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# **PREVENTING THE DEVELOPMENT OF PALESTINIAN NATURAL GAS RESOURCES IN THE MEDITERRANEAN SEA**

**Implications for Multinational Corporations  
Operating in Israel's Gas Industry**

**Special Report for 2014 UN Forum on Business and Human Rights**



AL-HAQ

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Publisher: Al-Haq - © All Rights Reserved

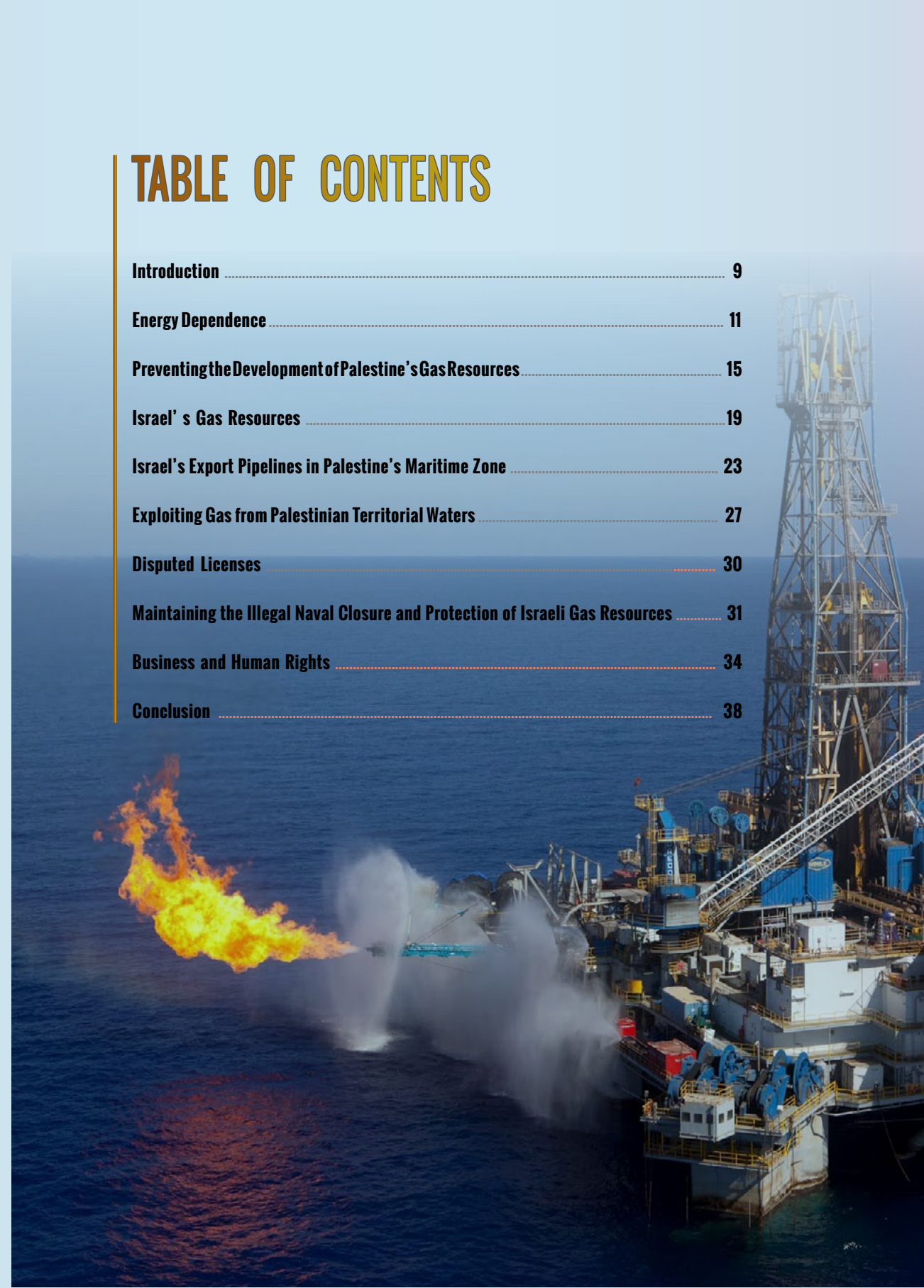
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2014

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# Glossary

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

*Division of the West Bank under the 1995 Interim Agreement on the West Bank and the Gaza Strip (also known as the Oslo II Accord)*

**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 was 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.

**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.

**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  $-162^{\circ}$  shrinking the gas volume 600 times for storage and transportability.

**Occupied Palestinian Territory:** 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.

**Operation Protective Edge:** 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.

# Abbreviations

**AGP** – Arab Gas Pipeline

**Bbl** – barrel (unit)

**Bcm** – billion cubic meters

**BG** – British Gas Group

**Btu** – British thermal unit

**CCC** - Consolidated Contractors Limited

**EEZ** – Exclusive Economic Zone

**FCO** – Foreign and Commonwealth Office (UK)

**GEDCO** – Gaza Electricity Distribution Company

**GWh** – Gigawatt-hour (1 million kWh)

**ICCPR** – International Covenant of Civil and Political Rights

**ICESCR** – International Covenant of Economic, Social and Cultural Rights

**IEC** – Israel's Electricity Corporation

**IHL** – International Humanitarian Law

**IHRL** – International Human Right Law

**JDECO** - Jerusalem District Electric Company

**kWh** – Kilowatt hour

**LNG** – Liquefied Natural Gas

**NEPCO** - Jordanian National Electric Power Company

**MM Bbl** – Million barrels

**MM Stb** – Million stock barrels

**NEDCO** - Northern Electricity Distribution Company

**NPV10** – Net present value at ten per cent incremental costs

**OSC** - Outer Continental Shelf

**PEC** – Palestine Electric Company

**PIF** - Palestine Investment Fund

**PPCG** - Palestine Power Generation Company

**SELCO** - Southern Electric Co

**Tcf** – Trillion cubic feet

**Tscf** – Trillion standard cubic feet

**Tscm** – Trillion standard cubic meters

**TW** – Terrawatts

**UNCLOS** – United Nations Convention on the Law of the Sea

**UNCTAD** – United Nations Conference on Trade and Development



## Introduction

In March 2010, the U.S Geological Survey published a *Fact Sheet on the Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean* estimating that there was “a mean of 1.7 billion barrels of recoverable oil and a means of 122 trillion cubic feet of recoverable gas in the Levant Basin Province” making the region one of the most important sources of natural gas in the world.<sup>1</sup> The Levant Basin Province spans from the Nile Delta Cone below the south west of Israel and the occupied Gaza Strip of Palestine, to the Tartus Fault north of Lebanon, and the Eratosthanes Seamount in the northwest, off Cyprus in the Mediterranean sea, and the Levant Transform Zone, bordering the West Bank, Israel, Jordan and Lebanon and Syria.<sup>2</sup> Notably the map provided by the U.S Geological Survey indicates that there are potentially eight 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 and a cluster of gas and oil deposits around the Dead Sea.<sup>3</sup> Notably, Annex III of the Oslo Agreement provides the legal basis for a cooperation agreement on the management of industrial quantities of oil and gas resources “particularly in the Gaza Strip and in the Negev”.<sup>4</sup> There is also the possibility that oil resources could be located underneath the gas fields in the Mediterranean Sea.<sup>5</sup>

Israel has systematically prevented the occupied Palestinian population from developing their natural gas resources off the Gaza coast. 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 preventing Palestinian access to its Gaza Marine gas resources.

<sup>1</sup> U.S Department of the Interior, U.S Geological Survey, *Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean*, Fact Sheet 2010-3014 (March 2010) p. 1; James Stocker, “No EEZ Solution: The Politics of Oil and Gas in the Eastern Mediterranean” *Middle East Journal*, Volume 66, No. 4, Autumn 2012, p. 579.

<sup>2</sup> U.S Department of the Interior, U.S Geological Survey, *Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean*, Fact Sheet 2010-3014 (March 2010) p. 1.

<sup>3</sup> There are also two more potential oil fields, one near Qalqiliya and another near Hebron. Similar to Meged-5, the oil field near Qalqiliya 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”. (May 08, 2013)

<sup>4</sup> Article 3, Oslo Agreement, 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.”

<sup>5</sup> Shmuel Even, “Israel’s Natural Gas Resources: Economic and Strategic Significance” *Strategic Assessment*, Volume 13, No. 1 (July 2010), p. 10.



## Energy Dependence

### *Beyond Occupation: Israel Administration of Natural Resources in Occupied Palestinian Territory*

Israel occupied the West Bank, Gaza Strip and East Jerusalem in 1967. In so doing, it imposed a military authority and concentrated all governing competence in the hands of the area commander.<sup>6</sup> A series of military orders were adopted that radically altered the administration of natural resources in the West Bank, placing them under military control; Order Concerning the Investment of Natural Resources (West Bank) (No. 389), 1970<sup>7</sup>, Order Concerning the Law on Regulation of the Affairs of Natural Resources (West Bank) (No 457), 1971<sup>8</sup>, Order Concerning Law on Regulation of the Affairs of Natural Resources (Amendment) (West Bank) (No 1110), 1984.<sup>9</sup>

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.<sup>10</sup> 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 on the use of immoveable natural resources. For example, the competent authority could issue new mining rights to any person or corporate entity previously holding a certificate of discovery under Article 42(1) of the Jordanian Law No. (37) of 1966.<sup>11</sup> Additionally the amendment granted the competent authority the right to revoke any mining rights previously issued and dispose of the area covered by the mining right, in consideration of public interest.<sup>12</sup>

<sup>6</sup> Raja Shehadeh, *From Occupation to Interim Accords and the Palestinian Territories* (Kluwer Law International, 1997) 85.

