



Russell Tribunal

on Palestine

With the support of

The Bertrand Russell Peace Foundation Ltd

Settlement and the plundering of natural resources

By the Irish Delegates:

James Phillips, Barrister – at- Law
Seamus Byrne, Barrister – at –Law
Paul Callan, Senior Counsel

Table of Contents

- 1.0 Israeli Sponsored Illegal Settlements in the West Bank of Palestine
- 2.0 Commencement and Progress of the Illegal Settlements
- 3.0 Effect of the Settlements on the Palestinian Population
- 4.0 General Principles of EU Law
- 5.0 The EU – Israel Association Agreement
- 6.0 Options for Further Action
- 7.0. Specific Legal Action

1.0 Israeli Sponsored Illegal Settlements in the West Bank of Palestine

- 1.1 The issue of settlements, and continued settlement expansion and their effect on the indigenous Palestinian population is one of the principal obstacles to the attainment of lasting peace in the Middle East. The settlements have long since been declared illegal by; inter alia, the International Court of Justice, the High Contracting Parties of the Fourth Geneva Convention, the United Nations and the European Union. Israeli settlement policy ranges from active promotion to removal by force and violence.
- 1.2 In order to understand the ideology underpinning the settlement enterprise in the context of Israel's belligerent occupation of the Palestinian Territories, it is necessary to briefly examine the historical and political make-up of the land collectively known as Israel and the Occupied Palestinian Territories. Following the collapse of the Ottoman Empire after World War One, these lands were subject to the British Mandate for Palestine, formally approved by the League of Nations in 1922 and endorsing the earlier Balfour Declaration of 1917, in which the British Government "**viewed with favour**" the establishment in Palestine of a national home for the Jewish people. Following this, and against the backdrop of increased Jewish immigration and rising violence, the United Nations assumed control over the area. On 29th November 1947, the U.N. adopted General Assembly Resolution 181 which proposed to divide the British Mandate for Palestine into two states: one Arab and one Jewish, with the city of Jerusalem placed under a Corpus Seperatum to be administered by the U.N. in order to preserve the inimitable religious and spiritual status of the city among the world's principal monotheistic religions. The Jewish State was to traverse some 56% of the land with the remainder to the proposed Arab State. Following the partition plan, Israel declared its independence and the Arab-Israeli war ensued which culminated in the 1949 Arms Agreement which established the Green Line, a de jure international border between Israel and the then Jordanian controlled West Bank. Referring to the Green Line, Article III, Paragraph 2 of the Agreement provides, "**No element of the military or paramilitary forces of either party shall advance beyond or pass over for any purpose whatsoever, the armistice demarcation lines**"
- 1.3 Notwithstanding this injunction in relation to the Green Line, following the 1967 armed conflict, Israeli forces proceeded beyond the Green Line and occupied all the territories which had constituted Palestine under the British Mandate, including the West Bank. As part of its push into the Palestinian Territories, Israel has stolen thousands of dunams of land from the Palestinians and has established thereon dozens of settlements in which hundreds of thousands of Israeli civilians now live. Palestinians, having been expelled from their land, are refused re-entry. The settlements constitute a continuing violation of their human rights.

2.0 Commencement and Progress of the Illegal Settlements

- 2.1 During the 1967 war, Israel occupied East Jerusalem and the West Bank, the Gaza Strip, the Golan Heights and the Sinai Peninsula. It immediately began establishing settlements in these areas, particularly East Jerusalem. More than four decades later the settlements have grown dramatically. Settlements dominate and percolate many areas of the Palestinian West Bank. According to the B'Tselem's 2008 Annual Report, there were some 121 settlements in the West Bank, excluding East Jerusalem. In addition to

this, there were also 12 large settlements and other small settlement points in East Jerusalem and a further 100 outposts in the West Bank. The Israeli Central Bureau of Statistics estimated that the 2008 population of the settlements, including those in East Jerusalem, approached half a million people. The settlement enterprise is supported and sustained through an intricate and sophisticated bypass road network system in the occupied territories that is not designed to serve the infrastructural needs of the local Palestinian population. Taken together, the settlement enterprise and their accompanying road network system amount to unconcealed policies of land appropriation and confiscation. In other words, a land grab. In this activity, as in many others, Israel is in breach of many facets of International Law.

2.2 Article 49 of the Geneva Convention expressly provides:

“... the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies”.

