaza-Jericho Agreement, the Preparatory Transfer of Powers and Responsibilities, and the Protocol on Further Transfer of Powers and Responsibilities.\textsuperscript{105} A full transfer of competence over gas, fuel, petroleum, quarries and mines from the military government and its Civil Administration to the Palestinian Authority was proposed, with gradual transfer of competence in Area C. Article 15 (1)(b) and Article 31 (2) of the Interim Agreement (1995) provided that powers and responsibilities pertaining to the licensing, and supervision of the establishment, enlargement and operation of quarries, crushing facilities and mines, and the exploration and production of oil and gas in the West Bank and the Gaza Strip, would be “transferred gradually” to Palestinian jurisdiction.\textsuperscript{106}

The broad cooperation agreements covering the general development of natural resources reminiscent of Oslo I were narrowly construed in Oslo II and limited to the development of contiguous oil and gas resources. Article 15(4)(a) guaranteed that Palestine would notify Israel of any exploration and production of oil and gas, while Article 15(4)(b) required both sides to cooperate concerning the production of oil and gas in joint geological structures. However attempts to segregate Palestinian energy from the Israel Electric Corporation (IEC) were unsuccessful.\textsuperscript{107} The agreement guaranteed IEC “unrestricted and secure access” to Palestine’s electricity grid until a future agreement could be reached.\textsuperscript{108}

\textsuperscript{100} J Stocker (n. 1) 591. Israeli Ministry of National Infrastructure Map

\textsuperscript{101} A Palestinian Development Bank, a Palestinian Export Promotion Board, Environmental Authority, a Palestinian Land Authority and a Palestinian Water Administration Authority, were to be established also.


\textsuperscript{104} ibid.

\textsuperscript{105} Preamble, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995).

\textsuperscript{106} Preamble, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995).

\textsuperscript{107} Article 10, Appendix 3, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995).

\textsuperscript{108} ibid.
4.3 Israel’s Unilateral Exploitation of Joint Geological Gas Structures

“I think that the Noa development is required to bridge the gap in the gas supply between the depletion of the Mari-B and the commissioning of the Tamar field. That small field, which would not have been developed otherwise, is required to supply gas or serve as a backup for supplying gas to oil refineries and possibly to other consumers in case there is a lack of gas during this interim period. This will be an important insurance to securing the supply of gas during this interim period in case there is a lack of gas due to geopolitical reasons (Egyptian gas) or technical delays in Tamar.”

(Dr. Amit Mor, CEO and energy specialist at the Eco Energy consulting firm, 2011)\(^{109}\)

4.3.1 Exploiting Gas from Palestinian Territorial Waters

In 2011, two main issues prompted the Noble Energy partners operating under the YAM Tethys venture to quickly deplete their gas wells located in the Noa lease. Firstly, there had been serious disruptions to Israel’s gas imports from Egypt following pipeline attacks in the Sinai, requiring urgent supply of gas to Israel’s domestic market. Secondly, it became apparent that the Tamar and Leviathan fields could not be developed for export until a gas storage facility was secured. Mari-B was an old gas reservoir, which would work ideally for this purpose once depleted. A decision was made to rapidly extract and wind up the Yam Tethys field containing the Noa and Mari-B reservoirs. However Israel and the OPT share a geologically contiguous gas structure that includes Israel’s North and South Noa reservoirs and Palestine’s Border field.

In 2011, media reported that joint development of the Noa South gas well might be the subject of a cooperation agreement between Israel and the Palestinian Authority.\(^{110}\) At a minimum, the report highlighted Israel’s intention to develop the Noa South reservoir under a cooperation agreement necessary under the Oslo Accords. Article 15(4)(b), Annex III of the Israeli-Palestinian Interim Agreement (1995)\(^{111}\) requires “Israel and the Palestinian side agree to cooperate concerning production of oil and gas in cases of joint geological structures.”\(^{112}\) The Noa field straddles Palestinian waters located adjacent to Gaza Marine 1, with the Border field extending into Palestinian territorial waters.\(^{113}\) In its 2012 Annual Report, Delek Drilling indicated that exploratory wells had been drilled in the Noa holdings (‘Noa’ and ‘Noa South 1’) and highlighted the discovery of commercial quantities of gas.\(^{114}\) Should drilling extend into the Palestinian continental shelf this would amount to a violation of the Palestinian population’s right to sovereignty over its natural resources.

In June 2012, the Noble Energy conglomerate\(^{115}\) began selling gas from the Noa north well to the IEC,\(^{116}\) exploiting the well “at a higher production rate” than other projects, thus taking the risk of

\(^{110}\) Ibid. See also Delek Drilling, Annual Report (n 114).

On the Israeli side, the Noa field is divided into the Noa North and Noa South wells, with the Noa South well extending into the Palestinian Border field. Any exploitation of the Noa South well would certainly drain gas from the Border field. There is also the possibility that gas resources from the South and South-West reservoir would migrate to the Noa North reservoir should this be exploited. On this basis exploitation of Noa North would also require Palestinian cooperation.\(^{117}\) In its 2011 Annual Report, Delek Group reported that it had developed the Noa North field. It had capped production at 1.2 BCM subject to the Commissioner for Petroleum Affairs instruction “to prevent allegations of gas production from other parts of the reservoir extending beyond the lease area”.\(^{118}\) Similarly Delek Group’s partners, Noble Energy confirmed in their 2012 Annual Report “during 2011, due to unexpected natural gas supply disruptions into Israel, we decided to develop Noa/Noa South”.\(^{119}\) From 2004 to 2013 the Yam Tethys partnership developed the reservoirs in the Noa lease at a rate of 23 BCM. By September 2014, it was reported that gas from the Yam Tethys lease was finally nearing depletion.\(^{120}\) However the unilateral exploitation of a contiguous geological structure even within Israel’s leased area would still violate the Oslo Accords, regardless of arbitrary imposed caps on production.

\(^{118}\) Ibid. See also Delek Drilling, Annual Report (n 114).

In June 2012, the Noble Energy conglomerate\(^{115}\) began selling gas from the Noa north well to the IEC,\(^{116}\) exploiting the well “at a higher production rate” than other projects, thus taking the risk of

In August 2013, Netherland, Sewell and Associates Inc (NSAI), compiled a report on proved and probable reserves in Noa and Mari-B. This time, the quantities cited for the Noa field were “contingent upon the removal of the production limitation imposed by Israel” in Noa North. This raised the possibility that gas located in Palestinian territorial waters might also be the subject of direct unilateral exploitation.\footnote{Netherlands, Sewell and Associates Inc., Report on Proved and Probable Reserves and Future Revenue (August 20, 2013) 3.}

### 4.4 DISPUTED LICENSES

“Our position was that if the maritime borders are demarcated, the land border should be jointly demarcated as well. Now that they’ve suddenly sent maps, we have no choice but to set the borders ourselves.”


Following the conclusion of an agreement with Cyprus, Israel asserted its right to a 200 nm exclusive economic zone, laying claim to natural resources contained therein. By claiming an exclusive economic zone (EEZ), States may assert sovereign rights over marine resources, whether living or non-living “for the purpose of exploring and exploiting, conserving and managing the natural resources”.\footnote{North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) ICJ Reports 1969, p. 22.} States may also assert rights in the EEZ for economic exploitation, exploration and production of energy in waters superjacent to the seabed, and of the seabed and its subsoil.\footnote{Article 56, United Nations Convention on the Law of the Sea, Agreement Relating to the Implementation of Part XI of the Convention 127} Jurisdiction over the EEZ extends to the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment.\footnote{Ibid.} Most notably, States have sovereign rights to explore and exploit oil and gas resources in the EEZ.\footnote{Ibid.}

#### 4.4.1 Delimiting Israel’s Southern EEZ

Israel awards leases and licenses for exploration and production from maritime space it has claimed as its EEZ. Israel and Cyprus have concluded coordinates of delimitation for an EEZ which runs parallel to the Palestinian coast. However the terms of the Israel/Cyprus EEZ agreement indicate that the coordinates may be subject to further negotiation.

In 2003, Cyprus and Egypt agreed on eight geographical coordinates of a median line on the delimitation of an EEZ between the two States.\footnote{Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone (17 February 2003) <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDF/FILES/TREATIES/EEZ/CYP003EEZ.pdf> accessed 9 May 2015.} Similarly, in 2010 Cyprus and Israel agreed to twelve geographical coordinates of delimitation, continuing and concluding the delimitation of Cyprus’s EEZ in the southernmost quadrant of the Mediterranean Sea.\footnote{Agreement between the Government of the State of Israel and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone (with Annexes) Nicosia (17 December 2010) <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDF/FILES/TREATIES/cyp_isr_eez_2010.pdf> accessed 9 May 2015.} Article 74 of the United Nations Convention on the Law of the Sea (UNCLOS) establishes that the delimitation of the EEZ is concluded between States with opposite or adjacent coasts. Coordinates delimiting the median line between Palestine’s coast and Cyprus were concluded bilaterally between Israel and Cyprus. However both the Egyptian and Israeli agreements concluded with Cyprus indicate that coordinates Latitude 32°33’20”N and Longitude 32°58’20”E where Israel’s EEZ starts and Egypt’s EEZ ends may be subject to further negotiation. Despite this, Israel has carved up its EEZ and awarded exploration licenses based on the current EEZ agreement.
4.4.2 Palestine and the unilaterally allocated EEZ

The State of Palestine has not yet concluded a delimitation agreement of its EEZ with opposite or adjacent States. Nevertheless, Israel has unilaterally allocated a narrow triangular sliver from its declared EEZ to Palestine. In maps this features as a triangular space off the Gaza coast. However Israel does not have the sovereign authority to declare an EEZ for Palestine, and there is no legal basis for the allocated triangular sliver of maritime space.

Although both the Egyptian and Israeli agreements with Cyprus include a clause indicating that coordinates eight and twelve may be reviewed and/or extended as necessary, this may be difficult to renegotiate where long term gas production concessions have already been awarded to international corporations. Should Palestine negotiate coordinates of delimitation with Cyprus, it may be necessary for Israel, Egypt and Cyprus to review and extend coordinates eight and twelve. Nevertheless, for now Israel has mapped its exclusive economic zone into licensing fields. On this basis, the Israeli Ministry of Energy and Water Resources estimates that Israel has approximately 1400 BCM offshore natural gas reserves valued at between $60 billion and $290 billion over a sixty year development period.

4.4.3 Delimiting Israel’s Northern EEZ

In the North, Israel has laid claim to part of Lebanon’s declared EEZ. In 2007 Lebanon agreed to six coordinates of delimitation of its EEZ with Cyprus leaving the starting terminal point for future agreement. In 2010, Lebanon, deposited charts and lists of geographical coordinates defining a line intersecting the boundary, drawn from the northernmost part of Gaza, forms the basis of a leftover minimal EEZ for Palestine. The delimitation of the EEZ between Israel and Cyprus continues seamlessly from Egypt, and would appear to include coordinates of delimitation that would more accurately delimit the sea between Cyprus and the State of Palestine.

In maps, Palestine’s future EEZ as depicted by Israel, stems singularly from the shared eighth and twelfth coordinates (Latitude 32°53’20"N and Longitude 32°58’20"E) agreed between Egypt and Cyprus, and Israel and Cyprus. A line joining the Egyptian/Gaza border with the twelfth coordinate represents a potential although yet to be agreed ‘boundary’ depicting the eastern part of Egypt’s EEZ and the western boundary of Israel’s EEZ. A line intersecting the boundary, drawn from the northernmost part of Gaza, forms the basis of a leftover minimal EEZ for Palestine. The delimitation of the EEZ between Israel and Cyprus continues seamlessly from Egypt, and would appear to include coordinates of delimitation that would more accurately delimit the sea between Cyprus and the State of Palestine.

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### Notes


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135 Bulletin No. 52 (n 132) 47. The coordinate may become later negotiated as Palestine’s point of delimitation with Cyprus, N. Ioannidis, ‘Emerging Voices: The Law of the Sea as a Tool for Stability and Progress in the Eastern Mediterranean Sea’ (Opinio Juris 13 August 2015).


Lebanon’s EEZ at the UN and later proclaimed point twenty-three in the south as its southernmost EEZ delimitation coordinate. In 2011, following Noble Energy’s gas finds in the Leviathan, Israel lodged a list of geographical coordinates with the UN delimiting its northern EEZ. The delimitation was based on coordinate one as a terminal point, rather than the new coordinate twenty-three advanced by Lebanon significantly expanding Israel’s EEZ into Lebanon’s declared maritime space. Lebanon responded with a letter to the Secretary General of the United Nations denouncing Israel’s absorption of part of Lebanon’s EEZ as “a flagrant attack on Lebanon’s sovereign rights over that zone.” Accordingly the Norwegian Ministry of Foreign Affairs has recommended against Norwegian investments in the Israeli continental shelf, which it considered “disputed area.”

The warning underscores Israel’s lack of title to gas resources in the part of the EEZ bordering and extending from Lebanon. It also illustrates, by way of comparison, the gravity of Israel’s unilateral expansion of its EEZ in maritime waters off the coast of Gaza.

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139 D. Meier, (n 137) 3.
140 A. Asemiyan, (n 59) 36.
143 J. Solvik, ‘Norske semiaplers røde i israelsk gasseventyr’ Dagen (20 November 2014) <http://www.dagen.no/nyheter/INVESTERINGER/Norske-semiaplers-rote-i-israelsk-gasseventyr-137232> accessed 9 May 2015. However despite the warning, a number of contracts were signed between Norwegian and Israeli companies following the attendance of Israeli Minister for Energy at a conference in Stavanger in 2013. To date, Noble Energy has concluded contracts with Norwegian company Aker Solutions, to supply 240 km of steel tube umbilicals for connection to the Tamar and for a mono ethylene glycol (MEG) reclamation unit to remove blockages from Tamar’s subsea pipelines. Update, ‘Tamar Natural Gas Field, Israel’ <http://www.dagen.no/Nyheter/INVESTERINGER/Norske-semiaplers-rote-i-israelsk-gasseventyr-137232> accessed 9 May 2015.
144 D. Meier, (n 137) 5.
4.4.4 Developing Disputed EEZ Fields

According to Israel’s gas policy, every gas reservoir located within Israel’s exclusive economic zone should be connected to the nationwide distribution system. This policy does not differentiate between reservoirs that are located within the disputed EEZ and undisputed areas, as well as areas that are Palestinian. As such, Israel has awarded exploration licenses for parts of the southernmost EEZ parallel to the Palestinian coastline. Should the State of Palestine conclude points of delimitation with Cyprus, this would mean a much-expanded EEZ zone far broader than the triangular sliver unilaterally allocated to Israel. This could potentially affect title to oil and gas wells in Israeli leases along the current unofficial and yet to be agreed Israeli/Palestinian maritime boundary, including Lease I/7 Noa, Lease I/10 Ashqelon, Lease 332 Shimshon, Lease 335 Heletz-Kokhav, Lease 342 Hof Ashqelon, Lease 387 Shemen, Lease 392 Daniel Maarav, Lease 398 Neta, and Lease 399 Royee.

While the Noa and Mari-B leases have now been fully exploited by Israel, exploration at Lease 399 Royee has recently revealed large gas deposits based on a geologic risk assessment. Israel awarded an exploration license for the Royee and Neta fields to Israeli corporations Ratio Oil Exploration Limited (70%) and Israel Opportunity (10%) and Italian corporation Edison (20%). Edison is reportedly the “official operator of the exploration process”. In December 2014, NSAI filed a report with the Israel Securities Authority indicating that the Royee lease area contained large gas deposits estimated at between 1.9 and 5 tcf, making the discovery the third largest in Israel. However the report also outlined that there was no certainty that any of the prospective resources would be discovered at Royee and should prospective resources be discovered there was no guarantee that they would be commercially viable. Nevertheless, some or all of this lease area may be disputed should the State of Palestine negotiate coordinates of delimitation with Cyprus.

