



Opinion of the Advisory Council on Policy Coherence for Development

Belgium's economic and commercial relations with Israeli settlements in the Occupied Palestinian Territories

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Introduction

1. This opinion is based on the finding that the policies pursued by the State of Israel, as an occupying power of Palestinian territories in the West Bank (including the Golan Heights) and Gaza, cancel the positive effects of the development aid that Belgium provides to these territories, or considerably reduce its effectiveness. This opinion aims to identify the various instruments available to improve the coherence and effectiveness of Belgium's action in the Occupied Palestinian Territories.

2. The Occupied Palestinian Territories are the fourth largest recipient of **Belgian development aid**. During the last Indicative Cooperation Programme (2012–2015), Belgium allocated €71.6 million to Palestinian territories, primarily in education and local government. Belgian cooperation prioritizes a rights-based approach¹ and as the government agreement reiterates, "development cooperation is a powerful instrument anchored in a vision of Belgian foreign policy."² In relation to the Middle East peace process, Belgium supports a "two-State solution, with an independent, democratic, united, sovereign and viable Palestinian State living alongside Israel in peace, security and mutual recognition." Belgium "therefore opposes any attempt to undermine the two-State solution, such as settlement and all measures taken in that framework."³ The Federal Parliament adopted a resolution in November 2016 that requires the government "in Europe and bilaterally, to pursue the policy of differentiation between Israeli settlements and Israel in order to safeguard the two-State solution; to ensure that Israeli settlements do not benefit from the bilateral relations between the EU and Israel."⁴

¹ General Policy Note. 2017 International Development, 28 October 2016, p. 5.

https://diplomatie.belgium.be/sites/default/files/downloads/note_de_politique_generale_developpement_international_2017.pdf

² Government Agreement, 9 October 2014, p. 198.

http://www.premier.be/sites/default/files/articles/Accord_de_Gouvernement_-_Regeerakkoord.pdf

³ Belgian Ministry for Foreign Affairs, Trade and Development Cooperation, *Middle East*. https://diplomatie.belgium.be/fr/politique/regions_mondiales/moyen-orient

⁴ Belgian Chamber of Representatives, Resolution on Belgium's support for relaunching the Middle East peace process, 24 November 2016, point 4 of proceedings. <http://www.lachambre.be/FLWB/PDF/54/1973/54K1973008.pdf>



3. The Israeli army destroys structures financed by Belgian and European cooperation (including the Khirbet al-Taweel electricity network in September 2014 (€550,000) and playground in Za'atara in April 2016 (€51,366.96))⁵. Between 2009 and 2016, 170 EU-financed structures were destroyed by the Israeli authorities, including 91 structures in 2016⁶. Therefore, Israel is pursuing a policy of forced population displacement to gain land for the development of settlements. 94% of Palestinian planning permission applications in Area C (delimited by the Oslo Accords, representing 60% of the occupied West Bank, under total Israeli control and where all Israeli settlements develop) are rejected, which forces Palestinians to build without authorization. From 1988 to 2016, 16,000 Palestinian structures were destroyed in the West Bank. In 2016 alone, the Israeli authorities demolished or seized 1,093 structures in the West Bank, including East Jerusalem, contributing to the displacement of over 1,600 Palestinians. This number has almost doubled since 2015 and is the highest since the OCHA began the systematic monitoring of demolitions⁷. In October 2017, eight European Union Member States including Belgium requested financial compensation of €30,000 from Israel for structures destroyed in Area C⁸.

4. The Belgian federal government agreement states that "Our instruments must be used with maximum effectiveness to obtain the greatest possible effect on the development of developing countries"⁹. Yet Israeli settlement hinders Palestinian economic development. According to the World Bank, Palestinian access to Area C would increase Palestinian GDP by 35%¹⁰. In his report, the ILO Director-General also stresses the restrictions imposed by the occupation and settlement on growth and development in the West Bank: restrictions on the movement and circulation of goods, on access to land and resources in Area C, and on exports¹¹.

5. Despite these findings, the European Union and EU Member States, including Belgium, have not yet taken all the necessary measures to comply with the International Court of Justice's Advisory Opinion of 9 July 2004 on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories¹². Yet meeting the obligations that result from this opinion would put pressure on Israel, encouraging it to comply with international law, and provide greater coherence in development policies addressing the Occupied Palestinian Territories. This opinion identifies measures that can be taken in that respect¹³.

