TRADING AWAY PEACE: How Europe helps sustain illegal Israeli settlements
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1. APRODEV
2. Broederlijk Delen (Belgium)
3. Caabu (UK)
4. CCFD - Terre Solidaire (France)
5. Christian Aid (UK and Ireland)
6. Church of Sweden
7. Cordaid (Netherlands)
8. Danish Church Aid (Denmark)
9. Diakonia (Sweden)
10. FinnChurchAid (Finland)
11. ICCO (Netherlands)
12. IKV Pax Christi (Netherlands)
13. International Federation for Human Rights (FIDH)
14. Medical Aid for Palestinians (UK)
15. Medico International (Germany)
16. Medico International Switzerland
17. The Methodist Church in Britain
18. Norwegian People’s Aid
19. Norwegian Church Aid
20. Quaker Council for European Affairs
21. Quaker Peace and Social Witness (UK)
22. Trocaire (Ireland)

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Cover Photo: A view of the settlement of Modi’in Illit, built on lands taken from the neighbouring Palestinian villages, Eduardo Soteras/Activestills.org
Design by Miriam Hempel, www.daretoknow.co.uk
In early 1993, I was appointed EU Commissioner for External Relations. It was a time of hope and engagement between Israel and the Palestinians, months before the signing of the Oslo Accords.

Almost 20 years have passed since the Oslo Accords were signed—and peace in the Middle East seems more remote than ever. That no comprehensive peace has been achieved is due to a number of reasons. The stagnation of the peace process cannot be attributed to a single factor.

However, one of the main reasons—I would say the decisive one—is Israel’s incessant settlement policy in the West Bank and East Jerusalem. In recent years, this policy has been preventing the resumption of meaningful peace negotiations. But its negative impact goes much further: it threatens the viability of the two-state solution and thus the very feasibility of peace.

During the past decades, the EU has consistently criticized and condemned the settlement policy. Dozens of official EU statements and positions reaffirm the illegality of the settlements under international law and regard them as major obstacles to peace. Repeatedly, the EU has stressed that it will not recognize any unilateral changes to the pre-1967 borders, including with regard to Jerusalem.

As settlement construction has continued and accelerated, however, we Europeans have failed to move from words to action. So far, we have refrained from deploying our considerable political and economic leverage vis-à-vis Israel to contain developments on the ground that contradict our basic values and that undermine our strategic interests.

As the window of opportunity for peace between Israel and the Palestinians is closing before our eyes, the EU now faces a fundamental challenge and possibly last chance to translate its principled positions into effective action. If Europe wants to preserve the two-state solution, it must act without delay and take the lead.

This groundbreaking report suggests how the EU could do so. It identifies concrete measures that the EU and its 27 member states should adopt to restore credibility to the EU’s positions and contain the settlement policy. At the highest level, they deserve serious consideration.

I am of the opinion that these measures, directed only at illegal settlements outside Israel’s recognised borders, do not constitute an anti-Israel agenda. On the contrary, the preservation of the two-state solution, in accordance with international law, should be seen as a contribution to Israel’s security and legitimacy.
The European Union's position is absolutely clear: Israeli settlements in the occupied Palestinian territory are "illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible." Yet this report shows how European policy helps sustain the settlements. It reveals that the EU imports approximately fifteen times more from the illegal settlements than from the Palestinians themselves.

Israeli settlements are communities established on territories occupied by Israel since 1967. Today there are more than 500,000 Israeli settlers living across the occupied West Bank, including East Jerusalem. Settlements control more than 42% of the West Bank's land and the majority of its water and natural resources. Their daily encroachment on Palestinian territory undermines the feasibility of two-state solution promoted by the European Union.

Over the past two years, settlement expansion has accelerated with more than 16,000 new housing units announced or approved. Meanwhile the demolitions of Palestinian structures - including those funded by European donor support - are on the rise, displacing over a thousand people from their homes in 2011, almost twice the number in 2010. The last two years have also seen unprecedented numbers of violent attacks by settlers against Palestinians.

A discriminatory two-tier system

Through the establishment of settlements, successive Israeli governments have created a discriminatory two-tier system in the West Bank with settlers enjoying all the rights and benefits of Israeli citizenship, and Palestinians subject to Israeli military laws that deprive them of their fundamental rights.

Movement of Palestinians within the West Bank and access to essential services, including hospitals, remains hampered by some 542 obstacles to movement, including roadblocks and checkpoints, despite limited easing in the last years. Access to water also remains hugely unequal with Israeli over-extracting West Bank water resources, while restricting Palestinians from drilling new wells and developing their water infrastructure. In some cases, pumping of groundwater to irrigate export crops on settlement farms has dried up nearby Palestinian wells, limiting Palestinians' ability to cultivate their own lands.

The two economies of the West Bank

Settlement farmers and manufacturers benefit from wide-ranging Israeli government subsidies and enjoy easy access to international markets via government-built roads that bypass Palestinian populated areas. In stark contrast, the Palestinian economy is severely constrained by Israeli restrictions on access to markets and natural resources, the annual cost of which has been estimated at EUR 5.2 billion or 85% of the total Palestinian GDP. As a result of these restrictions, Palestinian exports have declined from over half of Palestinian GDP in the 1980s to less than 15% of GDP in recent years, effectively negating any benefits of the EU's preferential trade agreement with the Palestinians.

This has helped create a situation where the Palestinian Authority is dependent on large amounts of funds from the EU and other foreign donors and is currently facing an acute fiscal crisis.

The contradictions of Europe's trade with Israeli settlements

The most recent estimate of the value of EU imports from settlements provided by the Israeli government to the World Bank is $300m ($230m a year); this is approximately fifteen times the annual value of EU imports from Palestinians. With more than four million Palestinians and over 500,000 Israeli settlers living in the occupied territory this means the EU imports over 100 times more per settler than per Palestinian.

The most common settlement products sold in Europe include agricultural products, such as dates, citrus fruits and herbs, and manufactured products including cosmetics, carbonation devices, plastics, textile products and toys.

Despite its firm position that settlements are not part of Israel, Europe has been accepting imports of these settlement products with origin designated as "Israel," thus acquiescing to Israel's extension of its sovereignty over the occupied territory. Many of these products are also sold in European stores under the misleading label "Made in Israel," denying consumers their right, under existing protection legislation, to make informed decisions when they shop. As a result, many European consumers are unwittingly supporting the settlements and the attendant violations of human rights.

Beyond the trade in settlement goods, some European-owned companies have invested in settlements and related infrastructure or are providing services to them. Cases that have been reported include GAS (UK/Denmark), Alstom (France), Veolia (France), and Heidelberg Cement (Germany). Others, such as Deutsche Bahn (Germany), AssaAbloy (Sweden), and Unilever (Netherlands) have already ceased their activities in the West Bank in recent years, setting the example for the companies still doing business in the settlements.

Adding to the contradictions at the heart of EU policy towards Israel's illegal settlements, the EU has failed to fully exclude settlements from the benefits of its cooperation programmes and bilateral agreements with Israel. In several cases, EU public funds for research and development have been used to directly support activities in settlements.

The newly ratified EU-Israel Association Agreement (ACAA) is another example of EU's failure to insist on a firm distinction between Israel proper and the illegal settlements.

The way forward

The many linkages with settlements are inconsistent with Europe's obligations under international law, which stipulates that third parties, including European governments, have the duty not to recognise, aid or assist settlements as well as the duty to effectively oppose them. By trading with settlements and contributing to their permanence, the EU is also undermining its years of political and financial investment in Palestinian state-building efforts. There is a growing awareness among European governments of the need to close the gap between their rhetoric on settlements and their practice. The British and Danish governments have already taken concrete steps by adopting guidelines for correct labelling of settlement products. But there is much more that national governments and the EU can do to ensure their policies do not directly or indirectly support settlements and the associated injustices.