<sup>7</sup> Published in Proclamations, Orders and Appointments (Israeli Occupation, West Bank) Issue No. 23, 30/07/1970 at page 810.

<sup>8</sup> Published in Proclamations, Orders and Appointments (Israeli 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).

<sup>9</sup> Published in Proclamations, Orders and Appointments (Israeli Occupation, West Bank) Issue No. 66, 17/09/1984 at page 55. (This Order amended Order No. (457) relating to licensing and permits, for water and irrigation projects).

<sup>10</sup> Article 2, The Israeli Defense Army, Order No. (389), Order Concerning the Investment of Natural Resources (19 June 1970).

<sup>11</sup> Article 42(1), Law No. (37) of 1966, The Provisional Law on Regulation of the Affairs of Natural Resources

<sup>12</sup> Article 42(2)(b), Law No. (37) of 1966.



Paragraph 3 of Order No. (389) allowed the competent authority to furnish “any of its power – in writing – to any person”, thereby placing the governance of Palestinian natural resources beyond the control of the military commander.<sup>13</sup>

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 regulation of the energy sector was further fragmented with competence for marketing, pricing and ownership allocated between various departments including the Petroleum Commissioner, the Petroleum Unit, 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.<sup>14</sup> As such, this saw the absorption of competence over natural resources, from the military commander back into the Israeli government and ministries. This arrangement has continued beyond the Oslo Accords, with the Israeli Civil Administration maintaining authority for zoning, construction and infrastructure in Area C.<sup>15</sup>

### Maintaining Control over Electricity in the Occupied Palestinian Territory

Since 1967, Israel has manipulated Palestine into a state of energy dependence that is economically advantageous to Israel. 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 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 Civil Administration.<sup>16</sup> The Civil Administration authorized the Israel Electricity Company 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” despite the manifest illegality of altering prior electricity supply arrangements and the distortion of factoring in the interests of illegal settlers as measures ‘benefitting

<sup>13</sup> Article 3, Order No. (389) Order Concerning the Investment of Natural Resources (19 June 1970)

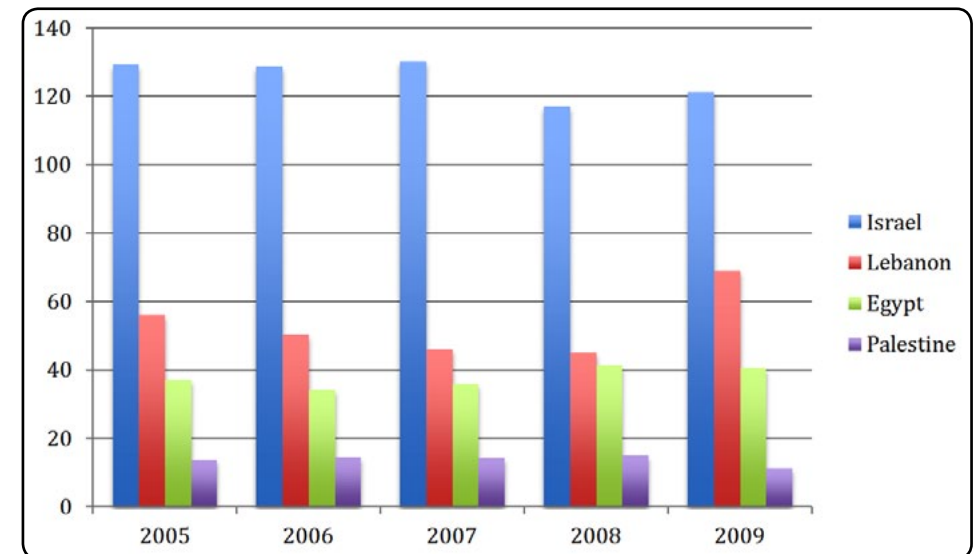
<sup>14</sup> U. S Chamber of Commerce, U.S-Israel Business Initiative, Recommendations for Advancing U.S-Israel Cooperation in Energy Exploration and Production (May 2013) 7. At <http://www.usisraelbusiness.com/files/2013/05/Energy-Recommendations.pdf> (last accessed 22 January 2014)

<sup>15</sup> Coordination of Government Activities in the Territories, Civil Administration in Judea and Samaria, <http://www.cogat.idf.il/1279-en/Cogat.aspx> accessed 26 August 2014

<sup>16</sup> D. Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (State University of New York Press, 2002) 64.

the occupied population’.<sup>17</sup>

Israel further terminated a concession agreement with the Jerusalem Electricity Company granted by Jordan in 1967 for the supply of electricity to East Jerusalem and the West Bank and purchased the plant granting a new concession to the Israel Electric Corporation (IEC).<sup>18</sup> The measure effectively attached the energy economy of Jerusalem to Israel creating the conditions of Palestinian energy dependence.<sup>19</sup> As it stands, the IEC owns the electrical grid in the West Bank and currently supplies 95 percent of the West Bank’s electricity to three electricity distribution companies the Jerusalem District Electric Company (JDECO), the Northern Electricity Distribution Company (NEDCO) the Southern Electric Co. (SELCO)<sup>20</sup> while Jordan supplies 5% of electricity to Jericho in the West Bank.<sup>21</sup>



Electricity Consumption Figures 2009<sup>22</sup>

<sup>17</sup> HCJ 256/72, *Jerusalem District Electricity Co. Ltd. v. Minister of Defence et al.*, 27(1) PD 124, 138

<sup>18</sup> D. Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (State University of New York Press, 2002) 66.

<sup>19</sup> “Arab Electricity Company Taken Over” *Journal of Palestinian Studies*, Vol. 9, No., 3 (Spring, 1980) 175.

<sup>20</sup> Palestinian Market Briefs, Energy (Oil and Gas Electrical Power).

<sup>21</sup> Ibid; West Bank and Gaza Energy Sector Review <[http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/WESTBANKGAZAEXTN0\\_contentMDK\\_21688966-menuPK\\_294386-pagePK\\_141137-piPK\\_141127-theSitePK\\_294365\\_00.html](http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/MENAEXT/WESTBANKGAZAEXTN0_contentMDK_21688966-menuPK_294386-pagePK_141137-piPK_141127-theSitePK_294365_00.html)> accessed 22 November 2014.

<sup>22</sup> Independent Statistics and Analysis, U.S Energy Information Administration. Figures for 2009, Total Primary Energy Consumption per Capita, one million Btu (British thermal unit) per person. At <<http://www.eia.gov/cfapps/ipdbproject/iedindex3.cfm?tid=44&pid=45&aid=2&cid=regions&syid=2005&eyid=2009&unit=QBTU>>

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.<sup>23</sup> The remainder of the electricity is supplied by Egypt (27 MW) and the Palestine Electric Company (PEC) (65 MW).<sup>24</sup>

In addition to the OPT being dependent on Israel's Electricity Corporation 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.<sup>25</sup> Should gas be supplied from the Gaza Strip to power electricity stations in the West Bank, Palestinians could become self-sufficient.<sup>26</sup> By maintaining control over Palestine's electricity supply, Israel can cut off or reduce this supply as a coercive and punitive measure and weapon of economic warfare.

23 United Nations, Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, "Between the Fence and a Hard Place: The Humanitarian Impact of Israeli-imposed Restrictions on Access to Land and Sea in the Gaza Strip" World Food Programme, Special Focus August 2010, p. 33; Fact Sheet EWASH Advocacy Task Force, Accountability for Violations of the Human Rights to Water and Sanitation in the Occupied Palestinian Territory: The Committee on Economic, Social and Cultural Rights, December 2011, p. 3.

24 Palestine Economic Policy and Research Institute, 'Electricity Crisis in Gaza: Causes, Consequences and Treatments' (November 2013) 3.

25 R Bryce, 'Oil, Peace and Palestine: Energy Key to Holy Land's Past, Future' (2005) 1(4) *World Energy Monthly Review* 10.

26 V Kattan, 'The Gas Fields off Gaza: A Gift or a Curse?' (2012) *Al Shabaka, the Palestinian Policy Network* 2.

## Preventing the Development of Palestine's Gas Resources

In November 1999, a consortium comprised of Consolidated Contractors Limited (CCC), the British Gas Group (BG) and the Palestine Investment Fund (PIF) concluded an agreement with the former President of the Palestinian Liberation Organisation, Yasser Arafat for the development and commercialization of the Gaza Marine fields.<sup>27</sup> In 1999, the Palestinian Authority granted a twenty-five year exploration license with 90 percent equity to British Gas.<sup>28</sup> After receiving security clearance from Israeli Prime Minister Ehud Barak in 2000, BG drilled two wells in the Gaza Marine finding reserves estimated at 1.4 trillion cubic feet (tfc).<sup>29</sup>

However 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 that gas supplies the domestic Palestinian market, as well as finds an export market. Initially Palestine had planned to export gas to Egypt where it would be converted for international export into liquefied natural gas.<sup>30</sup> However, Israel prevented the development of a pipeline from the Gaza Marine to Al-Arish in Egypt because it was considered logistically vital to secure the export of liquefied natural gas to international export markets.<sup>31</sup> In the meantime, BG tried unsuccessfully to negotiate an export arrangement with Israel and Egypt to pipe gas from the Gaza Marine to BG Group's Idku LNG (liquefied natural gas) plant in Egypt.