In May 2013, the United States Chamber of Commerce submitted its Recommendations for Advancing U.S-Israel Cooperation in Energy Exploration and Production, to the Government of Israel, advising that natural resources located in the Outer Continental Shelf (OCS), be leased in tracks to “private, profit-seeking firms whose exploration and development efforts are guided by market forces”. It warned against “onerous compliance obligations” and against environmental hazards or a “cumbersome regulatory process” that would stifle the development of international economic interests. Arguably, some of the cited fields in the outer continental shelf would include fields at the outer edge of the disputed Egyptian/Palestinian/Israeli continental shelf and disputed Israeli/Lebanese outer continental shelf.
Table of the Key Licenses Awarded to Gas Companies Operating in Palestinian and Israeli Gas Fields\(^\text{156}\)

<table>
<thead>
<tr>
<th>FIELD</th>
<th>LICENSE</th>
<th>ESTIMATED RESERVES</th>
<th>DISCOVERY</th>
<th>START OF PRODUCTION</th>
<th>PARTNERS</th>
</tr>
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<tbody>
<tr>
<td>Leviathan</td>
<td>Rachel/Amit</td>
<td>17-21 tcf</td>
<td>June 2010</td>
<td>2018</td>
<td>Noble Energy (operator) (35%) Aner (22.67%) Delek Drilling (22.67%) Ratio Oil Exploration (15%)</td>
</tr>
<tr>
<td>Tamar</td>
<td>Malan</td>
<td>5-8.4 tcf</td>
<td>January 2009</td>
<td>April 2013</td>
<td>Noble Energy (operator) (35%) Isramco Neger 2 (28.75%) Delek Drilling (15.62%) Aner (15.62%) Dor Gas (4%)</td>
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<td>Dalit</td>
<td>Michael</td>
<td>0.5 tcf</td>
<td>March 2009</td>
<td>2013</td>
<td>Noble Energy (operator) (35%) Isramco Neger 2 (28.75%) Delek Drilling (15.63%) Dor Gas (4%)</td>
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<tr>
<td>Nea</td>
<td>Noa</td>
<td>0.04 tcf</td>
<td>June 1999</td>
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<tr>
<td>MariB</td>
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<td>0.97 tcf (Duplicated)</td>
<td>February 2000</td>
<td>2004</td>
<td>Yam Tethys Joint Venture: Noble Energy (operator) (47%) Delek Drilling (25.5%) Aner (23%) Delek Investment (4.4%)</td>
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<tr>
<td>Pinnacles</td>
<td></td>
<td>0.4 tcf</td>
<td>March 2012</td>
<td>July 2012</td>
<td>Noble Energy (operator) (39.6%) Aner Oil (22.67%) Delek Drilling (22.67%) Ratio Oil (15%)</td>
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<tr>
<td>Tain</td>
<td>Aion A</td>
<td>1.2 tcf</td>
<td>January 2012</td>
<td>n/a</td>
<td>Noble Energy (operator) 39.66% Aner Oil (22.67%) Delek Drilling (22.67%) Ratio Oil (15%)</td>
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<tr>
<td>Karish</td>
<td>Aion C</td>
<td>1.8 tcf</td>
<td>May 2013</td>
<td>n/a</td>
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<tr>
<td>Dolphin</td>
<td>Hanna</td>
<td>2.87 tcf</td>
<td>January 2012</td>
<td>n/a</td>
<td>Noble Energy (operator) (28.4%) Delek Drilling (22.67%) Aner 27.87% Ratio Oil Exploration (15%)</td>
</tr>
<tr>
<td>Sarah and Myra</td>
<td>Sarah, Myra</td>
<td>0.23 tcf</td>
<td>November 2012</td>
<td>2015-2016</td>
<td>Geo Global Resources (operator) (8%) Entemaniene Energy (43.78%) ILDC (9%) Blue Water (8.76%) Modin Energy (15.28%) OIM Holdings (5%)</td>
</tr>
<tr>
<td>Yam Hadera</td>
<td>Yam Hadera</td>
<td>1.4 tcf</td>
<td>December 2011</td>
<td>n/a</td>
<td>Modin Energy (operator)(100%)</td>
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<td>Gabriella and Yitzhak</td>
<td>Gabriella, Yitzhak</td>
<td>1.4 – 1.8 tcf</td>
<td>December 2011</td>
<td>2012</td>
<td>Modin Energy (operator) (79%) Adna Energy Israel (19%) Brownstone Energy (15%)</td>
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<tr>
<td>Royee</td>
<td>Royee, Neta</td>
<td>1.9 – 5 tcf</td>
<td>December 2014</td>
<td>n/a</td>
<td>Edison (operator) (29%) Ratio Oil Exploration (70%) Israel Opportunity (10%)</td>
</tr>
<tr>
<td>Gaza Marine</td>
<td>Gaza Marine</td>
<td>1.4 tcf</td>
<td>2000</td>
<td>n/a</td>
<td>British Gas (operator) (60%) Consolidated Contractors (CCC) (30%) PIF (10%)</td>
</tr>
<tr>
<td>Border Field</td>
<td></td>
<td>0.1 tcf</td>
<td>2000</td>
<td>n/a</td>
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5. FORCIBLY CLOSING THE GAZA STRIP AND PIPELINES

5.1 PROTECTING ISRAEL’S GAS INFRASTRUCTURE BY MILITARY BLOCKADES, CLOSURE AND ATTACKS ON THE GAZA STRIP

Israel has adopted an array of devastating measures in its military arsenal to ensure the security of its massive gas resources in the Mediterranean Sea. While Israel purposely blocked the development of the Gaza Marine, the development of Israel’s natural gas market became the centerpiece of Israel’s energy policy. This followed the discovery of vast natural gas resources off Israel’s coast.\(^\text{157}\) (To date, 5 oil fields and 12 gas fields have been discovered in Israel). To put it into perspective, Israel’s claimed exclusive economic zone dwarfs its mainland territory and is nearly double its size. The discovery of the Tamar field alone is worth approximately $52 billion USD to the Israeli economy and Israel’s Leviathan field is three times larger than Tamar again.\(^\text{158}\)

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\(^{157}\) State of Israel, ‘Conclusions of the Committee for the Examination of the Fiscal Policy with Respect to Oil and Gas Resources in Israel’ (January 2011).

\(^{158}\) A. Barkat, ‘E&Y Israel partner Shlomo Affle estimates the savings at $42 billion and the government’s take at $10 billion in capitalization value’ Globes (7 January 2014).
A number of gas fields in Israel's claimed EEZ, border Palestinian territorial waters such as the Noa and Mari-B licenses under the Yam Tethys operators. Israel has extended its military security measures into Palestinian maritime space to protect Israeli gas platforms on the maritime border and to protect the export supply routes of companies operating off the Israeli coast through Palestinian territorial waters. At first, Israel introduced military measures to ensure that gas imports from Egypt, reached Israel's domestic market unimpeded. In addition Israel implemented military measures to protect gas platforms located near Gaza's maritime border.

However, as the scale of Israel's gas wealth unfolded, the Gaza Strip in its entirety was perceived by Israel as a threat to its gas resources. Israel has forcibly closed the Gaza Marine and closed off the entire land, air and sea space of the Gaza Strip. According to one IDF navy commander: "Immediately following Operation Protective Edge, the Palestinians went back to commercial fishing. We enforce fishing bans in order to prevent irregularities. At this time the fishing zone range is six miles. The Palestinians requested that it be extended to 12 miles. Such extension will produce an operational problem, as it would place them substantially closer to the Tethys and Tamar offshore rigs, while we maintain a very intensive defensive effort around those rigs. It will shorten our response intervals. One should bear in mind the fact that the drilling rigs are located 16 miles off shore".159

In addition, Israel has systematically attacked the Gaza Strip in military operations Summer Rains, Cast Lead, Returning Echo, Pillar of Defense, and Protective Edge. Each operation is designed to devastate, ensuring that the Palestinian population remains unable to mobilize against Israel's gas empire.

5.1.1 Israel’s Key Gas Discoveries at Yam Tethys, Tamar and Leviathan

The Mari-B gas field is Israel's oldest but most important gas field, especially in terms of its strategic importance to Israel's gas distribution infrastructure and proximity to the Gaza Strip. In March 2000, American company Noble Energy discovered a large gas deposit 13 nm west of Ashkelon and 243 meters below the seabed, contiguous to the Palestinian territory.160 Between 2000 and 2003, Noble Energy constructed and installed the Mari-B jacket and platform.161 Gas from Mari-B was developed for Israel's domestic market since 2004. However, now depleted, the Mari-B reservoir is licensed for use as a storage facility.162 The use of Mari-B as a storage facility is an integral part of any gas export plan underscoring its importance within Israel's gas infrastructure. Since 2000, coincidentally the same time Mari-B was discovered, Israel's navy has forcibly restricted Palestinian access to Gaza's maritime space to a 6 nm limit from the 20 nm agreed under the Oslo Accords.163 In essence, Israel has created a 7 nm illegal security zone around Noble Energy's Mari-B gas field.

In 2009, Noble Energy and its partners Israeli corporations Delek Group and Dor Gas Exploration discovered the Tamar gas reservoir 90 km off the coast of Israel with massive estimated reserves of 8 tcf.164 In March 2013, gas production began on Israel's Tamar field supplying 50 to 80 percent of the Israeli domestic market via gas piped to the IEC power plants in Ashdod. 165 The Tamar platform is linked both to the Mari-B storage facility via a subsea tieback for export purposes, and to a gas-processing platform at Ashkelon where it connects to an onshore reception station in Ashdod for domestic supply.

In December 2010, Noble Energy discovered the Leviathan gas field approximately 81 miles off Haifa with a staggering 16 tcf of reserves. The Leviathan reserves are double that of Tamar, effectively altering Israel's geostrategic position as a regional gas power.166 It is estimated that production will begin in 2018.167 However, gas cannot be produced until Israel secures gas export agreements with other States.

159 O. Heller, “We Must be Alert and ‘Well Prepared’” IsraelDefense (16 December 2014).
160 R. Bryza (n 21) 11; A Antreasyan (n 59) 36.
162 ‘Directorial Abstract’ (n 146) 3; and sold to the IEC with shares divided between Noble Energy (47%) and Israeli companies Delek Drilling (25.5%), Avner Oil Exploration (23%) and Delek Investments and Properties Limited (4.4%). Noble Energy, ‘Eastern Mediterranean’ <http://www.nobleenergyinc.com/Operations/International/Eastern-Mediterranean-128.html> accessed 9 May 2015; A Antreasyan (n 59) 36.
165 A Antreasyan, (n 59) 36.
167 A Antreasyan (n 59) 36. However the exploitation of gas from Leviathan is likely to generate controversy, as it is “part of a larger basin that extends into the territorial waters of Israel, Lebanon, and Cyprus.”
5.1.2 Securing the Mari-B Storage Facility

The protection of Mari-B as the only storage facility for Israeli gas has become a vital artery for Israel’s export and domestic distribution plans. This means that gas pumped from Tamar or Leviathan (when it comes online) can be injected into the Mari-B reservoir for storage pending domestic distribution into Israel or pending export. Should technical problems (or attacks on pipelines), require the Tamar or Leviathan pipelines to shut down for maintenance, then gas stored in the Mari-B reservoir will be used for distribution to the domestic and/or export markets.169 Mari-B requires massive security measures for protection, given that it holds enough gas for domestic supply and/or export and given that it is Israel’s only gas storage facility.170

Notably the Mari-B storage facility is located beside Palestine’s ‘maritime border’ and only 13 nm from Palestine’s shore.171 Originally Israel had intended to build the gas storage facility in northern Israel. However, the National Planning and Building Commission refused permission to locate the storage facility there on the basis it would be detrimental to the environment.172 Instead in 2014, Israel’s Ministerial Committee on Interior Affairs approved the transmission of natural gas via the Mari-B storage facility under the Tama 37 H Framework.173 Mari-B’s location outside Israel’s territorial waters meant that the regulation of the platform fell beyond the competence of the Territorial Water Committee and other regulatory bodies limited to planning within the territorial sea.174 However the location of Mari-B just outside Israel’s territorial waters, means that under international law the maximum security zone which can be legally placed around the platforms is a radial distance of 500 meters (a mere 0.27 nm).175 In order to protect its gas platform, Noble Energy has reported that the Israeli Ministry of Defense maintains a 500-meter buffer zone around the Mari-B platform and gas pipelines, along with a 5-mile fishing restriction.176 In addition, the Ministry of Defense has imposed naval restrictions on shipping under Notice to Mariners No. 6/2008 (13 August 2008), and later blockaded the entire Palestinian Sea under Notice to Mariners No. 1/2009 (6 January 2009), leaving only a narrow slipway of 3 nm to 6 nm for fishing from the Palestinian coast. Meanwhile Israel has consistently refused to supply “reasons and a legal basis for establishing a limited fishing zone” off the Gaza Strip.177 The imposition of a prolonged and unspecified blockade is an egregious violation of international law.178 The prolonged blockade represents not just a closure of Palestine’s maritime space, but an annexation of Palestine’s maritime waters for Israel’s energy security.

171 The Mari-B platform is reportedly located outside Israel’s territorial waters. Vice Admiral (Ret.) Eliezer Marum, Oil and Gas Security and Strategy, Universal Oil and Gas Conference, David Dead Sea Resort, Ein Bokek, Israel (18-20 November 2014). Although Noble reports that the Mari-B platform is located 25 km or 13 nm off the coast of Israel at co-ordinates 622,624 easting; 3,511,745 northing. Noble Energy Mediterranean Ltd., ‘Environmental Impact Assessment, Tamar Field Development Project Offshore Israel’ (September 2012) 3, 6.
175 Article 60(5), United Nations Convention on the Law of the Sea (1982), “5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorised by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones.” Article 5(3), Convention on the Continental Shelf (1958).
178 Notably, Paragraph 94 of the San Remo Manual requires of the blockade notification that “the declaration shall specify the commencement, duration, location, and extent of the blockade and the period within which vessels of neutral states may leave the blockaded coastal area.”
Israel established a naval closure prohibiting foreign vessels from entering Gaza’s maritime space along the 20 nm limit. When Israeli troops withdrew on January 21, the naval closure remained in force. This meant that fishing vessels could not go beyond the arbitrary imposed 6 nm limit from Gaza, and additionally international vessels could not enter Gaza’s maritime space from international waters. As such, it created a military corridor around the El-Arish pipeline, which was destined to start operating at full capacity that year to export gas to the Israeli market.

Maintaining the security of the pipeline is important for business. IEC and EMG are currently suing the Egyptian government in international arbitration for disruptions to the gas supply in 2011 following pipeline attacks. Now that Israel plans to reverse the flow of gas and export from Israel through the pipeline, it also needs to prevent Israel’s exposure to similar arbitration by international companies, should gas exports be disrupted due to unforeseen events.

In November 2014, Noble Energy announced plans to build a new underwater pipeline from the Tamar platform to supply the Union Fenosa Gas plant in Egypt by 2017. Although the Tamar partners have indicated that the EMG pipeline will be used to export gas to Egypt, EMG has strenuously denied any such agreement. Either way, gas exported via a new pipeline or the existing EMG pipeline must be subject to Palestinian agreement.

184  A. Mihailescu, ‘BG, PA in Gas Deal Without Israel’
185  Update, ‘PPT Buys 25% of East Mediterranean Gas Co’
187  Haaretz (23 March 2015) ‘The gas delivery point, in accordance with the deal, is in Ashkelon and, therefore, the Tamar partners are not part of the contacts between Dolphinus and the EMG company’.
188  Al-Noaou, ‘IEC May Withdraw $4.2 b suit against Egypt’
189  During Operation Protective Edge Israel further reduced the maritime zone to 3 nm.
180  During Operation Protective Edge Israel further reduced the maritime zone to 3 nm.

5.1.4 Enhanced Military Security

In light of the discoveries of gas at Leviathan and Tamar and the need to secure gas distribution networks, Israeli OC Navy Admiral Ram Rothberg indicated that Israel’s naval capabilities would be further enhanced to protect Israel’s economic interests. He explained that “the size of the gas reservoirs is larger than the size of the State of Israel and has significant consequences for how we operate and how we grow...the main solution is to be present in the area to protect the rigs and ensure that the gas reaches Israel.”194 The enhanced military security includes the purchase of four naval vessels with advanced radar systems, the deployment of missile interceptors on gas rigs and anti-ship Barack missile defense systems.195 Israel has purchased a number of submarines from Germany which according to the Israeli navy, will enable Israel to “stay in enemy territory for weeks” and “act in any enemy coast”.196 In October 2014, it emerged that Germany had subsidized the price of Israeli submarines by $382 million, only six weeks after Israeli attacks on Gaza killed 2,205 Palestinians and injured thousands more, during Operation Protective Edge.197

In March 2014, the United States House of Representatives adopted the United States-Israel Strategic Partnership Act placing Israel in the unique position of major strategic partner of the United States. In particular, “energy cooperation and the development of natural resources by Israel” were earmarked as strategic interests of the United States.198 It amended the United States Naval Transfer Act of 2008 to include “improved reporting on enhancing Israel’s qualitative military edge and security posture”.199 In addition, a research programme was launched to enhance Israel’s border, maritime and aviation security capabilities. The Act pledged to provide robust security assistance to Israel and reaffirmed the security cooperation provided for under the United States-Israel Enhanced Security Cooperation Act of 2012.200 As such, it placed the United States in a partnership role providing for Israel’s enhanced gas security.

5.2 ISRAEL ATTACKS PALESTINIAN FISHERMEN

Israel routinely uses force to unilaterally restrict maritime access. Between July and December 2011, Al-Haq documented 29 arbitrary arrests and attacks on fishermen,201 and 50 arbitrary arrests and attacks in 2012,202 two of which, resulted in death.203 Al-Haq has documented instances where the Israeli navy has indiscriminately attacked fishermen as close as 200 meters from the Gaza shoreline near Rafah in the South. In addition, Israel’s lethal dominance and control of the sea surrounding Gaza has extended beyond the Maritime Zones and into international waters. On 31 May 2010, the Israeli military intercepted a humanitarian convoy of six ships, some 64 nm from the Gaza maritime zone and opened fire leading to the deaths of nine persons aboard the Mavi Marmara.204

Affidavit No. 9161/2013

I, the undersigned, Mohsen Akram Diab Zayed, of Palestinian nationality, born on 16 December 1988, a fisherman, and a resident of Al-Salatin neighbourhood, in Beit Lahia, North Gaza governorate, would like to declare the following:

“At approximately 17:00, on Sunday 17 November 2013, I set off from the beach in Al-Sudaniyya area north-west Jabaliyya town in the North Gaza governorate on a fishing trip on the boat along with my cousin, Ammar Sultan, 20. We threw our net into the sea and headed north of the sea until we were around one nautical mile into the sea opposite Al-Nawras area south to Al-Waha resort north of the Strip, in the area allowed for us to fish in.

At 18:00 while we were pulling out the fishing net from the sea, I saw an Israeli gunboat heading towards us and then I heard gunshots fired in our direction. We were very scared and I could see the bullets hitting the water around us. The gunboat came 30 meters close to us and it was going around us while the soldiers kept shooting at us. Then I heard one of the soldiers speaking through the microphone, ordering us to leave the fishing net, take off our clothes and jump into the sea immediately and swim towards their boat. I jumped first then Ammar and we swam towards the gunboat...

...During the interrogation the officer asked me about the details of my family members and their jobs. Then he told me that he’d confiscate the boat as a punishment for my working in a forbidden area. Then they took me back to the same room and took Ammar for interrogation. I sat inside the room, blindfolded and tied for about an hour. Then Ammar returned to the room and we both sat on the ground tied and blindfolded for about two hours...”

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.

Ibid.
Affidavit No. 9065/2013

I, the undersigned, Salim Khalil Salim Al-Fasih, of Palestinian nationality, born on 1 November 1955, a fisherman, and a resident of Al Shate’ Camp, North Gaza governorate, would like to declare the following:

“We were six miles into the sea, which is the distance allowed by the Israeli Naval Force for Palestinian fishermen. We threw our net into the sea while we made sure we didn’t cross over the six mile limit and stopped to wait for the fish to gather around the fishing net.

At 16:30, I saw a big Israeli gunboat heading towards us really fast from the middle of the sea. Then the soldiers on the gunboat started shooting at us heavily and randomly and without any warning. They kept shooting at us from a 100-meter distance and our boat had holes from the bullets from different sides. My colleagues decided that they should escape towards the beach and we did so as quickly as possible in our boat. We lay on the boat’s surface because we were afraid we’d get shot as the Israeli soldiers kept shooting, even though we were four nautical miles from the beach.

The bullets hit the ring sling of the boat, which we use to lift the fishing net loaded with fish from the sea water. The ring sling fell on my right hand… I was transferred to Al-Shifa hospital in Gaza city. The doctors there informed me that I required surgery to remove my finger.”

Affidavit Number 7742/2012

I, the undersigned, Zahir “Muhammad ‘Ali” Yousef al-Sultan, of Palestinian nationality, born on 7 October 1991, a fisherman and a resident of the al-Salatin neighbourhood of Beit Lahya, North Gaza governorate, state the following:

On Friday 28 September 2012, at around 9:30 am, I was with 30 other fishermen fishing the mullet... We were fishing with nets on the seashore northwest of Beit Lahya in the North Gaza governorate, 60 meters away from the Israeli water borderline. Of the fishermen, I knew my neighbour Fahmi Salih Abu Riyash, 23, a football player at the Beit Lahya club and a former member of the Palestinian team. He is married and has a child who is almost one year old. His brother Yousef Abu Riyash, 20, was also there.

