

# **From Settlement to Shelf: The Economic Occupation of the Syrian Golan**

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*Cover photograph depicts settlement products on the ruins of a destroyed Arab village, near the Israeli settlement of Katzrin in the occupied Syrian Golan*

Cover photograph sourced from Jalaa Maray archives

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If you are neutral in situations of injustice, you have chosen the side of the oppressor. If an elephant has its foot on the tail of a mouse and you say that you are neutral, the mouse will not appreciate your neutrality.

**Archbishop Desmond Tutu**

## Abbreviations

<b>BDS</b>	Boycott, Divestment and Sanctions
<b>DEFRA</b>	Department for Environment, Food and Rural Affairs
<b>DMZ</b>	Demilitarised Zones
<b>EU</b>	European Union
<b>EC</b>	European Community
<b>ECJ</b>	European Court of Justice
<b>HSRC</b>	Human Sciences Research Council
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICJ</b>	International Court of Justice
<b>ICRC</b>	International Committee for the Red Cross
<b>IHL</b>	International Humanitarian Law
<b>OPGAI</b>	occupied Palestine and Syrian Golan Heights Advocacy Initiative
<b>OPT</b>	occupied Palestinian Territories
<b>PIL</b>	Public Interest Lawyers
<b>SPSC</b>	Scottish Palestine Solidarity Campaign
<b>TEU</b>	The European Union
<b>UN</b>	United Nations
<b>UNDOF</b>	United Nations Disengagement Observer Force
<b>UNGA</b>	United Nations General Assembly
<b>UNCHR</b>	United Nations Commission on Human Rights
<b>UNSC</b>	United Nations Security Council
<b>UNSCR</b>	United Nations Security Council Resolutions

## Introduction

*The issue of the media coverage of the Golan Heights<sup>1</sup> is that there really isn't much of it. A prime example is that just last week there was the anniversary of the 1967 war and we had a whole week's coverage - very intensive coverage - of the legacy and the effects of the war, but very little said about the Golan itself. Most of it focused on the Israeli-Palestinian issue. And I think that this is a real problem because there are lots of facets of the Golan issue.*

*- Sharif Nashashibi, chairman of Arab Media Watch (2007).<sup>2</sup>*

The conflict and unrest in the Middle East region has long been a focal point of international media coverage, to the extent that a diverse array of people possess at least a rudimentary awareness of the situation currently unfolding in the occupied Palestinian Territories. Regrettably, many of the substantive issues pertaining to Israel's occupation of the Syrian Golan, whilst equally important, have been largely neglected on the international stage, despite their considerable significance in the search for a lasting peace in the region. Now in its 42nd year, the occupation has had substantial repercussions for the economy and landscape of the Golan. Accordingly, this report examines the economic occupation of the Syrian Golan, focusing on the illegality of Israeli settlements, their resultant industries and the international community's continued acquiescence regarding Israel's gross violations of international law in the region.

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<sup>1</sup> Hereafter referred to as the Golan, the occupied Golan or the occupied Syrian Golan.

<sup>2</sup> Report of the London International Conference on the Golan (June 2007) Sophie Bradford (Ed) 'A Conference on the Golan' in *The Golan – Ending Occupation, Establishing Peace*, 5.

Section one will give a brief overview of the region, examining the history of the occupied Golan prior to the 1967 War, the aftermath of this conflict and the exceptionally controversial annexation. It will also chart the rise of settlements in the region, examining the motives for Israeli expansion and the legal issues which arise as a result. In addition, the demolition of Arab villages will be analysed with regard to how this destruction facilitated the establishment of illegal Israeli settlements.

Section two will examine the economic motives underpinning the establishment of settlements in the Golan as well as looking at the subsequent settlement industry in the region. Economic sanctions and restrictions imposed by the Israeli authorities on the local Arab population will be analysed, with a particular focus on discriminatory land and water policies. International law will be considered in the context of a nation's right of sovereignty over its natural resources and the prohibition on an occupying power profiting from an occupation.

Section three will examine EU-Israel trade relations and the role of Europe in allowing settlement products to be imported and distributed throughout the Common Market. In addition, an analysis of the problems which emerged in relation to the implementation of the 'Rules of Origin' Protocol under the EU-Israel Association Agreement and the labelling of settlement products will be undertaken. Section three will also consider the EU's failure to comply with its human rights obligations when conducting external relations with Israel. Lastly, the issue of corporate complicity will be explored in light of companies affiliated with settlement production in the Golan.

The report will conclude with two case studies on Eden Springs mineral water and wineries in the Golan. These case studies will focus on the impact of settlement production on the local Syrian inhabitants of the Golan region.