Alternatively gas from the Gaza Marine could be sold by BG to the Israeli market. On the recommendations of a technical review this would involve developing the Gaza Marine field with a pipeline supplying an onshore processing terminal.<sup>32</sup> Although the Palestinian Authority approved the plan in 2002, Israel has since consistently

27 Victor Kattan, 'The Gas Fields off Gaza: A Gift or a Curse?' *Al Shabaka, the Palestinian Policy Network* (April 2012), p. 1; Anais Antreasyan, 'Gas Finds in the Eastern Mediterranean: Gaza, Israel, and other Conflicts' *Journal of Palestinian Studies*, Vol. XLII, No.3 (Spring 2013), p. 30.

28 Under Article 27 of Law No. (1) of 1999 for Natural Resources, licences 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.

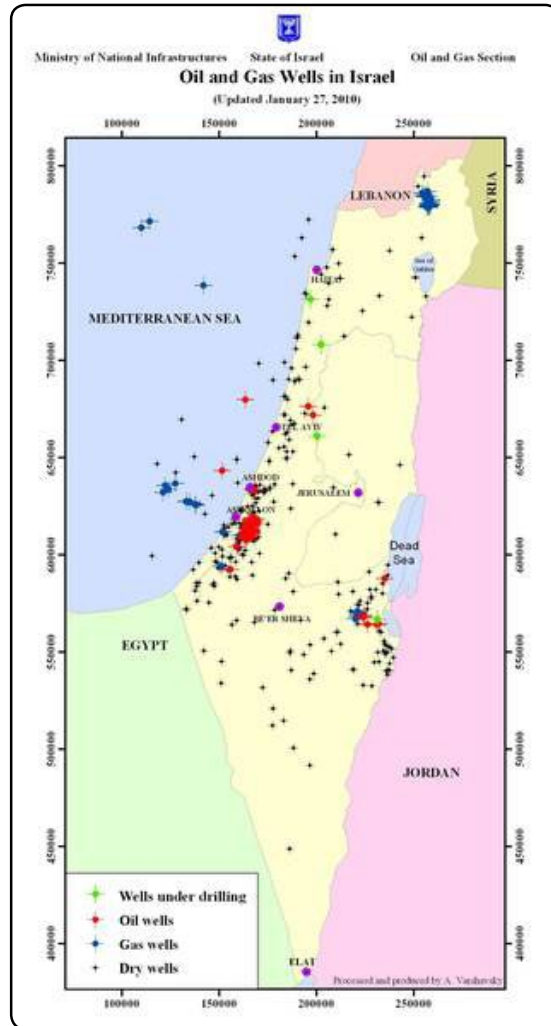
29 Victor Kattan, 'The Gas Fields off Gaza: A Gift or a Curse?' *Al Shabaka, the Palestinian Policy Network* (April 2012), p. 2; Anais Antreasyan, 'Gas Finds in the Eastern Mediterranean: Gaza, Israel, and other Conflicts' *Journal of Palestinian Studies*, Vol. XLII, No.3 (Spring 2013), p. 31.

30 Henderson, *Natural Gas in the Palestinian Authority: The Potential of the Gaza Marine Offshore Field* (German Marshall Fund, March 2014) 2

31 Palestinian Ministry of National Economy, *Economic Costs of the Israeli Occupation for the Occupied Palestinian Territory* (September 2011) 27

32 Henderson, *Natural Gas in the Palestinian Authority: The Potential of the Gaza Marine Offshore Field*, (2014) *German Marshall Fund* 2.





Source: Map of Offshore Drilling History 1969-2003<sup>35</sup>

blocked all attempts made by Palestine and BG to conclude gas export agreements. 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 per year to the Palestinian economy, arguing that Israel would not have full oversight of gas revenues, despite the fact that gas revenues were agreed to be deposited into a special account currently used for tax revenues which Israel already exercises full control over.<sup>33</sup> By 2007, negotiations between BG, Israel and Egypt had collapsed, with BG withdrawing from negotiations and closing its office in Israel.<sup>34</sup>

33 R Bryce (n 25). 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 - as levied on OPT imports from the international market via Israel. Palestine Economic Policy Research Institute (MAS), 'Background Paper: On the Clearance 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).

34 "British Gas and Israel Eyeing Gaza's Natural Gas Reserves," *The Daily Star*, April 26, 2010.

35 Gardosh et al., 'The Levant Basin Offshore Israel: Stratigraphy, Structure, Tectonic Evolution and Implications for Hydrocarbon Exploration' (April 2008) 13 at <<http://energy.gov.il/English/Subjects/OilAndGasExploration/Documents/LevantBasinOffshoreIsrael2008.pdf>> accessed 23 September 2014.

## 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, a move which would mutually benefit the Palestinian economy and supply excess gas for sale to the Israeli domestic market.<sup>36</sup> 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.<sup>37</sup> Quartet Middle East Envoy Tony Blair and Adv. Yitzhak Molcho of Israel<sup>38</sup> hosted the talks in the absence of the Palestinian Authority and the Consolidated Contractors Company (CCC). There was significant political pressure for the Israel Electricity Company to engage with the discussions, despite IEC reluctance to consent to a gas purchase agreement for Palestinian gas which would cost 25 percent more than Israeli gas.<sup>39</sup> On 27 November 2013, talks were resumed between the IEC negotiating team, BG and Adv Yitzhak Molcho, at the request of Israeli Prime Minister Netanyahu.<sup>40</sup> The development of the Gaza Marine was now considered a matter of some urgency. Following delays in securing permits to produce gas from Israel's Leviathan field, Noble Energy<sup>41</sup> and Delek Working Group were now delaying the production and supply of gas to the Israeli market and Israel potentially faced substantial gas shortages in 2015.<sup>42</sup>

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

36 A Barkat, 'Israel in Secret talks with BG on Palestinian Gas, The talks concern development of the Gaza Marine license for the Palestinian population in the West Bank and Gaza' (13 March 2013) Globes Israel's Business Arena.

37 Victor Kattan, "The Gas Fields off Gaza: A Gift or a Curse?" Al Shabaka, the Palestinian Policy Network (April 2012), p. 2

38 Adv. Yitzhak Molcho is Netanyahu's personal envoy to the Palestinian negotiations and notably was the first representative to the Gaza negotiations with Yassar Arafat in 1996. Nathan Guttman, Netanyahu's Representative will attend Peace talks along with Livni, *The Jewish Daily Forward* (26 July 2013); Globes, Israel in Secret Talks with British Gas on Palestinian Gas (14 March 2013) <<http://www.jpost.com/Breaking-News/Israel-in-secret-talks-with-British-Gas-on-Palestinian-gas>> accessed 6 September 2014

39 A Barkat, 'IEC renews Palestinian gas purchase talks' (27 November 2013) Globe's Israel's Business Arena

40 *Ibid.*

41 Noble Energy has the majority operating interests in the Yam Tethy's, Tamar and Leviathan fields. See <<http://www.nobleenergyinc.com/operations/eastern-mediterranean-128.html>>

42 State of Israel, The Recommendations of the Inter-Ministerial Committee to Examine the Government's Policy Regarding Natural Gas in Israel, Executive Summary (September 2012) 3-4, at <<http://energy.gov.il/English/PublicationsLibraryE/pa3161ed-B-REV%20main%20recommendations%20Tzemach%20report.pdf>> (last accessed 25 January 2014); A Barkat, (n. 38). Production from the Tamar field had been expected to start in April 2013. A Varshavsky, 'Current Status of Offshore Oil and Gas Exploration in Israel, Ministry of Energy and Water Resources' (July 2012) 3.

cumulative demand between 2013-2040.<sup>43</sup> Overall, Israel was budgeting on gas exports it could not yet provide. By engaging in unilateral talks with BG over the Gaza Marine, Israel demonstrated from the outset that it had no intention of relinquishing its control over Palestine's energy resources, that Palestine would not be accorded independent opportunities for development and further, that Palestine's energy resources would be developed and directed for the benefit of the Israeli economy at a time suitable to Israel.

### The Undeveloped Gaza Marine and Border Field

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.<sup>44</sup> 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.<sup>45</sup> The gas worth USD 6 billion would be exported through the Arab Gas Pipeline already linking Jordan and Egypt and bypassing Israel.<sup>46</sup>

On its website and in its Annual Report (2012), the Palestine Investment Fund (PIF) indicated that the future development of the Palestinian Power Generation Company in the West Bank and the modification of the Power Generation Company 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).<sup>47</sup> However by January 2014, the Palestinian Power Generation Company had concluded a gas supply agreement with the 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 in the near future. The export of Leviathan gas to supply the Palestinian power plant at Jenin would smooth the way politically for gas deals with Egypt and Jordan. Similarly, in April 2014, the Delek Group published its Bond Offering Procedure, stating "it is unlikely that the Gaza Marine Field (30BCM offshore Gaza) will be developed in the coming years".<sup>48</sup> Instead the PIF Report forecasted that Palestine would begin self-generating natural gas in 2030.<sup>49</sup>

43 The Israeli Institute for Economic Planning, 'The Use of Natural Gas in the Israeli Economy' (March 2013) 16. The Israeli Institute for Economic Planning warned against conservative projections of national gas outlining "underestimation of true demand can result in a greater long term economic risk since tight supply may push up prices and starve sectors from getting the gas they need".

44 M Ghazal, 'Jordan, Cyprus to Work on Gas Deal Details 'Within Weeks' *The Jordan Times* (9 September 2014) < <http://jordantimes.com/jordan-cyprus-to-work-on-gas-deal-details-within-weeks>> accessed 28 September 2014.