Recommended measures (for national governments and the EU as appropriate)

Sales and imports of settlement products

1. Ensure correct consumer labelling of all settlement products as a minimum measure, as done by the UK and Denmark, but also covering manufactured products.
2. At a further measure, discourage businesses from purchasing settlement goods and from all other commercial and investment links with settlements, by means of formal government advice.
3. As a more comprehensive option, ban imports of settlement products, as called for by Ireland.

Excluding settlements from EU and national relations with Israel

4. Exclude settlement products from preferential market access by insisting that Israel start designating the origin of settlement products differently than Israel.
5. Exclude settlements from bilateral agreements and cooperation instruments with Israel by means of explicit legal provisions and safeguards.
6. Exclude settlement products and companies from public procurement tenders.

Financial transactions with settlements

7. Remove organisations funding settlements from tax deduction systems, as done in Norway.
8. Prevent financial transactions to settlements and related activities by means of applying restrictive measures, as a more comprehensive approach.

Other measures

9. Discourage citizens from buying property in settlements by means of formal advice, as already done by several EU member states.
10. Issue guidelines for European tour operators to prevent support for settlement businesses.
11. Draw up a list of companies mis-stating the origin of settlement goods as "Israel" as requested by the European Parliament.
12. Insist that Israel disaggregates settlement data provided to the Organisation for Economic Co-Operation and Development (OECD).
INTRODUCTION

The signatories to this report – humanitarian, development, human rights, peace-building and faith organisations from nine EU member states, as well as from Norway and Switzerland - have been witnessing the daily impacts of Israeli settlements on Palestinian communities in the occupied territory for many years. In contrast to the commonly held perception that the situation is one of stalemate and status quo, they have seen that the reality on the ground is far from static. Settlements are expanding, reducing Palestinian access to resources such as water and farmland, while the related infrastructure of checkpoints, settler roads and the separation barrier is blocking their freedom of movement and hindering their access to basic services. Palestinian homes and infrastructure are being demolished to make way for settlements, displacing hundreds of people every year.

The position of the European Union is absolutely clear: “Settlements are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible.” Yet, over the years, the EU’s statements have done little to halt the continued settlement construction. At the same time, Europe has continued trading with the settlements, thus facilitating their entrenchment and growth. Given that settlement expansion is making a viable Palestinian state all but impossible, the trade with settlements is undermining billions of Euros in aid that Europe has invested in Palestinian state-building efforts. There is a growing awareness among European governments of the need to rectify these policy inconsistencies.

This report documents the effects of Israeli settlements on Palestinian rights and livelihoods and describes the Israeli government’s starkly different treatment of settlers and Palestinians in the West Bank. It outlines the economic links between Europe and the settlements, naming the most common settlement products sold in Europe and detailing the involvement of European companies. The report also analyses European and national policies relevant to trade and other linkages with settlements. It presents a range of concrete and feasible measures to bring the actions of national governments and the EU in line with their words and to ensure that their policies do not directly or indirectly assist the settlements.
CHAPTER 1
ISRAELI SETTLEMENTS
AND THEIR IMPACT

Settlements are Israeli communities established on territory occupied by Israel since the 1967 Arab-Israeli war. Settlements are supported by an infrastructure including special roads, checkpoints, and the separation barrier dividing them from the surrounding Palestinian population. Settlements violate international law and UN Security Council resolutions and yet, throughout the 45 years of Israel’s occupation of the Palestinian territory, every Israeli government has promoted continued settlement expansion.

There are now more than 500,000 Israeli settlers living in over 200 settlements in the West Bank, including East Jerusalem. The settler population has more than doubled since the conclusion of the Oslo peace accords in 1993, which were intended to provide a framework for ending the occupation. The settler population is growing at a much faster rate (an average of 5.3% annually over the last decade) than the Israeli population as a whole (1.8%). Some of the largest settlements, such as Ma’ale Adumim, Ariel and Betar Illit are now sizable towns with tens of thousands of inhabitants.

During the past two years in particular, following the failure of US President Obama’s effort to convince the Israeli government to freeze settlement construction, settlement growth has markedly accelerated. More than 16,000 new housing units have been announced or approved since October 2010. Over the same period, Israeli authorities have stepped up demolitions of Palestinian homes, while violent attacks by settlers against Palestinians have also sharply increased.

The growth of settlements is creating facts on the ground that are violating the Palestinian right to self-determination and making the two-state solution promoted by the European Union ever harder to achieve. More than 42% of West Bank land and the majority of water and natural resources have been seized from Palestinians and allocated to settlements. Settlements and the related infrastructure, including new road networks and the separation barrier, have carved up Palestinian communities into disconnected enclaves with movement controlled by checkpoints. This “land grab”, that has no legitimate security justification, has dramatically reduced the space available for Palestinians to develop livelihoods and construct housing and infrastructure. At the same time, settlements have been integrated with Israeli proper, blurring the internationally accepted pre-1967 border between Israel and the West Bank.

Through the establishment of settlements, Israel has created a discriminatory two-tier regime in the West Bank with two populations living separately in the same territory under two different systems of law. While settlers enjoy all the rights and benefits of Israeli citizens, Palestinians are subject to a system of Israeli military laws that deprives them of their fundamental rights.

Areas A, B and C: permanent temporariness

Under the Oslo Accords, the West Bank was divided into three administrative zones which were meant to be temporary and transitional. “Area A”, which covers just 18% of the West Bank, is under civil and security control of the Palestinian Authority. “Area B” is under Palestinian civil control and joint Israeli-Palestinian security control. “Area C” is under the full civil and military control of the Israeli government and it is the area where Israeli settlements are located. Covering 62% of the West Bank, Area C is the largest and the only contiguous area connecting 227 separate enclaves (A and B). In order to travel through Area C Palestinians must cross through checkpoints. Area C also contains the majority of water resources and grazing and agricultural land. As the EU has noted in an internal report, the Palestinian state-building project supported and co-financed by the EU “is in effect partly limited to the fragmented and isolated ‘islands’ of areas A and B in the ‘ocean’ of the contiguous area C.”

“Israel’s continuing announcements to accelerate the construction of settlements in the Occupied Palestinian Territories, including East Jerusalem, send a devastating message. We call on the Israeli government to reverse these steps. The viability of the Palestinian state that we want to see and the two-state solution that is essential for Israel’s long-term security are threatened by the systematic and deliberate expansion of settlements. Settlements are illegal under international law and represent a serious blow to the Quartet’s efforts to restart peace negotiations. All settlement activity, including in East Jerusalem, must cease immediately.”

EU statement at the UN Security Council, December 2011

\[\text{Source: TRADING AWAY PEACE: How Europe helps sustain illegal Israeli settlements} \]
Demolitions deprive people of their homes, remove their sources of livelihood and have an overwhelmingly negative psychosocial impact. More than half the Palestinians displaced in 2011 were children for whom the loss of their home is particularly devastating.

According to Israeli authorities, demolitions are carried out because structures lack the required building permits. In reality, it is almost impossible for Palestinians to obtain permits to build homes, clinics, schools, wells, animal pens or other vital infrastructure for local communities in Area C. Israeli authorities have rejected 94% of construction permit applications for Palestinian structures in Area C in recent years.

In contrast, Israeli settlement construction continues unabated and receives strong government support despite violating international law. Even in cases where Israeli settlers have built entire settlement outposts in breach of Israel’s own regulations, the Israeli authorities have rarely demolished the buildings. In some cases they have retroactively approved their construction or connected them to the road network, electricity and water supply and provided security forces to guard them. There are currently about 100 settlement outposts built without the required permits (while all settlements, whether with permits or not, are illegal under international law).