Suddenly, we heard gunshots fired from the border in our direction. I looked behind me and saw ten Israeli soldiers taking position above a sand dune about 15 meters away from the border and shooting at the fishermen. At that moment, I ran away along with most of the fishermen and took shelter from the gunfire behind the sand dunes on the seashore. Later on, I saw the Abu Riyash brothers; they were the closest ones to the border, about five meters away from the coast, in the sea and almost 20 meters from the border fence. They were trying to escape south but were visible to the soldiers above the hill. The soldiers were shouting at them. While they were escaping, the soldiers fired at them directly in sniper fashion. Fahmi was shot in the left foot and fell to the ground, and his brother Yusef was shot in the left hand while trying to help him.

After that, I saw Fahmi trying to get up and continue running away from the area, but the soldiers fired at him, and he was shot again and fell to the ground. At that moment, I, along with other fishermen, started shouting at the soldiers to stop shooting so that we could help Fahmi. I stepped away from the sand dune with my hands up. Then I took off all of my clothes except for my underwear, so that the soldiers would not shoot me. The soldiers then signalled to me to get closer to the wounded Fahmi and Yousef. When I got closer to them, I saw that Fahmi was wounded in the left thigh and in the left groin. He was bleeding heavily from his wounds. I also saw that Yousef was slightly wounded in the left hand... A number of fishermen helped us carry Fahmi for about another 300 meters, where we put him in a civil defence ambulance that had arrived. We took him to the Kamal Odwan hospital in Beit Lahya.

At around 3:00 pm, the doctor took Fahmi into surgery because of severe abdominal bleeding. That evening, at around 10:00 pm, the doctors pronounced him dead. The following afternoon, on Saturday, 29 September 2012, we received Fahmi’s body and buried him in the Beit Lahya cemetery in the North Gaza governorate.
5.3 ISRAEL’S DESTRUCTION OF PALESTINIAN ENERGY INFRASTRUCTURE IN THE GAZA STRIP

During past Israeli military offensives, Israel has targeted vital energy infrastructure located in the occupied Gaza Strip. Israel frequently attacks Palestinian fishermen and regularly launches bombing campaigns on the Gaza Strip, leaving Palestinians unable to access and develop their natural resources infrastructure. This allows Israel to maintain ultimate control over energy supplies to the occupied Palestinian population as well as ensure the continued fragmentation of the OPT.

i. Operation Summer Rains 2006

On 28 June 2006, Israel launched ‘Operation Summer Rains’ in response to the kidnapping of Israeli soldier Gilad Shalit. During the offensive, Israel attacked six transformers at the Gaza Power Plant. The attacks resulted in destruction of the transformers making the occupied Palestinian population in the Gaza Strip dependent on the supply of electricity from the IEC.207 Additionally, during a military incursion into As Shok, electricity cables were cut by the IDF.208 The power plant’s transformers were replaced later in November 2006. However, the new transformers operated at 40 megawatts or 30 percent less than original capacity of 140 megawatts. Hence, the destruction of the transformers made the occupied Palestinian population in the Gaza Strip dependent on the supply of electricity from the IEC.209 The Gaza Strip needs approximately 240 megawatts of electricity to supply the territory.210

Al-Bassiouni v. The Prime Minister: Electricity argued in Court

Following the 2006 operation, on 19 September 2007, the Israeli Security Cabinet declared the occupied Gaza Strip a hostile territory and unanimously decided “to restrict the passage of various goods to the Gaza Strip.”211 Following the 2006 operation, on 19 September 2007, the Israeli Security Cabinet declared the occupied Gaza Strip a hostile territory and unanimously decided “to restrict the passage of various goods to the Gaza Strip.”211 In Al-Bassiouni v The Prime Minister, non-governmental organizations sought an injunction to provide for gasoline and diesel for the running of hospitals, water and sewage pumps as well as electricity or industrial diesel for the Gaza power plant to supply the needs of the civilian population.212 Israel argued that “damaging the enemy’s economy is in and of itself a legitimate means in warfare” falling within the permitted qualifications on free passage of consignments under Article 23 of the Fourth Geneva Convention.213 The High Court of Justice satisfied that Israel had intended to supply “the essential humanitarian guarantees of the Gaza Strip” and would eventually do so, upheld the government’s decision to restrict fuel and electricity in the face of a massive humanitarian crisis, once again reinforcing the illegitimate acts of the government.214

On 7 February 2008, the IDF announced plans to further reduce the supply of fuel and electricity by 1.5 megawatts to the Gaza Strip. As a result the occupied population in the Gaza Strip faced 8 hours of electricity per day, with the IEC supplying 120 megawatts of the 240 megawatts of electricity needed.215 Consequently, the United Nations Office for the Coordination of Humanitarian Affairs reported that cuts to electricity had forced hospitals to suspend operations, 40 million liters of untreated wastewater per day had to be released into the sea and almost half the population in Gaza had no access to running water.216 By October 2008, the World Bank reported that the closure had affected industrial employment with a drop from 35,000 employed in 2005 to 840 in 2008.217 In November 2008, Israel further suspended the supply of fuel to the Gaza Strip for a week, resulting in the closure of the power plant.218

ii. Operation Cast Lead

During ‘Operation Cast Lead’ in 2008-2009, Israel destroyed an electrical factory containing spare parts used for general repairs to the electrical grid.219 The report of the UN Fact-finding Mission on the Gaza Conflict of 2009 concluded that there was “a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites.”220 During the ground offensive, Israeli targeted and damaged seven of the twelve electrical power lines connecting Gaza to Israel and Egypt.221 Israel was supplying 51 percent of the Gaza Strip’s electricity, (Egypt 7 percent, Gaza 34 percent, deficit 8 percent) but often reduced the supply leaving Gaza with only 41 percent for civilian life.222

In 2011, Israel stopped supplying industrial diesel fuel to the Gaza Strip. By 2012, the Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory reported an electricity and

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210 Ibid.


214 Ibid., para 11, 22.


216 OCHA, ‘Electricity Shortages’ (n 210).


fuel crisis in the Gaza Strip resulting in a chronic electricity deficit brought on by the closure of the Strip and restrictions on importation.iii

iii. Operation Protective Edge

As the Kerry Peace Initiative collapsed, the prospect of an independent energy distribution system in Palestine collapsed with it. On 8 July 2014, Israel launched ‘Operation Protective Edge’.224 Once again, Israel targeted the Gaza Power Plant. Israel attacked the plant on five separate occasions, causing damage to its turbines.225 On 29 July 2014, Israel further destroyed one of the three fuel tanks at the Gaza Power Plant.226

Whilst ‘Operation Protective Edge’ was unfolding, Israel negotiated gas export deals with Egypt and Jordan. These followed Israel’s January 2014 agreement with the PA that gas from Leviathan would be used to supply a future power plant in Jenin. However even these supply agreements absent parallel agreements to develop the Gaza Power Plant would serve to further fragment the OPT along energy lines. Israel would retain full control over oil and gas export VAT revenues and would still profit from its reduced supply of electricity to the Gaza Strip and nearly full supply of electricity to the West Bank. Closure of Palestine’s maritime space and political prevention of Gaza Marine development would continue while ensuring economic and energy independence remained unviable. Meanwhile the development of Israel’s gas reserves seen by some as key to peace in the Middle East, would see the full scale military closure of Palestine’s maritime space and the denial of Palestinian access to its sovereign natural oil and gas resources.

Source: Al-Haq, ‘Houses Demolished in Beit Hanoun during Operation Protective Edge’

224 Al-Haq, ‘Palestinian Children Continue to be put in Harm’s Way due to Israel’s Continued Occupation of Palestinian Territory’ (October 2014) para. 6.
6. ISRAEL’S GAS DISTRIBUTION INFRASTRUCTURE

6.1 ISRAEL’S GAS SUPPLY TO THE DOMESTIC MARKET

Supplying the Domestic Market: Israeli Gas Policy

In 2012, the Prime Minister of Israel and the Minister of National Infrastructures convened the Inter-Ministerial Committee to examine the government's natural gas policy. The Committee proposed that the gas sector be radically altered to create the conditions necessary for Israel's full economic dependence on domestic gas. Among the proposals was the creation of an advanced gas distribution system, which would see an increase in the number of gas suppliers, an increase in gas handlers and handling facilities such as pipelines, and an increase in the number of sea to shore inlets. The capacity of privately owned power plants to distribute energy to the public system would also be increased by means of a synchronized gas and electricity system. The decision to pipe liquefied natural gas onshore, was approved under Government Resolutions 2178, 3260 and 177. As a result, a buoy based liquefied natural gas receiving terminal was constructed off the Hadara Coast, linking gas reserves in the Mediterranean Sea to mainland Israel. In this manner, most of Israel's vast natural gas reserves, including gas from the disputed EEZ will be connected to the mainland with 40 percent intended for domestic consumption. Much of the gas is purchased by Israel Electric Corporation to fire publicly owned power stations and private power stations, such as Alon Tavor, Ramat Gabriel and Sorek.


229 Israel has unusual “non-normalised” domestic gas consumption patterns, where some 90% of gas is directed towards generating electricity as distinct from a global average of 35%. The Israeli Institute for Economic Planning, ‘The Use of Natural Gas in the Israeli Economy’ (March 2013) 8.


6.2 ISRAEL’S EXPORT INFRASTRUCTURE

“Jordan really has no real alternative to Israeli gas, but still, there are real problems in doing business with them...There needs to be a reasonable political environment for a country like Jordan to sign on. A political process [with the Palestinians] will soften public opinion and enable us to get the signatures, not the other way around.”

(Nimrod Novik, 2014)

6.2.1 Export Pipelines

The location of pipelines is central to any economic development of natural gas resources and securing pipeline agreements has been a contentious issue geopolitically. Israel cannot develop its vast gas resources in the Mediterranean Sea without first establishing gas export markets and concluding gas export agreements. The Tzemach Committee recommended the removal of all obstacles to the export of gas, underscoring the “great importance in the export of Israeli natural gas for use by Israel’s neighbours”.

Nevertheless, Israel needs to conclude bilateral or multilateral agreements to secure the routing of supply pipelines for the export of liquefied natural gas (LNG).

To date, Israel has concluded a gas export agreement with Palestine. Israel has also negotiated agreements with Jordan and Egypt. Ideally, Israel would secure gas export agreements with Cyprus and Turkey, but due to geopolitical tensions there have been no agreements to date. The matter is one of some urgency because gas cannot be developed in Leviathan, Israel’s largest gas field, until gas export markets are secured. Delays in production amount to costs of $3 billion USD annually.

However corporations and States agreements to pipe gas for future export from Israel’s Tamar and (when it comes online) Leviathan fields will inevitably contribute to the lethal military closure of Gaza’s maritime space enforced to secure Israel’s gas platforms and pipelines (see section 6.1). Furthermore they may be using gas pipelines routed without the consent of the State of Palestine and which may be subject to Palestine’s domestic environmental laws and regulations.

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233  Directorial Abstract (n 146) 10.


235  Article 79, UNCLOS (1982) “Submarine cables and pipelines on the continental shelf...”

3. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.

4. Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.”
6.2.2 Regional Export Pipelines

- **Palestine**
  
  On 5 January 2014, the Palestine Power Generation Company (PPGC) and the Leviathan partners236 signed an agreement worth an estimated $1.2 billion USD for the supply of natural gas to operate the future PPGC power plant in Jenin.237 Gas would be supplied when Leviathan came online in 2018 for a twenty-year period to the PPGC or before this time if the PPGC purchased the overall contracted amount of gas. The PPGC was established to provide a domestic source of electrical power to the West Bank.238 However in March 2015, after increased pressure from Palestinian civil society, PPGC withdrew from the agreement reportedly owing to its commitment to the development of Palestinian natural gas at Gaza and “national independence in the energy sector.”239

- **Exporting to Jordan**
  
  Jordan generates 96 percent of its energy from imported fuel, with 80 percent of imports formerly originating from Egypt.240 However in 2014, Jordan suffered an electricity deficit of 15 TW (terra watts).241 Political upheaval in Egypt had affected Egyptian gas exports, with Jordan facing an acute energy crisis.242 In February 2014, Noble Energy signed a gas export agreement to supply gas from the Tamar field to the Arab Potash Company and Jordan Bromine Company facilities near the Dead Sea.243

In September 2014, a week after the conclusion of Operation Protective Edge, Israel’s 2014 offensive on the Gaza Strip, Noble Energy signed a Memorandum of Understanding with Jordan’s National Electric Power Company under the auspices of the special envoy of the US Secretary of State. Israel will become Jordan’s main gas supplier, exporting gas from the Leviathan field over a fifteen-year period.244 The gas exports are expected to commence when Leviathan comes online in 2018.245 A new pipeline connecting a floating offshore terminal will run through “Jezreel Valley in Northern Israel to Beit Shean near the border and into Jordan”.246

There has also been some discussion about an alternative pipeline routed through the occupied West Bank to supply Jordan from the Levithan. At the Universal Oil and Gas Conference (2014), Joseph Paritzky, former Minister for National Infrastructure suggested that laying a gas pipeline through the West Bank for gas exports was more important than geopolitical considerations.247 According to him, routing a gas pipeline through the OPT was “no big deal”.248 Similarly, the Ministry of National Infrastructures indicated that there was no solution yet in relation to gas distribution infrastructure through ‘Judea and Samaria’.249 The statements highlight the casual disregard of Palestine by Israeli actors intending to operate in the OPT.

Laying a pipeline through the immovable property of the occupied territory for the benefit of the belligerent occupant’s home economy amounts to a serious violation of Article 55 of the Hague Regulations. The types of ancillary security arrangements employed to protect a gas pipeline through occupied territory would further infringe on the civil and humanitarian rights of the occupied population. This would amount to an illegal annexation of land and curtail the right to freedom of movement of the occupied population.

- **Egypt**
  
  On 5 May 2014, Noble Energy signed a non-binding letter of intent with Union Fenosa for the export of 2.5 tcf of natural gas from the Tamar field over a fifteen-year period, pending Egyptian government approval.250 Gas will be pumped via the Israel-Egypt pipeline to a liquefaction plant in Damietta for transit to the international market via Spain. Union Fenosa Gas owns 80 percent of the Damietta plant, a joint venture between Spain’s Gas Natural and Italy’s Eni.251 The El-Arish pipeline had previously supplied 37 percent of IEC’s natural gas demand from 2009 until the pipeline was damaged during hostilities in 2011.252

In June 2014, Noble Energy negotiated an agreement to export gas from the Leviathan field to BG’s liquefied natural gas plant in Idku in Northern Egypt, for transit to the European and Asian markets.253

The statements highlight the casual disregard of Palestine by Israeli authorities when it comes to Israeli settlements. In 2011, Israeli authorities approved the construction of a pipeline from Deercheen to Qidma.254 However, the pipeline was never constructed due to the Israeli occupation of the area.

249 The statements highlight the casual disregard of Palestine by Israeli authorities when it comes to Israeli settlements. In 2011, Israeli authorities approved the construction of a pipeline from Deercheen to Qidma.254 However, the pipeline was never constructed due to the Israeli occupation of the area.
252 S Even, ‘Israel’s Natural Gas Resources: Economic and Strategic Significance’ (2010) 13(1) Strategic Assessment 10; A. Anthanayan (n 39) 38; J Strocker (n 1) 582.
An underwater pipeline will supply gas from Leviathan to Egypt over a fifteen-year period.244 A senior Egyptian oil official indicated that the government would approve the agreement, if some of the gas supplied the domestic market at a reasonable price.245 Gas exports from Leviathan were planned to be transported by BG in the first quarter of 2015.246 However, in April 2015 Royal Dutch Shell announced plans to buy out BG Group, including the Idku plant in Northern Egypt.

On 19 October 2014, the Noble Energy conglomerate signed a letter of intent to supply 2.5 billion cubic meters (BCM) gas to the Egyptian firm, Dorphinus Holdings Ltd. beginning 2015 through the El-Arish pipeline.247 However the El-Arish pipeline runs through Palestinian waters. The option to pipe gas through Egypt and onto Europe for international export is a less expensive option as there are fewer pipelines to be laid and the waters are shallow. Notably, Egypt and Israel have negotiated the gas supply contract without any agreement from Palestine to grant access through its contiguous or territorial waters. It is for the same reason, that gas agreements with Turkey cannot be concluded, as Cyprus will not agree to the use of its continental shelf to route gas pipelines to Turkey.248

6.2.3 International Export Pipelines

With a view to international export, Israel has considered gas export routes through Cyprus, Greece, and Turkey for export to the European and Asian markets.

- **Cyprus**

For Israel, Cyprus could hold the key to international export markets. Here Israel has two options, firstly Israel could export liquefied natural gas from the Cypriot port of Vasilikos for the European market, or secondly, it could lay pipelines across the Cypriot continental shelf to Turkey, supplying the Turkish market and international export.249

In 2013, Cyprus granted Israeli oil companies Delek and Avner an oil and gas exploration license for 30 per cent stake in Cyprus’ Block 12. At the time, Cypriot Minister of Commerce, hailed a “new era of Cyprus-Israeli strategic cooperation which includes economic and political dimensions.”250 However


As such, gas agreements with Turkey cannot be concluded, as Cyprus will not agree to the use of its continental shelf to route gas pipelines to Turkey. Alternatively, gas export agreements may be concluded between Israel, Cyprus, Greece and Bulgaria. Such an agreement would make it possible for Israel to deliver liquefied natural gas via an East Mediterranean Gas Pipeline to Greece and the Balkan States, while connecting with Italy via the IGI Poseidon link in the Ionian Sea. Economic agreements to develop and transport gas between States do not operate in a vacuum, they are generally accompanied by separate bilateral military agreements to protect resources. In February 2014, to mark its enhanced security agreement, Israel and Cyprus held a joint military exercise codenamed ‘Onisilos-Gideon’ in Cypriot airspace. During this exercise, the Israeli Air Force simulated firing at targets along the southern Cypriot coast, for exclusive economic zone patrols.265

larger gas export agreements where gas pipelines are routed from Cypriot maritime waters to Turkey, revolve around successful resolution of the Turkish-Cypriot peace process, currently in "structured negotiations".266 Routing pipelines directly to Turkey is the preferred option for gas exports as it would potentially save gas companies over $15 billion USD in liquefaction costs.267


Annexing Energy: Exploiting and Preventing the Development of Oil and Gas in the Occupied Palestinian Territory

Greece
On a State visit to Greece in 2010, the current Israeli Prime Minister Netanyahu proposed that Israel and Greece consider a connecting gas pipeline.266 The same year, Israel and Greece entered into a military cooperation agreement, known as Minoas 2010. As part of Minoas 2010, Israel and Greece engaged in numerous joint military exercises in Greek airspace and territorial waters to potentially secure the transit of future gas exports.267 In 2012, Israel, Cyprus and Greece established a working group to discuss Eastern Mediterranean Energy Corridor options for exporting gas via a Cypriot liquefaction plant at Vassilikos. Such options included an onshore Israeli liquefaction plant or an East Mediterranean Pipeline to Europe.268 In August 2013, Israel, Greece and Cyprus signed a Memorandum of Understanding exploring the possibility of constructing a 2000 megawatts Euro Interconnector, laying a 1,000 km seabed cable conducting electric power from gas fired plants to the European market.269


268  S Tagliapietra, 'Towards a new eastern Mediterranean Corridor?' Fondazione Eni Enrico Mattei (Italy, December 2013) 18.