45 M Ghazal, 'Jordan to Buy Gas from Gaza Starting 2017 - Minister' *The Jordan Times* (16 August 2014) < <http://jordantimes.com/jordan-to-buy-gas-from-gaza-starting-2017---minister>> accessed 28 September 2014.

46 Palestine Investment Fund, 'Investing for our Children's Future' 9 < <http://www.pif.ps/resources/file/booklets/pif-brochure-english.pdf>> accessed 29 September 2014.

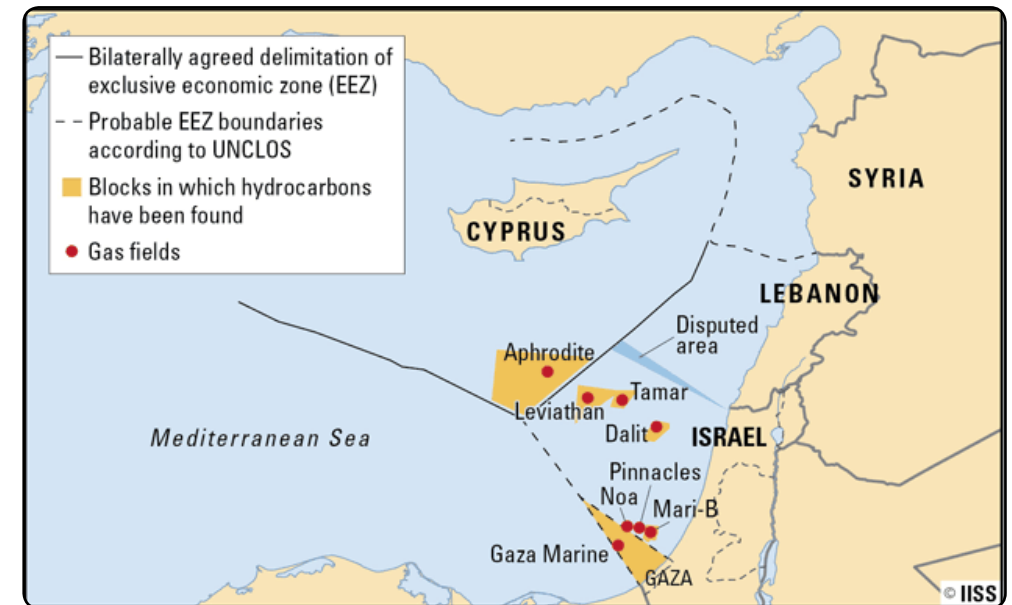
47 PIF, Gaza Gas Project <http://www.pif.ps/index.php?lang=en&page=1367843910902> accessed 21 October 2014.

48 Delek Group, Bond Offering Procedure (Tel Aviv, April 28, 2014) 20.

49 *Ibid* at 83.

## Israel's Gas Resources

The development of the natural gas market has become the centerpiece of Israel's energy policy following the discovery of vast natural gas resources off the Israel's coast.<sup>50</sup> To date, 5 oil fields and 12 gas fields have been discovered in Israel. In 2009, Noble Energy and its partners Delek Group and Dor Gas Exploration discovered the Tamar gas reservoir 90 km off the coast of Israel with estimated reserves of 8 tcf, eight times larger than Gaza's 1 tcf reserves.<sup>51</sup> In March 2013, gas production began on the Tamar field supplying 50 to 80 per cent of the Israeli domestic market via gas piped to the IEC power plants in Ashkod.<sup>52</sup>



Source: *Oil and Gas Eastern Mediterranean*<sup>53</sup>

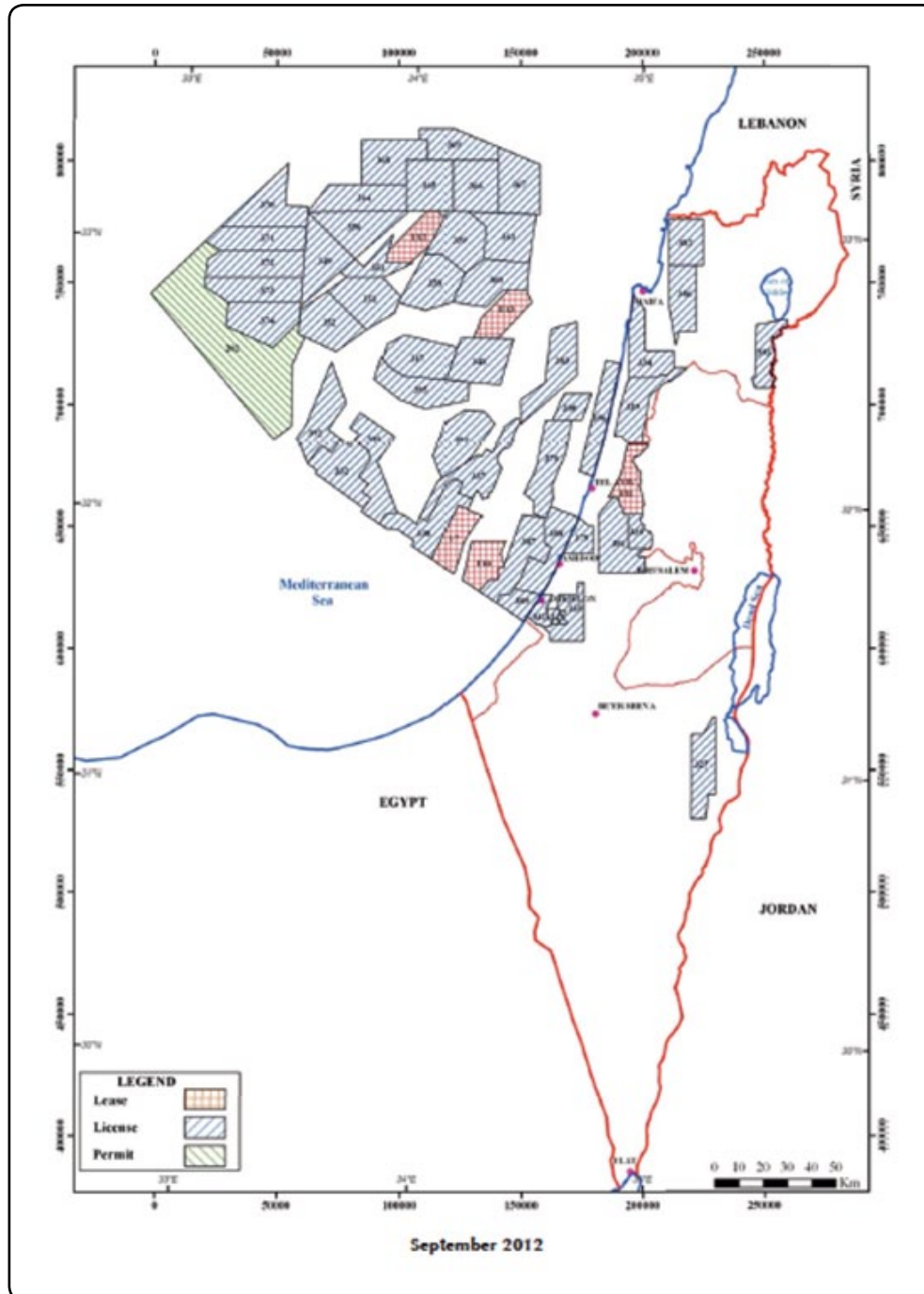
50 State of Israel, Conclusions of the Committee for the Examination of the Fiscal Policy with Respect to Oil and Gas Resources in Israel (January 2011).

51 Ministry of National Infrastructures, Energy and Water Resources < <http://energy.gov.il/English/Subjects/Natural%20Gas/Pages/GxmsMniNGEconomy.aspx>>

52 A Antreasyan, 'Gas Finds in the Eastern Mediterranean: Gaza, Israel, and other Conflicts' (2013) XLII (3) *Journal of Palestinian Studies* 36.

53 *Oil and Gas Eastern Mediterranean* at <http://www.oilandgascyprus.com/?tag=cyprus> accessed 24 November 2014.





In December 2010, Noble Energy discovered the Leviathan gas field approximately 81 miles off Haifa with a massive 16 tscf of reserves, double that of Tamar, effectively altering Israel’s geostrategic position as a regional gas power.<sup>54</sup> Noble operates the Rachel and Amit license at Leviathan with Ratio Oil Exploration 1992 LP, Delek Drilling LP and Avner Oil and Gas Ltd. holding minor interests.<sup>55</sup> It is estimated that production will begin in 2018. 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”.<sup>56</sup>

In 2012, Noble Energy discovered commercial quantities of oil located at a greater depth beneath the Leviathan-1 well.<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup> Satisfied with the potential oil exploitation from Leviathan-1, Noble Energy resumed drilling in January 2013.<sup>60</sup>

When Noble discovered gas in Tamar and the Leviathan, it became clear that Israel had more gas than necessary for the domestic market and it needed to conclude export agreements with neighbouring States to create an export market. Israel’s gas cannot be developed until the gas agreements are concluded. Because of the urgency of the gas development and pressure from oil and gas companies, Israel introduced a series of legislative measures to facilitate the swift development of gas. These legislative measures are not complete as, for example, the old Petroleum Legislation did not provide for Petroleum Profits, and also a Maritime

54 A Antreasyan (n. 50) 29.

55 SubsealQ, Leviathan <[http://www.subsealq.com/data/Project.aspx?project\\_id=814&AspxAutoDetectCookieSupport=1](http://www.subsealq.com/data/Project.aspx?project_id=814&AspxAutoDetectCookieSupport=1)>

56 A Antreasyan (n.50) 36.

57 United States Securities Exchange Commission, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, Noble Energy Inc. (31 December 2012) 18.