Demolitions also affect projects funded by European governments on behalf of the Palestinians. During 2011 and the first half of 2012, at least 62 structures funded by European donors were demolished in Area C, including water cisterns, animal shelters and agricultural and residential structures. At least another 110 structures funded by European donors are under threat of demolition, having received demolition or “stop work” orders from Israeli authorities. There are no known cases where European donors have received any compensation from the Israeli authorities for the damage to their projects.

Checkpoints, roadblocks and the separation barrier

Since the 1990s, Israel has put in place an extensive network of obstacles blocking Palestinian movement within the West Bank, including checkpoints, roadblocks and the separation barrier, accompanied by a restrictive system of permits. Despite some easing of the physical restrictions in the last four years, Palestinians still face major difficulties in travelling between different West Bank cities, accessing their workplaces, farmland, schools and hospitals, and visiting their family relatives.

According to recent UN figures, there are approximately 542 roadblocks and checkpoints obstructing Palestinian movement in the West Bank. Approximately 70 communities, with a combined population of 190,000, are forced to use detours that are two to five times longer than the direct route to the closest city.

Most of the restrictions on Palestinian movement in the West Bank are intended to protect the Israeli settlers’ security and to facilitate their movement. In contrast to the Palestinians, settlers have easy access to roads that bypass Palestinian populated areas and connect settlements to the road network and cities inside Israel and to other settlements.

The separation barrier is a major additional obstacle to Palestinian movement. The route of the barrier deviates from the internationally accepted pre-1967 ‘Green Line’ for 85% of its 700km route, making the barrier illegal under international law, as stated by the International Court of Justice. Cutting deep into the West Bank, the barrier is dividing Palestinian communities from one another, isolating some 11,000 Palestinians on the ‘Israeli’ side and separating farmers from their lands. The route of the barrier is primarily determined by the location of the settlements, as it keeps 85% of the settlement population, including areas planned for future settlement expansion, on the ‘Israeli’ side of the barrier.

Access to East Jerusalem also remains a major problem. Israel obliges any Palestinian who does not have residency rights in Jerusalem or Israeli citizenship to apply for a permit through a complicated and time-consuming process. This is also the case for medical patients accessing Palestinian hospitals in East Jerusalem. 19% of patients and their companions in the West Bank who applied for healthcare access in 2011 had their permits denied or delayed. In a vast majority of ambulance transfers, patients must be moved from a Palestinian ambulance to an Israeli ambulance at a checkpoint before entering Jerusalem.
Trading away Peace: How Europe helps sustain illegal Israeli settlements

Water cisterns used by Palestinian farmers to collect rainwater are frequently demolished by the Israeli authorities (46 in 2011 alone), further limiting their ability to grow crops. In addition, a growing number of water springs on Palestinian land in the vicinity of settlements have been taken over in recent years by settlers who have subsequently blocked Palestinian access to them.45

Many Palestinian farmers have no choice but to purchase water from mobile tankers that is up to five times more expensive than water from Bardala said they could only cultivate one-third to one-half of the land they have.59 Farmers from Bardala said they could only cultivate one-third to one-half of the land they have.59 Some farmers have resorted to purchasing portable water tankers for irrigation, though Israeli forces have in some cases confiscated the water tanks and fined the owners.56

Meanwhile, the settlers have no problem with access to water: in addition to a swimming pool, Mehola’s generous water supply allows it to grow crops for export. According to the Israeli group Who Profits, Mehola produces melons and dates for export to Europe.52

Palestinian workers in settlements

The space for Palestinian economic activity and employment is severely constrained by sweeping Israeli restrictions. As a result, many Palestinians have little option but to seek employment in the same settlements, which are the very reason for their poverty and lack of opportunity. This is despite the policy of the Palestinian Authority, supported by Palestinian trade unions, that discourages Palestinians from working in the settlements.

The Israeli settlement economy, on the other hand, benefits from the exploitation of Palestinian labour. Palestinians working in settlements are employed mainly in construction, agriculture and in the industrial zones.

At least 9,500 Palestinians are working in settlement farms, which in some cases have been built on land expropriated from them. In a harsh irony, some Palestinian farmers have become, in effect, tenant workers on what used to be their own land.61 Palestinian workers often face discrimination and violations of their rights. While the minimum wage in Israel is currently $8.00 per hour, Palestinians working on Israeli settlements in the Jordan Valley are paid only an average of $2.00–$4.80 per hour. None of the Palestinian workers interviewed in a recent survey received the benefits that Israeli workers are entitled to by law, including holidays, overtime pay, health insurance or sick pay.59

According to Kav LaOved, an Israeli NGO protecting labour rights, children as young as 12 also work seasonally on the Jordan Valley settlement farms, mainly when dates, peppers and tomatoes are harvested.55

Settler violence

The presence of illegal settlements in the occupied territory is a source of extreme tension that often leads to violence on both sides. Palestinians living in the vicinity of settlements located throughout the West Bank have been subjected to increasing numbers of violent attacks committed by settlers.

2011 saw a record number of settler attacks resulting in Palestinian casualties and property damage: 32% more than in 2010, and 144% more than in 2009. Nearly 250,000 people live in communities vulnerable to settler violence.58

In addition, about 10,000 Palestinian-owned trees, primarily olive trees, were damaged or destroyed by Israeli settlers last year, significantly undermining the livelihoods of hundreds of families.59 Other acts of settler violence against Palestinians have included stone throwing, blocking roads, torching fields and other damage to property.

Under international law, Israeli authorities are obliged to secure law and order and to investigate and prosecute crimes. Still, settlers committing violent attacks enjoy almost total impunity. According to the Israeli rights group Yesh Din, over 90% of complaints regarding settler violence filed by Palestinians with the Israeli police in recent years have been closed without indictment.60 Out of 162 complaints filed by Palestinians against incidents of vandalism of their trees by settlers over the past seven years only one resulted in an indictment.61

1.2 Settlements, trade and international law

Why are settlements illegal?

As the occupying power, Israel is obliged to respect international humanitarian law as set forth, inter alia, in the Fourth Geneva Convention (1949) and the Hague Regulations (1907).

The Fourth Geneva Convention prohibits an occupying power from transferring its citizens into the occupied territory (Article 49). The Hague Regulations prohibit an occupying power from undertaking permanent changes in the occupied area unless these are due to specific military needs, or unless they are undertaken for the benefit of the local, in this case Palestinian, population.62

By seeking to prevent de facto annexation, these prohibitions reinforce the basic principle that an occupier only acquires temporary authority over an occupied territory, not permanent sovereignty.63 They are also in accordance with the principle of “inadmissibility of the acquisition of territory by war”.64

The creation of settlements for Israeli civilians in the occupied Palestinian territory violates these international laws, as concluded by the UN Security Council, confirmed by the International Court of Justice and repeatedly stated by the EU.65 Settlements also breach the Palestinian right to self-determination.66

A number of related Israeli practices are also illegal under various provisions of international humanitarian and human rights law, including:

• the appropriation of Palestinian land for settlements and the exploitation of Palestinian non-renewable natural resources;67
• unjustified changes in pre-existing laws on water distribution and planning;68
• demolitions of Palestinian structures and forcible displacement of Palestinians;69
• construction of the separation barrier where it deviates from the pre-1967 Green Line;70
• movement restrictions linked to settlements.71
What are the obligations of European governments?

Under international law, third states, including European governments, have the following obligations with regard to serious breaches of international law:

• duty not to recognise as lawful a situation arising from a breach of international law (duty of non-recognition);
• duty not to render aid or assistance in maintaining the illegal situation; and
• duty to ensure compliance by all signatories, including Israel, with international humanitarian law (i.e. to exert influence, to the degree possible, to stop its violations).