However analysts for the German Marshall Fund have cast doubt over the technical and commercial feasibility of an undersea gas pipeline due to serious physical challenges in terms of the long distance of 1,200 kilometers and extreme water depths of 2000 m between the offshore fields and Greece.271 Nevertheless, the European Union (EU) considers the “project [to be] of common interest” thus making it eligible for European financial and bank loans.272

Turkey
In 2014, Noble Energy consortium tried to engage with Turkey in the hope of exporting gas from the Leviathan field via a subsea pipeline.273 Although Turkey is a potential export option, Cyprus could politically block a future Israel-Turkey pipeline running through its continental shelf, under the terms of the United Nations Convention on the Law of the Sea.274 However Noble Energy also operates the Aphrodite field in Cyprus, and piping gas from Aphrodite and Leviathan to Turkey is considered the cheapest option for export. In August 2015, the CEO of Tercus Petrol suggested that Turkey may be interested in importing gas from Leviathan.275 This would also grant Israel access via Turkey to international markets.276 While Turkey remains the optimum transit route for gas exports from Israel, politically an agreement is unlikely to take place.277 Instead, Turkey is negotiating a pipeline deal involving the routing of four gas pipelines to Russia, termed the ‘Turkish Stream’ for the export of Russian gas to Europe.278

Europe
In 2007, the EU Directorate General for Research published “Energy Corridors: European Union and Neighboring Countries” proposing a European Energy Policy linking Europe via ‘energy corridors’


276  Ibid.


278  D. Graeber, 'Willm: No Word yet on Turkish Gas Pipeline’ UPI (19 August 2015).
to neighbouring supplier States.291 One of the ‘energy corridors’ earmarked as a priority project included the Nabucco Project. This project proposes a pipeline to connect Caspian and Middle East gas resources to the EU market via Turkey.292 A Communication from the Commission to the European Parliament identified the series of transcontinental corridors as “one of the EU’s highest energy security priorities”.291

In November 2010, the European Commission recommended diversifying its gas dependence on the Russian Federation, Norway and Algeria making European States less vulnerable to ad hoc supply cuts (by Russia in particular).293 Adding new supply sources, the European Commission approved plans to develop an Eastern Mediterranean corridor linking a LNG facility in Cyprus via an offshore pipeline and further approved the Euro-Asia Interconnector placing them on the list of Projects of Common Interest (PCI), 2014-2020. In 2013, Israel signed a Memorandum of Understanding with Cyprus and Greece, which would see Israeli gas exported via the European Commission’s newly proposed Eastern Mediterranean corridor.294

Which Way Forward?
On 23 December 2014, Israel’s Antitrust Authority decided that Noble Energy and Delek Group must sell their majority shareholdings in either the Tamar or Leviathan fields in order to end their monopoly over Israel’s gas resources.295 Noble Energy requested a hearing with the Antitrust Authority indicating its intention to oppose the decision.295 In May 2015, the newly elected Israeli government sidestepped the Antitrust Authority’s recommendations and agreed to continue as planned the development of the Leviathan field, despite the existence of an energy cartel.295 In addition, Israel’s Security Cabinet voted to remove gas agreements from the competence of the Antitrust Authority as a national security issue.287 A revised agreement was drafted forcing the sale of Delek Groups interest in Tamar but retaining Noble Energy’s holding at a reduced rate.287 In August 2015, the gas agreement was approved along with a controversial so-called ‘stability clause’ preventing interference from future governments thereby cementing Noble Energy’s continued interests in the Tamar and Leviathan gas fields.287

Although Israel has considered various export routes with Cyprus, Greece and Turkey, none of these have been successfully concluded to date. In light of the geophysical and political obstacles inherent in Cypriot, Greek and Turkish supply routes, it looks like it might be more expedient for Israel to export gas internationally via the Suez canal in Egypt.280 The deposed Egyptian President Morsi had opposed Israel’s use of the Suez canal for gas exports but this option may now be subject to negotiation under President al-Sisi.290 Either way, States planning to import Israel’s gas should be aware that Israel’s gas export infrastructure runs through Palestine’s contiguous and territorial sea, which has been effectively annexed by Israel for the purposes of its own energy security. As such States would be contributing to Israel’s continued violations of international humanitarian law and violations of Palestinian territorial sovereignty and self-determination. An illegal situation, assisted by United States support in continuing “Israel’s energy security” and its role in facilitating Israel’s gas export agreement negotiations.292


281 Ibid., pp. 9, 20.


289 D. Heseltine (n 183).

290 United States-Israel Strategic Partnership Act (n 199).
7. OIL IN THE OCCUPIED PALESTINIAN TERRITORY

"Looking at the site of the flare and the shape of the overall field, it’s clear this extends into the West Bank. And even when extracting from the Israeli side, it’ll be draining Palestinian reserves." (Samer Naboulsi, Petroleum Engineer, 2012)

7.1 VERIFIED PALESTINIAN OIL RESOURCES

There are numerous oil deposits located in the OPT, including deep-sea oil and oil shale. Contiguous oil resources straddling the Green Line are currently being unilaterally exploited by Israel.

7.1.1 Oil fields at Rantis, West Bank village: Meged-5

In 2000, international experts conducting a survey for the Israeli government reported that Israel contained substantial oil deposits with estimates of between 2 - 4 billion barrels of undeveloped offshore oil and 500 million barrels of undeveloped onshore oil. In 2004, after years of exploratory drilling, Givot Olam Oil Exploration of Jerusalem reported a commercial discovery of an estimated 980 million barrels of oil in the Meged-4 well located in Israel.

However, part of the 62,500 acre Meged oil field rests on the Green Line demarcating the West Bank and Israel between the Palestinian village of Rantis and the Israeli town of Rosh Haayin. It is still unclear how far the Meged oil field extends into the West Bank. According to Givot Olam, the Meged-5 well is located 16 kilometers south of the Meged-4 well, in the Southern Rosh Haayin Lease. Following initial Israeli silence about the location of the Meged-5 well, the Palestinian Authority appointed a committee of experts to explore and investigate the existence of Meged-5, which it believed was located somewhere between Qalqilya and Latrun.

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They could not be sure that any oil field extended below the West Bank. But the strong likelihood is that it did (otherwise why drill so close to the Green Line).  
- They had seen “flaring” at the site. While they could not get close enough to make a definite judgement, such “flaring” was normally indicative of drilling for exploration at the least, or more usually extraction itself.  
- They had been informed by their Palestinian interlocutors that the drilling was actually being carried out by a Jewish religious organisation and that there was allegedly a theological as well as commercial rationale for the current activity.  
- They had also heard of a further oil discovery in the Southern West Bank, near Hebron.  

By 2013 the presence of Palestinian oil resources in the village of Rantis were openly acknowledged, forming an integral part of the energy strategy under the Palestinian Economic Initiative. In 2014, the U.S Energy Information Administration updated its website to include “fields on the Israeli side of the boundaries [which] may extend across the West Bank and Gaza borders”.  

In April 2004, Israel leased the Meged Field to Givot Olam Oil Exploration Ltd for 30 years. Givot Olam provide in its Assessment of the Meged-5 well proposal that the company along with FracTech Ltd considered that reserves of up to 800,000 barrels could be accessed from the area. The company further recommended development of Meged-4 and Meged-2, highlighting the companies intent to use horizontal drilling techniques. In 2010, production test drilling at Meged-5 found the oil field contained an estimated 1.525 billion barrels of oil.

Meged-5 found the oil field contained an estimated 1.525 billion barrels of oil.

Companies leased to extract oil from Israel and the Occupied Palestinian Territory

<table>
<thead>
<tr>
<th>Company</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Edison SPA</td>
<td>Edison SPA is an Italian electricity and gas company.</td>
</tr>
<tr>
<td>Genie Energy</td>
<td>Genie Energy is an American energy company. The company is traded on the New York Stock Exchange.</td>
</tr>
<tr>
<td>Givot Olam Oil Exploration</td>
<td>Givot Olam Oil Exploration is an Israeli oil and gas exploration and production company. The company is listed on the Tel Aviv Stock Exchange.</td>
</tr>
<tr>
<td>Israel Energy Initiatives (IEI)</td>
<td>IEI is an Israeli oil and gas exploration and production company. IEI is a subsidiary of Genie Energy.</td>
</tr>
</tbody>
</table>

7.1.2 How much oil does Meged-5 contain? 
There is some uncertainty surrounding the exact reserves in Meged-5. In 2009, Givot Olam estimated that Meged-5 contained reserves in excess of 100 million barrels of oil. In 2010, exploratory drilling at Meged-5 indicated that there were approximately 1.525 billion barrels of oil. The field may also contain saleable gas deposits. However, an independent estimation by NJR Wright Greensand Associates Limited, reached a more conservative estimate, on the basis of a three well development plan, amounting to 29.6 million barrels of oil (MM bbl). In 2010, A Baker RDS, conducted a report into the amount of oil potentially contained in Meged, estimating that there was proven or tested quantities amounting to 10.0 MM stb and an additional 9.0 MM stb unproven reserves in Meged-5, totalling approximately 19 MM stb of oil. Despite these conservative estimates, a 2011 report by Israel’s Ministry of Finance considered that the quality and depth of oil at Meged-5, indicated “the existence of significant oil deposits in Israel’s land area too”.

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300 Ibid.
303 United States, EIA, Palestinian Territories (n 96).
Despite the varying estimates, Givot Olam began producing oil from Meged-5 in 2011.\textsuperscript{314} Since the start of the oil production at Meged-5, there have been reports of increased oil potential. For example, Givot Olam’s shares rose by 2.5 percent in October 2013, following reports that Meged-5 contained an extra 610,000 barrels of oil (M bbl) than previously estimated.\textsuperscript{315}

However, striking a note of caution, the upper end of these figures may have been massaged by the company to make it appear more profitable on the Israeli Stock Exchange, in order to attract investors, as the oil fields were not yet self-financing.\textsuperscript{314} Nevertheless, Meged-5, part of which belongs to the OPT, is currently being commercially exploited by Givot Olam with revenues directed to the State of Israel. This violates Israel’s customary international law obligations to co-develop shared oil resources with Palestine.

### 7.2 POTENTIAL PALESTINIAN OIL RESOURCES

#### i. Oil in the Mediterranean Sea off the coast of Gaza

Between December 2010 and 2012, Noble Energy discovered commercial quantities of oil at depths below the Leviathan-1 well, in Israel’s EEZ.\textsuperscript{314} The company secured the services of Atwood Advantage drillship with the objective of prospecting at 12,000 feet water depth/40,000 feet drill depth at a cost of $16 million USD.\textsuperscript{314} These significant oil finds, deep below the sea-bed, highlight the potential that similar oil resources may be discovered underneath the Gaza Marine and Border fields. Although Noble Energy temporarily suspended the deep sea drilling in May 2012, citing mechanical limitations, the company was encouraged “by the possibility of an active thermogenic (crude oil generating) hydrocarbon system at greater depths within the basin” under the Leviathan field.\textsuperscript{314} Satisfied with the potential oil exploitation from Leviathan-1, Noble Energy resumed exploratory drilling in January 2013 and developed a drilling plan in 2014 to continue testing for deep-sea deposits.\textsuperscript{317} The U.S Energy Information Administration and the Office of the Quartet Representative Tony Blair, Initiative for Palestinian Economy Energy, have indicated that there are similar potential hydrocarbons located below the Gaza Marine.\textsuperscript{316}

#### ii. Shale Oil in the West Bank

The Palestinian Economic Initiative stated that there were potential but yet unidentified amounts of hydrocarbons including shale oil, in the West Bank.\textsuperscript{316} Israel, holds an estimated 150 billion barrels of oil from oil shale resources in the Shfela Basin with some of these resources located near the Green Line.\textsuperscript{316} At the 2014 Universal Oil and Gas conference, Dr. Harold Vinegar, Chief Scientist at Israel Energy Initiatives (IEI) suggested that the West Bank was in possession of significant amounts of good quality shale oil.\textsuperscript{316} The resources located in the West Bank are estimated to be of a larger amount than those located inside Israel.\textsuperscript{317} In 2014, IEI sought approval from the Jerusalem District Planning and Building Committee for a pilot shale oil production site located “west of the crossing from the southern West Bank, inside the Green Line” located in Israel.\textsuperscript{317}

IEI is a subsidiary of Genie Energy based in Newark NJ and was granted an exploration and production license under Israel’s Petroleum Law, 1952.\textsuperscript{316} Mining shale oil requires environmentally destructive ‘fracking’ techniques, where the shale oil is heated to 300 degrees centigrade for the purpose of transforming the shale oil located at depths of 200-300 meters below ground into lightweight oil.\textsuperscript{317}

Although the ‘fracking’ process would necessitate drilling deep heating wells, IEI argued that a further 200-meter layer of impenetrable rock separated the shale oil and West Bank aquifers protecting it from pollution. However on 2 September 2014, the Jerusalem District Committee voted against the oil shale drilling pilot project in the Adulam Valley finding that it “had the potential to cause extreme environmental damage, including contaminating nearby groundwater and even emitting radioactive material.”\textsuperscript{315}

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\textsuperscript{316} IEI, Production Process <http://www.iei-energy.com/production_process.shfela-basin-oil-shale-pilot-project-374265> accessed 9 May 2015; IEI describes the In-Situ Conversion Process involving: ‘drilling heating wells into the oil shale with a smaller number of production wells strategically placed in the heating pattern. The heater wells gradually heat subsurface oil shale formation. The elevated temperature converts the kerogen into lighter hydrocarbons fractions, which are then brought to the surface through the production wells as light hydrocarbon fuel, leaving the coke residue in the reservoir.’ IEI, Production Process <http://www.iei-energy.com/production_process.php> accessed 9 May 2015.


\textsuperscript{322} The resources located in the West Bank are estimated to be of a larger amount than those located inside Israel.\textsuperscript{317} In 2014, IEI sought approval from the Jerusalem District Planning and Building Committee for a pilot shale oil production site located “west of the crossing from the southern West Bank, inside the Green Line” located in Israel.\textsuperscript{317}

iii. Potential Oil around Hebron

In January 2012, a declassified e-gram communication between the Foreign and Commonwealth Office and British Consulate General in Jerusalem noted the potential for a further oil discovery in the Southern West Bank near Hebron.238 Some exploratory drilling had been conducted at as-Samu in Hebron during the Jordanian occupation.239 Moreover, the Palestinian Authority has indicated that attempts to drill for oil had been unsuccessful in Birzeit (which literally translates to Well of Oil) near Ramallah, during the Jordanian occupation.240

iv. Potential Oil around Gaza

Both the U.S Geological Survey and the U.S Energy Information Administration have indicated that there are potential oil resources to be discovered inland on the northern and southern borders of Gaza and Israel.241 It has also become apparent that Israel drilled numerous boreholes and wells in occupied Gaza during the 1970’s, including Til-1,242 Kefar Darom 1, Nezarim 1 and Gaza 1.243

7.3 ACCESS DENIED: HOW ISRAEL BLOCKS THE DEVELOPMENT OF OIL RESOURCES IN THE OPT

7.3.1 Confiscating Village Land and Preventing Access to Oil

Israel has prevented Palestinian access to develop its oil fields at the Palestinian village Rantis, located in the governorate of Ramallah. Much of the village’s land has been designated for military training zones and subsequently used for the construction of the Annexation Wall, built on Rantis agricultural land.

Since 1948, Israel has expropriated 28,500 dunums (approx. 7042 acres) of agricultural land in the area by military order.234 In 1978, confiscated land to the east of Rantis was designated as a military training zone, and in 1980 agricultural lands between the 1948 and 1967 borders were further reclassified as military training zones.235 Meanwhile, the Ministry of Housing constructed a settlement of 2,500 housing units in the expropriated land between Rantis and Nahalin.236 Between 2004-2005 Israel confiscated 3,500 dunums of land for the construction of the Wall around the village of Rantis under Military Order 03/ 69/T Judea & Samaria 2003, citing ‘security purposes’. This physically prevented Palestinian access to the expropriated lands.237

The Wall runs between 500 meters to 1 kilometer inside the Palestinian side of the Green Line, cutting 327 328 329 330 331 332 333 334 335 336 337 Source: Al-Haq, Checkpoint at Meged Field

329 Ma’an News Agency, ‘Minister: PA May Drill for Oil in West Bank’ (20 April 2012).
330 Ibid.; Declassified Communications (n 299).
331 United States, EIA Palestinian Territories (n 98); U.S Geological Survey (n 1).
off access to approximately 6.5 kilometers of Rantis village. Across this space, the Meged oil field spans 175 square km between the Palestinian village of Rantis and the Israeli town Rosh Ha'ayin. The Wall has created an enclave around Rantis effectively trapping 2,688 villagers between the main and secondary depth walls, severely limiting their freedom of movement and preventing Palestinian access to the oil field on the Palestinian side of the Green Line.

Article 15 of the Interim Agreement (1995) places a further barrier between Palestinians and their sovereign oil reserves. In Area C, powers and responsibilities concerning the exploration and production of oil and gas remain under Israeli control, to be “transferred gradually” to the Palestinian Authority. Rantis straddles Area B and Area C, with 1,317 dunums of land in Area B and 9,606 dunums in Area C. Under the Oslo Interim Agreement, Palestine has full civil control and exercises joint Israeli-Palestinian security control in Area B, while Israel retains full control over security, planning and construction in Area C. In March 2014, the Palestinian Authority issued a global tender for oil exploration in the West Bank. However any plans fostered by Palestine to develop oil in Area C would require advance Israeli approval. This political arrangement effectively rubber-stamps the illegal Israeli annexation of Palestinian land around Rantis, expediting Israeli exploitation of Palestinian oil resources.