58 *Ibid.*

59 *Ibid.*

60 Noble Energy Inc., Form 10-Q Quarterly Report, United States Securities Exchange Commission, Quarterly Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the Quarterly Period ended September 30, 2013.

Zones Bill is to be adopted. There will be further delays developing gas resources until the legislation is concluded. The Antitrust Committee recently ruled that the Noble conglomerate could not maintain its market monopoly, so Israel is obliged to open up to new investors.<sup>61</sup> As the licenses for development have already been awarded in the last few years, these new investors will come into the market as co-operators of already licensed fields.

Any multinational companies intending to enter the Israeli gas market as cooperators of licensed fields may be complicit in preventing the development of Palestinian oil and gas resources in the Gaza Marine and Border field. Israel has enforced a lethal naval closure of the Gaza Strip coastline to secure its gas resources located along the boundary of Palestine's territorial waters. Moreover, pipelines connecting Israel and Egypt for gas exports run through Palestine's maritime space in the absence of any agreement with the Palestinian Authority.

## Israel's Export Pipelines in Palestine's Maritime Zone

Israel cannot develop its vast gas resources in the Mediterranean Sea without first establishing gas export markets and concluding gas export agreements. To date Israel has agreed upon a Memorandum of Understanding for the export of gas with the State of Palestine for the supply of gas from Leviathan when it comes online in 2018. Israel has also negotiated agreements with Jordan and Egypt. Ideally, Israel would secure gas export agreements with Cyprus and Turkey, however, due to tensions geopolitically 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 annually.<sup>62</sup>

### Palestine

On 5 January 2014, the Palestine Power Generation Company (PPGC) and the Leviathan partners<sup>63</sup> signed an agreement worth an estimated \$1.2 billion for the supply of natural gas to operate the future PPGC power plant in Jenin.<sup>64</sup> Gas will be supplied when Leviathan comes online in 2018 for a twenty-year period to the PPGC, or before this time, if the PPGC purchases the overall contracted amount of gas. The PPGC was established to provide a domestic source of electrical power to the West Bank, albeit through imported Israeli gas due to the continued prevented development of the Gaza Marine.<sup>65</sup>

### Exporting to Jordan

Jordan generates 96 percent of its energy from imported fuel, with 80 percent of imports formerly originating from Egypt.<sup>66</sup> However by 2014, it was estimated that Jordan would suffer an electricity deficit of 15 TW (terra watts).<sup>67</sup> Political

62 H Cohen, 'Not Developing Leviathan costs State \$3 billion a year' Globes (20 November 2014) <http://www.globes.co.il/en/article-not-developing-leviathan-costs-3b-a-year-1000987948>

63 Noble Energy Mediterranean Ltd., Delek Drilling Limited Partnership, Avner Oil Exploration Limited Partnership, Ratio Oil Exploration (1992) Limited Partnership.

64 Delek Group, 'Leviathan Partners Signs Agreement with Palestine Power Generation Company for the Supply of Natural Gas' (6 January 2014) <<http://ir.delek-group.com/phoenix.zhtml?c=160695&p=irol-newsArticle&ID=1887870&highlight=>> accessed 29 September 2014.

65 Palestine Power Generating Company, Company Overview <<http://www.ppgc-ps.com/node/85>> accessed 29 September 2014; Palestine Investment Fund, Annual Report 2012, 33.

66 The Israeli Institute for Economic Planning, The Use of Natural Gas in the Israeli Economy (March 2013) 15.

67 *Ibid.*

61 Israel Antitrust Authority, Annual Report on Competition Policy Developments in Israel (2010) 13. At [http://www.antitrust.gov.il/files/32806/Israel\\_Annual\\_Report\\_2010-2011.pdf](http://www.antitrust.gov.il/files/32806/Israel_Annual_Report_2010-2011.pdf) (last accessed 15 January 2014). In 2011, the Annual Report on Competition Policy Developments in Israel, cited its concerns, that together these companies, had held a monopoly over the supply of natural gas in Israel, in violation of the Restrictive Trade Practices Act, 5748-1988 governing industry monopolies.



upheaval in Egypt had affected Egyptian gas exports, with Jordan facing an acute energy crisis.<sup>68</sup> In February 2014, Noble 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.<sup>69</sup>

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.<sup>70</sup> A new pipeline connecting a floating offshore terminal will run through "Jezerrel Valley in Northern Israel to Beit Shean near the border and into Jordan".<sup>71</sup>

There has also been some discussion about an alternative pipeline routed through the occupied West Bank to supply Jordan from the Leviathan. 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.<sup>72</sup> Routing a gas pipeline through the occupied State of Palestine was "no big deal".<sup>73</sup> Similarly, the Ministry of National Infrastructures indicated that there was no solution yet in relation to gas distribution infrastructure through 'Judea and Samaria'.<sup>74</sup> Laying a pipeline through the immovable property of the occupied State 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 curtailment of the right to freedom of movement of the occupied population.

68 J Mitnick, 'Jordan Israel Weigh Gas Deal: Amman, Plagued by Energy Crisis, Would be First Buyer of Newfound Reserves' (2013) *The Wall Street Journal*.

69 Noble Energy, 'Noble Energy Announces Agreement to Sell Tamar Gas to Multiple Customers in Jordan' (19 February 2014) <<http://investors.nobleenergyinc.com/releasedetail.cfm?ReleaseID=826568>> accessed 24 September 2014.

70 Newman, 'Israel Signs \$15 billion gas deal with Jordan' (3 September 2014) <<http://www.timesofisrael.com/israel-signs-15-billion-gas-deal-with-jordan/>> accessed 23 September 2014; Globes, 'Leviathan Partners Signing \$15 billion Jordanian Gas Deal' <<http://www.globes.co.il/en/article-israel-signing-15b-jordanian-gas-export-deal-1000968828>> accessed 23 September 2014.

71 J Mitnick, (n. 66). Hedy Cohen, 'The Ministry of Energy wants the Leviathan partners to pay for the pipeline, which will cross into Jordan near Bet Shean' (10 September 2014) <<http://www.globes.co.il/en/article-israel-jordan-gas-pipeline-to-cost-over-nis-250m-1000970416>> accessed 23 September 2014.

72 Speech of Joseph Paritzky, former Minister for National Infrastructure Universal Oil and Gas Conference (18-20 November 2014), David Dead Sea Resort, Ein Bokek.

73 *Ibid.*

74 *Ibid.*

## 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.<sup>75</sup> 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% of the Damietta plant, a joint venture between Spain's Gas Natural and Italy's Eni.<sup>76</sup> The Israel-Egypt pipeline had previously supplied 37 percent of Israel Electric Corporation's natural gas demand from 2009 until the pipeline was damaged during hostilities in 2011.<sup>77</sup>

In June 2014, Noble Energy negotiated an agreement to export gas from the Leviathan field to BG liquefied natural gas plant in Idku in Northern Egypt, for transit to the European and Asian markets.<sup>78</sup> An underwater pipeline will supply gas from Leviathan to Egypt over a fifteen-year period.<sup>79</sup> 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.<sup>80</sup>

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, Dolphinus Holdings Ltd., from 2015 through the Israel-Egypt (Al-Arish) pipeline.<sup>81</sup> However the Al-Arish pipeline runs through the Gaza Marine maritime space through Zone L. Gas from Israel must be delivered and received in the final location to ensure the transaction. Should anything happen *en route* to the gas there will be no transaction and the contract may be cancelled on the basis of a *force majeure*. This happened in 2014

75 Greg Carlstrom, 'Egypt and Israel to Reach Another Gas Deal' (8 May 2014) <<http://www.aljazeera.com/news/middleeast/2014/05/egypt-israel-reach-another-gas-deal-201458823585752.html>> accessed 24 September 2014.

76 Reuters, 'UPDATE 1-Israel Tamar gas field partners aim for exports to Egypt LNG plant' (7 July 2014) <<http://www.reuters.com/article/2014/05/06/israel-gas-egypt-idUSL6N0NS5CA20140506>> accessed 24 September 2014.

77 S Even, 'Israel's Natural Gas Resources: Economic and Strategic Significance' Strategic Assessment, Volume 13, No. 1 (July 2010), p. 10; A Antreasyan, (n.50) 38; J Stocker (n.1)582.

78 S Solomon, 'Israel Nears Gas Sales to Egypt as Middle East Unrest Flares' Bloomberg <<http://www.bloomberg.com/news/2014-08-20/israeli-gas-to-reach-global-market-via-pipelines-to-egypt.html>> accessed 24 September 2014.

79 E Azran and Reuters, 'Leviathan partners sign preliminary deal to export gas to Egypt' (30 June 2014) <<http://www.haaretz.com/business/premium-1.601980>> accessed 24 September 2014.

80 C Coats, 'Will Egypt Finally Embrace Israeli Gas?' (9 July 2014) <<http://www.forbes.com/sites/christophercoats/2014/07/09/will-egypt-finally-embrace-israeli-gas/>> accessed 24 September 2014.