## **Section 1 :**

**Annexation and Settlements – Paving the Way  
for Economic Exploitation**

## 1.1 The occupied Golan – A Brief Geographical Overview

The occupied Syrian Golan is a small mountainous region in the south-western corner of Syria which has been under Israeli occupation since June 1967. Comprising of mountainous peaks and plateaus, it has long been viewed as a strategic military territory, with the imposing peak of Mt. Hermon, at 2,224 metres,<sup>3</sup> providing a dominant perspective of southern Syria, southern Lebanon and much of northern Israel. Despite its relatively small size, the region has an overall landmass of 1,860 sq. km<sup>4</sup> and its unique terrain is unrivalled within the state of Israel. As such, it is coveted not only for its elevated position but also for the healthy water sources that surround Mt. Hermon and an emerging tourist industry, the potential for which cannot be found anywhere else in Israel. Three tributaries of the Jordan River, the Dan, Hasbani, and Banias (also spelt Banyas) find their sources in this region<sup>5</sup> and are crucial to agricultural development, which is one of the key aspects of Israel's occupation. The picturesque scenery and natural beauty of the region, combined with its substantial water reserves and thriving vineyards, is overshadowed by a dark cloud which takes the form of strategic settlement expansion; this has resulted in exploitation of natural resources, asymmetrical water quotas and discriminatory taxes.

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<sup>3</sup> The highest peak of Mt. Hermon is 2814 m which is still under Syrian control. The 2224 m peak is controlled by Israel.

<sup>4</sup> Dr Ray Murphy and Declan Gannon, 'Changing the Landscape: Israel's Gross Violations of International Law in the occupied Syrian Golan' (2008) Al-Marsad, the Arab Centre for Human Rights in the occupied Golan 9.

<sup>5</sup> Muhammad Muslih, *The Golan: The Road to Occupation* (Institute for Palestine Studies, Washington D.C. 1999) 4.



Figure 1 : Location of the occupied Syrian Golan.

Map sourced from [Mapsof.net](http://Mapsof.net)

### 1.1.1 The History of the occupied Syrian Golan prior to 1967

An added complication to the discord in the Golan involves the existence, prior to 1967, of three distinct lines separating Syria from Israel (or, prior to 1948, from the British Mandate of Palestine). Border disputes began in earnest in the aftermath of World War I.<sup>6</sup> At the San Remo Conference of April 1920, the Ottoman Empire was divided up with Britain taking Mesopotamia (modern day Iraq) and Palestine,

<sup>6</sup> J. Slater, 'Lost Opportunities for Peace in the Arab-Israeli Conflict: Israel and Syria, 1948 - 2001' (2002) 27(1) *International Security* 79, 83.

whilst France took Syria and Lebanon.<sup>7</sup> The concept of the nation state was new to the region and as such faced all the complications that come with artificial boundaries and alien systems of governance. The genesis of the modern day Israeli-Syrian conflict began with the 1948 Arab-Israeli War<sup>8</sup> during which these complications were emphasised, with disputes over these artificial boundaries playing a substantial role. A Syrian advance from the Golan resulted in the capture of a small amount of contested land. The reasons for this advance are disputed, with Israel claiming it was an unprovoked encroachment and Syria asserting that it was in response to Israeli actions which resulted in the displacement of hundreds of thousands of Palestinians the previous year. The added issue of water resources led Syria to agree to take up to half a million Palestinian refugees in return for access to the Jordan River and Lake Tiberias, an agreement which was never forthcoming due to the unwillingness of Israel to make concessions regarding land or water rights.<sup>9</sup>

In 1949, Israel and Syria signed the Armistice Agreement which resulted in the creation of UN-monitored demilitarized zones (DMZs). These zones comprised an area of less than 100 m<sup>2</sup> stretching from the top of Lake Huleh to the southern banks of Lake Tiberias. Tensions began to grow again in 1951 as Israel started to exercise sovereignty over these zones by removing Arab residents and replacing them with settlers which in turn led to altercations, as Israel attempted to exercise exclusive

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid* 82.

<sup>9</sup> Dr Ray Murphy and Declan Gannon, 'Changing the Landscape: Israel's Gross Violations of International Law in the occupied Syrian Golan' (2008) Al-Marsad, the Arab Centre for Human Rights in the occupied Golan 16.

control over them.<sup>10</sup> It was these zealous Israeli policies in the DMZs that were seen as a provocation to which Syria was forced to respond; thus Israeli-Syrian clashes continued throughout the 1950s. During these clashes, the DMZ around Lake Tiberias became apportioned as Israel retained control over the western banks of both the lake and the Jordan River, while Syria took control of the north eastern corner of the lake and the eastern bank of the river. This became the de facto border which remained in place until 1967<sup>11</sup> (see fig. 2 below). A common theme evident in these clashes was the struggle for water access and when Israel set about diverting the waters of the Jordan River into the Negev Desert, Slater notes that 'Syria responded by seeking to divert the Hatzbani [ read : Hasbani ] and Banyas tributaries further upstream, in southern Lebanon and the Golan Heights, which in turn led to Israeli raids that destroyed the Syrian diversion facilities'.<sup>12</sup>

Clashes during the 1960s followed a familiar theme of 'action and reaction',<sup>13</sup> as Israel encroached on disputed areas only to be met with armed resistance from a more elevated Syrian offensive. It was this elevation that was coveted by former Israeli Prime Minister David Ben-Gurion who harbored a vision of including the Golan, as well as other parts of south-western Syria, in an expanded Israeli state, believing it to be part of biblical Palestine. The escalation of clashes in the lead up to the 1967 War was noted by the Soviet Union as they declared their support for Syria and as Egypt then mobilised, an Israeli

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<sup>10</sup> J. Slater, 'Lost Opportunities for Peace in the Arab-Israeli Conflict: Israel and Syria, 1948 - 2001' (2002) 27(1) *International Security* 79, 88.