In a recently published legal opinion, James Crawford, professor of international law at Cambridge University, argues that allowing trade with settlements does not violate the duty of third states to their markets but are now empty. Photo: Trócaire/Eoghan Rice

According to another view, third states do have an obligation to end all trade with settlements, as states permitting entry of settlement products to their markets are implicitly recognising, aiding and assisting settlements.71

Even if states are not obliged to stop the import of settlement products, Crawford points out that if an EU member state wished to do so, this would be permissible under EU and World Trade Organisation law.72

Crawford further argues that third states’ purchase of agricultural produce from settlements (e.g. through public procurement) would breach their obligation not to aid or assist the ongoing commission of an internationally unlawful act. This is because settlement agriculture is heavily dependent on water and water distribution in the West Bank is regulated by Israeli military orders that contravene the occupier’s duty to respect pre-existing laws.73

Crawford also argues that financing construction of settlement-related infrastructure (e.g. the Jerusalem light rail) may breach the duty of non-recognition, since it contributes to making the occupation permanent.74

In the last chapter, this report puts forward concrete measures the EU needs to take if it is serious about its obligation to effectively oppose the settlements and associated violations of international law.

CHAPTER 2
THE TWO ECONOMIES OF THE WEST BANK: LAVISH SUBSIDIES VS. CRIPPLING BARRIERS

Farmers and manufacturers operating in settlements benefit from wide-ranging government incentives as well as from easy access to international markets via special roads that bypass Palestinian populated areas. In stark contrast, the Palestinian economy and trade are severely restricted by multiple physical and administrative obstacles imposed by the Israeli authorities. This makes the Palestinians dependent on funds from the EU and other foreign donors.

2.1 Benefits for settlements

Settlements have established modern agribusinesses and industrial zones that produce high value goods for export to the EU and international markets. This is partly due to the special incentives provided by the Israeli government.

Most settlements are classified by Israel as “national priority areas” which entitles them to a wide range of financial benefits and subsidies, including for housing construction, education, health services and local development. The benefits provided to settlers are significantly higher than benefits for Israelis living within the pre-1967 lines. According to the Israeli NGO Peace Now, the Israeli government spends at least 1.6 billion shekels (€330 million) annually on benefits for settlers over and above the level of benefits provided to citizens inside Israel proper. This does not include the significant security funds spent on settlements. Government grants for local authorities in settlements were more than twice as high per capita than inside Israel, while spending on education per pupil was 63% higher in settlements.75

Settlements have established modern agribusinesses and industrial zones that produce high value goods for export to the EU and international markets. This is partly due to the special incentives provided by the Israeli government.
2.2 Restrictions on Palestinian economy and trade

According to the Paris Protocol, signed in 1994 as part of the Oslo peace process and recognised by Israel as the formal basis of economic relations with the Palestinian Authority, Palestinians have the right to export their products without restrictions and should be given equal treatment to Israeli exporters.

The EU and EFTA both have trade agreements with the Palestinians granting them preferential access to the European market, including duty-free access for industrial products. In 2011, the EU extended the duty-free access to most Palestinian agricultural exports, in what the EU has called “one of the most generous [agreements] that the EU has ever signed in the field of agriculture.”

However, the difference between theory and reality could not be greater. Wide-ranging Israeli restrictions effectively invalidate the EU’s agreement with the Palestinians, affect every aspect of their business activity and keep their exports to Europe to a minimum.

The restrictions include:

- **Constraints on access to land and water:** These restrictions are particularly crippling for the Palestinian agricultural sector. According to UNCTAD, “the economy has lost access to 40% of West Bank land, 82% of its ground water, and more than two thirds of its grazing land” and the impact on Palestinian agriculture has been devastating. Restrictions on access to water make Palestinian produce much more expensive than produce from settlements.

- **Ban on dual-use items:** Israeli bans Palestinians from importing a range of “dual-use” items, including chemicals and fertilisers used in factories and agriculture. While Israeli settlers have full access to these materials, Palestinians are forced to turn to more expensive or less effective alternatives that further increase the cost of production and often have greater negative long-term impact on the environment.

- **Obstacles to movement of goods:** While settlers enjoy easy and direct access to Israeli and international markets, all Palestinian goods destined for Israel or further export must pass through Israeli port and airport terminals where they face further disadvantages, including additional assistance provided by individual member states.

- **Obstacles to movement of people:** Further impediments to movement include the separation barrier and checkpoints, which are particularly crippling for the Palestinian agricultural sector.

**Gaza closure:** Compared to the West Bank, the Gaza Strip has been subject to even more stringent restrictions, especially since the takeover by Hamas in 2007. Exports from Gaza, a territory inhabited by 1.6 million Palestinians, have been banned almost entirely, contributing to the low volume of overall Palestinian exports. Despite the easing of some restrictions by Israel since 2010, the volume of exports from Gaza is still less than 2% of the pre-2007 levels. EU imports from Gaza over the five years of blockade have been limited to a few shipments of agricultural produce to the Netherlands and two trucks of garments to the UK.

Altogether, the Israeli restrictions “remain the major impediment to sustainable economic growth” in the occupied Palestinian territory, according to the World Bank. A Palestinian study cited by the World Bank estimated the total cost of the Israeli restrictions at $6.9 billion ($5.2 billion) in 2010, or 85% of the total Palestinian GDP. In other words, if the restrictions were lifted, the Palestinian economy would be almost double in size than it is today.

“Very few economies have faced such a comprehensive array of obstacles to investment—not just of physical impediments to movement, but also comprehensive institutional and administrative barriers. ... The numerous Israeli road blocks, closed areas, restricted roads, and growing settlements have cut the Palestinian communities into isolated cantons, raising transportation costs and significantly limiting the ability of Palestinian enterprises to achieve economies of scale.”

**World Bank**

2.3 EU funding and Palestinian aid dependency

Israeli settlement policy and the associated restrictions placed on the Palestinian economy make the Palestinian Authority (PA) dependent on funds from the EU and other foreign donors for approximately one-third of its expenditure. The EU is the largest donor to the Palestinians: it gave approximately €5 billion between 1994 and 2011, and allocated €525m in 2011 alone; this does not include additional assistance provided by individual member states.

Although Palestinians are among the highest per capita recipients of foreign aid in the world, foreign funding is unable to compensate for the paralysing impact of Israeli constraints on access to markets and resources. The PA is currently facing an acute fiscal crisis and protests against the dire economic situation have spread across the West Bank. At $1.14 billion (€0.9 billion), expected foreign aid this year is not sufficient to cover the PA’s projected $1.5 billion (€1.2 billion) budget deficit. The European Commission recently announced new funding of €100 million for the Palestinians.

The PA’s fiscal crisis and its dependency on large amounts of foreign funding would be significantly alleviated or even entirely prevented if the Israeli government lifted its debilitating restrictions on the Palestinian economy. A recent estimate cited by the World Bank shows that if Israeli barriers to the development of Palestinian agriculture were removed to allow the cultivation of only an additional 3.5% of Area C in the Jordan Valley, the Palestinian economy could gain $1bn a year—comparable to the entire annual foreign aid budget to the PA.

International Monetary Fund

At present, international donors meet most of the bill for the consequences of occupation that should be met under the Geneva convention by Israel. ... If Israel continues, as its prime minister says it will, to build settlements, making an agreement on a viable Palestinian state all but impossible, should the international community simply shrug its shoulders and write more cheques? The money that I spent in Palestine on behalf of European voters and taxpayers over five years as a European commissioner has drained away into the blood-soaked sand.”