7.4 EXPLOITING PALESTINIAN OIL UNDER ISRAEL’S PETROLEUM LAW 5712-1952

Israel has applied the provisions of Petroleum Law 5712-1952 to oil partially located in Rantis, transferring rights of use to Givot Olam. Petroleum Law 1952 requires that commercial quantities of oil are available for exploitation in a petroleum field (see also section 7.1.2). Initially a license may be obtained for the right to explore and conduct test drilling, while a lease confers the exclusive right to explore and produce petroleum. For these purposes a petroleum field includes “the land and all geologic formations underlying it beneath which is a known accumulation of petroleum capable of being produced in commercial quantities”. Thereafter a production lease is granted, permitting exploitation and extinguishing any former rights held in the property.
Israel sanctioned oil exploration in the occupied Golan Heights in violation of Article 55 of the Hague Regulations. In April 2013, Israel awarded an exploration license under Petroleum law 5712-1952 to Afek covering 396.5 square kilometers of southern Golan Heights. Afek is a subsidiary of Genie Energy Limited. Israel’s former Minister of Infrastructures and IDF Brigadier General (res.) Effie Eitam is Chairman of the Board of Genie Israel Holdings and Avigad Meiri formerly the “Ministry of Defense’s representative at the regional planning committees and the advisory council on matters of oil and energy” advises Afek on logistics, licensing and permitting. The exploration license permits the execution of survey wells and production tests subject to the approval of Israel’s Regional Planning and Building Committee.

Genie Energy’s 2014 Annual Report illustrated its full awareness of the illegality of its Afek operations: “because of the dispute as to the status of the Golan Heights, operations under the license may initiate international criticism, sanctions and boycotts. The political uncertainties surrounding the Golan Heights may result in (i) questions regarding the validity of the license granted to Afek by the State of Israel; (ii) disputed titles to any resources extracted; (iii) possible sanctions on Afek or Genie or restrictions on sale of any extracted resources; and (iv) possible negative publicity or other adverse public activities or perceptions of Afek and the Company. In addition, if the Golan Heights are returned to Syria by Israel, the continuation of Afek’s license would be in doubt.”

8. LEGAL ANALYSIS

8.1 ISRAEL’S LEGAL OBLIGATIONS

Israel, as the Occupying Power, must administer the occupied territory’s natural resources according to the rules of international humanitarian law, more specifically the Hague Regulations (1907), the Fourth Geneva Convention (1949) and the Additional Protocol I (1977). Israel is compelled to abide by the Hague Regulations as well as the provisions of Additional Protocol I that largely reflect customary international law. 354

353 Aeneid I, 539-540 [Dryden’s translation, I, 170-173].

354 Israel is not a party to the Hague Regulations, however the norms were declared customary international law at Nuremberg, and are binding on this basis. Although Israel has ratified the Fourth Geneva Convention it has refused to apply the Convention in full to the occupied territory, on the irrelevant grounds that Jordan was not sovereign over the territory in 1967. Consequently, this argument has been overwhelmingly rejected by the ICRC, states parties to the Geneva Conventions, and the International Court of Justice, while numerous UN Security Council and General Assembly resolutions have confirmed the applicability of the Fourth Geneva Convention to the OPT.
Legal Framework: The Laws of Belligerent Occupation

Article 42 of the Hague Regulations establishes the criteria for belligerent occupation on the *de facto* basis of military presence and substitution of authority.354 Article 43 of the Hague Regulations follows on from the established *de facto* control of territory where “the authority of the legitimate power is in the hands of the occupant in power, placing on him the obligations on the invading army for the duration of time that the authority is ‘established and can be exercised’”.355 The belligerent occupant’s administration of the territory is therefore temporary and accordingly, the belligerent occupant does not acquire sovereign title in the territory.356 The belligerent occupant must maintain the previous laws in force in the territory “unless absolutely prevented”.357 Nevertheless, the belligerent occupant may implement new laws in limited circumstances to ensure its security358, and indeed is under an obligation to do so to provide for the humanitarian guarantees of the Fourth Geneva Convention.359

Treaty law and State practice support the extension of the laws of belligerent occupation over maritime resources and regulate the exploitation of oil and gas resources in the continental shelf. In particular, Article 88 of the Oxford Manual of Naval War (1913) states that maritime territory can be occupied.360 Additionally, Judge Tullio Treves, of the International Tribunal on the Law of the Sea, has noted that “the resort to human rights or humanitarian considerations and rules in the context of the occupation extends only to the territory where such authority has been established and can be exercised.”361

355 Article 42, Convention IV (respecting the Law and Customs of War on Land and its annexes: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907. “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.

356 Ibid.


358 Article 43, Hague Regulations (1907).


360 Article 88, Article 59, Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, entered into force Oct. 21, 1950. “To the fullest extent of the means available to it the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate. The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other International Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods. The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.”

361 Oxford Manual of Naval Law, Adopted by the Institute of International Law, 1913, in D Schleider, J Toman, The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and other Documents (4th edition, 2004) 1273, 1135. “Occupation of maritime territory, that is of gulfs, bays, harbours, estuaries and technological waters, exists only when there is at the same time an occupation of continental territory, by either a naval or a military force. The occupation, in that case, is subject to the laws and usages of war on land.”
political status and freely pursue their economic, social and cultural development”.364Permanent sovereignty over natural resources is considered an integral element of the principle of self-determination, which undoubtably is jus cogens in nature.365 In particular the right of permanent sovereignty over natural resources as part of the economic strand of self-determination, was developed to address foreign ownership over natural resources where newly independent states wished to nationalize and protect their national assets.366 The objective was not to “frighten off” foreign investment in natural resources, but to prevent foreign exploitation.367 In particular, the Human Rights Committee considers that the freedom of people to dispose of their natural resources involves a correlative duty on other states and the international community to refrain from interfering with the enjoyment of the right.368 Notably, Israel as Occupying Power does not have sovereign rights over Palestinian territory and may only administer immovable natural resources under the temporary rules of usucapio.369

Numerous General Assembly resolutions have underscored the right of the Palestinian people to self-determination and to sovereignty over their territory while emphasizing that Israel as Occupying Power has “only the duties and obligations of an Occupying Power”.370 More recently the General Assembly adopted a resolution holding that the “right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination”.371 This echoed General Assembly Resolution 1803 on the right of peoples and nations to permanent sovereignty over their natural resources considered declaratory of customary international law.372 This explicitly suggests that revenues from Palestinian natural and national resources must be used to support their jus cogens right to self-determination and the development of the State of Palestine. E contrario, the retention of revenues by the State of Israel to frustrate the creation of a Palestinian unity government, or to penalize the State of Palestine for other legitimate actions, violates the right to permanent sovereignty over natural resources, which is ipso facto a violation of the right to self-determination, a peremptory norm of international law.373

8.2 INTERNATIONAL HUMANITARIAN LAW

8.2.1 Israel’s Denial of Access to Oil Fields at Rantis

Israel’s appropriation of Palestinian village land belonging to Rantis and the construction of the Annexation Wall has prevented Palestinian access to oil fields on the Palestinian side of the Green Line. The confiscation of private property is prohibited under international humanitarian law.374 Article 46 of the Hague Regulations provides that “private property cannot be confiscated”.375 Article 52 of the Hague Regulations outlines the circumstances under which the belligerent occupant can requisition private property, being “for the needs of the army of occupation” and “in proportion to the resources of the country”.376 According to Article 52, requisition must not “involve the inhabitants in the obligation of taking part in military operations against their own country” and compensation must be paid for the requisitioned property as soon as possible.377

Israel has repeatedly argued that it appropriates private agricultural Palestinian land for the construction of the Annexation Wall for security purposes.378 Accordingly the military order issued in Rantis, “Order to Seize Lands No. 03/69/T (Judea and Samaria) 2003”, cites “military reasons” for the seizure of land.379 However “military need” advanced under Article 52 pertains to immediate military needs.380 Further, Article 52 limits requisitions in kind and services to “matters as billets for the occupying troops and the occupation authorities, garages for their vehicles, stables for their horses, urgently needed equipment and supplies for the proper functioning of the occupation authorities, food for the army of occupation and the like.”381 It would require a quantum leap in interpretation to extend the parameters of military need to the private commercial interests of Givot Olam Oil Exploration for the production of petroleum. Indeed in Duweikat et al v Government of Israel (1979), the Israeli High Court of Justice advanced that “the military necessities to which the Article [52] refers cannot include, by any reasonable interpretation, the needs of national security in their broader sense”.382

The reclassification of private agricultural land as military training zones during belligerent occupation

364 Article 1, ICCPR; Article 1, ICESCR.


368 Human Rights Committee, General Comment No. 12.

369 Article 55, Hague Regulations (1907).

370 A/RES/58/292 (17 May 2004); General Assembly, Permanent Sovereignty of the Palestinian People in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their Natural Resources (30 October 2014) A/C.2/69/L.33.


373 Article 46, Hague Regulations (1907).

374 Ibid.

375 Article 52, Hague Regulations (1907).

376 This obligation to respect private property has been recognized by Israel in HCJ 2058/04, Beit Sourik Village Council v The Government of Israel et al., (30 June 2004) paragraph 35.

377 Article 52, Hague Regulations (1907).

378 Beit Sourik Village Council (n 379) para 3. On April 14, 2002, the Minister’s Committee for National Security reached a decision, to erect the “security fence” or wall with the objective “to improve and strengthen operational capability in the framework of fighting terror, and to prevent the penetration of terrorists from the area of Judea and Samaria into Israel”.


results in the destruction of private agricultural property. Additionally, the courts have recognized that circumstances might prevail in the theater of hostilities rendering the destruction of property inevitable. This qualification is met by the test of absolute military necessity. Furthermore, the destruction of agricultural property for the exploration, drilling and production of oil at Meged-5 exceeds the narrow application of Article 53 of the Fourth Geneva Convention and may amount to a grave breach of Article 147 of the Fourth Geneva Convention.

The International Court of Justice (ICJ) has unequivocally stated that Israel’s use of force does not render its actions justifiable under the laws applicable to belligerent occupation. The ICJ concluded that the Wall “cannot be justified by military exigencies or by the requirements of national security or public order.” As such, the construction of the Wall in occupied Palestine violated the Palestinian right to self-determination by illegally acquiring territory through the use of force.

The appropriation of private immovable property for commercial purposes exceeds the narrow conditions for requisition based military need in Article 52 of the Hague Regulations. Confering title over Meged-5 to private corporations to exploit oil effectively alters the title of Palestinian private immovable agricultural property to commercial property for the benefit of enterprises friendly to the occupying forces. Article 52 categorically prohibits altering the title of private immovable property under such circumstances.

Israel’s mining and exploitation of oil at Meged-5 in Rantisp, the drilling of exploratory wells in occupied Gaza in the 1970s, and the exploitation of migratory gas resources in the Border Field violate Article 55 of the Hague Regulations. During belligerent occupation, the rights of the occupant receive priority over property rights, whether public or private, and whether it is movable or immovable in nature.

The general rule deriving from the laissez faire nature of international humanitarian law is that private property must be protected and cannot be confiscated. Public movable property may be requisitioned for use in military operations, and the fruits of public immovable property may be appropriated.

For example, in N.V De Bataafsche Petroleum Maatschappij and Others v. The War Damage Commission (1956) the leading case on oil expropriation during belligerent occupation, the Japanese occupying forces treated oil stocks owned by private Dutch corporations in occupied Sumatra as public war booty. The court considered that oil could only be requisitioned as public movable property, where there was a "sufficiently close connection with direct military use" to bring it within the ambit of Article 53(2) as munitions of war.

On this basis it is generally supported by most commentators and case-law, that resources such as oil and gas, which need to be exploited and refined, are not directly usable as munitions de guerre for purposes of requisition. Rather oil and gas is broadly considered to be public immovable property under Article 55 of the Hague Regulations.

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immovable agricultural property to commercial property for the benefit of enterprises friendly to the occupying forces. Article 52 categorically prohibits altering the title of private immovable property under such circumstances. Oppenheim submits that “immovable private enemy property may under no circumstances or conditions be appropriated by an invading belligerent. Should he confiscate and sell private land or buildings, the buyer would acquire no right whatever to the property.”

8.2.2 Limitations on Israel’s use of Oil and Gas as Public Immovable Property on Land and Sea during Belligerent Occupation

I. Appropriation of Public Moveable Property

Israel’s mining and exploitation of oil at Meged-5 in Rantisp, the drilling of exploratory wells in occupied Gaza in the 1970s, and the exploitation of migratory gas resources in the Border Field violate Article 55 of the Hague Regulations. During belligerent occupation, the rights of the occupant receive priority over property rights, whether public or private, and whether it is movable or immovable in nature.

The general rule deriving from the laissez faire nature of international humanitarian law is that private property must be protected and cannot be confiscated. Public movable property may be requisitioned for use in military operations, and the fruits of public immovable property may be appropriated. Accordingly Article 53 of the Hague Regulations allows the army to take possession of ‘all movable property belonging to the State which may be used for military purposes.’

For example, in N.V De Bataafsche Petroleum Maatschappij and Others v. The War Damage Commission (1956) the leading case on oil expropriation during belligerent occupation, the Japanese occupying forces treated oil stocks owned by private Dutch corporations in occupied Sumatra as public war booty. The court considered that oil could only be requisitioned as public movable property, where there was a "sufficiently close connection with direct military use" to bring it within the ambit of Article 53(2) as munitions of war.

On this basis it is generally supported by most commentators and case-law, that resources such as oil and gas, which need to be exploited and refined, are not directly usable as munitions de guerre for purposes of requisition. Rather oil and gas is broadly considered to be public immovable property under Article 55 of the Hague Regulations.

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is one of direct usability. For example, extracted oil in storage tanks would be considered moveable property and requisitioned under Article 53(2) of the Hague Regulations provided it is intended for direct use in military operations.

It is important to distinguish between the public and private characterisation of property for the purposes of military use. Significantly, the laws in force prior to the Israeli occupation categorised oil and gas resources as public. Article 11 of the Palestine Mandate placed natural resources under public ownership, and this law continued in force during the Egyptian occupation of the Gaza Strip. During the Jordanian occupation of the West Bank, Law No. (37) of 1966, Jordan placed minerals including oil and gas under public administration. The public character of oil is reflected in Article 85 of the Basic Law (2002) of the State of Palestine which governs the utilisation of natural resources as ‘state owned’ property. Article 85 of the 2002 Basic Law (May 29, 2002).

403 Article 30-48, Law No. (37) of 1966, The Provisional Law on Regulation of the Affairs of Natural Resources.

404 Article 55, 2002 Basic Law (May 29, 2002).

405 Natural Resources Law (No.1), 1999, Published in Palestinian Gazette (Palestinian National Authority), Issue No. 28, 13/03/1999 at page 10.

406 Article 6, Natural Resources Law (No.1), 1999

407 Article 55, Hague Regulations (1907).

408 Article 52, Hague Regulations (1907).


The policy underpinning usufruct is to ensure that the protection and functional maintenance of the moveable property of the occupied State remains intact for the returning sovereign. Consequently, Israel’s use of public moveable property is limited by the Article 55 duty to safeguard the capital of the property. Moreover, as usufructuary, Israel should not use the property in a wasteful or negligent manner as would seriously impair the properties value. ‘Safeguarding the capital’ prohibits the occupant from any exploitation of the public resource. For example, excess tree felling is proscribed and profligate mining that would impair the resource is forbidden, as both would impact negatively on the owner’s enjoyment of the property on termination of the usufruct. Accordingly, Israel is obliged to maintain and continue the functioning of the Gaza Marine 1 and 2 Wells, which BG Group had already started, its failure to do so risks impairing the value of the property.

Israel’s Long Term Lease and the Temporary Usufruct

The temporary nature of belligerent occupation initially established in Article 43 of the Hague Regulations, extends to Article 55. The occupant is prevented from making permanent changes to the laws in the occupied territory and this combined with the de facto authority established under Article 42 is illustrative of the occupant’s temporary presence on the territory. In French Claims Against Peru, 1901 (the Guano case), the Franco Chilean Arbitration Tribunal established inter alia that the relationship the belligerent occupant enjoys over public immovable property is temporary. While States may lease or contract out their usufructuary rights to companies, the terms of the lease must comport with Article 55. Accordingly, Israel’s grant of long-term thirty-year leases to Givot Olam for the Meged-S oil well, exceed the temporary nature of belligerent occupation and Article 55 of the Hague Regulations. According to Whitton J. in Bataafsche, even an Article 53(2) seizure “never transfers title, and in the case of an expendable product the occupier is under a duty to return to the owner at the end of the hostilities the unexpended portion.”

ii.Usufruct of Public Immovable Property

Article 55 of the Hague Regulations facilitates the belligerent occupant’s use of public immovable property with the belligerent occupant acquiring temporary usufructuary privileges for this purpose. Article 55 of the Hague Regulations provides:

“The occupying state shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.”

The policy underpinning usufruct is to ensure that the protection and functional maintenance of the immovable property of the occupied State remains intact for the returning sovereign. Consequently, Israel’s use of public immovable property is limited by the Article 55 duty to safeguard the capital of the property. Moreover, as usufructuary, Israel should not use the property in a wasteful or negligent manner, such as seriously to impair its value. He may, however, lease or utilise public lands or buildings, sell the crops, cut and sell timber, and work the mines. The term of a lease or contract should not extend beyond the conclusion of the war.

410 Oppenheim warns that the usufructuary is “prohibited from exercising his right in a wasteful or negligent way so as to decrease the value of the stock and plant.” L. Oppenheim (in 305) 306. Greenspan adds that the usufructuary must not “impair” the value of the property. M Greenspan, The Modern Law of Land Warfare (University of California Press, 1959) 208.

411 Article 43, Hague Regulations (1907). “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

412 Article 31 of the predecessor Lieber Code, 1863 similarly provided that the title to immovable property “remains in abeyance during military occupation, and until the conquest is made complete” and Article 52 of the Oxford Code, 1880 conveyed that the occupant “may only provisionally administer the immoveables.” Article 31, Instructions for the Government of Armies of the United States in the Field, Prepared by Francis Lieber, promulgated as General Orders No. 100 by President Lincoln, 24 April 1863.


415 (This also applies to Al-Ahi Oil and Gas in the Golan Heights.). M Greenspan (n 410) 288. “The occupant may lease State property, although leases and contracts in relation to public property should not extend beyond the duration of the occupation.”