Further, Article 147 of the Convention provides that the extensive appropriation of property constitutes a grave breach of the Convention. Moreover, such practices constitute a breach of Article 8 of the Rome Statute of the International Criminal Court which criminalises grave breaches of the Geneva Conventions of 1949 and categorises such breaches as **“war crimes”**. Although Israel is not a signatory to the Rome Statute, arguendo, such a Statute is reflective of customary International Law. The Hague Regulations also prohibit an occupying power from undertaking permanent changes in the occupied area unless these are due to military needs in the narrow sense of the term, or unless they are undertaken for the benefit of the local population.

2.3 Israel occupied the West Bank as a belligerent occupant and is therefore obliged to leave in place the existing laws and judicial institutions. This it did not do. Rather, it superimposed a system of military orders and military courts. Israel's military administration has issued over 2,000 orders of a legislative effect that substantially displaced the significance and practical effect of previous law. Israel's occupation has impaired judicial autonomy, including the seizure of the power to appoint and remove Judges. Israeli military authorities have trampled upon the jurisdiction of Palestinian courts on many issues, including the right to move any trial or hearing to a military court. Within the military courts, its orders always take precedence over Israeli and International Law. Israeli military courts have repeatedly refused to apply International Laws and conventions.

2.4 The issue of settlements has been adjudicated upon by the International Court of Justice in its ruling on the legal consequences of the construction of a wall in the occupied Palestinian Territory. The Court concluded that the settlements established by Israel in the occupied Palestinian Territory are in breach of International Law. It further ruled that the construction of the Wall and its associated regime create a **“fait accompli”** on the ground that could well become permanent. The Court also considered the applicable provisions of International Humanitarian Law and Human Rights Instruments relevant to the destruction and requisition of property, restrictions

on freedom of movement of inhabitants of the Occupied Palestinian Territory, impediments to the exercise by those concerned of the right to work, to health, to education and to an adequate standard of living. The construction of the Wall and the settlements regime cannot be justified by military exigencies or by the requirements of national security or public order. The Court therefore found that there was a breach by Israel of several of its obligations under the applicable provisions of International Humanitarian Law and Human Rights Instruments. It also made reference to the risk of the situation being considered tantamount to de facto annexation. Israel continues to defy the Court's ruling and the aforementioned Conventions.

- 2.5 The presence of the settlers is actively encouraged and funded and protected by successive Israeli governments. Jews from both inside Israel and worldwide are encouraged onto the land by various incentives; subsidies, preferential low interest rate loans, grants, low property prices, lower taxes, quality utilities, high quality schools, park lands and leisure facilities. A by-product of the settlements is the phenomenon of settler violence. Settler violence against the Palestinian population is aided and abetted by the Israeli military. Many settlers are armed and permitted to mistreat, perpetrate violence upon and even kill, Palestinians without sanction.
- 2.6 Israel has now all but dropped the pretence that the settlements are necessitated for reasons of security. In the immediate aftermath of Israel's agreement to return Sinai to Egypt, (after pressure from the United States), the World Zionist Organisation, fearful of similar pressure being exerted over the Occupied Palestinian Territories, produced a report which, inter alia, openly stated that Israel was in a **"race against time and must concentrate on establishing facts on the ground There mustn't even be a shadow of a doubt about our intention to keep the territories of Judea and Samaria for good"**. The report also spells out strategies for how to settle the land, referring to techniques used in 1948 and since applied to the Palestinian community within Israel itself; geographically dissecting and fragmenting yet more of their land, paralysing them politically and socially, thus ensuring their dependence on the Jewish economy. The Israeli government has applied most aspects of Israeli law to the settlers and the settlements, thus effectively purporting to annex them. Local government in the settlements has been established in a manner similar to that which pertains inside Israel itself. The areas of jurisdiction of the Jewish local authorities are defined as "closed military zones" in the military Orders passed to give purported validity to the settlements. Israeli citizens, Jews from throughout the world and tourists all have access to these areas without the need for a permit, whereas Palestinians are forbidden to enter these areas with authorisation from the Israeli military.

3.0 Effect of the Settlements on the Palestinian Population

- 3.1 The consequences of the settlements and the Wall upon the Palestinian population are incalculable. Through a sophisticated road network system, the settlements separate Palestinian land and communities and are consequently segregationist in nature. The settlements fracture Palestinian territorial integrity and secure for the first time through the assistance of a well developed road network system, Israeli territorial contiguity with the settlements. In eroding the Green Line, the settlement project has resulted in an incontinent Palestine. This is a deliberate and calculated attempted destruction of

the Palestinians' right to self-determination and a workable, contiguous Palestinian State. The settlements also ensure the existence of two separate legal systems in the West Bank which are divided along ethnic lines. The Jewish settlers are extra-territorially subject to Israeli Civilian Law while the Palestinians are subject to Israeli Military Law. In its 2008 Annual Report, B'Tselem states that **"The existence of the settlements has caused grave and prolonged infringement of the human rights of Palestinians. Among the rights infringed are the right to self-determination, the right to equality, the right to property, the right to freedom of movement and the right to an adequate standard of living"**. Additionally, in the 6th Sir David Williams Lecture, given on the 16th November 2006, Lord Bingham of Cornhill, former Lord Chief Justice of England, in his lecture entitled **"The Rule of Law"** stated as follows at page 17/18 stated "The preamble to the United Declaration of Human Rights 1948 recites that "it is essential if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the Rule of Law"