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid* 90.

<sup>13</sup> Muhammad Muslih, *The Golan: The Road to Occupation* (Institute for Palestine Studies, Washington D.C. 1999) 44.

illegal preemptive strike on Egypt, Syria and later Jordan ended six days later with the Arab armies in disarray. By 10 June the Golan was under Israeli control and this was followed two days later with the strategic capture of Mount Hermon.<sup>14</sup>

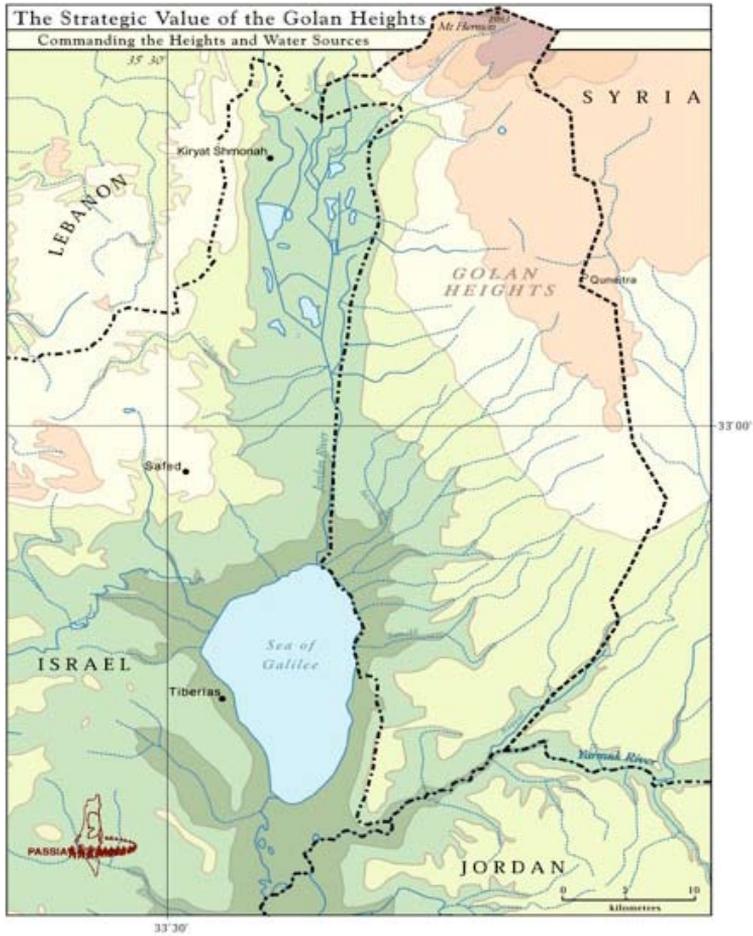
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<sup>14</sup> *Ibid* 51.



Figure 2

Map sourced from [jewishvirtuallibrary.org](http://jewishvirtuallibrary.org).



Palestinian Academic Society for the Study of International Affairs  
 (PASSIA)

Figure 3: Indication of the water sources in the occupied Golan

## 1.2 The 1967 War and its Outcomes - The Road to 'Annexation'

The The 1967 Arab-Israeli War had a devastating effect on the indigenous population of the Golan. Immediately after occupation, Israeli settlement building and population transfer was initiated. Arab Media Watch, in a 2007 report has said of the population transfer:

Prior to 1967, the Syrian population of the Golan Heights [sic] was roughly 140,000, living in two cities (Qunaytra and Afiq), 164 villages and 146 agricultural farms. Almost all of them were uprooted and expelled during and after the war, forced to relocate to refugee camps around Damascus and whose numbers today are approaching half a million. Following Israel's conquest, the two cities, 130 villages and 112 agricultural farms were destroyed. Six villages with a total population of 7,000 remained. In 1971, the Israelis destroyed the village of Sukhatah [sic., read: Sehita ], deported its residents to the adjacent village of Masadah and turned Sukhatah [sic., read: Sehita ] into a military base. Today, the Golan's communities are concentrated in five villages: Majdal Shams, Masa'da, Bqa'atha and 'Ein Qinyeh to the north and east of the heights and Ghajar in the northwest. The number of Syrians living in the Golan totals around 20,000.<sup>15</sup>

The destruction of the capital city of Qunaytra led to heavy criticism of Israel by the United Nations. As with the rest of

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<sup>15</sup> Report of the London International Conference on the Golan (June 2007) Arab Media Watch, *'The Golan since 1967'* in *The Golan-Ending Occupation, Establishing Peace*, 9.

the region it was captured after the 1967 Arab-Israeli War but was briefly recaptured by Syria during the 1973 Arab-Israeli War. Israel again regained control and the city was almost completely destroyed before the Israeli withdrawal in June 1974. It is now situated in the demilitarised United Nations Disengagement Observer Force (UNDOF) Zone between Syria and Israel.