Exploiting Natural Resources for Commercial Profit
In addition to the above, using the fruits of finite immovable property for commercial profit, is prohibited under Article 55. Generally a usufructuary privilege permits the user to appropriate the fruits of the property. 434 However, finite non-renewable resources such as oil and gas do not constitute fruits for these purposes and instead form part of the occupied territories capital. 435 Immovable property may be used to help defray the expenses of the administration of the occupied territory, or for purposes benefitting the occupied population. However, it is explicitly prohibited under Article 55 to procure the use of immovable property for economic profit. 436 Accordingly, the extraction of oil and gas by Givot Olam and the Noble Energy conglomerate for private commercial gain are prohibited under Article 55. 437

8.2.3 Appropriation of Gas Revenues and Taxes
Israel's appropriation of customs clearance revenues including revenues from energy destined for the Palestinian market exceeds its administrative obligations under IHL. Article 48 of the Hague Regulations governs the belligerent occupants administration of taxes and revenues within occupied territory. 438 Article 49 allows contributions to be collected “for the needs of the army or of the administration of the territory in question”. Drawing on Article 43 of the Hague Regulations, the collection of taxes, duties and tolls are imposed “for the benefit of the State” and are “as far as is possible” based on the rules in force on assessment and incidence in the occupied State. However, it is accepted in international practice that local municipalities will still levy local taxes independently of the belligerent occupant. 439 Naturally, the rules may be modified where it is in the best interests of the occupied State to do so. 440 However in Abu Aita v Commander of Judea and Samaria (VAT case) (1983) Justice Shamgar upheld a military order introducing equalising VAT on products and services in the occupied territories, in parallel with Israel’s economy and patenty for the benefit of Israel. 441 The imposition of disproportinate tax rates and duties which followed were categorically denounced

Prohibition on Opening New Mines
Opening and exploiting new oil and gas wells in occupied territory is a violation of Article 55 of the Hague Regulations. 442 While the belligerent occupant can use existing mines in order to maintain the functioning and integrity of the property, there is an explicit prohibition on the development of new mines during occupation. 443 Exploiting new mines would substantially deplete the capital of the property, as oil and gas resources are finite. 444 During the Israeli occupation of the Sinai in the 1970’s, Israel drilled new oil wells, commercially exploiting and appropriating Egyptian oil located in the continental shelf. In a Memorandum of Understanding, the United States considered that the regime of belligerent occupation extended to the territorial sea. 450 Accordingly, the Memorandum rejected Israel’s contention that it had the right to open new mines under the laws of belligerent occupation, concluding “an occupant’s rights under international law do not include the right to develop a new oil field, to use the oil resources of occupied territory for the general benefit of the home economy or to grant oil concessions” 451

The High Court of Justice (HCJ) has considered the development of new mines in Area C, not yet transferred to Palestinian Authority control as a political-security issue outside the competence of the military commander. 452 In Yesh Din v IDF Commander in the West Bank (2011) the HCJ characterized the exploitation of quarries by Israel in Area C as a political-security-national issue and thus beyond the jurisdiction of the Court subject to future political negotiations. 453 The ruling upheld the Israeli practice whereby the authority to administer natural resources in the OPT, ceded from the military commander and was absorbed into Israeli government departments akin to annexation. The ruling allowed private Israeli corporations to exploit immovable Palestinian quarries for commercial profit, beyond the reach of occupation law. The Courts interpretation facilitates Israel’s illegal natural resource exploitation in Area C which clearly violates Article 55 of the Hague Regulations. Israel’s drilling into Palestinian territory at Meged-5 and drilling of boreholes and wells in occupied Gaza during the 1970’s, including Til-1, 454 Kefar Darom 1, Nezarim 1 and Gaza 1, exceeds the usufructuary privileges of the belligerent occupant. 455

The Israeli occupation of the Sinai during the 1970’s, including Til-1, 455 Kefar Darom 1, Nezarim 1 and Gaza 1, exceeds the usufructuary privileges of the belligerent occupant. 456

417 Y Ari (397) 210; B Clagett, T Johnson, ‘May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?’ (1979) 72(3) The American Journal of International Law 558, 574-5.
418 B Clagett, T Johnson, I 417 558, 574. Article 52, Oxford Code (n 412) “The occupant can only act in the capacity of provisional administrator in respect of real property, such as buildings, forests, agricultural establishments belonging to the enemy State (Article 6), it must safeguard the capital of these properties and see to their maintenance.
421 ibid., 84, 83 733, 735.
423 ibid., para. 6.
425 (This also applies to exploratory wells in the occupied Golan Heights). G Gvirtzman et al., ‘The Late Tertiary of the Coastal Plain and Continental Shelf of Israel and it’s Bearing on the History of the Eastern Mediterranean’ (Geological Survey of Israel) 1201.
426 418 I 430 Article 48, Hague Regulations (1907). “If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the army or of the administration of the occupied territory to the same extent as the legitimate Government was so bound.”
429 This also applies to Alik Oil and Gas in the Golan Heights.
430 Article 46, Hague Regulations (1907), “If, in the territory occupied, the occupant collects the taxes, duties, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound.”
431 In re Lecop and Others (1944), the French Council of State found that the municipal council retained the authority to impose a special tax on commercial transactions for the maintenance of public order provided that such determination did not conflict with the rights of the occupying Power. In re Lecop and Others, (January 7, 1944) France, Council of State, Annual Digest and Reports of Public International Law Cases Years 1943-1945, (London Butterworth & Co. (Publishers), Ltd, 1949) Case No. 161, p. 453.
433 HCJ 69/81, Abu Aita et al. v Commander of Judea and Samaria et al. (VAT case), 37(2) PD 197, 310. English translation in 13 IYHR 348 (1983).
by the UN General Assembly in Resolution 41/63 D. Moreover von Glahn argues that "the courts decision did not incorporate convincing evidence that the new tax actually served to improve (or even to maintain) the civil life of the population, nor that there was shown any evidence that the imposition of the new tax served the needs of the occupying Israel Defense Forces".

Despite the illegality of imposing the occupant's tax regime on the occupied state, the equalizing tax relationship was adopted with the creation of the semi-customs union under the Oslo Accords. Article 7 of the Paris Protocol (1994) required that the Palestinian Authority maintain a fixed level of VAT synchronized within 2 percent of Israel's VAT rate. However Article 7, Article 8 and Article 47 of the Fourth Geneva Convention together prohibit agreements which result in the denial of Convention rights. For example, Article 7 of the Fourth Geneva Convention ensures that protected persons will not be adversely affected by special agreements. Article 8 prevents protected persons from renouncing the rights secured to them by the Convention. Similarly Article 47 of the Fourth Geneva Convention expands on this protection and ensures that "agreements concluded between the authorities of the occupied territories and the Occupying Power" will not deprive protected persons of their rights under the Convention. Although the prohibitions on special agreements derive from the Geneva Conventions, the provisions also apply to agreements in contravention of the Hague Regulations. Article 154 of the Fourth Geneva Convention bridges the Hague and Geneva Conventions, the latter being supplementary to Sections II and III of the Hague Regulations.

Critically, Article 48 strictly establishes that monies may only be used for the purposes of administering the occupied territory. The belligerent occupant is bound by an Article 48 duty, "to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound". Accordingly, taxes, dues and tolls collected under for the administration of the territory are protected from Article 53 requisition for "military operations".

This understanding is succinct with the predecessor 1880 Oxford Manual that "the occupant is not free to dispose of what still belongs to the enemy and is not of use in military operation".

A distinction may be drawn between Article 53 "cash, funds and realizable securities" belonging to the State, and the collection of Article 48 taxes and revenues used for the administration of the occupied State, the former traditionally was subject to appropriation during armed conflict, while the latter was always specifically protected. Accordingly, Israel's collection and appropriation of customs clearance revenues on electricity, petroleum, gas and fuel imports belonging to the State of Palestine, falls outside the requisition parameters of Article 53 of the Hague Regulations and is absolutely prohibited under Article 48 of the Hague Regulations. Moreover, the measures infringe upon Palestinian peoples rights to permanent sovereignty over their "national resources".

8.2.4 Appropriation of Natural Resources and Revenues
Israel's exploitation of oil and gas deposits, forced depression of the Palestinian economy, the appropriation of Palestinian revenues, perpetrated by the forced territorial fragmentation of the State of Palestine amounts to economic spoliation. In Re Farben, the Military Tribunal at Nuremberg considered the crime of spoliation, as the "wanton, premeditated, and systematic destruction or plunder of the economic substance of occupied territory". The terms, 'spoliation', 'plunder', 'pillage', 'looting', 'sacking' and 'exploitation' have been used interchangeably in reference to the appropriation of property in international criminal law. Alternatively, spoliation appears as the war crime of appropriation in Article 80 of the Rome Statute. Zimmerman contends that the crime pertains specifically to crimes of appropriation conducted during the context of a belligerent occupation. Notably the crime covers both private and public property. Significantly, the act of seizure or taking possession of property, is a component of the crime of appropriation. This element is especially applicable to the seizure or withholding of Palestinian gas deposits preventing their development in the Gaza Marine and forcible possession by naval closure. Similarly, it is applicable to Israel's ad hoc seizure and withholding of Palestinian revenues also constituting collective punishment.

Furthermore "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" amounts to a grave breach under Article 147 of the Fourth Geneva

436 Article 7, Gaza-Jericho Agreement Annex IV.
438 Article 8, Fourth Geneva Convention (1949).
440 Article 154, Fourth Geneva Convention (1949); Advisory Opinion, Legal Consequences (n 385) par 89.
442 Article 50, Oxford Code (n 432) "Although the occupant replaces the enemy State in the government of the invaded territory, his power is not absolute. So long as the fate of this territory remains in suspense—that is, until peace—the occupant is not free to dispose of what still belongs to the enemy and is not of use in military operations."
443 Zimmerman contends that the crime pertains specifically to crimes of appropriation conducted during the context of a belligerent occupation. Notably the crime covers both private and public property. Significantly, the act of seizure or taking possession of property, is a component of the crime of appropriation. This element is especially applicable to the seizure or withholding of Palestinian gas deposits preventing their development in the Gaza Marine and forcible possession by naval closure. Similarly, it is applicable to Israel's ad hoc seizure and withholding of Palestinian revenues also constituting collective punishment.

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interconnection between the realization of human rights and economic development.” Article 55 of the Charter of the United Nations explicitly refers to the promotion of “economic and social progress and development”. Article 1(2) of the Declaration on the Right to Development establishes “the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both international covenants on human rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.” The African Commission on Human and People’s Rights in Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya found Kenya’s removal of the Endorois people from ancestral lands and subsequent prevention of access to land in order to create a game reserve for tourism violated the right to development under the Article 22 of the African Charter. Drawing on the UN Declaration on the Right to Development, the African Commission considered that the result of development is empowerment, while the right is realized when capabilities and choices are improved. Similarly, Israel’s prevention of Palestinian access to natural resources coupled with the policy to frustrate Palestinian plans to develop the Gaza Marine, Border field and oil fields at Rantisi purposefully prevents the empowerment of the occupied Palestinian population. This further infringes upon Article 28 of the Universal Declaration on Human Rights underscoring the necessity of realizing collective and individual human rights within a social and international order. Consequently, denial of the right to development has a knock on effect on the realization of other rights such as the right to work, the right to culture and the general fulfillment of “basic needs.”

At the International Conference on Human Rights in Tehran (1968) the Conference advanced “that the enjoyment of economic and social rights is inherently linked with any meaningful and profound

8.3 INTERNATIONAL HUMAN RIGHTS LAW

In the Commentary on Article 12 of the Guiding Principles on Business and Human Rights, commercial enterprises are directed to not only respect internationally recognized human rights, but also to “respect the standards of international humanitarian law” in situations of armed conflict. Many international corporations have incorporated the principles into their Corporate Social Responsibility Policies and Codes of Conduct. For example, in its 2013 Sustainability Report, Noble Energy indicated that it would promote the rights detailed in the UN Declaration on Human Rights and apply the Voluntary Principles on Security and Human Rights.

Despite this, Gaza’s maritime space has been closed to protect Noble Energy’s Mari-B investment. Israel’s deliberate targeting and killing of civilian Palestinian fishermen to maintain the security of Noble Energy’s gas investments, violates their right to life guaranteed by Article 6 of ICCPR. The closure of the territorial waters of the Gaza Strip restricting Palestinians to a six-mile limit violates Article 12 of the right to freedom of movement. This is particularly concerning where the infringement prevents Palestinians from accessing and developing their natural gas resources for much needed domestic revenues. The determined efforts of Israel to impede development in the OPT, by leasing rights over natural resources to corporations, also violates the right to development as outlined in the Declaration on the Right to Development. Preventing the Palestinian population from accessing and developing their natural resources constitutes an infringement of the right to self-determination and to permanent sovereignty over their natural resources (see section 9.1).

8.3.1 The Right to Development

The collective right to Palestinian economic development has been systematically curtailed by Israeli policies and practices, by the imposed closure of borders of the Gaza Strip and West Bank, the annexation of Palestinian land by the Annexation Wall and preventing the development of Palestinian oil and gas energy resources.

At the International Conference on Human Rights in Tehran (1968) the Conference advanced “that the enjoyment of economic and social rights is inherently linked with any meaningful and profound

453 Article 147, Fourth Geneva Convention (1949).
454 Palestinian Fiscal Revenue Leakage (n 38) 39.
455 Armed Activities (n 385). (This similarly applies to oil exploited from the Golan Heights).
460 Article 15, Charter of the United Nations (1945).
461 Article 1(2), United Nations General Assembly resolution 41/128.
463 ibid., para 293.
8.4 CUSTOMARY INTERNATIONAL LAW

8.4.1 Naval Closure of the Gaza Strip

Israel has enforced an illegal naval closure of the Gaza Strip (see section 5.1). The closure formally declared by Israel under the pretext of Operation Cast Lead has continued beyond the close of hostilities. More recently, Israeli OC Navy Adm. Ram Rothberg remarked that operations continued in enemy waters to ensure the protection of rigs, gas resources and economic interests. The closure amounts to an illegal naval blockade of Palestine’s maritime space. The 1858 Declaration of Paris provides the de jure basis for a naval blockade where the blockading State provides a formal notification coupled with the blockading of the naval forces to establish a legally binding blockade on neutral states. The provisions of the 1909 Declaration Concerning the Laws of Naval War (London Declaration) on announcing and notifying naval blockades are considered customary international law.

However establishing and maintaining a naval blockade during an ongoing belligerent occupation is illegal. The West Bank and Gaza Strip constitute one single territorial unit and a blockade of Palestine’s maritime space equally affects the West Bank. The 1909 Declaration Concerning the Laws of Naval War narrowly provides for “blockade in time of war”. Additionally, the San Remo Manual outlines that a blockade is prohibited if:

(a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or
(b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.

Notably the language of ‘concrete and direct military advantage anticipated’ employed in Article 102(b) mirrors the principle of proportionality in a customary and treaty provision pertaining to conduct of hostilities and not belligerent occupation. Similarly Greenwood outlines that a blockade is “generally regarded as an act of war”. However the enforcement of a protracted naval blockade outside of actual hostilities during an ongoing belligerent occupation designed to inflict hardship on the occupied population constitutes collective punishment and a war crime under international humanitarian law. In this vein, the UN Human Rights Council Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance found that the ‘blockade or closure regime’ was a ‘single disproportionate measure of armed conflict’ constituting an illegal collective punishment of the people of Gaza. The closure of Palestine’s maritime space for the purposes of protecting Israel’s commercial gas interests and preventing the development of Palestine’s sovereign gas wealth is prohibited under the customary law of blockade.

8.5 THE LAW OF THE SEA

8.5.1 Access to Gaza Marine and Border Field

Through its ongoing closure of the Gaza Strip and maritime space Israel has denied Palestinian access to the Gaza Marine located 19 nm from the coast and the Border field parallel to it. Notably, the Gaza Marine is located within Zone L under the Oslo Accords which Palestine has rights of access to for fishing recreation and economic activities. The Border Field lies in closed Zone K under the Oslo Accords. Regardless of the agreement, the State of Palestine has customary international law rights to a territorial sea a contiguous zone and an exclusive economic zone.

The territorial sea is governed by Article 2 of UNCLOS which extends the sovereignty of the coastal State “beyond its land and its internal waters” to “an adjacent belt of sea”, otherwise known as the territorial sea. The States sovereignty extends to the airspace above the territorial sea and to the bed and subsoil beneath. Article 3 of UNCLOS provides that every State has a right to establish the breadth of the territorial sea to a distance of 12 nm. In 1973, the 12-nautical-mile rule was regarded as customary international law by the UN Third Conference on the Law of the Sea. Although Israel has not signed...
or ratified the UNCLOS, it has amended its laws on the territorial sea, to reflect Convention norms. In 1990, Israel extended its territorial waters from 6 to 12 nm to reflect international practice. Article 6 of Palestine’s Natural Resources Law (No.1) 1998 outlines that natural resources discovered in the “territorial waters and free zone” are considered public property. The free zone extends to 20 nm off the Gaza coast. Customary international law establishes that states may claim a territorial sea of 12 nm and a further 12 nm contiguous zone adjacent and contiguous to the territorial sea. Article 33 of UNCLOS establishes that the contiguous zone may not extend to more than 24 nm beyond the baselines. In this zone, the State may exercise control necessary to:

(a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
(b) punish infringement of the above laws and regulations committed within its territory or territorial sea.

The original purpose of the contiguous zone is to police activities in the territorial waters. These rights far exceed the security limitations of the Oslo Accords. Palestine’s customary rights to a contiguous zone to its territorial sea extend its customary international law rights of access by a further 4 nm beyond the 20 nm maritime zone concluded under the Oslo Accords.

8.5.2 Palestinian Continental Shelf and EEZ

The State of Palestine has not delimited its EEZ and continental shelf but has customary law rights to natural resources in the continental shelf beyond the Gaza Maritime Zones. On 1 January 2015, the State of Palestine signed the UNCLOS. The treaty entered into force thirty days following the deposit of instrument of ratification. Until this time, the customary provisions of UNCLOS applied. Israel is a party to the Convention on the Continental Shelf (1958) but has not ratified UNCLOS, which only superseded the Convention on the Continental Shelf for those States party to it. In North Sea Continental Shelf Case, the International Court of Justice declared Articles 1, 2 and 3 of the Convention on the Continental Shelf customarily international law. Under customary international law the coastal State exercises sovereign rights to natural resources contained in the continental shelf for the purposes of exploitation and exploration. The rights to exploit natural resources in the continental shelf are exclusive and “no one may undertake these activities, or make any claim to the continental shelf, without the express consent of the coastal State”. Further, the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

i. Physical Delimitation

Article 76(1) of UNCLOS provides for the delimitation of the continental shelf and is declaratory of customary international law. It provides that “The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.”