⁵ Senate, Written question 6-903 from Johan Verstreken (CD&V) of 20 April 2016 to the Deputy Prime Minister and Minister of Development Cooperation, the Digital Agenda, Telecommunications and Postal Services. <https://www.senate.be/www/?Mlval=/Vragen/SchriftelijkeVraag&LEG=6&NR=903&LANG=fr>

⁶ *Occup'Annexion. The shift from occupation to annexation in Palestine*, 11.11.11, CNCD-11.11.11 e.a, June 2017, p. 7. <http://www.cncd.be/IMG/pdf/11report-stopoccupannex-0617lr.pdf>

⁷ UNGA, Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan. Report of the Secretary-General, 1 November 2017 (A/72/564). <http://undocs.org/A/72/564>

⁸ *Huit pays européens, Belgique en tête, réclament une compensation financière à Israël* by Claire Bastier in *La Libre*, 24 October 2017. <http://www.lalibre.be/actu/international/huit-pays-europeens-belgique-en-tete-reclament-une-compensation-financiere-a-israel-59ef798dcd70ccab36b1c80c>

⁹ Government Agreement, *op. cit.*, p. 198.

¹⁰ "Palestinians Access to Area C Key to Economic Recovery and Sustainable Growth", The World Bank, 8 October 2013. <http://www.worldbank.org/in/news/press-release/2013/10/07/palestinians-access-area-c-economic-recovery-sustainable-growth>

¹¹ "The situation of workers in the occupied Arab territories", Report of the ILO Director-General, 106th ILO session, 2017, pp. 16-17. http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_368279.pdf

¹² International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004.

¹³ F. Dubuisson (ULB Centre for International Law), *Les obligations internationales des États membres de l'UE concernant le commerce des produits des colonies israéliennes*, CNCD-11.11.11, 11.11.11 & FIDH, Report, February 2014 (updated in July 2014).



Issues and challenges

6. **Israel's occupation of the Palestinian territories dates back to June 1967.** It has been accompanied by settlement of the occupied territory, as well as multiple violations of international humanitarian law and human rights¹⁴.

7. Israeli settlement of the Occupied Palestinian Territories leads to several **serious violations of international humanitarian law**. Article 49 of the 1949 Fourth Geneva Convention prohibits "forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power."¹⁵ Occupation of the Palestinian territories violates two fundamental principles of international law with the status of peremptory norms (*jus cogens*), namely the inadmissibility of acquiring territories by force and the right to self-determination¹⁶. It also leads to the violation of numerous fundamental rights and freedoms: non-discrimination, freedom of movement, equality, due process, fair trial, not to be arbitrarily detained, liberty and security of person, freedom of expression, freedom of access to places of worship, education, water, housing, adequate standard of living, property, access to natural resources and effective remedy¹⁷.

8. All the settlements are identified by Israel as "national priority areas", a classification also given to economically disadvantaged and border areas, which gives access to a number of financial benefits. In addition, the Israeli government directly encourages **manufacturing and agroindustry companies** to move into the settlements, including those that export to Europe, via a series of incentives: development and investment in industrial areas in the settlements, 69% rebate on leasing land for industrial, tourist or commercial purposes, tax benefits and recruitment subsidies for factories moving into the settlements, and benefits in the agricultural sector. The agricultural settlements also receive indirect aid as the Israeli Civil Administration declines to collect rent on this land, which represents an indirect subsidy of 50 million shekels annually (over €12 million). When the EU decided in 2005 to exclude products from the settlements from the trade benefits resulting from the EU–Israel Association Agreement, the Israeli government also introduced a special subsidy to reimburse settlement businesses that were forced to pay customs duties to export their goods to the EU. In 2012, the Israeli budget allocated 10.8 million shekels (€2.2 million) for that purpose¹⁸.

9. As peremptory norms (*jus cogens*), the rules of international law violated by Israel lead to three types of obligations for all members of the international community: ensuring compliance with the

¹⁴ Occup'Annexation, *op. cit.* <http://www.cncd.be/IMG/pdf/11report-stopoccupannex-0617lr.pdf>; Valentina Azarova, *Israel's unlawfully prolonged occupation: consequences under an integrated legal framework*, ECFR, June 2017. http://www.ecfr.eu/publications/summary/israels_unlawfully_prolonged_occupation_7294

¹⁵ Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (implemented on 21 October 1950).