Four of the five remaining villages (with the exception of Ghajar which faced different geographic, social and political conditions) stood firm in the face of occupation and have resisted attempts to impose Israeli citizenship on them. Approximately 80% of the Golan population at this time was Arab, belonging to various religious groups with the rest comprising of ethnic minorities such as Armenians, Dagistanis, Chechians, Turkmens etc. In the years that followed, Israel sought to begin the process of annexation of the Golan with a 'divide-and-conquer' approach. The Syrian education curriculum was outlawed and replaced with 'one specially designed to inculcate a sense of separate "Druze identity," distinct from the Arab identity- as if members of this eleventh-century offshoot of Islam constituted a nation rather than a religious sect.'<sup>16</sup> Teachers in the schools were carefully screened and anyone showing too much political awareness was immediately dismissed and replaced with a teacher of inferior experience and quality. This led to compliance with the authorities and an enforcement of the new curriculum.<sup>17</sup> At one point, the possibility of establishing a separate independent Druze state was mooted; a proposal which Israel viewed as having the potential to create an ideal buffer zone between Israelis and Arabs.

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<sup>16</sup> Tayseer Mara'i and Usama R. Halabi, '*Life under occupation in the Golan Heights*' (1992) 22(1) *Journal of Palestine Studies* 78, 81.

<sup>17</sup> *Ibid.*

### 1.2.1 The Clash over Israeli Citizenship

The issue of Israeli citizenship proved more problematic. Israel had hoped that if enough of the Syrian population accepted Israeli ID papers then the de facto annexation of the Golan would be achieved. Within Israel itself, this policy was relatively successful but the population provided stern resistance. As Mara'i and Halabi have noted, it was the policies of the Likud party that provided the spark for the citizenship clashes, with annexation clearly defined as their goal.<sup>18</sup>

In the lead up to this planned annexation, the Israeli Law of Nationality was amended in 1980 which led to the Israeli government effectively pushing citizenship on the Arab population of the Golan. In response to this, a general meeting was called by religious leaders and activists in the largest of the Syrian villages, Majdal Shams. Roughly half the population of the four villages turned up for the meeting, where it was decided that anyone who accepted Israeli citizenship would essentially be ex-communicated from the local community. This would have a devastating affect on the lives of people who chose to accept Israeli IDs due to the close-knit community spirit found in the Golani villages. If a person was unable to attend local weddings, funerals etc. they would be living the life of an outcast and crucially, it was viewed by most that this was too high a price to pay for accepting the offer from Israel. As Kennedy notes, 'Such tremendous social pressure was exerted on them that all but a few diehard quislings returned their cards. Those who repented were required to recant publicly, or to go door-to-door to apologise to their neighbours,

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<sup>18</sup> *Ibid* 82.

and to contribute money to support the families of those imprisoned.’<sup>19</sup>

Nazim Khattir, a local farmer from Majdal Shams, was one of the teachers who lost his job at this time. He explains what happened.

**Nazim Khattir from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 1.1**

*Since the first day of the occupation there was resistance in the Golan. Groups of young people began to mobilise and organise themselves against the occupation. People here believe the homeland/state is the most valuable thing. The older generations, our fathers and grandfathers successfully fought the Turkish and the French. In 1979 Israel began plans to annex the Golan through the Syrian population themselves with a process of giving people Israeli citizenship. It didn't take long for the local population to figure out what is going on and they started to discuss what to do. All the Golan is divided into large extended families and it was decided that the families would bear the responsibility not to allow any members to accept citizenship. There was a high awareness among the people as to what was going on. There was a great community gathering in the square of Majdal Shams and it was decided to ban the people who accepted Israeli citizenship from the community. They will not be respected and will be cut-off from society. This is very important in our society. It is a small society and such relationships are very important as many people are related. At this point people had figured out that Israel was*

<sup>19</sup> R Scott Kennedy, 'The Druze of the Golan: A case of non-violent resistance' (1984) 13(2) Journal of Palestine Studies 48, 52.

*attempting to annex the Golan without officially annexing it. If the people took the citizenship then it would be the will of the people to officially join Israel. It took a year and a half but the plan was defeated.*

### 1.3 ‘Annexation’ – Undermining the Legal Status of the Golan

On 14 December 1981 the Knesset passed the third reading of the ‘Golan Heights Law’ which effectively annexed the Golan and unilaterally re-drew the borders of Israel and Syria. To this day, Israel and the international community continue to dispute the legal status of the Golan. As an indication of this, three days after the decision of the Knesset, United Nations Security Council Resolution 497 (17 December 1981) was adopted unanimously and called on the State of Israel to rescind its de facto annexation of the Golan Heights. Resolution 497 stated that ‘the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights is null and void and without international legal effect’.<sup>20</sup> Israel has not recognised this and refuses to apply the relevant provisions of international humanitarian law (IHL) claiming the Golan to be a part of its sovereign territory. As a point of departure, this section will assess the legal status of the Golan and the ‘Golan Heights Law’.