Jurisdiction derives from the natural prolongation of the continental shelf as an extension of the States territory or the establishment of a 200 nm continental shelf following legal rules of delimitation akin to the establishment of an EEZ. The right of a State to establish a 200 nm EEZ is recognized in customary international law.

The continental shelf off the coast of Gaza is 28 km or 15 nm wide in the south and 14 km or 7.5 nm in the north. Beyond this the sea bottom drops to a depth of 25 meters consisting of sand sediments. The continental slope is also included in the measurement and the southernmost slope off Israel bordering Gaza extending to 85 km or 45 nm off the continental shelf, which would bring the continental slope off Gaza to a distance of approximately 60 nm. Although States can establish jurisdiction from the outer edge of the continental margin, the uninhabited and/or poor area of the continental slope and slope in the eastern Mediterranean is considered a potentially rich area for future exploitation.

483 Article 6, Natural Resources Law (No.1), 1998, 10.
485 Article 33, UNCLOS (1982).
488 Article 308, UNCLOS (1982).
490 North Sea Continental Shelf Case (n 125) 37, 63.
492 Ibid.
495 Article 76(1), UNCLOS (1982).
496 Article 74, UNCLOS (1982); Article 83 UNCLOS (1982); Dispute Concerning Delimitation Of The Maritime Boundary Between Bangladesh And Myanmar In The Bay Of Bengal (Bangladesh/Myanmar), International Tribunal For The Law Of The Sea, (14 March 2012) Judgment, p. 130, para 458. There is a trend in state practice and judicial and arbitral decisions for the same boundary line to be drawn for the continental shelf as for the EEZ. This is represented in Articles 74 and 83 of UNCLOS, both reflective of customary international law. A Aust, Handbook of International Law (Cambridge University Press, second edition, 2010) 272.
499 Israel Atomic Energy Commission, ‘Tsunamis Induced by Submarine Slumpings off the Coast of Israel’ (July 1975) 5.
a continental shelf up to a distance of 200 nm and an outer continental shelf to 350 nm, the natural prolongation off the Gaza coast arguably does not extend that far. Nevertheless, the State of Palestine has customary law rights to its natural continental shelf and slope to distances of approximately 60 nm. The rights of a State over the continental shelf exist ipso facto and ab initio, by virtue of its sovereignty over the land, and the State does not need to make a good claim over those areas. This would extend Palestine’s rights over its maritime space beyond the Gaza Maritime Zone by a distance of approximately 40 km. This is space which Israel has allocated as its own and awarded licenses for exploration to international hydrocarbon companies.

ii. Legal Delimitation

Traditionally States have applied an equidistance principle to establish boundaries derived from Article 15 of UNCLOS. For example, “an equidistance line is one for which every point on the line is equidistant from the nearest points on the baselines being used.” In the North Sea Continental Shelf Cases, Germany who was not a party to the Convention argued that the equidistance principle for delimiting the continental shelf, when applied to a concave coastline resulted in an unduly small portion of the continental shelf. The ICJ ruled that Article 6 had not evolved into CIL and used equitable principles, which it considered should be applied to a concave coastline like Germany, or equally a straight coastline should the coasts of adjacent countries protrude immediately on either side.

Other equitable considerations may include security considerations or geographic disadvantage. In the 1993 Jan Mayen Case (Denmark v Norway) the ICJ noted that security considerations could be factored into the measurement of the continental shelf. Similarly in Libyan Arab Jamahiriya/Malta the ICJ found that the delimitation in question was “not so near the coast of either party as to make questions of security a particular consideration”. Maritime boundaries may be redrawn where security considerations require the boundary to be established further away from one state. The concept of geographic disadvantage is touched upon in relation to the EEZ, but this is more in relation to fishing rights of geographically disadvantaged or landlocked states.

Alternatively the State of Palestine can negotiate a legal delimitation of its continental shelf and EEZ with neighbouring opposite and adjacent States of distances up to 200 nm. This would mean that the State of Palestine would have to negotiate points of delimitation with Cyprus. The concave shape of Gaza’s coastline indicate that equitable principles of delimitation may apply to further extend the Palestinian EEZ. Moreover, concepts of geographical disadvantage may be considered given that most Palestinian territory is landlocked, granting additional EEZ fishing rights. A tribunal or court may alter the EEZ to include security considerations. However should the State of Palestine negotiate points of delimitation with Cyprus this would certainly call into dispute Israel’s southernmost EEZ licenses including the Royee license located 150 km or 80 nm from the coast (see section 5.2.4). Additional coordinates of delimitation could arguably provide for a broader Palestinian EEZ partially absorbing bordering Israeli licenses Noa, Mari-B and Shimson.

500 Article 15, UNCLOS (1982).
501 North Sea Continental Shelf Cases (n 125) para 79.
502 North Sea Continental Shelf Cases (n 125) para 81. Similarly, Bangladesh v Myanmar in the ITLOS considered that it was relevant to include the concavity of the Bangladesh coast as a factor for consideration where the continental shelf had a continuing effect beyond 200 nm. Bangladesh v Myanmar (n 498) para 127, para 433.
503 Article 15, UNCLOS (1982).
504 Jan Mayen Case (Denmark v Norway), I.C.J Reports 1993, p. 40, para 81.
506 Article 70, UNCLOS (1982).
iii. Unilateral Allocated Palestinian EEZ Sliver

Israel does not have rights of sovereignty over the OPT and does not have the competence to conclude delimitation agreements for waters adjacent to Palestine's territorial waters. It is imperative that a State first be able to support a claim to sovereignty over the land before an authoritative legal claim to an EEZ be supported.200 A State may not unilaterally delimit an EEZ on the continental shelf of another State. The allocation of the EEZ in the absence of participation by, and agreement from the PLO is not binding on the PLO.200 Even so, where it is impossible for agreements to be concluded, the ICJ has indicated that delimitation should be effected by recourse to a third party possessing the necessary competence.199 Furthermore, delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result.201 It is not evident that Israel did either.

Notably the State of Palestine has not concluded an EEZ agreement with coastal States and the maritime sliver unilaterally allocated on its behalf has no legal basis in international law. Even if the triangular sliver did depict Palestine's EEZ, there would be good grounds for the State of Palestine to challenge it on the principles of equity. The space does not account for the State of Palestine's concave coastline which may warrant the grant of a wider EEZ. Should this be the case, title to licenses in the Yam Tethys basin may be disputed. In particular, the planned storage facility in Mari-B which receives gas piped from Tamar and when it comes online Leviathan, may also be subject to future Palestinian claims.

8.5.3 Maritime Delimitation and Shared Natural Resources

Israel's exploitation of geographically contiguous oil and gas structures is limited by the Oslo Accords. To date, there is no international treaty law governing shared oil and gas resources of geographically contiguous States.202 States have deliberately left a legal vacuum in treaty law relying instead on the terms of bilateral agreements.203 The subject of contiguous offshore oil and gas resources, are linked to issues of maritime delimitation addressed by States in relation to the resolution of maritime claims.204 Such delimitation agreements often provide for joint exploitation of oil and gas deposits, which States have considered represent the 'best way forward' for management purposes.205 For example, States concluding production agreements may decide to cooperate “through joint companies, through setting up enterprises for joint production, through achieving projects in one of the contracting countries or a third country, through specialization in production by countries and through the joint utilization of available production capacities”.206

In this vein, Oslo 1 established an Israeli-Palestinian continuing Committee for Economic Cooperation, to facilitate joint cooperation in the management of inter alia energy207 and an Energy Development Program was agreed for the “further joint exploitation of other energy resources”.208 Similarly, Article 15(4)(b) of the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (1995) provided that “Israel and the Palestinian side agree to cooperate concerning production of oil and gas in cases of joint geological structures”.209

The Israeli High Court of Justice (IHCJ) has underscored its obligations relating to shared resources. In Mara'abe v The Prime Minister of Israel, the IHCJ found that “the construction of the fence does not affect the implementation of the water agreements”.210 This is an acknowledgement of Israel’s continued obligations derived from international agreements pertaining to shared resources. Moreover parties are bound by the principle pacta sunt servando.

8.5.4 Pipelines

Israel has laid gas pipelines on Palestine's continental shelf without seeking approval from the PLO as required under international law.211 Under Article 55 of the Hague Regulations, the belligerent occupant only acquires temporary usufructuary rights over the immovable property of the occupied territory, including the continental shelf. Accordingly, the belligerent occupant may not grant or other entities rights over the occupied continental shelf which vest in the occupied population. Only the sovereign State has the competence to conclude international agreements for the use of


511 Ibid.

512 In common law two approaches have developed. Firstly, the ‘rule of capture’ premised on the migratory nature of oil, gas and shale oil determines that whoever captures the migrated resources may stake a legal claim of ownership. Alternatively, surface ownership confers rights over all related subsurface reservoirs, which may also result in cross border exploitation of migrating oil and gas resources. However these are rules of domestic law applying initially to migratory resources in competing licensing claims. The international system does not provide the adequate monitoring and enforcement safeguards to facilitate such common law practices. Moreover the regime of belligerent occupation under international law places additional limits on the occupying States use of natural resources.


514 Ibid. para 8.

515 Ibid.


520 Mara’abe v The Prime Minister of Israel (n 390) para 67.

521 Article 58, UNCLCS (1982), ‘Rights and duties of other States in the exclusive economic zone’ (paragraph 31 (…) 3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.” Article 79, UNCLCS (1982), Submarine cables and pipelines on the continental shelf.
its sovereignty territory and the de facto role of the belligerent occupant falls short of full sovereignty in this regard.\textsuperscript{522} For example, the International Law Commission has indicated that the acts of the belligerent occupant do not represent the acts of the occupied State and the occupied State does not incur international responsibility for wrongful acts on this basis.\textsuperscript{523} These limitations in terms of sovereignty capacity were duly recognized in the agreement between Israel and the PLO, in Annex III to the Declaration of Principles of Self-Government Arrangements, 1993, requiring joint cooperation in the "construction of oil and gas pipelines".\textsuperscript{524}

\textbf{i. El-Arish Pipeline}

Between 2005 and 2008 Israel and Egypt negotiated and built a gas pipeline connecting El-Arish in Egypt with Ashkelon in Israel running across Palestinian’s continental shelf. Israel has employed lethal security measures to protect the pipeline operating from within Palestine’s maritime space. Article 79 of UNCLOS establishes a right of all States to lay pipelines and submarine cables on the continental shelf of coastal states. However the right to lay pipelines and submarine cables is subject to the consent of the coastal state in relation to the delineated course the laying of pipelines will take.\textsuperscript{525} The coastal State may take reasonable measures to prevent, reduce and control the pollution from pipelines.\textsuperscript{526} Furthermore, the coastal State may establish "conditions for cables or pipelines entering its territory or territorial sea".\textsuperscript{527} For example the coastal State may require permits under its domestic law placing conditions on the operation of pipelines.\textsuperscript{528}

Similarly, Article 58 of UNCLOS regulates the laying of pipelines in the EEZ and requires that States have "due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State".\textsuperscript{529} This may include for example laws on bunkering\textsuperscript{530}, environment\textsuperscript{531} or customs.\textsuperscript{532} While the negotiation of pipeline agreements is a political issue, the Energy Charter Secretariat established under the 1994 Energy Charter Treaty, has prepared model agreements for cross-border pipelines and model agreements for cross-border electricity projects,\textsuperscript{533} consisting of bilateral model agreements between states and between states and investors which reflect "recent accepted practices within their field of concern".\textsuperscript{534}

Under UNCLOS, the State of Palestine may withhold consent for the El-Arish pipeline for environmental reasons. Additionally, the Oslo Accords require joint Israeli Palestinian cooperation for the construction of oil and gas pipelines in the Gaza Strip.\textsuperscript{535}

\textbf{ii. Gaza Marine pipeline}

Israel has consistently refused to allow Palestine to develop its Gaza Marine gas resources politically blocking plans for BG to develop a pipeline from the Gaza Marine to El-Arish in Egypt considered logistically vital to secure the export of liquefied natural gas.\textsuperscript{536} There is an international law right of all States to lay pipelines on the continental shelf subject to the conditions of the coastal State.\textsuperscript{537} By preventing the laying of the pipeline, Israel is violating international law obligations. Moreover UNGA Resolution 1803, provides that "the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well being of the people of the State concerned."\textsuperscript{538}


\textsuperscript{523} Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries (2011), A/65/10, p. 44.

\textsuperscript{524} Article 79(1), UNCLOS (1982).

\textsuperscript{525} Article 79(2), UNCLOS (1982).

\textsuperscript{526} Article 79(3), UNCLOS (1982).

\textsuperscript{527} Article 58, UNCLOS (1982).

\textsuperscript{528} A Norman, M Gutierrez, Serving the Rule of International Maritime Law (Routledge, 2010) 132.

\textsuperscript{529} Article 58, UNCLOS (1982).


\textsuperscript{531} P Bergin, 'The Antarctica, The Antarctic Treaty Regime, and Legal and Geopolitical Implications of Natural Resource Exploration and Exploitation' (1988-1989) 4 Florida International Law Journal 1, 34. Moreover, in Fisheries Jurisdiction Case, the International Court of Justice interpreted the obligation to have "due regard" housed in Article 58(3) to include environmental obligations for the conservation of living resources on the high seas, while also taking account of fishery conservation measures. Fisheries Jurisdiction Case (United Kingdom v Norway) Judgment I.C.J (25 July 1974) para. 72.

8.6 INTERNATIONAL ENVIRONMENTAL LAW

8.6.1 Fracking

Israel’s techniques of accelerated gas production, deep sea drilling and fracking may have damaged joint geological structures impacting on future Palestinian production of oil and gas.

The United Nations Environment Programmes ‘Draft Principles of Conduct for the Guidance of States in the Conservation and Harmonious Exploitation of Natural Resources Shared by Two or More States’ represents a system of soft law norms which the General Assembly has requested all States take into account with shared geologically contiguous natural resources in bilateral or multilateral conventions.538 States with shared natural resources are required to cooperate by way of exchange of information, notification and consultations carried out in good faith and avoiding unreasonable delays.539 In particular, there is a customary international law duty to exercise due diligence in activities where harm may be caused to underground aquifers. It is “every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States”.540

Israel is obligated to exercise due diligence to avoid environmental hazards. Accordingly, Israel must uphold the decision of the Jerusalem District Committee for Planning and Building halting IEI’s pilot project, employing fracking techniques which could pollute the West Bank aquifer.541

9. LEGAL CONSEQUENCES FOR VIOLATIONS OF INTERNATIONAL LAW

9.1 ISRAEL’S RESPONSIBILITY AS OCCUPYING POWER

Israel has extensively and unlawfully appropriated Palestinian oil and gas resources in the OPT for the sole benefit of its home economy and systematically prevented the Palestinian population from developing their gas resources in the Gaza Marine and oil fields at Rantis. These practices are aimed at forcibly stagnating the Palestinian economy and preventing the right to self-determination and the use of revenues for statehood. As such, Israel is in violation of Articles 43 and 55 of the Hague Regulations. In addition, these violations constitute war crimes and amount to grave breaches of the Geneva Conventions. Israel is a High Contracting Party to the Geneva Conventions, and is therefore obligated to put an end to all violations of IHL and investigate and prosecute those responsible for violations of the Conventions.

Furthermore, by maintaining the illegal closure amounting to an annexation of the Mediterranean Sea and maintenance of the Annexation Wall, Israel consistently fails to meet its obligations under international human rights law by refusing to respect, protect and fulfil the right of the Palestinian people to rights to development and freedom of movement. To meet its obligations under international law Israel must immediately cease all internationally wrongful acts, offer appropriate guarantees of

538 Ibid., Principle 7.
539 Ibid., Principle 7.
non-repetition and make full reparations for the injury caused, including material or moral damages. Full reparations must take the form of restitution where materially possible, compensation or satisfaction otherwise. 542

9.2 CORPORATE RESPONSIBILITY

Notably the Guiding Principles on Business and Human Rights establish a role for corporations "as specialized organs of society performing specialized functions", and requires compliance with human rights and other applicable laws such as humanitarian and customary law. 543

Accordingly, corporations benefiting from business opportunities supported by an environment of human rights violations, may be found complicit in aiding and abetting violations even where they do not positively assist in orchestrating the abuses. In particular the UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights provide that "transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide... other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law". 544

Corporations operating in Israel’s oil and gas industry are benefiting from violations of international human rights and international humanitarian law. They have facilitated the closure of the Gaza Marine zone to secure gas export pipelines, the protection of the Mari-B storage facility and the unilateral exploitation of the Noa North reserve draining migratory gas from the Border field.

9.3 THIRD STATE RESPONSIBILITY

Israel’s violation of peremptory norms of international law incurs obligations on third States. For example, Article 41 of the ILC Draft Articles provides that States not recognize breaches of peremptory norms as lawful, and that States actively cooperate to bring the unlawful situation to an end. 545 Furthermore, third States should ensure that Israel makes full reparations for the damages caused by its breaches of peremptory norms of international law. Under common Article 1 to the four Geneva Conventions of 1949, States have obligations to ensure Israel’s respect for international humanitarian law and must refrain from condoning or rendering support to its illegal policies in the OPT. In this vein, States should revise their plans to buy Israeli gas piped through Gaza maritime space, destined for regional and European markets, as this renders support to the continued illegal closure of the occupied Gaza Strip.

States should further refrain from actively encouraging corporations from negotiating business deals with Israeli companies which may contribute to gross violations of international humanitarian law. The United States has international responsibilities in relation to the business activities of Noble Energy in the OPT. Similarly, States seeking investment opportunities in Tamar and Leviathan should bear in mind their responsibilities. The forcible protection of the gas distribution network for Tamar and Leviathan in the OPT breaches peremptory norms of international law by denying Palestinian sovereignty over natural resources. In particular, the European Union has committed itself to address third states’ compliance with international humanitarian law and there is an onus on European States to take this into account. There are a number of compliance measures under the EU Guidelines on Promoting Compliance with International Humanitarian Law, such as the issuance of demarches and public statements and undertaking restrictive measures, which States have agreed to practice.