81 S Udasin, 'Israeli Partners sign bid to sell natural gas to Egyptian firm, *The Jerusalem Post* (19 October 2014) <<http://www.jpost.com/Israel-News/New-Tech/Israeli-gas-firm-signs-bid-to-sell-natural-gas-to-Egypt-379181>> accessed 19 October 2014.

to BG who cancelled a supply contract to Egypt on the basis of *force majeure*, when Egypt diverted gas to the domestic market. Within this understanding, it is important that any gas travelling outside Israel's jurisdiction is protected until it reaches its final destination. This warrants additional security and where the gas is directed through Palestinian territorial waters, this means the prolongation of the illegal naval closure and occupation of Gaza's continental shelf. The option to pipe gas through Egypt and onto Europe 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 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.<sup>82</sup>

## Exploiting Gas from Palestinian Territorial Waters

Israel and the State of Palestine share a geologically contiguous gas structure. The Israeli license awarded for the portion of the geological structure in Israel's maritime space for the Yam Tethys basin comprises the Mari-B and Noa wells developed between 2004 and 2013 by Noble Energy and Delek Energy at a rate of 23 BCM of gas. However the basin spans into Palestinian territorial waters also comprising the Border field. Israel's platform for the Yam Tethys basin the Mari-B platform, is contiguous to Palestinian territorial waters. Israel unilaterally built the platform without cooperation or agreement from the State of Palestine required under the Oslo Accords.<sup>83</sup> In September 2014, it was reported that the gas production from the Yam Tethys field was finally nearing completion.<sup>84</sup>

In 2011, it appeared that joint development of the Noa South gas well might be the subject of a cooperation agreement between Israel and Palestine when Israeli business news *Globes* reported that Prime Minister Benjamin Netanyahu suggested the development of Noa South in cooperation with President Mahmoud Abbas.<sup>85</sup> At a minimum, it highlighted Israel's intention to develop the Noa South reservoir under a cooperation agreement necessitated by the Oslo Accords. Article 15(4)(b), Annex III of the Israeli Palestinian Interim Agreement (1995) requires "Israel and the Palestinian side agree to cooperate concerning production of oil and gas in cases of joint geological structures."<sup>86</sup> The Noa field straddles Palestinian waters located adjacent to Gaza Marine 1, with the Border field extending into Palestinian territorial waters.<sup>87</sup> In its 2012 Annual Report, Delek Drilling indicated that exploratory wells had been drilled in the Noa holdings ('Noa' and 'Noa South 1') highlighting the discovery of commercial quantities of gas.<sup>88</sup> The unilateral drilling of the exploratory Noa South 1 well extending into the Palestinian continental shelf of itself amounts to a violation of Palestinian sovereignty.

<sup>83</sup> Article 15(4)(b), Annex III of the Israeli Palestinian Interim Agreement (1995)

<sup>84</sup> S. Udasin, 'IEC Stops Receiving Gas from Yam Tethys', *The Jerusalem Post* (23 November 2014) < <http://www.jpost.com/Breaking-News/IEC-stops-receiving-gas-from-Yam-Tethys-337689> > accessed 23 November 2014.

<sup>85</sup> A Barkat, 'Israel sees Palestine gas fuelling Gaza power station' (8 March 2011) *Globes Israel's Business Arena*.

<sup>86</sup> Article 15(4)(b), Annex III, The Israeli- Palestinian Interim Agreement (28 September 1995).

<sup>87</sup> *Ibid* p. 36.

<sup>88</sup> See 2012 Annual Report, Delek Drilling (p. 250) at [http://www.delekenergy.co.il/\\_Uploads/dbsAttachedFiles/Final\\_Avner.pdf](http://www.delekenergy.co.il/_Uploads/dbsAttachedFiles/Final_Avner.pdf)

<sup>82</sup> A Gurel, 'The Cyprus Problem as an Obstacle to Regional Energy Cooperation', (2013) 93 *Oxford Energy Forum, A Quarterly Journal for Debating Energy Issues and Policies* 12.



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.<sup>89</sup> In its 2011 Annual Report, Delek Group reported that it had developed the Noa North field subject to the Commissioner for Petroleum Affairs instruction to cap gas production at 1.2 BCM “to prevent allegations of gas production from other parts of the reservoir extending beyond the lease area”.<sup>90</sup> Similarly 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”.<sup>91</sup> 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. Moreover it violates Palestinian rights of permanent sovereignty and self-determination over its natural resources.

In June 2012, the Noble conglomerate<sup>92</sup> began selling gas from the Noa north well to the Israel Electric Corporation,<sup>93</sup> exploiting the well “at a higher production rate” than other projects, taking the risk of damaging the wells from the high rate of gas exploitation.<sup>94</sup> In August 2013, Netherland, Sewell and Associates Inc, 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, raising

89 See Avner Oil Exploration at <[http://www.delekenergy.co.il/Uploads/dbsAttachedFiles/Final\\_Avner.pdf](http://www.delekenergy.co.il/Uploads/dbsAttachedFiles/Final_Avner.pdf)>

90 See 2011 Delek Annual Report at [http://media.corporateir.net/media\\_files/IROL/16/160695/Delek%20Group%20Annual%20Report%202011%20EN.pdf](http://media.corporateir.net/media_files/IROL/16/160695/Delek%20Group%20Annual%20Report%202011%20EN.pdf). See Avner Oil Exploration at [http://www.delekenergy.co.il/Uploads/dbsAttachedFiles/Final\\_Avner.pdf](http://www.delekenergy.co.il/Uploads/dbsAttachedFiles/Final_Avner.pdf)

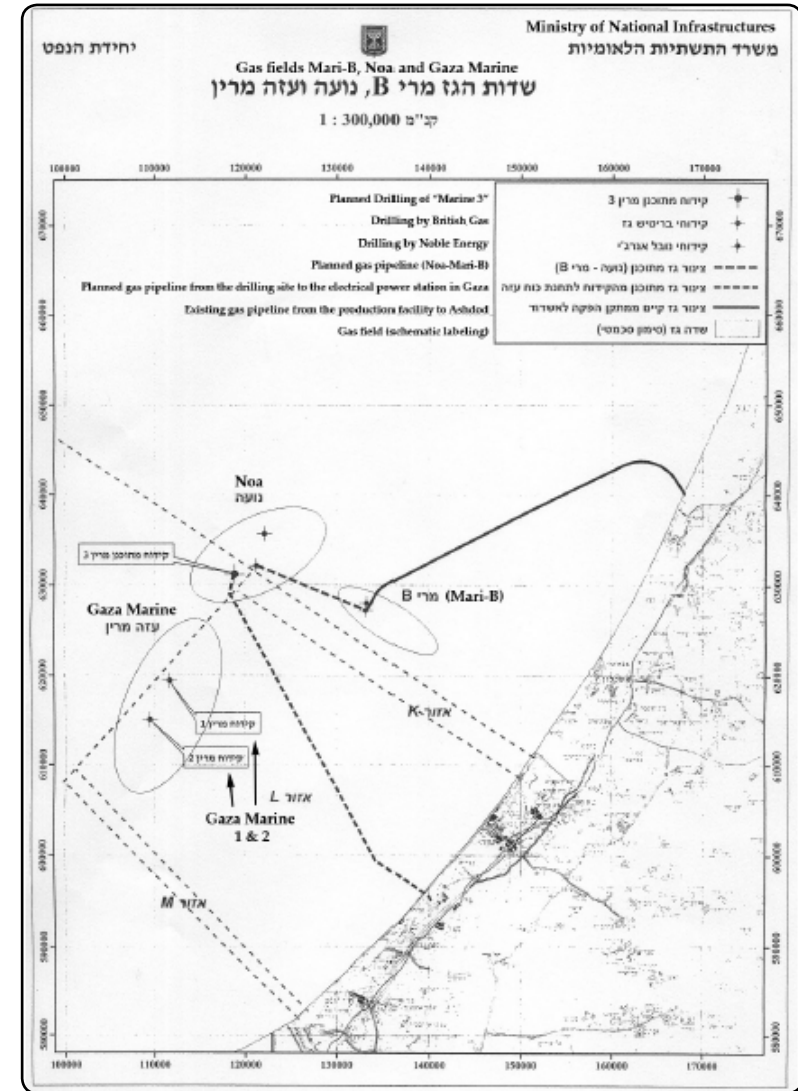
91 Noble Energy Inc., “Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934” (for fiscal year ended December 31, 2012) 119, 120 <[http://www.nobleenergyinc.com/annualreport/nei12/images/NBL\\_10K.pdf](http://www.nobleenergyinc.com/annualreport/nei12/images/NBL_10K.pdf)> accessed 28 May 2014;

92 Noble Energy Mediterranean Ltd. (47.0950%), Delek Drilling Limited Partn. (25.5000%), Avner Oil Ltd. Partn. (23.0000%), Delek Group Ltd., (4.4410%)

93 Noble Energy Inc., “Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934” (for fiscal year ended December 31, 2012) 17, 24 <[http://www.nobleenergyinc.com/annualreport/nei12/images/NBL\\_10K.pdf](http://www.nobleenergyinc.com/annualreport/nei12/images/NBL_10K.pdf)> accessed 28 May 2014; Noble Energy News Release, Noble Energy, Inc. Announces Startup of Natural Gas Production From the Giant Mari-B Field Offshore Israel. At <http://webcache.googleusercontent.com/search?q=cache:YuJFee2Uy4J:investors.nobleenergyinc.com/common/mobile/iphone/releaseDetail.cfm%3FReleaseID%3D359787%26CompanyID%3D3Dabea-2d0wmq%26mobileid%3D+&cd=2&hl=en&ct=clnk&client=safari> (last accessed 25 November 2013); Reuters, “Noa well starts supplying Israel with Natural Gas” (24 June 2012) <<http://www.reuters.com/article/2012/06/24/us-noa-israel-idUSBRE85N0GR20120624>> accessed 28 May 2014

94 Noble Energy Inc., “Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934” (for fiscal year ended December 31, 2012) 24, 77 <[http://www.nobleenergyinc.com/annualreport/nei12/images/NBL\\_10K.pdf](http://www.nobleenergyinc.com/annualreport/nei12/images/NBL_10K.pdf)> accessed 28 May 2014; A Barkat, “Israel in secret talks with BG on Palestinian gas” at <<http://www.globes.co.il/en/article-1000829662>> Annex III, Article 15(4)(b), Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995)

the possibility that gas located in Palestinian territorial waters might also be the subject of direct unilateral exploitation.<sup>95</sup>



Source: Gas Fields Mari-B, Noa and Gaza Marine<sup>96</sup>

95 Netherlands, Sewell and Associates Inc., Report on Proved and Probable Reserves and Future Revenue (August 20, 2013) p. 3.