¹⁶ Human Rights Council, Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (John Dugard), 60th session, 8 September 2003, § 6 and 13.

¹⁷ Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, UN Human Rights Council, A/HRC/22/63, 7 February 2013, § 105. http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-63_en.pdf

¹⁸ Collective of 22 European NGOs including the FIDH, *La Paix au Rabais : comment l'Union européenne renforce les colonies israéliennes*, October 2012, p. 17. <https://www.fidh.org/IMG/pdf/lapaix.pdf>; Human Rights Watch, Occupation inc., January 2016, pp. 32–35. <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian>



relevant areas of international law, not recognizing the illegal situation created by these violations and not providing aid or assistance to maintain the situation. These obligations were detailed in the International Court of Justice's advisory opinion of 9 July 2004 on the construction of the wall, which led the General Assembly to ask all United Nations Member States to "comply with their legal obligation, as outlined in the advisory opinion."¹⁹ The International Committee of the Red Cross's recent commentary on Article 1 common to the four Geneva Conventions also stresses the obligations of non-recognition and non-assistance of third states²⁰.

10. Since 2009, the measures taken by the EU and its Member States demonstrate awareness of their obligation of non-recognition of Israeli settlement, as shown by the 2013 guidelines excluding Israeli settlements from European financing²¹, the adoption of business advisories published by eighteen EU Member States to date²² including Belgium²³, as well as the adoption of the November 2015 Interpretative Notice on indication of origin of goods from Israeli settlements²⁴ (measure already adopted by Belgium in July 2014²⁵). This European policy direction is clearly expressed by the Foreign Affairs Council's Conclusions on the Middle East Peace Process of 10 December 2012²⁶ and has since been repeated numerous times, particularly in the conclusions adopted by the Council of the EU on 18 January 2016²⁷. The obligation of non-recognition of Israeli settlement has also been reiterated by the United Nations Security Council's Resolution 2334²⁸.

Recommendations

11. Raise awareness amongst Belgian companies and dissuade them from investing in the settlements. In July 2014, following seventeen other EU Member States, the Belgian government issued Joint Communications aiming to raise awareness amongst EU companies and citizens of participating in economic and financial activities in the Israeli settlements²⁹. The Belgian government

¹⁹ General Assembly, Advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, including in and around East Jerusalem, 2 August 2004 (UN A/RES/ES-10/15).

²⁰ ICRC, 2016 commentary on Article 1, common to the 4 Geneva Conventions (158-159): <https://ihl-databases.icrc.org/applic/ihl/dih.nsf/Comment.xsp?action=openDocument&documentId=9FDA19119E4EB59AC1257F7D005ED435>

²¹ Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onward, European Commission, 19 July 2013 (2013/C 205/05). http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-il/dv/settlements_guidelines_/settlements_guidelines_en.pdf

²² Hugh Lovatt, EU member state business advisories on Israeli settlements, ECFR, 2 November 2016. http://www.ecfr.eu/article/eu_member_state_business_advisories_on_israel_settlements

²³ *Messages communs visant à sensibiliser les entreprises et les citoyens de l'UE par rapport à la participation à des activités économiques et financières dans les colonies israéliennes*, SPF Foreign Affairs, July 2014 (last consultation: July 2017). <https://diplomatie.belgium.be/fr/businessguidelines>

²⁴ Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967, European Commission, 12 November 2015 (EU 2015/C 375/05). <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XC1112%2801%29&from=EN>

²⁵ *Avis aux détaillants concernant l'étiquetage d'origine des produits en provenance des territoires occupés par Israël*, SPF Economy, July 2014 (last consultation: July 2017). http://economie.fgov.be/fr/binaries/Notice%20produits%20Isra%C3%ABl_tcm326-253289.pdf

²⁶ Council conclusions on the Middle East Peace Process, 10 December 2012. http://eeas.europa.eu/delegations/israel/press_corner/all_news/news/2012/20121210_02_en.htm

²⁷ Council conclusions on the Middle East Peace Process, 18 January 2016, § 7–8. <http://www.consilium.europa.eu/en/press/press-releases/2016/01/18-fac-conclusions-mepp/>

²⁸ UNSC, Resolution 2334, 23 December 2016 (UN S/RES/2334 (2016)).