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<sup>20</sup> United Nations Security Council Resolution 497 (1981) 17 December 1981 (Section 1).



The border crossing near Qunaytra between Syria and the occupied Syrian Golan

*Photo sourced from Jonathan Molony archives*

### 1.3.1 The Applicability of International Humanitarian Law

The legal status of the Golan has generated significant disagreement and debate, raising many questions, the most crucial being, can the Golan be classified as an occupied territory under IHL? To phrase it another way; are the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949 applicable to this situation? The Golan has been under Israeli control for 42 years, 28 of which have seen the Golan subject to Israeli civil law.<sup>21</sup> It is well documented that the international community does not recognise the Golan as a part of Israel, so in order to ascertain the correct legal status of the Golan, an examination of IHL is required to see if indeed the Hague Regulations and Fourth Geneva Convention apply.

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<sup>21</sup> At the time of writing.

The International Court of Justice, in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in occupied Palestinian Territory, stated that according to Article 2, the Geneva Conventions apply if there exists an armed conflict between two contracting parties,<sup>22</sup> regardless of the territories' status in international law prior to the armed attack.<sup>23</sup> It goes on to say 'The object of the second paragraph of Article 2 is not to restrict the scope of application of the Convention, as defined by the first paragraph, by excluding them from territories not falling under the sovereignty of one of the contracting parties.'<sup>24</sup> Added to this it is stated that 'This interpretation reflects the intention of the drafters of the Fourth Geneva Convention to protect civilians who find themselves, in whatever way, in the hands of the Occupying Power.'<sup>25</sup> Al-Haq has noted that Israeli Attorney General Menachem Mazuz appointed a legal team soon after the Advisory Opinion in order to examine its implications. The result of this report was a recommendation to the Israeli government that the Fourth Geneva Convention be applied de jure.<sup>26</sup>

A conclusive definition of occupation can be found in the Hague Regulations 1907, Article 42 of which states that a 'territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.'<sup>27</sup> Perhaps the most fundamental element of the laws of occupation is the presumption that any case of

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<sup>22</sup> Both Syria and Israel were high contracting parties to the Convention at the time of the outbreak of the war in 1967.

<sup>23</sup> International Court of Justice, *Legal Consequences of the Construction of a Wall in the occupied Palestinian Territory*, ICJ (2004) para. 95.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Al-Haq Annual Report 2004*, 39.

<sup>27</sup> *Article 42 of the Hague Regulations 1907*, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907.

occupation is a temporary condition which does not confer sovereignty or prejudice future arrangements.<sup>28</sup> While the exact time frame of this temporary condition is not defined, an occupation of over 40 years was presumably not envisaged by the drafters. Some commentators are beginning to change the language they are using to describe the Israeli occupation with terms such as 'apartheid' and 'colonialism' slowly creeping into the discourse.<sup>29</sup> A recent HSRC report notes that 'Belligerent occupation in itself is not an unlawful situation. It is acknowledged and accepted as a possible consequence of armed conflict. However, international humanitarian law...presupposed that occupation is a temporary state of affairs...' <sup>30</sup> (emphasis added)

Israel erroneously considers the Geneva Conventions to be inapplicable to the Golan, as the latter is not occupied in its eyes. The Golan, as noted above, is under Israeli civil law and as such (according to Israel) is within the official boundaries of the State of Israel. This opinion has met with no support from international actors, with the UN, the ICRC and the ICJ all explicitly condemning Israel's occupation of the Golan. As such, it is still regarded by the majority outside of Israel proper as being subject to the laws of occupation. As with the annexation of East Jerusalem, control of the Golan was gained through the use of force, an action which HSRC notes amounts to conquest and acquisition of territory by such means has long been invalidated.<sup>31</sup> The ICRC also notes that the legality of any particular occupation is regulated by the UN

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<sup>28</sup> *Al-Haq Annual Report 2004*, 41.

<sup>29</sup> HSRC Occupation, Colonialism, Apartheid? A Re-assessment of Israel's practices in the occupied Palestinian territories under international law (Cape Town, 2009) <http://www.hsrc.ac.za/Document-3227.phtml> accessed 7 December 2009

<sup>30</sup> *Ibid* 26.

<sup>31</sup> *Ibid* 70.

Charter and the law of *jus ad bellum*. Essentially, once there is a situation which factually amounts to an occupation the law of occupation applies – whether or not the occupation is considered lawful.<sup>32</sup>

Even if Israel did accept this, its application of the Geneva Conventions in the West Bank and Gaza is anything but satisfactory.<sup>33</sup> In spite of this, the international laws of occupation should prevail and as the occupying power, Israel needs to respect the principles of IHL which continue to apply to the territory until such time as it is merged within the occupying state or with another country. The crucial point in this case is that annexation is reliant on the condition that it occurs as part of a political-legal settlement that is accepted and recognised by the international community<sup>34</sup> and as UN Security Council Resolution 497 (above) has shown, this is clearly not the case. The status of the Golan therefore should be no different to that of the occupied Palestinian Territories (OPTs). The Fourth Geneva Convention is therefore applicable to the occupied Syrian Golan and must be respected.