96 Israeli Ministry of National Infrastructure Map in J Stocker (n.1) 591.

## Disputed Licenses

Israel's leases and licenses for exploration and production are tracts of maritime space awarded out of its exclusive economic zone (EEZ). However the terms of the EEZ agreement concluded with Cyprus for the point of delimitation parallel to the Palestinian coastline may be subject to further negotiation and may be disputed.

In 2003, Cyprus and Egypt agreed to eight geographical coordinates of a median line on the delimitation of an EEZ between the two States.<sup>97</sup> Following suit, 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.<sup>98</sup> Although, 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, Palestine was sidestepped entirely in the process and coordinates delimiting the median line between Palestine and Cyprus were concluded bilaterally between Israel and Cyprus.

Israel unilaterally allocated a triangular slice of EEZ based on the first point of delimitation concluded with Cyprus, although unilateral maritime delimitations have no basis in international law. There are good grounds for the State of Palestine to challenge the maritime space based on the principles of equity. The delimitation did 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 the Leviathan, may also be subject to future Palestinian claims.

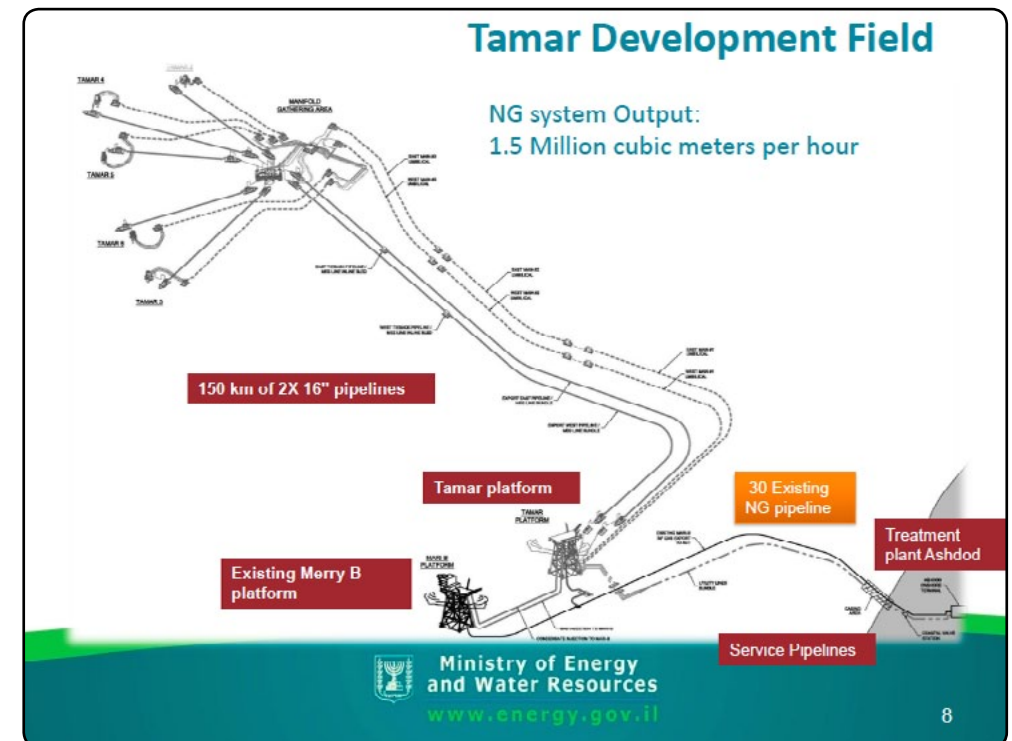
97 Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone (17 February 2003) < <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EGY-CYP2003EZ.pdf> > accessed 21 September 2014.

98 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) < <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/48387/Part/I-48387-08000002802d12b7.pdf> > accessed 21 September 2014.

## Maintaining the Illegal Naval Closure and Protection of Israeli Gas Resources

Israel's natural gas fields, the Shimson, Noa and Mari-B border Palestinian territorial waters. Considerable quantities of oil are located underneath the gas wells, however these require deep sea drilling and have not been exploited to date.

Of Israel's gas platforms, Mari-B is the only connecting infrastructure to the shore. This is a very important as Tamar and possibly Leviathan when it comes online will send gas to Mari-B as a storage facility. Noble has now linked the Tamar and Mari-B facilities with a subsea tieback, the longest in the world.



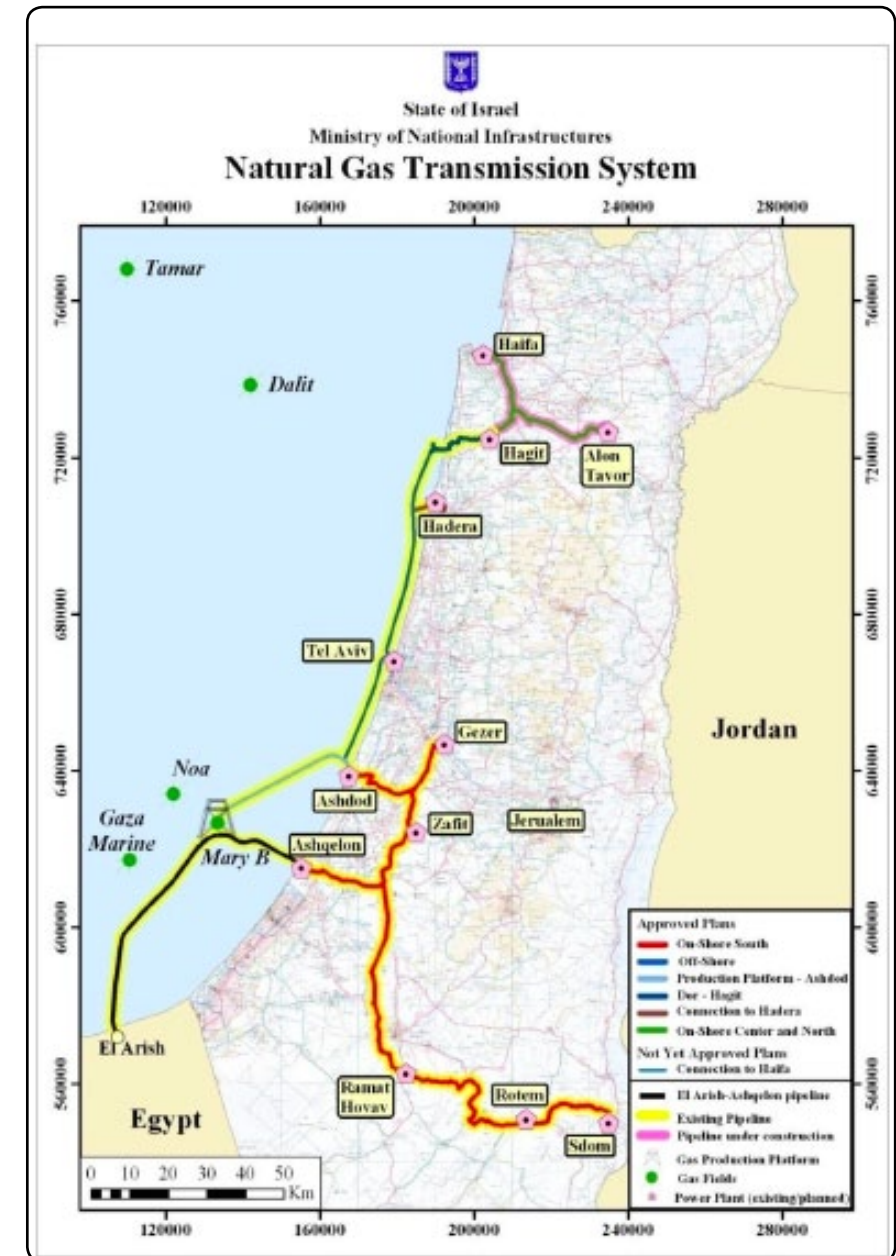
Source: *Layout and Planning of NG Infrastructure in Israel from Offshore to Land*<sup>99</sup>

99 Ministry of Energy and Water Resources, *Layout and Planning of NG Infrastructure in Israel from Offshore to Land* (July 2012) 8.