²⁹ See: Belgian Ministry of Foreign Affairs, Trade and Development Cooperation, *Messages communs visant à sensibiliser les entreprises et les citoyens de l'UE par rapport à la participation à des activités économiques et financières dans les colonies israéliennes*. <https://diplomatie.belgium.be/fr/businessguidelines>



could go further by providing **continuous and proactive information to Belgian companies on the risks of investing in the settlements and providing resources dissuading companies from investing** (exclusion from export insurance, excluding Israeli companies involved in the settlements from trade missions, payment of fines by contravening companies, etc.).

12. Ensure the traceability and labelling of origin of products from the settlements. In 2005, the European Union and Israel agreed a Technical Arrangement enabling the EU to exclude products from the settlements from the preferential tariffs reserved for Israeli goods pursuant to the EU–Israel Association Agreement. This arrangement requires Israeli customs to ensure that the production site and postcode conferring originating status are shown on customs documents. The EU publishes a list of the settlements' postcodes, which are ineligible for the preferential tariffs. The identification of products from Israeli settlements and their exclusion from the preferential tariffs reserved for Israeli products is wholly reliant on the customs of EU Member States³⁰. Recent revelations have shown that the arrangement has been inapplicable since the introduction of new seven-figure postcodes in Israel, which apparently makes it impossible for the European Union to establish a list of the settlements' postcodes³¹. It should nevertheless be possible to identify products from the settlements using customs documents. Belgium and the European Union must **put pressure on the Israeli government to implement the 2005 Technical Arrangement**. If no arrangement is found within the Association Council, arbitration proceedings could be launched³².

13. In November 2015, the European Commission published its Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967,³³ specifying the obligations on labelling of origin for products from the Israeli settlements. Belgium had already published a similar notice in July 2014³⁴. However, the difficulties associated with application of the Technical Arrangement complicate the identification of products from the Israeli settlements, and therefore the correct indication of their origin in view of the European interpretative notice. **Belgium must continue its efforts on indicating the origin of products from the Israeli settlements**, particularly by increased consultation in the area between customs (SPF Finance) and economic inspection (SPF Economy) or by regular information to economic operators (retailers, distributors) on their obligations in the area.

14. Dissuade Belgian companies from maintaining economic relations with the settlements. Belgium should take measures, including legislative, **to ensure that companies registered in Belgium, directly or via their affiliates or subcontractors, do not maintain economic relations with Israeli companies or settlements that may contribute to maintaining the illegal situation** resulting from the settlement

³⁰ European Commission – Taxation and Customs Union, *EU-Israel Technical Arrangement*. https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/rules-origin/general-aspects-preferential-origin/euisrael-technical-arrangement_en

³¹ "Goods from Israel settlements granted preferential EU trade deals", in Middle East Monitor, 28 September 2017. <https://www.middleeastmonitor.com/20170928-goods-from-israel-settlements-granted-preferential-eu-trade-deals/#.WdIMM0XUr0Q.twitter>

³² According to Article 75 of the EU–Israel Association Agreement, if the Association Council is unable to settle the dispute, either Party may notify the other of the appointment of an arbitrator; the other Party must then appoint a second arbitrator. The Association Council shall appoint a third arbitrator. (See: EU–Israel Relations: Promoting and Ensuring Respect for International Law, Euromed Rights & Aprovev, May 2012, p. 49. https://euromedrights.org/wp-content/uploads/2015/04/RA_Eu_Israel_Fr_Web72Dpi_240956315.pdf)

³³ Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967, European Commission, 12 November 2015 (EU 2015/C 375/05). <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015XC1112%2801%29&from=EN>

³⁴ *Avis aux détaillants concernant l'étiquetage d'origine des produits en provenance des territoires occupés par Israël*, SPF Economy, July 2014 (last consultation: July 2017). http://economie.fgov.be/fr/binaries/Notice%20produits%20Isra%C3%ABl_tcm326-253289.pdf



policy. The database of companies linked to the settlements³⁵, which is due to be published for the 37th session of the Human Rights Council, could facilitate identification of these companies.

15. Ban the import of products from companies implicated in the settlements. Resolution 31/36 of the Human Rights Council asked the High Commissioner for Human Rights to establish a database of companies implicated in the Israeli settlements, on the basis of the parameters defined in paragraph 96 of the Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem³⁶. The High Commissioner announced the release of the database to Member States by the end of 2017. It will then be presented during the 37th session of the Human Rights Council in March 2018. Being unable to identify products from the settlements, Belgium and the European Union could decide to exclude products exported by companies implicated in the settlements, which could be identified by this database. To that end, Belgian and European political leaders must first encourage the publication and regular update of this database in the stated timescales.