Chris Patten, former EU Commissioner for External Relations
3.1 Volume of settlement trade with the EU

It is difficult to determine the exact volume of exports from the settlements to the EU as the EU does not collect separate trade data for settlements. The Israeli Ministry of Foreign Affairs has, however, recently informed the World Bank that settlement exports to the EU amount to $300 million per year (€230 million). This represents approximately 2% of total Israeli exports to the EU. It is lower than the share of settler population in the total Israeli population (c. 7%) and than the share of the settlement economy in Israel’s GDP estimated by the OECD at 3.9%. It is likely that if the value of settlement exports to Europe were adjusted to include products wholly or partially produced or packed in settlements, the figure would be significantly higher.

While settlement exports may represent a relatively small proportion of total Israeli exports, they still amount to a considerable quantity in absolute terms and are of vital importance for the economic viability of many settlements. Trade with settlements bolsters their economy and contributes to their permanence and growth, thereby helping to perpetuate the associated impacts on Palestinian communities.

Exports from settlements to the EU also vastly exceed Palestinian exports to the EU, which have had an average value of €15 million a year over the past five years. Indeed, using the figure provided to the World Bank, the value of exports from illegal settlements to the EU is approximately fifteen times the value of the Palestinian exports.

Agricultural products grown in the settlements include dates, grapes, fresh herbs, cut flowers, avocados, citrus fruits, tomatoes, aubergines, cucumbers and potatoes. The products are most likely to be found on the shelves of European retailers during winter months when they are out of season in Europe. In most European countries where there are no clear labelling guidelines and where supermarkets continue sourcing settlement goods, it is usually impossible for the consumer to tell whether fruits and vegetables marked as ‘Israel’ are from Israel or from the settlements.

Fresh agricultural produce from settlements is exported to Europe by Israeli companies that source from both Israel and from settlements. Mehadrin is currently the largest Israeli company exporting fruits and vegetables to the EU and worldwide, followed by Arava Export Growers. Both companies are known to be active in the settlements of the Jordan Valley. Hadiklaim is the main Israeli exporter of dates, a large share of which comes from settlements.

Apart from fresh produce, a number of Israeli wines sold in Europe are made from grapes grown in settlements. According to the Israeli NGO Who Profits, all of the major Israeli wineries exporting to Europe have vineyards in the occupied Golan Heights and most in the West Bank. Food processing companies based in the West Bank settlements and exporting to Europe include Achdut (producer of Achva halva) and Adanim Tea (herbal teas).

More than four million Palestinians and over 500,000 Israeli settlers live in the occupied territory. Therefore, in per capita terms, the EU imports at least 10 times more per settler than per Palestinian. This is despite the EU’s condemnations of the illegal settlements and its significant financial support for the economic viability and development of the Palestinian Authority.

The discrepancy is largely driven by Israel’s generous incentives for settlement businesses and the crippling restrictions imposed on the Palestinian economy described in the preceding chapter. By importing vastly more from settlements that are taking advantage of the occupation than from producers living under the occupation, Europe is helping to entrench the discriminatory two-tier system in the West Bank.
Manufactured goods

Settlements in the West Bank produce a range of industrial goods, mostly manufactured in purpose-built industrial zones. Like the settlements themselves, the industrial zones are a violation of international law, which prohibits the occupying power from constructing permanent infrastructure in occupied territory, unless it is for military use or serves the interests of the occupied population. Examples of industrial products manufactured in settlements and sold in Europe include:

Ahava cosmetics:
Ahava – Dead Sea Laboratories is a cosmetics company that operates in the West Bank. It manufactures all of its products in Mitzpe Shalem, an Israeli settlement in the occupied Jordan Valley, on the shore of the Dead Sea. According to Who Profits, the company also has a license to extract mud from the occupied area of the Dead Sea in some of its products - a breach of international law, which prohibits exploitation of natural resources of an occupied territory for commercial purposes. Ahava exports a significant share of its products overseas including to some 20 European countries.

Ahava made $17 million in profit from exports in 2008. Products of the company are sold across Europe in branded Ahava stores as well as in pharmacies and retail chains. Despite being produced in a settlement in the West Bank, Ahava products are labeled "Made in Israel," thus misleading consumers. About 45% of the company’s shares are owned by two settlements, which means that revenues from the sale of Ahava products directly support their continued existence and development.

SodaStream devices are especially popular in Sweden; it is estimated that one of every five Swedish households owns a SodaStream device. The main factory is in the Mishor Adummim industrial zone in the West Bank. Mishor Adummim is part of Ma’ale Adummim, one of the largest settlements strategically located east of Jerusalem, the establishment of which is considered one of the largest expropriations of private Palestinian land during the occupation. SodaStream pays taxes to Ma’ale Adummim Municipality; its revenues are thus directly funding this settlement, which effectively exploits of natural resources of an occupied territory for commercial purposes.

The company also has a production facility in Israeli proper and recently has been giving contradictory statements about where different devices for different markets are manufactured. The products are usually sold abroad under the label "Made in Israel.

SodaStream carbonation devices:
SodaStream produces home devices for carbonation of water and soft drinks. SodaStream products, also known under the brand name Soda Club, are sold at more than 35,000 stores worldwide and 69% of sales are in Europe.

SodaStream devices are especially popular in Sweden; it is estimated that one of every five Swedish households owns a SodaStream device. The main factory is in the Mishor Adummim industrial zone in the West Bank. Mishor Adummim is part of Ma’ale Adummim, one of the largest settlements strategically located east of Jerusalem, the establishment of which is considered one of the largest expropriations of private Palestinian land during the occupation. SodaStream pays taxes to Ma’ale Adummim Municipality; its revenues are thus directly funding this settlement, which effectively exploits of natural resources of an occupied territory for commercial purposes.

The company also has a production facility in Israeli proper and recently has been giving contradictory statements about where different devices for different markets are manufactured. The products are usually sold abroad under the label “Made in Israel.”

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Keter plastics:
The Israeli company Keter Plastic is a large manufacturer of indoor and outdoor plastic furniture and household products that operates in 190 countries worldwide. Keter and its subsidiary, Lupoli, operate two factories in the Barkan industrial zone in the West Bank, but it also has a number of other factories in Israel and abroad. It is unclear which of the Keter products are manufactured in the two settlement factories.

Other manufacturing companies based in settlement industrial zones and exporting to Europe include: Barkan Mounts (television mounts); Oferplex (textile products); Supergum (car plastic); Tip Top Toys Star (Intestar toys); Twisted P last (plastic accessories); and Yardani Locks (locking mechanisms). Many of these companies deliver components that are sold on international markets under different brands.

Story of a Palestinian date farm in the Jordan Valley: growing in an unfair field
16 kilometres north of the Dead Sea, Zuhair Al-Manasreh runs the largest Palestinian agricultural development project in the West Bank. Nakheel Palestine for Agricultural Investment is cultivating date trees on 750 acres around the city of Jericho in the Jordan Valley. With 20,000 trees, the three-year-old company expects to produce between 400 and 600 tons of high quality Mejdool dates for export this year.

But this is just a tiny fraction of what his Israeli competitors in the Jordan Valley are currently exporting. With large government subsidies, Israeli settlers have been able to establish industrial-scale date farms, and are flooding markets.

In contrast, Palestinians in the Jordan Valley face restrictions on the use of land, water, and on building, which means that companies like Nakheel Palestine are not competing on a level playing field. Without proper methods for storing and refrigerating, Palestinian farmers need to sell quickly before their products spoil. Israeli checkpoints and restrictions on moving goods to markets makes this challenging.