Israel has accepted the customary nature of the Hague Regulations up to a point. Seven years after the occupation commenced, in *Hilu v Government of Israel, et al*,<sup>35</sup> the Israeli

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<sup>32</sup> ICRC, '*Occupation and international humanitarian law: questions and answers*' <http://www.icrc.org/Web/eng/siteeng0.nsf/html/634KFC> accessed 16 October 2009.

<sup>33</sup> Israel's position regarding the applicability of the Fourth Geneva Convention in the OPTs is that the West Bank and Gaza were never under Jordanian and Egyptian sovereignty (the missing reversioner argument) and any acceptance of the Convention would be an acceptance of this sovereignty. Also, rather confusingly, Israel has declared that it will in practice act in accordance with the humanitarian provisions of the Fourth Geneva Convention.

<sup>34</sup> '*The occupied Syrian Golan: Background*' Al-Marsad, the Arab Centre for Human Rights in the occupied Syrian Golan (2005) 4.

<sup>35</sup> HCJ 302 / 72, 306 / 72, *Hilu v. Government of Israel* PD 27 [2] 169.

High Court of Justice affirmed that customary international law is a part of Israeli law unless it is contradictory to another provision of internal law. This was further clarified by the Supreme Court in *Ayoub v Minister of Defence*<sup>36</sup> (the 'Beit El' case). There is uncertainty as to the exact implications of this judgment, but it appears to afford Israel flexibility to pick and choose how it applies customary international law.

Common Article 2(2) of the Geneva Conventions also provides that the Conventions apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the occupation meets with no armed resistance. As a result of this, three criteria can be identified. There must be :

- an exercise of authority or effective control;
- control over the whole or part of the territory of another state; and
- it does not matter whether this occupation was met by armed opposition.<sup>37</sup>

The Golan clearly meets these criteria :

- Israel is exercising effective control and authority over the Golan area;
- which is recognised as a part of the state of Syria;
- there was no armed resistance by the indigenous Syrians of the region.

The question of resistance is all the more interesting in the Golan due to the specific non-violent approach taken by the local Syrians. The drafters of the Fourth Geneva Convention

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<sup>36</sup> HC 606 / 78, 610 / 78, *Ayoub v Minister of Defence* PD 33 [2] 113.

<sup>37</sup> ICRC, 'Current challenges to the law of occupation', <http://www.icrc.org/web/eng/siteeng0.nsf/html/occupation-statement-211105> accessed 16 October 2009.

were very specific regarding 'protected persons' and it must be stressed that the local Syrian Arab inhabitants of the Golan referred to throughout this report are classified as protected persons under the Convention. The Convention defines such persons as those who 'at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.'<sup>38</sup> The commentary to the Fourth Geneva Convention establishes that there are two main categories of protection person: (1) enemy nationals within the national territory of each of the Parties to the conflict; and (2) the entire population of an occupied territory (excluding nationals of the Occupying Power).<sup>39</sup> The Arab inhabitants of the Golan qualify as a protected population under these guidelines, in that they were Syrian nationals under occupation by Israel at a time when Israel was engaged in armed conflict with Syria. This classification of the Golan's Arab population is of extreme importance, in light of the fact that many articles of the Fourth Geneva Convention apply only to protected persons.

In light of this, the correct status of the Golan under IHL is that of an occupied territory rather than an annexed region as propagated by Israel. This matter has been further analysed by Dr. Guy Goodwin-Gill who summaries the issue in four main points. International law :

- prohibits the acquisition of territory by the use of force;
- prohibits the Occupying Power from changing the status of territory under occupation, either directly through annexation or indirectly through colonisation;

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<sup>38</sup> Article 4, Geneva Convention IV 1949.

<sup>39</sup> Jean S. Pictet (ed) *Commentary : Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross 1958) 46.

- requires the Occupying Power to recognise and protect the rights of the indigenous population of the Golan, Syrian citizens; and
- requires all States to refrain from recognising the illegal situation on the ground.<sup>40</sup>

Once again, these points are all crucially relevant to the occupation of the Syrian Golan, and for each of these, Israel does not accept this analysis and continues to consider the Golan part of its territory. This is a clear undermining of the legal status of the Golan and indeed of international law. Furthermore, as will be shown below, the laws of occupation have also been abused with regard to forcible population transfers and village demolitions. The situation escalated in the months after the annexation which led to the strikes of 1982, described by the American-Arab Anti-Discrimination Committee as 'The Bitter Year'.<sup>41</sup>

### 1.3.2 The Strikes of 1982 – Further Clashes over Citizenship

The strike campaign in 1982 has been described as a 'courageous and effective nonviolent campaign against the Israeli occupation',<sup>42</sup> and the importance of this campaign cannot be understated.

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<sup>40</sup> Report of the London International Conference on the Golan (June 2007), Guy S. Goodwin-Gill, '*The Occupation in International Law*' in *The Golan-Ending Occupation, Establishing Peace* 14.

<sup>41</sup> *The Bitter Year, Arabs Under Israeli Occupation in 1982*, American-Arab Anti-Discrimination Committee, (Washington DC 1983).