- 3.2 For Israel, the belligerent occupier of the Palestinian Territory, the benefits of expanding and deepening the settlements are considerable. Israel has acquired, illegally, large tracts of extra territory, including farmland and quarries, and, more importantly, the water underneath it. The decision to locate settlement blocks along the ridge of the West Bank was a strategic one: they embrace the territories aquifers and enable Israel to prevent the Palestinians from drilling wells on their own land. Similarly, settlements along the Jordan Valley brings the aquifer there within Israel's grasp. Israel now controls 80% of the West Bank's water sources and diverts most of that supply to its own citizens, inside Israel and the settlements with only a fifth of the West Bank's water available to its Palestinian population. In controlling the aquifers, Israel ensures that each settler is supplied with nearly 1,500 cubic metres of water per year, whereas each Palestinian receives just 83 cubic metres. More than 200,000 rural Palestinians, the majority living in Area C under Israeli control, having no running water at all, are forced to buy water from Israeli tanker trucks. In a further effort to undermine the Palestinian population in the West Bank, Israel has also systematically destroyed wells in the villages and routinely forbids Palestinians from collecting rainwater.
- 3.3 Israel continues to take forcibly expel Palestinians from their land in complete disregard to their right and title to same and their entitlement to fair procedures and natural justice. In many instances, Palestinian residents are unaware that their land has been registered in the name of the Israeli State. For many, by the time they learn of this fact, it is too late to invoke the inadequate appeal process available to them. The Israeli Supreme Court has sanctioned the mechanism used to unilaterally take control of Palestinian land and in so doing attempts to mask the illegality of what is being done.
- 3.4 Israel, in its capacity as the Occupying Power in the Occupied Territories, has defined obligations and responsibilities under International Law pertaining to the provision of the right to water. Specifically, reference is made to Article 56 of the Fourth Geneva Convention, which imposes on the occupying state a duty of **"ensuring and maintaining, with the cooperation of national and local authorities public health and hygiene in the Occupied Territory"**. Similarly, Article 43 of the Regulations attached to the Hague Convention Respecting the Laws and Customs of

War 1907 recognise the occupying State's duty to ensure "public order and safety". It is clear from these provisions that not only are water rights included within their compass but are central to their realisation. Israel exercises its control over water in the West Bank pursuant to Military Order 92 issued on the 15th of August 1967 which purports to grant complete authority over all water related issues in the Occupied Territories to the Israeli army. This was followed by Military Order 158 of the 19th of November 1967 which purported to stipulate that Palestinians cannot construct water installations without obtaining a permit. Military Order 291 of the 19th of December 1968 purportedly annulled all water related arrangements which existed prior to Israel entering into occupation.

- 3.5 The right to water can neither be understated nor overstated. According to the World Health Organisation in its 2003 publication, *The Right To Water* "**water is the essence of life. Without water, human beings cannot live for more than a few days. It plays a vital role in nearly every function of the body, protecting the immune system – the body's natural defence system – and helping remove waste matter**". In addition to this, water is of course necessary for many aspects of personal, domestic and economic life. As a direct consequence of the belligerent occupation of the Palestinian Territory by Israel and its policies employer there, the provision of water and the realisation of basic rights have been seriously undermined to a very significant extent. According to Amnesty International in their 2009 report *Thirsting for Justice: Palestinian Access to Water Restricted* "**Palestinian water consumption barely reaches 70 litres a day per person – well below the World Health Organisation's recommended daily minimum of 100 litres per capita. In contrast, Israeli daily per capita consumption is four times as much**". Israel continues its policies in wilful disregard of its obligations under International Law and in particular its responsibilities under the Fourth Geneva Convention, specifically Articles 85 and 89 which explicitly guarantee the right to water. The continued repudiation of the right to water in the West Bank has had inestimable ramifications for its citizens and their well-being. The World Bank in its 2009 report on the **Assessment of Restrictions on Palestinian Water Sector Development** has outlined the catastrophic effects upon which the continued illegal occupation has had on the water and sanitation conditions in both the West Bank and the Gaza Strip.
- 3.6 The Oslo 2 Agreement, concluded in 1995, contained provisions on both water and sewage that recognised undefined Palestinian water rights, and returned some West Bank water resources and services to the Palestinian authorities. The Agreement also provided that water and sewage was to be managed and maintained in the following way:
- (i) Existing levels of resource utilisation was to be maintained;
 - (ii) The deterioration of water quality and water resources was to be prevented;
 - (iii) Water was to be managed sustainably;
 - (iv) Water resources were to be adjusted according to climatological and hydrological conditions;