In spite of this, Al-Manasreh says growing dates is a strategic choice to keep the Palestinian presence and agriculture in the Jordan Valley alive. Without adequate water, there are few other crops that Palestinians can cultivate. Whereas settlement farms are allowed to drill new, deep wells, restrictions on Palestinians’ water use means that they are left with older, shallow wells with salinated, brackish water. Dates are one of the few agricultural products that can withstand this low quality water. Since dates are mostly sold as semi-dried fruit, they have a longer shelf life and can withstand the lengthy delays faced by Palestinian export goods at Israeli checkpoints and in port terminals.

“Palestinian investment in dates is the right choice for the Jordan Valley given the situation we are facing right now,” Al-Manasreh explains. “There is a lot of agricultural land in the Jordan Valley that has been abandoned by Palestinian farmers because they can’t access water. When land lays fallow, it can easily be confiscated by settlement farms. Our strategy is not just about making money, it is also about keeping Palestinian production going and giving farmers incentives to grow.”

With the goal of providing a solid alternative to employment on settlement farms, Nakheel Palestine currently employs 40 full time and 100 seasonal workers. With plans to plant an additional 24,000 date trees in the next two years, Al-Manasreh expects to triple its workforce.

Still, until Israeli constraints on Palestinians in the Jordan Valley are removed, it is unlikely the company will be able to unleash its full potential. The company’s farms are spread across land that falls in Area C. Given the restrictions and lack of development in Area C, the company has had to build from the ground up, often without permits which are almost impossible to obtain. In order to move workers and goods between the farms and to markets, Nakheel Palestine had to build its own agricultural roads. They have also had to install their own electrical grid, costing over $100,000, to power workstations and irrigation systems. The company also faces restrictions on building warehouses, and has outstanding demolition orders against one of its reservoirs, a well, a storage facility, a resting house for field workers and a computer workstation. Nakheel Palestine has brought three cases challenging the demolition orders to the Israeli Supreme Court.

Workers sort dates for export at Nakheel Palestine for Agricultural Investment.
3.3 Involvement of European companies

Beyond the trade in settlement goods, some international companies operate in settlements including through the provision of services and support to associated infrastructure. These activities include construction of transport infrastructure, provision of transport services to settlements, delivery of equipment for checkpoints, provision of security services to settlement businesses, extraction of non-renewable resources, and investment in settlement factories. Below are several prominent examples, based on recent information from multiple sources:

- **G4S**, the British-Danish multinational company, has been providing, through its Israeli subsidiary, security services and equipment to Israeli checkpoints, to prisons detaining Palestinians from the OPT inside Israel, and to private businesses in settlements. Following civil society pressure, G4S stated that it would end some of the controversial contracts between 2012 and 2015.127
- **Alstom**, the French multinational company, has been involved in the light rail project that connects Jerusalem with nearby settlements in violation of international law and that started operating in 2011. In late 2011, Alstom announced it would sell its stake in the project consortium, but has not yet succeeded to do so. Alstom also remains involved in ongoing maintenance as the provider of the train units.128
- **Veolia**, the French multinational company, has also been involved in the Jerusalem light rail project, including through a majority share in the company operating the trains. Following campaigns and negative publicity Veolia declared it would sell its shares but thus far has been prevented from doing so by the Jerusalem public transportation authorities with whom it has contractual obligations. Through its Israeli subsidiaries, Veolia also has a contract for waste collection services from an Israeli army base in the Jordan Valley.129

In contrast to the volumes of dates from Israeli settlements, Palestinians produce some 2,500 tons of dates in the occupied Jordan Valley. Many of these are the popular Medjool dates. Israel produces over 50% of the world’s Medjool dates, half of which are grown in the Jordan Valley settlements.130

The main Israeli exporter of dates is the company Hadiklaim. Hadiklaim appears to mark all dates as Israeli produce, making it difficult for the consumer to distinguish between dates from Israel proper and from the occupied Jordan Valley.

### Dates from the Jordan Valley

Dates from the occupied Jordan Valley are one of the most prominent agricultural settlement products, and can be found on supermarket shelves across the world.

More than 80% of dates from the Jordan Valley settlements are grown for export.131 In 2011, global Israeli date exports reached 25,000 tons, of which 12,000 were produced in the Jordan Valley settlements. Many of these are the popular Medjool dates. Israel produces over 50% of the world’s Medjool dates, half of which are grown in the Jordan Valley settlements.132

In contrast to the volumes of dates from Israeli settlements, Palestinians produce some 2,500 tons of dates in the occupied territory, of which about 300 tons are exported, most of them to the Gulf states.133

In April 2011, a European court ruled that a Jordanian company growing dates in the Jordan Valley could not be stopped from exporting them as Israeli dates.134

### AssaAbloy, the Swedish manufacturer of locks

AssaAbloy, the Swedish manufacturer of locks, relocated the factory of the Israeli company Mul-T-Lock, owned by AssaAbloy, from the Barkan industrial zone in the West Bank to a site within the Green Line. AssaAbloy announced the move in 2008 due to criticism in a report from Swedish NGOs echoed by the Swedish government. The company completed the relocation in 2011.135

### Deutsche Bahn, the German state-owned railway company

Deutsche Bahn, the German state-owned railway company, pulled out of the above-mentioned high-speed railway project linking Jerusalem and Tel Aviv. This happened in March 2011 after an intervention by the German government. The Minister of Transport defined the project as “problematic for foreign policy and potentially in violation of international law”.136

### Unilever

Unilever, the UK and Dutch multinational company, is in the process of moving the factory of the Israeli company Beigel & Beigel, owned by Unilever, from the Barkan zone to Israel proper in 2012. Beigel & Beigel is a major producer and exporter of pretzels, crackers and biscuits. The move should be completed by December 2012.137

These examples show the path to follow for the companies still doing business in the settlements. They also show that governments can play a constructive role in stopping and preventing companies’ involvement in settlements and the occupation.

Businesses that are involved in violations of international law may face the risk of legal action. Companies also increasingly commit to, and hence are increasingly held accountable to international frameworks of corporate social responsibility (CSR) that have emerged in recent years. These include the ‘Rugge Guidelines’ (The UN Guiding Principles on Business and Human Rights) and the OECD Guidelines for Multinational Enterprises. Both these frameworks recommend that companies assess the human rights impact of their operations (including potential breaches of international humanitarian law) as part of their CSR policies.

They advise businesses to avoid adverse human rights impacts connected to their operations, even if they do not contribute directly to those impacts. These frameworks also require governments to provide effective guidance to companies.138

The trade and investment linkages between Europe and settlements support the latter’s economic viability and further growth. If European governments are serious about their commitment to international law and Middle East peace, they need to urgently move beyond rhetoric and tackle these economic linkages.
CHAPTER 4
EUROPEAN POLICIES VIS-A-VIS SETTLEMENTS

The European Union regularly criticizes and condemns the Israeli settlement policy. Yet simultaneously it supports the viability of settlements by purchasing their products. Moreover, by accepting imports of settlement goods designated as originating in “Israel”, Europe is tacitly accepting Israel’s creeping expansion of sovereignty. And by permitting the sale of settlement products mis-labelled as “Made in Israel”, governments are failing to protect consumers’ legal right to make an informed choice about purchasing settlement goods. There is a growing awareness among European governments of the need to rectify these inconsistencies.

4.1 Settlement goods and preferential market access

Products from Israeli settlements in the occupied Palestinian territory are not entitled to benefit from preferential access to the EU market. The EU-Israel association agreement allows Israeli products to enter the EU market with reduced import tariffs, but as settlements are not recognised by the EU as part of Israel, settlement products may not benefit from the agreement. The European Court of Justice confirmed this in 2010.136 The very same situation applies for the European Free Trade Association (EFTA)-Israel free trade agreement.