16. Ban the import of products from the settlements. International obligations require Belgium and the EU to ban the import and sale of these products "due to their intrinsic links with a range of serious violations of peremptory and *erga omnes* norms of international law."³⁷ In continuing to import products from Israeli settlements in the Occupied Palestinian Territories (in practice, given the withdrawal from the Gaza settlements, only the West Bank and Golan Heights are involved), the European Union contributes to these settlements' economic viability and legitimizing what is an illegal occupation in international law. This attitude is incoherent with European Union Member States' efforts to further Palestinian development, with the ultimate aim of facilitating the emergence of a viable Palestinian State living alongside Israel in peace, security and mutual recognition. Belgium should then propose that the European Union **prevent the import and sale of products from Israeli settlements in the Occupied Palestinian Territories**. The move would not contravene international trade laws as the trade of products from Israeli settlements falls outside the scope of both the EU–Israel Association Agreement and the General Agreement on Tariffs and Trade (GATT)³⁸.

17. Exclude all companies based or operating in the settlements from public procurement bidding.

Justifications for the recommendations

General

18. As States have an obligation to **enforce** international law in dealings with Israeli settlements, "it can be said that States are required to adopt, in compliance with international law, reasonably conceivable measures of such a nature as to prompt the State involved to follow international law. Moreover, States are required to avoid actions that oppose the objective of encouraging compliance with humanitarian law, such as financing, furthering or facilitating economic activities directly associated with serious violations of the relevant international law."³⁹ It is "not compatible with the

³⁵ See the following point (15).

³⁶ Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements, *op. cit.*, § 96.

³⁷ *Idem*, p. 55.

³⁸ *Idem*, pp. 68–69.

³⁹ F. Dubuisson, *op. cit.*, (note 13), pp. 31–32.



objective to end the violations associated with settlement and the right to self-determination to trade with entities engaged in illegality, and therefore contribute to their economy"⁴⁰.

19. The obligation **not to recognize** the illegal situation implies not only prohibiting official recognition of illicit situations but "also prohibiting any action that would imply such recognition."⁴¹ In the Namibia case, the International Court of Justice stated that the obligation of non-recognition implies in particular "the obligation not to maintain [with the contravening State] dealings or relations of an economic or other nature that would support" continuation of the illicit situation⁴². Therefore, "the obligation of non-recognition implies that the EU and its Member States do not develop any economic relations of such a nature as to acknowledge Israel's authority over the Palestinian territories, including East Jerusalem, or grant legal effects to the settlements' activities."⁴³

20. The obligation **not to aid or assist** continuation of the illegal situation arising from settlement "implies that no contribution is given to projects or activities enabling the settlements to develop, flourish or succeed."⁴⁴ Yet "the settlements' economic activity plays an undeniable role in maintaining the illegal situation arising from settlement — moving civilian populations into occupied territories, seizing land and natural resources, excluding the Palestinian people — and the trade of goods is a key part", as also emerges from the report of the independent international fact-finding mission commissioned by the United Nations Human Rights Council⁴⁵.

21. Following Russia's illegal occupation and annexation of Crimea and Sevastopol, the European Union took a series of diplomatic and economic non-recognition measures. Amongst the economic measures, the EU banned the import of goods from Crimea which do not have a Ukrainian certificate. It also banned European investment in Crimea, the provision of tourist services in Crimea and the export of goods, technologies and services in the transport, telecommunications, energy and oil and gas exploration sectors to companies in Crimea or for use in Crimea⁴⁶. According to Article 21 of the EU Treaty, however, "The Union shall ensure consistency between the different areas of its external action and between these and its other policies" (Article 21, §3). To ensure consistency between its external policy and compliance with international law, the EU could adopt the same non-recognition measures on settlement in Palestinian territory⁴⁷.

Banning products from the settlements

22. The European Union is Israel's biggest trade partner with exchanges totalling €32 billion in 2015. The Israeli government estimates at \$300 million the value of goods manufactured in the settlements

⁴⁰ *Idem*, p. 36.