- (v) Necessary measures were to be taken to prevent any harm to water resources;
- (vi) Domestic, agriculture, urban and industrial was to be treated appropriately;
- (vii) An extra 28.6 mcm/year was to be made available to the Palestinians;
- (viii) A joint water committee was to be established to deal with all water and sewage related issues in the West Bank.

Notwithstanding the aforesaid provisions, Israel has failed to honour or comply with same and continues to exercise unilateral control over the West Bank's water sources to the manifest detriment of the Palestinian population. Through a sophisticated system of permit authorisation, movement and access restrictions, over-extraction of water and de facto control of borders and peoples, Israel perpetuates the ongoing water and sanitation crisis for the Palestinian residents. Settler-owned swimming pools, well watered lawns and large irrigated farms stand in stark contrast next to Palestinian villages whose residents live adjacent to open sewers and struggle to meet even their basic and essential domestic water needs. In parts of the West Bank, Israeli settlers use up to twenty times more water per capita than neighbouring Palestinian communities.

- 3.7 Israel continues to be in illegal occupation of the West Bank and East Jerusalem, in wilful defiance of International Law and numerous U.N. resolutions. In an effort to justify its abuses of International Law, Israel has constructed and maintained a legal fiction (alleged security needs) which it has employed to carry out theft of Palestinian land and the exploitation of its natural resources on a grand scale. In so doing, Israel has ghettoised and dehumanised the Palestinian population in the West Bank and, in the words of Harvard scholar, Sara Roy, has stolen from the native population;

“its most critical resources, namely land, water and labour and the capacity and potential for developing those resources. Not only are Palestinians exploited economically, they are deprived of their livelihood and developmental potential, national identity and sovereignty. The result is the deliberate, systematic and progressive dismemberment of the indigenous economy by the dominant one”.

- 3.8 The plight of the Palestinian population imprisoned in the West Bank is aggravated by the checkpoint and permit regime operated by the Israeli military. The checkpoints and restriction of movement imposed upon the population deprive them of their dignity, space, mobility, connection, relaxation and leisure. Deliberate and endless waiting at checkpoints amounts to cruelty and a breach of human rights. Time is a precious fundamental human resource. Every day Israel's closure policy robs 3.5 million human beings of that precious resource and in so doing, steals from them the right and ability to plan their lives.

4.0 General Principles of EU Law

- 4.1 The European Union is a principal actor on the global economic, political and legal front. As an intergovernmental organization, the composition of which is made up of

some twenty-seven sovereign independent states, International Law is of central significance to the Union's aims and objectives. Indeed, the core tenets of International Law and the upholding and adherence to same are not only a cardinal feature of the EU's identity but are also central to the EU's conduct in the area of external relations. This is explicitly stated in the Treaty of the European Union (TEU), which clearly defines and delineates the powers, competencies and values of the Union.

- 4.2 Respect for International Law, democratic principles and human rights are constitutional priorities, which underpin the conduct of the EU. Accordingly, reference is made to Article 2 of the TEU, which states:

"The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail"

Additionally, such underpinning functional and constitutional duties are reiterated in Article 3(5) of the TEU, which states:

"In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter"

Accordingly, the central position of International Law within the EU is unequivocally enunciated in the aforesaid articles and thus, human rights, democratic principles and the adherence to same are intrinsically linked to the EU's external relations. Moreover, the numerous agreements and treaties the Union has concluded with numerous countries, including Israel, which expressly stipulate such values, evidence the importance of such international norms. Furthermore, the EU's obligation to respect International Law in the exercise of its power has been expressly stated by the European Court of Justice. In the case of *Anklagemyndigheden v Peter Michael Poulsen and Diva Navigation Corp* (Case C-286/90 (1992) ECR I-6048) the ECJ unequivocally stated, "As a preliminary point, it must be observed, first, that the European Community must respect international law in the exercise of its powers". While this case related to a fisheries issue, the dicta as espoused by the ECJ is nonetheless of immense significance.