However, Israel, which treats settlements as an integral part of its territory, designates the origin of all exported products, including those from settlements, as ‘Israel’. This makes it difficult for the EU and EFTA to respect their own legal obligation to exclude settlement goods from preferential treatment.

Since 2005, the EU and EFTA have operated a so-called Technical Arrangement enabling European customs authorities to identify settlement goods and exclude them from preference. The customs authorities have to check goods arriving from Israel against a list of postcodes of settlements in order to determine whether the place of origin is in Israel proper or in a settlement.137

The Technical Arrangement puts the burden of identifying settlement goods on the European customs, rather than on Israel as the exporting country. It requires the customs and importers to manually check every single piece of documentation for every item imported from Israel and it is at odds with the normal processing of imports by European customs that is carried out through automated IT systems. For most European customs authorities checking settlement goods is not a priority and given the volume of imports from Israel, adequate resources to do so are not available.

It appears that the Technical Arrangement is not sufficiently reliable to prevent settlement goods entering the EU and EFTA markets and falsely claiming preferential access. Customs inspections in the UK have detected significant numbers of false claims, including cases where the postcodes given were of head offices in Israel and not the actual place of production in settlements.138

Recently, the European Commission has implicitly recognised the problem by extending the responsibility for checking the products’ place of origin from customs authorities to importing companies.139 This amendment of the Technical Arrangement may improve the overall effectiveness of the system and decrease the number of settlement products evading import duty, but it is no substitute for a legally sound solution.

By putting the burden of identifying settlement goods on the European side, the Technical Arrangement still allows Israel to continue treating settlements as an integral part of its territory. By accepting imports of settlement products with origin designated as ‘Israel’, the EU and EFTA are acquiescing to Israel’s creeping expansion of sovereignty. To rectify this, the EU and EFTA would need to oblige Israeli exporters to conform to EU regulations by correctly designating the origin of settlement products and ceasing to designate them as ‘Israel’ – as called for also by the European Parliament.140 This would shift the responsibility for distinguishing settlement goods onto Israel as the exporter and ease the burden on European customs and importers.

“Israeli settlements in the occupied territories are illegal and cannot be regarded as a part of the territory of Israel. Therefore, goods produced in these settlements by Israeli companies cannot be regarded as goods originating in Israel.”

European Commission141

4.2 Consumer labelling

Besides the problem with identifying the origin of products when they enter the EU market, there is a second problem with labelling of those goods at the point of sale to the consumer. Clear and accurate labelling at the point of sale is the responsibility of the retailer.

Under international law, settlements are not part of the State of Israel, but settlement products, agricultural as well as industrial, are often sold as “made in Israel”, thus misleading consumers. An increasing number of consumers wish to avoid settlement products on ethical grounds due to the circumstances of their production. Yet their right to exercise that choice is being denied, in defiance of EU consumer protection legislation.

In 2009 the UK government responded to these concerns by adopting labelling guidelines advising retailers that food products from settlements be labelled as “Produce of the West Bank (Israeli settlement produce)” and Palestinian produce as “Produce of the West Bank (Palestinian produce).”142 Although voluntary, the guidelines were welcomed by food retailers and appear to be observed by major supermarkets. Moreover, it appears that following the introduction of the guidelines, most major UK supermarkets have decided to stop sourcing own-branded food products from the settlements.143

In May 2012, Denmark announced it would adopt similar labelling guidelines. The guidelines have been issued in October 2012.144 An increasing number of European governments are considering similar action. In May 2012, EU Foreign Ministers made a public commitment to “fully and effectively implement existing EU legislation and the bilateral arrangements applicable to settlement products” – which also implies correct labelling of settlement goods in line with EU legislation.145

In Switzerland, the biggest retail chain Migros announced that it would introduce correct labelling of all settlement products, agricultural as well as industrial, by 2013.146 Outside Europe, South Africa’s government decided in August 2012 that it would issue a notice requiring correct labelling of settlement goods.147

“These actions should be applauded and other governments and companies should follow suit.” Labelling of settlement products is a “simple act [which] reminds us that settlements are a grave violation of international law and an instrument in a dangerous project of de facto annexation”.

Alon Liel, former Director General of the Foreign Ministry of Israel and Israel’s former Ambassador to South Africa.148

“This is a move that will clearly show consumers that this produce has been produced under conditions that not only the Danish government, but also the European governments have rejected. Then it is up to consumers whether they are prepared to buy the produce. (...) This is not targeted against Israel, but against illegal settlements.”

Danish FM Villy Savndal announcing labelling guidelines.149
4.3 Discouraging private sector dealings with settlements

International frameworks for corporate social responsibility (CSR) provide a basis for possible more comprehensive government measures than correct labelling of settlement products. CSR guidelines include the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises require governments to provide effective guidance to companies on how to respect human rights throughout their operations (see chapter 3.3).

Governments could encourage importers and other businesses, by means of formal advice, to refrain from any economic dealings with settlements including purchase of settlement goods and investment in settlements. An existing example is the Norwegian government’s position on Western Sahara that discourages “trade, investment, resource-extraction and other forms of commercial activity” in that territory.146

Such government initiatives could build on steps already taken by the private sector in some cases. In Norway, two of the main importers of fruit and vegetables, BAMA and Coop, have written agreements with their suppliers in Israel stating that fruit and vegetables produced in settlements shall not be supplied to them. In March 2012, the VITA chain, which was the main retailer of Ahava cosmetics products in Norway, announced it would stop all sales of settlement products, citing Norway’s official position on the illegality of settlements. The Norwegian government has already called for an EU-wide ban on imports from settlements155 but, in the interim, individual governments could implement such an import ban unilaterally.

The European Commission has confirmed a member state can unilaterally adopt measures to restrict trade if on the basis of Regulation 260/2009161 “can justify its action on grounds of public morality, public policy or public security – and in doing so it does not infringe EC law.”161 James Crawford’s legal opinion (see chapter 1.2) argues that an individual member state could lawfully ban trade with settlements and that such a measure would not breach World Trade Organisation regulations.

A ban on the import of Israeli settlement goods is not a ban or boycott on trade with Israel, which the signatories to this report do not advocate.

4.4 Banning imports of settlement products

While the introduction of labelling guidelines would enable consumers to choose whether they wish to buy settlement goods or not, it may not be sufficient to meet European governments’ obligation to exert their influence, to the degree possible, to stop violations of international humanitarian law.156

Permitting trade with settlements at all appears inconsistent with European governments’ recognition of their illegality and the fact that all production and manufacturing within the settlements involves further breaches of international law. Under Article 215 of the EU Treaty the EU could adopt “restrictive measures” to ban the import of settlement products.

The Irish Foreign Minister has already called for an EU-wide ban on imports from settlements156 but, in the interim, individual governments could implement such an import ban unilaterally.

The new Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) that facilitates EU-Israel trade in industrial products does not include an adequate territorial clause to restrict its application to Israel proper. The agreement was ratified by the European Parliament in October 2012.166 Unless Israel itself formally limits the application of ACAA to Israel proper, the agreement’s implementation will lead the EU to formally recognise Israeli authorities’ jurisdiction over the settlements. Implementing ACAA without obtaining such a binding territorial limitation from Israel would thus breach existing EU and international law and set a dangerous precedent.

The EU-Israel civil aviation agreement signed in July 2012 also has a very weak territorial clause that entities Israeli to apply its provisions beyond the Green Line.167

The problem can be solved if EU and national bilateral agreements with Israel include clear territorial provisions that explicitly restrict their application to Israel proper, regardless of Israeli domestic law. Similarly, regulations for cooperation programmes would have to provide firm legal safeguards that exclude participation of entities based or operating in settlements.