<sup>42</sup> R Scott Kennedy, '*The Druze of the Golan: A case of non-violent resistance*' (1984) 13(2) *Journal of Palestine Studies* 48, 50.

**Nazim Khattir from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 1.2**

*The original method of offering citizenship to the people was not done a second time. Instead people found that if they were going for a driving licence or a building licence, anything connected to the state, they would need Israeli citizenship to be successful. People were placed under house arrest and numerous people were fired, especially teachers and labourers. At this point the heavy-handed policy of Israel prompted the people to strike. On the 14th of Feb. 1982 a statement was announced declaring a rejection of Israeli policy and a demand to be considered Syrians in an occupied territory. The only citizenship that would be accepted is Syrian and Israeli civil law will be rejected. Also it was decided we would not accept the people who have taken Israeli citizenship in the Golan.*

The ID campaign that Israel attempted to enforce prior to annexation was stepped up in its aftermath, as it was expected that the Golani would now be forced to accept Israeli IDs and citizenship, but once again this was not the case. The population convened a mass meeting in Majdal Shams on 9 February 1982, which included the residents from Majdal Shams, 'Masa'da, Bqa'atha, and 'Ein Qinyeh'. This resulted in an unsuccessful appeal to the Israeli government to get the annexation ruling reversed and the decision was taken to strike indefinitely. As labourers refused to turn up for work, many lost their jobs with no compensation, some after a decade of service, as the industries of northern Israel struggled. This only helped to galvanise Syrian resistance to the occupation and united the villages like never before.

**Nazim Khattir from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 1.3**

*The strike was so comprehensive that schools, stores, workers, teachers all stopped. We began to organise ourselves in the society. Everyone was given a job. At the time a group of doctors decided to volunteer in the Golan to help the people. If there was a shortage of food in one family then it would be given by another family. Each village was its own unit, separated but together in spirit. There was nothing to do so we decided to do things like widen the streets, develop the cemetery area and build a sewage system. At the time there was no sewage system so one was installed. It was a productive way to spend the time.*

**Jameel Awad from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 1.4**

*It was winter time and the lack of a sewage system meant the village was very dirty. We established a committee to discuss the issue and we decided to construct a sewage system in the village. We did a general study to evaluate the project and we found that to make this project work every house had to pay \$200 and contribute four work days to the project. If people cannot work they could contribute \$50 instead of the four days. On many occasions people ended up working more time than was required of them and many of the big machines, the tractors and so on worked for free. Also there were a lot of cases where people couldn't pay the money so they worked instead. Before the end of the strike the project was completed with the money that we had. In many cases a lot of the poorer*

*families who couldn't pay had promised to pay in the future but it was decided by the committee to forget the issue because the project was completed.*

In April, the stand-off escalated when upwards of 15,000 Israeli soldiers surged into the area in a move which was designed to seal off the four main villages, not only from Israel but from all other areas. The resulting siege lasted 43 days as water and electricity was cut off and several home demolitions took place.<sup>43</sup> During this time, the Israeli soldiers went door-to-door confiscating old ID papers and leaving behind new Israeli ones but just as before the annexation, resistance held firm and attempts to enforce new citizenship failed.

**Nazim Khattir from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 1.5**

*On 1st April the army came to the Golan with the new ID cards, the same number of soldiers as there were people, and they re-occupied the Golan in order to deliver these IDs. The first thing the Army did was announce curfew. People went to the main square to challenge this curfew and clashes began. We did not use weapons and on different occasions civilians were successful in taking the weapons from the soldiers, giving them back later, never using them. They came with a whole plan of the village every house was numbered along with the owner and the number of people in each. They went to every house to deliver these IDs. Many people threw them away, many people didn't answer their doors, finding the IDs in front of the door and then throwing them out. The deliveries were*

<sup>43</sup> *Ibid* 54.

*done at night when people were at home and the next morning the roads were blue from everyone throwing out the IDs. Then there was a psychological battle. The school in the village was turned into a prison and people were arrested and taken there and told this person and that person took the ID so you have to too. They would be kept for days without any supplies.*

*After this people collected the IDs and put them in boxes, sending them back to Israel. The people decided that they were going to go work in their own fields that spring but the harvest would be shared amongst everyone. Israel began to realise that the population of the villages didn't want to be Israeli. Then Israel tried to push through another plan as they began sending Israeli Druze to come to talk to the people of the villages to explain that Israel knows you are different and you don't want to be Israeli and it will be respected but the strike must stop.*

In order to address the identity concerns of the Syrian Golani, Israel initially promised to make special ID cards with the word 'Arab' printed next to 'Nationality', a promise which was never fulfilled.<sup>44</sup> The legal situation of the Syrian Golani today is similar to that of the Palestinian Arab residents in occupied East Jerusalem, who are granted permanent residency. One crucial difference, however, is that the Palestinian inhabitants of East Jerusalem can continue to have a Jordanian nationality in addition to their Israeli travel document, while the Israeli travel documents of the residents of the occupied Syrian Golan state that their nationality is 'Undefined'.

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<sup>44</sup> *Ibid* 55.