- 4.3 Moreover, the foundation of the EU's external actions and external competencies are clearly demarcated by Article 21 of the TEU. It asserts:

"The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which

it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law”

Accordingly, the pivotal position in which human rights, democratic principles, human dignity and the importance of International Law occupy within the EU's composition can neither be understated nor overstated and the significance of same is self-evident.

- 4.4 In light of the explicit treaty based duties incumbent on the European Union, which demarcate the Union's obligations in respect of human rights and democratic principles, it is clear that all actions of the EU, internal and external, must be in accordance with and within the boundaries of the spirit and wording of the above-mentioned Articles.
- 4.5 The EU's role in relation to the ongoing situation in the Occupied Palestinian Territories is one of dysfunctional failure. Through a myriad of Agreements including the European Neighbourhood Policy and the legally binding EU-Israel Association Agreement and the tangible benefits which Israel derive from same, the EU has not only ignored its own treaty-based duties and international law obligations which pertain to its external relations policies but has also facilitated the ongoing human rights violations in the Occupied Palestinian Territories, including the unlawful settlement enterprise which continues to grossly hamper peace and infringe numerous human rights. Through its association with Israel, including through the EU- Israel Association Agreement and the duties it assumes from same, the EU has done next to nothing to ensure Israel desist from its ongoing human rights abuses subsuming the settlement enterprise. Accordingly, the EU in overtly circumventing its obligations and is thus culpable of passive and institutional collusion.

5.0 The EU – Israel Association Agreement

- 5.1. The primary legal nexus between the European Union and Israel is the EU-Israel Association Agreement, which came into force in June 2000. The principal tenets of the Agreement are the liberalization of services, the free movement of capital and competition rules, regular political dialogue, the strengthening of economic acquaintances and an overall preferential treatment of goods and services between both entities. Of cardinal importance is Article 2 of the said Agreement, which defines the basis upon which the Agreement is configured upon and also the crucial importance which is attached to respect for human rights and democratic principles. Article 2 states:

“Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement”

Implicit within the meaning of respect for human rights and democratic principles and thereby forming an essential element of the Agreement is the faithful observance and

adherence to Customary International Law, International Humanitarian Law and International Human rights law. The mandatory nature and wording of Article 2 is such that the basis of the Agreement itself shall be based on the positive and ongoing promotion, protection and vindication of all aspects of human rights and democratic principles.

- 5.2. It is manifest and incontestable that the actions of the Israeli State constitute a gross, calculated and continuing breach of the rights of the resident Palestinian populations in the West Bank, Gaza and East Jerusalem. Such violations have been referred to above.
- 5.3. By reason of Israel's ongoing abuses of humanitarian and human rights law in the Occupied Palestinian Territories, Article 2 of the said Agreement has been indisputably breached. The depth, level and intensity of such breaches are such, that they constitute a case of **"special urgency"** pursuant to Article 79 (2) of the Association Agreement. This Article stipulates:

"If either Party considers that the other Party has failed to fulfill an obligation under the Agreement, it may take appropriate measures. Before so doing, except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties"

- 5.4. The present situation in the Occupied Palestinian Territories not only amounts to a "special urgency" within the meaning of the above-listed provision, but that of an emergency, which warrants immediate and authoritative intervention.
- 5.5. As a party to the Agreement, the European Union and its member states have assumed the responsibility of ensuring the execution of the Agreement. Further, in its role as guardian of the Treaties pursuant to Article 17 (1) of the TEU the European Commission is mandated to ensure the application of the Treaties and the general interests of the Union including the observance of International Law, Humanitarian Law and Human Rights Law. It is evident that through the Agreement's ongoing subsistence, despite the above-mentioned irrefutable breaches, the Commission, rather than ensuring its application has permitted through its inaction the ongoing human rights abuses in the Occupied Palestinian Territories by Israel.

6.0 Options for Further Action

- 6.1 The European Union which includes the Council, the Parliament and the Commission, at an absolute minimum, should immediately take the following action:
 1. Suspend the EU- Israel Association Agreement.
 2. Suspend all assistance, including technical, financial, trade, social and cultural assistance either under the Association Agreement or otherwise.

3. Educate the public in all Member States to a real appreciation of the situation persisting for the Palestinian people in the West Bank and Gaza and of the obligations of the Union and of the Member States of the Union to take positive action to enforce the provisions of the current European Treaties in regard to the enforcement of human rights and the establishment of democratic principles.
- 6.2 All Member States in their individual capacity have corresponding obligations to take all necessary and appropriate steps to ensure that human rights and democratic principles are established and positively promoted by the Union of which they are Members.