In case of the FP7 programme, the European Commission admitted the regulations did not prevent settlement entities from participating and tried to “filter out” ineligible entities using the list of settlement postcodes. Apart from imposing an additional bureaucratic burden on the Commission, this approach does not exclude entities such as the Ahava company that operates wholly in a settlement but uses a registration address within Israel. The successor to the FP7 programme, Horizon 2020, offers an opportunity to include a clear legal safeguard to prevent the problem from re-occurring. The draft regulation currently under discussion in the European Parliament does not contain an adequate provision.

As this chapter has shown, there are still many gaps between European governments’ declaratory positions on settlements and their practice. Yet, the awareness of the need to rectify these inconsistencies is growing. The final chapter proposes concrete measures to bring the European policies closer in line with their rhetoric.
CHAPTER 5
RECOMMENDED MEASURES FOR EUROPEAN GOVERNMENTS AND THE EU

As it is their stated position that “settlements are illegal and an obstacle to peace” European governments and the EU must adopt concrete measures to ensure their policies do not directly or indirectly support entrenched and expansion of settlements. Both national governments and the EU have a number of feasible measures at their disposal. These measures target only illegal settlements, not Israel. Adopting them would effectively re-emphasise the pre-1967 Green Line that is being eroded by settlement expansion and that is of critical importance for the viability of the EU-promoted two-state solution. It would also be a signal of intent that international law will be upheld.

Sales and imports of settlement products

1. Ensure correct consumer labelling of all settlement products: As a minimum measure in line with existing consumer protection legislation, European governments must issue guidelines to ensure all settlement products (including manufactured goods) are accurately labelled so that consumers are aware of their true origin and can make an informed choice. Settlement products should be labelled as, for example, “West Bank (Israeli settlements)” to clearly distinguish them from both products made in Israel and Palestinian products. The European Commission should also provide EU-wide guidance for correct labelling of settlement products to ensure harmonisation.

2. Discourage companies from trading with and investing in settlements: As a more comprehensive measure than correct consumer labelling, national governments should issue formal advice to importers and other businesses to refrain from purchasing settlement goods and to avoid all other commercial and investment links with settlements. OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights can be used as the relevant international framework. Companies involved in settlement-related economic activities should be called to account. The Norwegian government’s position on Western Sahara that discourages “trade, investment, resource-extraction and other forms of commercial activity” in that territory can serve as an example.166

3. Ban imports of settlement products: As a further-reaching measure, governments could legally exclude settlement products from entry to the EU market. Trade in products of illegal settlements is inconsistent with EU foreign policy and, at least in cases of products involving the use of non-renewable resources such as water or minerals, may directly aid or assist ongoing breaches of international law. The Irish government has called for an EU-wide ban on imports from settlements167, but in the interim, national governments can implement such a measure. A ban on the import of Israeli settlement goods is not a ban or boycott on trade with Israel, which the signatories to this report do not advocate.

“‘We consider it necessary that the EU bring an end to the import of settlement products which are, in contradiction with EU labeling regulations, marketed as originating in Israel.”

Javier Solana, Richard von Weizsäcker, Helmut Schmidt, Romano Prodi, Felipe Gonzales, Lionel Jospin and 20 other former European leaders168

4. Ensure settlement products do not benefit from preferential market access: In complementarity with the above measures on sales and imports, the EU and EFTA must revise the ‘Technical Arrangement’ with Israel to guarantee all settlement products are effectively excluded from preferential treatment. In order to ensure that, and to properly implement EU’s own regulations, Europe must insist Israeli exporters start correctly designating the origin of settlement products, and cease designating them as ‘Israel’.

5. Exclude settlements from bilateral agreements and cooperation instruments: The EU and national governments must ensure agreements and cooperation instruments involving Israel cannot be applied to settlements:

All agreements with Israel must include clear territorial provisions that explicitly restrict their application to Israel proper, regardless of Israeli domestic law. The EU’s newly ratified ACAA agreement169, which does not contain an adequate territorial clause, should only be implemented if Israel itself formally limits its application to Israel proper.

Regulations for cooperation programmes, including the EU-funded research programme Horizon2020 currently under discussion, must include legal safeguards that exclude participation of entities based or operating in settlements.

National governments must apply the same provisions and safeguards in their bilateral relations with Israel.

6. Exclude settlement products and companies from public procurement: In tendering of public contracts, such as catering services or equipment supplies, EU institutions, governments, and state-funded bodies should specify that no settlement products or services may be supplied under the contract and that companies operating in settlements are excluded.170 This must be done before Israel is allowed increased access to public procurement markets in the EU, as currently envisaged under the EU-Israel Action Plan.

Financial transactions to settlements

7. Remove organisations funding settlements from tax deduction systems: National governments must ensure that gifts to organisations that provide funds to Israeli settlements are not tax-deductible. The Norwegian government’s decision in September 2012 to exclude the Karmel-institutet, a Norwegian organisation that has collected donations for Israeli settlements, from its list of organisations eligible for tax deductible gifts, can serve as a model.171

8. Prevent financial transactions supporting settlements and related activities: As a more comprehensive measure and as recommended by the EU’s Heads of Missions in the OPT, governments should apply restrictive measures to all financial transactions from their citizens, organisations and businesses in support of settlement activities breaching international law.172 In the absence of common EU action, such measures can be implemented by national governments.

Other measures

9. Discourage citizens from buying property in settlements: National governments must issue formal advice to citizens not to buy property in settlements, alerting them to the illegality of settlements, the doubtful legal title of most settlement properties and their uncertain future if a Palestinian state is established. Several EU member states have already issued such advice, but it should be strengthened and implemented by all member states.

10. Issue guidelines for European tour operators: As recommended by the EU’s Heads of Missions in the OPT, national governments must compile guidelines for tour operators to prevent support for settlement businesses, including hotels, bus operators, archaeological sites, etc.173

11. Draw up a list of companies mis-stating the origin of settlement goods: As requested by the European Parliament, the European Commission should draw up a list of companies exporting settlement products, which persist in mis-stating the non-preferential origin of those goods as Israel. This measure would be complementary to the revision of the Technical Arrangement (no. 4 above).174

12. Insist that Israel disaggregates settlement data for the OECD: European governments and other OECD members must require that statistical data provided by Israel always distinguishes between Israel proper and the settlements, in order to avoid validating an internationally unlawful situation. During its accession to the OECD in 2011, Israel had to commit to provide disaggregated statistics when required to do so. Since then, however, the OECD has failed to request Israel to do so.

“Contrary to what you may think, EU member states which take these measures act in Israel’s interest. They do so because they take steps that defend and reinforce the Green Line.”

Avraham Burg, former Speaker of the Knesset and Chairman of the Jewish Agency and the World Zionist Organization, expressing support for the British and Danish moves on settlement products.175

Excluding settlements from EU and national relations with Israel

As a further-reaching model.172

OECD: 169 In the
103 Trading away Peace: How Europe helps sustain illegal Israeli settlements


110 The OECD figure includes the whole population of East Jerusalem and the occupied Golan Heights. In sectoral terms, according to the OECD, these are normally divided between EU imports from Israel (0.2% of its manufacturing output, which reflects the large volume of agricultural production in the West Bank) and EU exports to Israel (0.38% of its geographic coverage of Israeli data): <http://www.oecd.org/els/4844424.pdf>


132 Financial Times, ‘Deutsche Bahn pulls out of Israel project’ (9 May 2011): <http://www.ft.com/intl/cms/s/0/4b6b59fc-7a4b-11e0-bc74-e9160d8d005e.html?__vs=731571971eb0000>'


166 Norwegian embassy to Morocco, op. cit.