⁴¹ International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, p. 309. Also see T. CHRISTAKIS, *L'obligation de non-reconnaissance des situations créées par le recours illicite à la force ou d'autres actes enfreignant des règles fondamentales*, in C. TOMUSCHAT and J.-M. THOUVENIN (eds.), *The Fundamental Rules of the International Legal Order. Jus Cogens and Obligations Erga Omnes*, Martinus Nijhoff, 2005, pp. 146-147.

⁴² F. Dubuisson, *op. cit.* (note 13), p. 34.

⁴³ *Idem*, p. 38.

⁴⁴ *Idem*, p. 45.

⁴⁵ *Idem*, p. 49.

⁴⁶ EU restrictive measures in response to the crisis in Ukraine, Council of the European Union: <http://www.consilium.europa.eu/in/policies/sanctions/ukraine-crisis/>; Occupation/annexation of a territory: Respect for international humanitarian law and human rights and consistent EU policy, European Parliament, Directorate-General for External Policies, Policy Department, June 2015. http://www.europarl.europa.eu/RegData/etudes/STUD/2015/534995/EXPO_STU%282015%29534995_EN.pdf

⁴⁷ Occupation/annexation, *op. cit.* p. 31.



each year and exported to the EU⁴⁸. This amount would rise significantly if goods partially produced in the settlements were taken in account. In 2012, estimates put all the products partially produced in the settlements and exported to the EU at €5.4 billion⁴⁹. According to 2012 figures, Belgium absorbs 5.4% of total Israeli exports⁵⁰. Although the value of exports from the settlements to the EU may not be very high compared to exports from Israel, this commercial activity is of vital importance for the economic viability of numerous settlements.

23. In a resolution adopted at its 34th regular session, the United Nations Human Rights Council stated that it was "concerned that economic activities facilitate the expansion and entrenchment of settlements, and aware that the conditions of harvesting and production for products made in settlements involve the breach of applicable legal norms, inter alia, the exploitation of the natural resources of the Occupied Palestinian Territory, including East Jerusalem." It then asked the States to "distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967, including not to provide Israel with any assistance to be used specifically in connection with settlements in these territories with regard to, inter alia, the issue of trade, consistent with their obligations under international law."⁵¹ A current Council member, Belgium voted for the resolution. Its position was consistent with the Federal Parliament's Resolution of 24 November 2016, which aims "to ensure that Israeli settlements do not benefit from the bilateral relations between the EU and Israel."⁵²

Israeli companies and settlements

24. The report of the independent international fact-finding mission to investigate the implications of the Israeli settlements on the human rights of the Palestinian people (2013) stressed the role of companies in maintaining the settlements' economic viability⁵³. Following the fact-finding mission, the Human Rights Council decided to publish a database of companies implicated in the Israeli settlements⁵⁴. The Israeli organization Who Profits also provides data on the companies involved in settlements on Palestinian territory. The organization recently updated its report on Israeli banks, for example, highlighting their direct involvement in the economic viability of Israeli settlements via their financial services to institutions, companies and individuals⁵⁵. To avoid assisting companies implicated in the settlements, Belgium and the EU could ensure that "no investment is made in companies involved in developing the settlements."⁵⁶

⁴⁸ "Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan", Report of the Human Rights Council, 34th session, 2017, point 35 (DOC NU: A/HRC/34/39).

⁴⁹ *La Paix au Rabais : comment l'Union européenne renforce les colonies israéliennes*, October 2012, p. 20; World Bank, Fiscal Crisis, Economic Prospects, September 2012, p. 13. <https://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/AHLCReportFinal.pdf>

⁵⁰ Katarzyna Lemanska, *Les relations entre la Belgique et l'économie de l'occupation israélienne*, CNCD-11.11.11, 11.11.11, FIDH, January 2015, p. 28

⁵¹ Human Rights Council, 34th regular session (27 February—24 March 2017), Resolution on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan (A/HRC/RES/34/31), point 13.a.

⁵² Belgium Chamber of Representatives, *op. cit.*

⁵³ Report of the independent international fact-finding mission to investigate the implications of the Israeli settlements, *op. cit.*, § 97.

⁵⁴ Human Rights Council, 31st regular session (29 February-24 March 2016), Resolution on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan (A/HRC/31/L.39), point 17.