In addition, under Articles 146 and 147 of the Fourth Geneva Convention, States are obligated to search for and prosecute those responsible for grave breaches of the Geneva Conventions. As noted, "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly" amounts to a grave breach under Article 147 of the Fourth Geneva Conventions. 546 The appropriation of oil extending into Palestinian territory at Meged-5 may amount to a grave breach of the Geneva Conventions. 547

9.4 INDIVIDUAL CRIMINAL RESPONSIBILITY

Individuals may be held criminally responsible for the war crimes of pillage, collective punishment and appropriation.

i. Pillage

The ICC Elements of Crimes outlines five elements for the war crime of pillage:

1. The perpetrator appropriated certain property.

2. The perpetrator intended to deprive the owner of property and to appropriate it for private or for personal use.

3. The appropriation was without the consent of the owner.

4. The conduct took place in the context of and was associated with an international armed conflict.

5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.


546 Article 147, Fourth Geneva Convention (1949).

547 (and oil exploitation in the occupied Golan Heights ); Armed Activities (n 365).
In particular Afek Oil and Gas, a subsidiary of Genie Energy, reported that its actions exploring and drilling for oil in the occupied Golan Heights may be subject to international condemnation and sanctions. Members of the Board include a former Minister for Infrastructures and a former advisor to the IDF, on natural resources and planning, with knowledge that title to oil resources belongs to the occupied State. The appropriation has been effected on behalf of Afek Oil and Gas, under the direction of and personally benefitting the board members, which may amount to the crime of pillage.

IEI is also a subsidiary of Genie Energy licensed to exploit shale oil in Shfela Basin bordering the Green Line. Any appropriation of oil resources from occupied territory for private or personal use may be prosecuted as pillage.

ii. Collective Punishment

Although collective punishment does not feature as a war crime at the ICC, it has done so at the Special Court for Sierra Leone and the ICTR and may do so in a future ad hoc tribunal. Article 50 of the Hague Regulations and Article 33 of the Fourth Geneva Convention prohibit collective punishment. Appropriating tax revenues and the closure of Gaza’s maritime space to protect commercial natural gas interests amounts to a prolonged indiscriminate and excessive penalty on the Palestinian population. As such, this may incur individual criminal responsibility for the war crime of collective punishment.

iii. Appropriation

Israel’s closure of Palestine’s maritime space as part of its policy to prevent Palestinian access to their gas reserves has frustrated Palestinian economic development and amounts to economic spoliation under the crime of appropriation. The ICC Elements of Crimes outlines 7 elements for the crime of destruction and appropriation of property where;

1. The perpetrator destroyed or appropriated certain property.
2. The destruction or appropriation was not justified by military necessity.
3. The destruction or appropriation was extensive and carried out wantonly.
4. Such property was protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Israel has closed Palestine’s maritime waters to secure the gas distribution network and export pipelines of private corporations for commercial profit. The appropriation of Palestinian maritime gas resources exceeds the requisition mechanisms of the Hague Regulations and may amount to organized State pillage in breach of Article 33 of the Fourth Geneva Convention. The massive appropriation of gas resources to prevent the State of Palestine’s development, may incur the individual criminal responsibility of senior Israeli government and military figures for the war crime of appropriation.

9.5 REPARATIONS

The State of Palestine is entitled to reparations from Israel for expropriated oil and gas resources. Furthermore Israel must return unlawfully seized property such as appropriated energy revenues to the State of Palestine and private village land to respective private property owners. The ICI advisory opinion on the Annexation Wall found that the wall was illegal, and that given its construction “entailed the requisition and destruction of homes, businesses and agricultural holdings”. Furthermore, the Court found that Israel had “the obligation to make reparation for the damage caused to all natural or legal persons concerned.” The Court went on to say that Israel had the “obligation to return the land, orchards, olive groves and other immovable property seized” and where restitution is impossible the Court found that Israel had the obligation to provide compensation under the applicable rules of international law.

The ICJ opinion and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law underscore the right to an effective remedy for the exploitation of Palestinian oil and gas resources. As demonstrated, the exploitation of Palestinian natural resources by Israel breaches both IHL and IHRL. Under the Basic Principles, victims include those that have suffered harm individually or collectively, and both directly and indirectly. Significantly, the harm may include “economic loss or substantial impairment of their fundamental rights.” Such victims are entitled to “full and effective” reparation that is proportional to the gravity of the breach, where a State should provide “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.” Accordingly, Israel must provide reparations for losses incurred to the Palestinian economy from its continuous blocking of Palestinian natural resource development, appropriation of Palestinian agricultural land rich in oil resources, plunder of Palestinian energy revenues and exploitation of contiguous oil and gas resources.

550 Advisory Opinion, Legal Consequences (n 305) para 152.
551 Ibid., 153
552 The UN Draft Principles on the Responsibility of States for Internationally Wrongful Acts note that states are obliged “make full reparation for the injury caused by the internationally wrongful act.”
554 Ibid.
555 Ibid., Principle 18.
By preventing the development of and exploiting Palestinian natural resources, the punitive conditions imposed by Israel on the Palestinian economy are “impeding any prospects of sustainable growth”.556 Accordingly, a Report of UNCTAD assistance to the Palestinian People: Developments in the Economy of the occupied Palestinian territory (September 2012) specifically identified the failure to develop Palestinian natural resources, alongside the loss of land and water as the “key long term constraint blocking the emergence of a strong economy”.557 As such, institutional reforms and state building efforts are stymied by the failure to secure a normal market economy based on revenue from natural resources.558 In March 2012, in its report to the Ad Hoc Liaison Committee, UNSCO identified financial deficits as a “serious and real threat to the Palestinian Authority’s sustainability”.559 Notably, the World Bank has reported that the Palestinian economy would prosper and face “substantially improved prospects for sustained growth” should Israel remove the restrictions it places on natural resources development in the OPT.560

The occupied population has sovereign rights to develop their oil and gas resources even during a military occupation.561 In terms of resource development, the Oslo Accords call for the establishment of an Energy Development Program, to provide for the joint “exploitation of oil and gas for industrial purposes”. Israel’s unilateral development of contiguous gas resources is buttressed by the deliberate denial of the Palestinian right to develop gas deposits and enforced by a military closure to protect gas platforms in violation of international law. Israel’s unilateral development of oil resources is effected through the appropriation of Palestinian agricultural land by way of the Annexation Wall and issuance of licenses extending Israeli law over illegally appropriated resources in violation of international humanitarian law.

States have a responsibility to ensure that their plans to import Israel’s gas do not contribute to continued violations of international humanitarian law and other international law. So far, gas pipeline distribution networks pass through the State of Palestine’s maritime space. By using these pipelines as an import channel, States are contributing to Israel’s closure of the Gaza Strip in violation of international law.

556 Economic Costs (n 40) 1.s.
558 ibid., para 6.
561 Article 3, Annex III, Protocol on Israeli-Palestinian Cooperation In Economic and Development Programs. “Cooperation in the field of energy, including an Energy Development Program, which will provide for the exploitation of oil and gas for industrial purposes, particularly in the Gaza Strip and in the Negev, and will encourage further joint exploitation of other energy resources. This Program may also provide for the construction of a Petrochemical industrial complex in the Gaza Strip and the construction of oil and gas pipelines.”
In light of the above, Al-Haq calls on Israel the Occupying Power and primary duty bearer in the OPT:

The State of Israel must

- Comply with its international humanitarian law obligations and international human rights obligations;
- End its illegal naval closure of Palestine’s maritime space and the illegal land closure;
- Immediately stop its illegal expropriation of Palestinian and Syrian oil resources and make reparations to the respective States;
- Stop obstructing the State of Palestine from developing the Gaza Marine including the laying of pipelines and umbilical's necessary for gas import and export;
- Discontinue its annexation of energy in Palestine and facilitate an independent Palestinian energy economy, as required under the Oslo Accords;
- Remove pipelines routed through Palestinian territory;
- Operate with due diligence and prohibit environmentally damaging practices which would cause pollution to trans-boundary water resources;
- Compensate the State of Palestine for all profits generated by the exploitation of oil and gas leakages in contiguous geological structures.
- Ensure the transport of humanitarian supplies to the Gaza Strip for energy reconstruction, including the provision of fuel and electricity to full operating capacity.

In order for Palestine to fulfill its right of control over its natural resources in line with international law, Al-Haq further recommends that:

The State of Palestine should

- Accede to the European Energy Charter Treaty [1994];
- Bring thereafter a petition to the Commission on the Limits of the Continental Shelf (CLSC), which facilitates the implementation of the Convention on the Law of the Sea and can offer scientific and technical guidelines on the delimitation of the continental shelf;
- Establish jurisdiction over its EEZ either based on its natural continental shelf or legal delimitation. This would be particularly useful given Palestine’s accession in 2011 to UNESCO’s 2001 Convention on the Protection of Underwater Cultural Heritage, granting states the competence to regulate activities concerning the protection of cultural heritage within the EEZ and continental shelf. In addition given the State of Palestine’s recent accession to UNCLOS;
- Amend Chapter 1, of Law No. (1) of 1999 for Natural Resources to reflect sovereignty over its natural resources in the continental shelf and/or EEZ given the State of Palestine’s recent accession to the UNCLOS.
- Conclude points of delimitation with Cyprus and Egypt and lodge future concluded coordinates of delimitation with the Repertory of the Law of the Sea;
- Object to the routing of the new pipeline between the Tamar platform and Union Fenosa Gas in Egypt, which will run through Palestine’s maritime space;
- Object to future planned pipeline routes from Leviathan to both the Union Fenosa and Damietta plants in Egypt, which will run through Palestine’s maritime waters (within an EEZ, or across the continental shelf to which Palestine has inherent sovereign rights);
- Take contentious cases or seek an advisory opinion on the delimitation of the maritime boundary upon accession to UNCLOS, as both Cyprus and Egypt are also parties to the treaty;
- Accede to the Statute of the International Court of Justice, which has jurisdiction to hear cases on the law of the sea.

• Extend its licensing regime to include natural resources beyond the Gaza Zone;
• Insist on the receipt of monies from gas revenues developed during belligerent occupation to be deposited into an international fund monitored by international auditors for the benefit of the occupied population; and
• Insist that a percentage of gas from the Gaza Marine is reserved for domestic market supply, from future Gaza Marine operators contracted to exploit the reserves. (However it is not commercially viable to supply the internal market alone. Much of the gas will need to be exported to ensure profitability although some gas should be directed to the internal market for domestic use).

Al-Haq further notes the critical role that third states and companies have in ensuring that Palestinian’s enjoy their sovereign rights over their natural resources, and provides the following recommendations:

Third States
• Europe should refrain from financing gas exports through the Eastern Mediterranean Corridor with Israel, Greece and Cyprus. The Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL) 2009/C 303/06 establishes operational tools for the promotion of compliance with IHL. The utilization of Israeli gas resources should be premised on the ending of the illegal naval closure of the Gaza Strip. The closure is maintained for the benefit of Israel’s gas sector and systematically prevents Palestinian development violating the right to self-determination and amounting to appropriation and collective punishment.
• The EU and individual States must not trade in oil resources exploited from land appropriated from Occupied Palestinian Territory.
• The EU should not import gas from Israel from gas fields operated by the Noble Energy Group conglomerate, which abuse a dominant market position in Israel. Israel’s facilitation of Noble Energy Group’s dominant market position in the gas industry is inconsistent with Article 36(1)(ii) of the Euro-Mediterranean Agreement (2000). The Agreement between Israel and the EU finds “abuse by one or more undertakings of a dominant position in the territories of the Community or Israel as a whole or in a substantial part thereof” to be “incompatible with the proper functioning of the Agreement”. The EU is reminded of its commitment under the Agreement to ensure transparency in this regard.
• States operating under military agreements with Israel must not operate in a manner inconsistent with international law which would see the prolongation of the illegal naval closure of Palestinian maritime space.
• High Contracting parties under the Fourth Geneva Convention must ensure respect for the Convention and ensure Israel’s compliance with convention obligations.
• States should commit to Business and Human Rights National Action Plans to ensure corporations registered in their jurisdictions are compliant with IHL and IHRL.
• Egypt must seek agreement from the State of Palestine for pipelines routed through Palestine’s maritime space, including the planned pipeline between the Tamar platform and Union Fenosa Gas plant in Egypt in 2017.

United Nations
• Member States of the United Nations should seek a General Assembly Resolution to take all necessary measures to prevent Israel’s exploitation of Palestinian oil and gas resources, ensure Palestinian access to develop oil and gas resources and for Israel to provide reparations for exploited natural oil and gas resources.
• Member States of the United Nations should seek an independent international investigation into Israel’s exploitation of Palestine’s natural resources.
• The General Assembly should request an Advisory Opinion from the International Court of Justice on the legality of a prolonged belligerent occupation and the legality of continued application of the Oslo Accords in light of prolonged occupation and the exploitation and depletion of Palestine’s natural resources.

Corporations should:
• Not undermine international humanitarian and human rights law by effectively conspiring with Israel to exploit Palestinian natural resources.
• Insist on including representatives from the relevant Palestinian governmental bodies when negotiating contracts with Israel that will likely have some trans-boundary effect, including for example environmental effects and appropriation of Palestinian natural resources.
• Stop applying environmentally damaging practices that affect the Palestinian environment.
• Comply with their human rights commitments articulated in the Guiding Principles on Business and Human Rights and reflected in Corporate Social Responsibility policies and Codes of Conduct.
• Corporations operating in the extractive industries in Israel must comply with commitments signed up to under the Voluntary Principles on Security and Human Rights.

ARTICLE 15 Gas, Fuel and Petroleum

1. a. This sphere includes, inter alia, the planning, formulation and implementation of policies, as well as the licensing and supervision of gas, fuel and petroleum facilities. For the purposes of this paragraph, “gas, fuel and petroleum facilities” shall include, inter alia, all gas and petrol stations, installations, terminals and infrastructure, as well as agencies for the marketing, distribution, transportation, storage, sale or supply of gas, fuel or petroleum products. This sphere also includes the licensing and supervision of the import, export, and transportation in addition to the exploration, production and distribution of gas, fuel and petroleum.

b. In Area C, powers and responsibilities regarding exploration and production of oil and gas shall be transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory except for the issues that will be negotiated in the permanent status negotiations during the further redeployment phases, to be completed within 18 months from the date of the inauguration of the Council.

2. In authorizing the establishment and operation of gas, fuel and petroleum facilities as defined in paragraph 1, the Palestinian side shall ensure that there is no detrimental impact on the environment or on the safety of Israel, the Settlements and military installations and that a safety distance from Israel, the Settlements and military installations is observed. Accordingly, the Palestinian side shall apply the American, British and/or Israeli safety and environmental standards.

3. The color of all gas cylinders in use by Palestinians in the West Bank and the Gaza Strip shall be different than that in use in Israel and by Israelis.

4. a. The Palestinian side will notify the Israeli side of any exploration and production of oil and gas carried out by the Palestinian side or with its permission.

b. Israel and the Palestinian side agree to cooperate concerning production of oil and gas in cases of joint geological structures.

5. a. All transportation of gas or fuel products, in Israel and in the West Bank and the Gaza Strip, shall be in accordance with the respective laws applying which, in any event, shall not fall short of the international requirements and standards concerning safety and environmental protection as applied by Israel. The transportation of gas and fuel products into Israel, the Settlements and military installations shall further be subject to the requirements and modalities regarding entry into Israel.

b. In order to facilitate the movement of transportation of gas or fuel products in the West Bank and the Gaza Strip -

(1) The Palestinian side will issue permits to Palestinian owners, drivers and escorts of vehicles transporting gas or fuel products. The issue of such permits shall be governed by the criteria regarding recruitment to the Palestinian police according to this Agreement. The issue of such permits is not contingent upon the approval of the Israeli side. The Palestinian side shall notify the Israeli side of the permits issued by it.

(2) The Palestinian side shall ensure that vehicles transporting gas or fuel products, as well as their parking lots, shall be guarded against any theft or unauthorized use.

The Palestinian side shall inform the Israeli side, at the earliest opportunity, of any suspected theft or unauthorized use of such vehicles.

6. The Israeli side shall cooperate with the Palestinian side with regard to the establishment by the Palestinian side of 3-4 storage facilities for gas and petroleum, including in facilitating, inter alia, location, land and technical assistance in order to secure the purchasing needs of the Palestinians from the Israeli market.

7. Matters regarding the environment and transportation are dealt with in Article 12 (Environmental Protection) and Article 38 (Transportation), respectively.
ARTICLE 31 Quarries and Mines

1. Powers and responsibilities in the sphere of Quarries and Mines in the West Bank and the Gaza Strip shall be transferred from the military government and its Civil Administration to the Palestinian side including, inter alia, the licensing and supervision of the establishment, enlargement, and operation of quarries, crushing facilities and mines (hereinafter “quarries”).

2. In Area C, powers and responsibilities relating to this sphere will be transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory, except for the issues that will be negotiated in the permanent status negotiations, during the further redeployment phases, to be completed within 18 months from the date of the inauguration of the Council.

3. a. Rights of Israelis (including corporations owned by Israelis) regarding quarries situated within the areas under the territorial jurisdiction of the Palestinian side, which are not operative, may be purchased by the Palestinian side, with the consent of the Israeli concerned, through a joint committee which shall be established by the CAC for this purpose. The sum to be paid to each Israeli with regard to his rights in the said quarries shall be based upon the investments made by him in the site. The Israeli side shall freeze licenses to such quarries. Pursuant to the date of the signing of this Agreement, such quarries shall not become operative.

b. The above joint committee shall also discuss the issue of quarries operated or used by Israelis. The two sides shall respect the recommendations of this committee. Until the decision of the Committee, the Palestinian side shall not take any measures which may adversely affect these quarries.

c. The provisions of subparagraphs a. and b. will apply to quarries presently situated in Area C, as they come under the territorial jurisdiction of the Palestinian side, commensurate with the gradual transfer of powers and responsibilities in accordance with paragraph 2 above.

4. The Israeli side shall consider any request by Palestinian entrepreneurs to operate quarries in Area C on its merits.
About 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 UN Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, regardless of the identity of the perpetrator, 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 the 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 ensure that international human rights standards are reflected in Palestinian law and policies. The organisation has a specialised international law library for the use of its staff and the local community.

Al-Haq is also committed to facilitating the transfer and exchange of knowledge and experience in IHL and human rights on the local, regional and international levels through its Al-Haq Center for Applied International Law. The Center conducts training courses, workshops, seminars and conferences on international humanitarian law and human rights for students, lawyers, journalists and NGO staff. The Center also hosts regional and international researchers to conduct field research and analysis of aspects of human rights and IHL as they apply in the OPT. The Center focuses on building sustainable, professional relationships with local, regional and international institutions associated with international humanitarian law and human rights law in order to exchange experiences and develop mutual capacity.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), and the Palestinian NGO Network (PNGO).