There can be no meaningful development of gas without a storage facility. The protection of Mari-B as the only storage facility for Israeli gas has become a vital artery for Israel's export plans. Although gas can potentially be piped directly from the well, if an unexpected event occurs affecting the flow of gas such as an earthquake or an attack on a pipeline, gas in the pipeline needs to be directed to a storage facility. As such, gas cannot realistically be developed without a storage unit. In the north of Israel, the National Planning Committee refused permission for a storage site making the routing of gas impossible there. Given the urgency of the situation – Tamar and Leviathan could not be developed without a storage facility – Mari-B and Noa were immediately exploited and depleted at great speed to facilitate the development of the storage facility. The distribution of natural gas under the natural gas transmission system via Mari-B was approved in 2014 under the Tama 37 H Framework.<sup>100</sup>

However the Mari-B platform is reportedly located outside Israel's territorial waters.<sup>101</sup> Israel employs grave security measures to ensure the protection of this gas platform. Noble Energy have reported that Israel maintains a 500 meter buffer zone around the Mari-B platform and employs a 500 meter buffer zone around gas pipelines, which notably run through Palestine's maritime space.<sup>102</sup> Additionally, Israel maintains an illegal naval closure of the Gaza Strip, and Zone K of Gaza's maritime area is designated a closed military zone under the Oslo Accords. These measures prevent Palestinian access to develop their natural resources and also facilitate Israel's unilateral development of contiguous gas resources in violation of the Oslo Accords.



Source: Layout and Planning of NG Infrastructure in Israel from Offshore to Land<sup>103</sup>

100 S. Udasin, 'Ministerial Committee Approves New Land, Sea Gas Reception Terminals' The Jerusalem Post < <http://www.jpost.com/Enviro-Tech/Ministerial-committee-approves-new-land-sea-gas-reception-terminals-369076> > accessed 24 November 2014.

101 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).

102 Noble Energy Mediterranean Ltd, 'Tamar Field Developments Project Offshore Israel'

(September 2012) 154.

103 Ministry of Energy and Water Resources, Layout and Planning of NG Infrastructure in Israel from Offshore to Land (July 2012) 8.

## Business and Human Rights

In the Commentary on Article 12 of the Guiding Principles on Business and Human Rights, commercial enterprises are directed to “respect the standards of international humanitarian law” in armed conflict.<sup>104</sup> The closure of the territorial waters of the Gaza Strip restricting Palestinians to a six-mile limit in their territorial waters violates Article 12 of the International Covenant on Civil and Political Rights (ICCPR) on 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, violates the right to development as outlined in the Declaration on the Right to Development.<sup>105</sup> 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.

Article 1(2) of the United Nations Charter states that the purpose of the United Nations is to “develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”. The right to self-determination is guaranteed under common article 1 of the ICCPR and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Furthermore the right to self-determination constitutes customary international law and represents a peremptory norm of international law.<sup>106</sup> Critically, by preventing access to, and the development of, oil and gas resources, infringes the *erga omnes* obligation on States, and the international community as a whole to guarantee the enjoyment of the right of self-determination.

The General Assembly has often linked the right to self-determination with ‘permanent sovereignty over natural resources’ – which is also considered a fundamental principle of customary international law and a basic ingredient of the right to self-determination.<sup>107</sup> As such, the principle entitles a people to dispose

<sup>104</sup> United Nations, Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework (2011), 15.

<sup>105</sup> 41/128 Declaration on the Right to Development; Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, A/HRC/8/5, 7 April 2008.

<sup>106</sup> Bayefsky, Self-Determination in International Law: Quebec and Lessons Learned (Kluwer Law International, 2000) 99.

<sup>107</sup> The customary character acquired by this principle was reiterated in the *Democratic Republic of Congo v Uganda* case, para. 244.

freely of their natural wealth and resources<sup>108</sup> and contains the right to ‘prospect, explore, develop and market’ the natural resources; it must be exercised in the interest of the national development and the well being of the people of the territory concerned.<sup>109</sup> This means that the Palestinian people have an inalienable right over their natural resources,<sup>110</sup> including land and water, and that the violation of this right is contrary to the spirit and principles of the ICCPR, as well as the United Nations Charter.<sup>111</sup> In 1983, the Secretary General of the United Nations explicitly expressed the applicability and importance of the principle of sovereignty over natural resources for the Palestinian people.<sup>112</sup>

Corporations choosing to invest in Israel’s Yam Tethys, Tamar and Leviathan gas fields, exploiting gas from the Border fields and maintaining an illegal closure of the Mediterranean Sea to secure the Mari-B platform, may contribute to human rights abuses. The closure prevents Palestinian development of its natural resources and also constitutes an illegal occupation of Palestine’s continental shelf in violation of the laws of belligerent occupation.

### Israel’s Responsibility as Occupying Power

Israel has extensively and unlawfully appropriated Palestinian gas resources in the OPT for the sole benefit of its home economy and systematically prevented the Palestinian population from developing their gas resources. These practices are aimed at forcibly stagnating the Palestinian economy and preventing the right to self-determination and the use of gas revenues for statehood. As such, Israel is in violation of Articles 43 and 55 of the Hague Regulations. In addition to State responsibility, these violations constitute war crimes, amounting 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.

<sup>108</sup> UNGA Res 1803 (XXVII) (14 December 1962) UN Doc A/RES/1803(XVII), Preamble and Charter of Economic Rights and Duties of States, Article 2 adopted by UNGA Res 3281 (XXIX) UN Doc A/RES/3281(XXIX); UNGA Res 3016 (XXVII) (18 December 1972) UN Doc A/RES/3016(XXVII), para. 1.

<sup>109</sup> UNGA Res 52/207 (18 December 1997) UN Doc A/RES/52/207.

<sup>110</sup> UNGA Res 3175 (XXVIII) (17 December 1973) UN Doc A/RES/3175(XXVIII), para. 1. The UNGA Resolution further reaffirmed that “[a]ll the measures undertaken by Israel to exploit the [...] natural resources of the occupied Arab territories are illegal” (paragraph 2), and “[t]he right of the [...] peoples whose territories are under occupation to the restitution of and full compensation for the exploitation and looting of, and damages to, the natural resources”, para. 3.

<sup>111</sup> UNGA Res 33/40 (13 December 1978) UN Doc A/RES/33/40, para. 3.

<sup>112</sup> Report of the Secretary-General, ‘Implications, under international law, of the United Nations resolutions on permanent sovereignty over natural resources, on the occupied Palestinian and other Arab territories and on the obligations of Israel concerning its conduct in these territories’, para. 51, (A/38/265, E/1983/85), 21 June 1983.



Furthermore, by maintaining the illegal closure of the Mediterranean Sea, 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 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.<sup>113</sup>

### 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.<sup>114</sup>

Corporations may be held accountable for their involvement in illegal activities in violation of international human rights and humanitarian law in the OPT. For example corporations may be complicit in violations of international human rights and international humanitarian law by maintaining the closure of the Gaza Marine zone to secure gas export pipeline and the protection of the Mari-B storage facility and the unilateral exploitation of the Noa North reserve draining migratory gas from the Border field. Accordingly, corporations benefitting 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”.<sup>115</sup>

<sup>113</sup> Articles 30, 31, 34-37 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, International Law Commission (ILC), United Nations, 2001 (ILC Draft Articles on State Responsibility).

<sup>114</sup> OCHR, Guiding Principles on Business and Human Rights, 6 < [http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr\\_en.pdf](http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_en.pdf)>

<sup>115</sup> *UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights*

### 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.<sup>116</sup> 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 occupied State of Palestine.

Accordingly, States should 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 and other States seeking investment opportunities in Tamar and Leviathan should bear in mind their responsibilities whereby the forcible protection of the gas distribution network for Tamar and Leviathan in the OPT breaches peremptory norms of international law 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. Accordingly “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.<sup>117</sup> The appropriation of migratory Palestinian gas in the contiguous well extending into the Border Field, may amount to a grave breach of the Geneva Conventions.<sup>118</sup>

<sup>116</sup> See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion) ICJ Rep 1971, paragraph 126.

<sup>117</sup> Article 147, Fourth Geneva Convention (1949).

<sup>118</sup> *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, International Court of Justice, 19<sup>th</sup> December 2005.



## Conclusion

By preventing the occupied Palestinian people from developing its natural resources, the punitive conditions imposed by Israel on the Palestinian economy are “impeding any prospects of sustainable growth”.<sup>119</sup> 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”.<sup>120</sup> As such, institutional reforms and state building efforts is stymied by the failure to secure a normal market economy based on revenue from natural resources.<sup>121</sup> 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”.<sup>122</sup>

In terms of resources development, the Oslo Agreement, Annex III, Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs, particularly calls for the establishment of an Energy Development

<sup>119</sup> Palestinian ministry of National Economy in cooperation with the Applied Research Institute Jerusalem (ARIJ), *The Economic Costs of the Israeli Occupation for the occupied Palestinian territory* (September 2011) 1.s

<sup>120</sup> United Nations Conference on Trade and Development,

Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the occupied Palestinian territory, (13 July 2012), TD/B/59/2, para 5.

<sup>121</sup> United Nations Conference on Trade and Development,

Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the occupied Palestinian territory, (13 July 2012), TD/B/59/2, para 6.

<sup>122</sup> Office of the United Nations Special Coordinator for the Middle East Peace Process, *Palestinian State Building: An Achievement at Increased Risk*, Brussels 21 March 2012, iii.



Program, to provide for the joint “exploitation of oil and gas for industrial purposes”. Arguably, oil and gas mined for purposes other than industrial, would not fall within the framework agreement, for example, oil and gas mined for military purposes to support the occupation. However oil and gas exploited outside the ‘industrial purposes’ paradigm will still fall for consideration under the Oslo Agreement.<sup>123</sup>

Israel’s unilateral development of contiguous gas resources is buttressed by the deliberate denial of the Palestinian right to develop the Gaza Marine gas deposits and enforced by a military closure to protect gas platforms in violation of international law.

<sup>123</sup> Article 3, Oslo Agreement, 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.”



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