⁵⁵ Financing Land Grab. The Direct Involvement of Israeli Banks in the Israeli Settlement Enterprise, Who Profits, February 2017. https://www.whoprofits.org/sites/default/files/financing_land_grab_web.pdf

⁵⁶ F. Dubuisson, *op. cit.* (note 13), p. 55.



25. Resolution 34/41 on the settlements adopted at the 34th session of the Human Rights Council asks the States "to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians."⁵⁷ In the Yassin and others vs. Canada case,⁵⁸ the Human Rights Committee reiterated that the International Covenant on Civil and Political Rights requires States with jurisdiction over companies contributing to human rights violations in the Occupied Palestinian Territories to take all measures to end the violation, particularly given the importance of the rights involved: "While the human rights obligations of a State on its own territory cannot be equated in all respects with its obligations outside its territory, the Committee considers that there are situations where a State party has an obligation to ensure that rights under the Covenant are not impaired by extraterritorial activities conducted by enterprises under its jurisdiction. That is particularly the case where violations of human rights that are as serious in nature as the ones raised in this communication are at stake." (para. 6.5.).

26. The Belgian government has adopted an initial Trade and Human Rights National Action Plan, which aims to introduce human rights into socially responsible business and sustainable development. Implementation of the plan will be assessed annually within the Social Responsibility working group of the Interdepartmental Commission for Sustainable Development⁵⁹. In its opinion on the draft plan, the Advisory Council on Policy Coherence for Development specifically emphasizes the principles of "due diligence", reparation and transparency to guide the Belgian government's work in the area. It proposes organizing consultations with local civil society organizations that are active in the area of human rights during economic missions (comment on Principle 8)⁶⁰.

Public procurement

27. A company that, via its professional and/or commercial activities, maintains economic relations with an Israeli settlement contributes to activities that violate human rights and international law. It is guilty of grave professional misconduct and, under the new Belgian legislation on public procurement, could be excluded from public procurement⁶¹. These grounds for exclusion are outlined in Article 57, § 4, c) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC⁶² (stipulating that a bidder can be excluded "where the contracting authority can demonstrate by appropriate means that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable").

28. If a parent, sister or daughter company is implicated in the Israeli settlements, the bidding company must provide evidence that it does not use the knowledge, expertise and/or image developed by its parent, sister or daughter company.

⁵⁷ Human Rights Council, 34th regular session (27 February–24 March 2017), Resolution on Israeli settlements, *op. cit.* (note 51), point 13.b.

⁵⁸ Communication 2285/2013, Findings of 26 July 2017 (CCPR/C/120/D/2285/2013).

⁵⁹ See: Press release « Plan d'action national Entreprises et Droits de l'homme », Council of Ministers, 20 July 2017. <http://www.presscenter.org/fr/pressrelease/20170720/plan-daction-national-entreprises-et-droits-de-lhomme>

⁶⁰ "The National Trade and Human Rights Action Plan", Opinion of the Advisory Council on Policy Coherence for Development (CCPD-ABCO), 29 February 2016, pp. 4, 11–12. <http://www.ccpd-abco.be/wp-content/uploads/2016/02/CCCPD-Opinion-BHR-PAN-FR.pdf>

⁶¹ The new Belgian Act of 17 June 2016 on public procurement (not yet enacted) stipulates in Art. 69 3° optional grounds for exclusion on the basis of grave professional misconduct.

⁶² Official Journal of the European Union, OJ L 94, 28.3.2014, p. 65.



29. "States should promote respect for human rights by business enterprises with which they conduct commercial transactions."⁶³ The sixth United Nations Guiding Principle on Business and Human Rights identifies public procurement as unique opportunities to promote awareness of and respect for human rights by those enterprises.

*The **Belgian federal Advisory Council on Policy Coherence for Development (CCPD-ABCO)** was created by Royal Decree of 2 April 2014 implementing the Law of 19 March 2013 on the Belgian Development Cooperation (articles 2, 16°, 8, 31 and 35, 2°). The Advisory Council's main mission is to produce opinions for the Belgian federal authorities in view of increasing the respect for the principle of policy coherence for development, in accordance with article 208 of the Treaty on the Functioning of the EU and article 8 of the Law of 19 March 2013 on the Belgian Development Cooperation.*

To find out more about the Council and to read more of its opinions available in French, Dutch and English, please visit the Council's website: <http://www.ccpd-abco.be/>

⁶³ OHCHR, UN Guiding Principles on Business and Human Rights, *op. cit.*, p. 9.