## Nazim Khattir from Majdal Shams, occupied Syrian Golan Al-Marsad Affidavit Extract 1.6

*They promised us a lot, they would not consider us Israelis, they will not confiscate our land, they will not confiscate our water, we will not have to serve in the Israeli army and they will treat us differently to how they treat their own people. Usually Israeli promises can't be trusted.*

### 1.4 The Settlements

*Construction of infrastructure and housing by Israel was actively pursued in 2007 and early 2008. The Israeli Land Department put up 2,500 dunums<sup>45</sup> of land in the occupied Golan for sale to settlers. According to a recent decision by the Regional Settlements Council in the occupied Syrian Golan, a new settlement tourism village will be built by 2010, on 40 dunums of land close to the destroyed village of Amudiyah, with an earmarked amount of \$30 million.<sup>46</sup>*

Since the end of the 2006 Lebanon war, settler leaders have launched a \$250,000 advertising campaign in order to attract young Israelis to the Golan with the lure of free land and a lifestyle unrivalled anywhere in Israel. As the Washington Post notes 'Their goal is to double the Jewish population in Golan to 40,000 within a decade through an appeal that emphasizes cowboy hats over skullcaps.'<sup>47</sup> The Golan offers

<sup>45</sup> One dunum is equal to 1000 m<sup>2</sup>

<sup>46</sup> United Nations General Assembly Economic and Social Council, 7 May 2009, para. 61.

<sup>47</sup> Scott Wilson, 'Golan Heights Land, Lifestyle Lure Settlers', Washington Post, (30 October 2006), accessed online at : <http://www.washingtonpost.com/wp-dyn/content/article/200629/10//AR2006102900926.html> accessed 10 November 2009.

something that cannot be found in Israel proper; mountains, skiing, nature hikes and an escape from the stifling summer heat of the cities such as Haifa and Tel Aviv. The expansion of the settlement programme shows no signs of abating in the occupied Golan. Settlement construction on occupied lands is a central feature of the Israeli occupation but the motives for the settlement construction in the occupied Syrian Golan differ slightly from those in the West Bank. This section will look at these reasons and assess how they stand up to examination under international law.

**Figure 4 :**

List of settlements in the occupied Golan, sourced from Foundation for Middle East Peace at :

[http://www.fmep.org/settlement\\_info/settlement-info-and-tables/stats-data/settlements-in-the-golan-heights](http://www.fmep.org/settlement_info/settlement-info-and-tables/stats-data/settlements-in-the-golan-heights)

Source: List of Localities : Their Population and Codes. Jerusalem: Central Bureau of statistics, 1999 - 2008

Name	Population								Date Established
	2008	2007	2006	2005	2004	2001	2000	1999	
Afiq	212	216	215	210	235	226	219	203	1967
Allone Habashan	291	286	271	255	251	214	192	181	1981
Avne Eitan	468	468	418	357	337	324	290	276	1978
Ani'Am	494	462	414	384	379	300	293	277	1978
Bene Yehuda	1,009	1,036	1,021	991	971	929	917	887	1972
Eli Al (Eli Ad)	275	272	264	256	247	235	242	233	1968
El Rom	263	271	274	269	267	272	288	292	1971
En Ziwan	197	213	216	229	214	217	233	251	1968
Geshur	218	204	215	226	192	134	139	145	1971
Giv'at Yo'av	458	452	436	397	398	352	466	-	1968
Had Nes	593	510	482	461	439	394	365	332	1987
Haspin	1,374	1,369	1,312	1,273	1,262	1,170	1,170	1,170	1973
Kanaf	345	333	319	302	285	246	219	201	1985
Katzrin (Qazrin)	6,518	6,444	6,479	6,535	6,357	6,100	6,160	6,060	1977
Kefar Haruv	319	312	306	285	239	231	241	240	1974

Ma'ale Gamla	388	357	340	309	306	260	253	254	1976
Merom Golan	519	497	495	469	411	365	384	361	1967
Mevo Hamma	338	339	336	329	325	343	363	356	1968
Mezar	61	65	56	52	44	52	55	48	1981
Ne'ot Golan	377	350	334	303	291	241	219	207	1967
Natur	129								1980
Neve Ativ	175	175	174	173	167	184	156	153	1972
Nov	529	529	510	504	484	424	413	382	1973
Odem	103	103	103	95	93	93	93	-	1981
Ortal	255	238	243	254	258	255	248	226	1978
Qela	162	154	106	71	58	59	62	N/A	1984
Qeshet	549	526	517	524	501	468	441	445	1974
Qidmat Zevi	375	373	371	353	341	300	276	273	1985
Ramat Magshimim	547	517	500	487	483	439	436	445	1968
Ramot	470	487	478	480	472	468	476	457	1970
Senir	467	450	424	414	384	272	280	-	1967
Sha'al	230	225	230	229	230	222	216	206	1976
Yonatan	375	353	352	347	344	271	250	236	1976
Total:	19,083	18,692	18,105	17,823	17,265	16,020	15,955	15,313	

### 1.4.1 Legal Analysis of the Settlements

Central to the legal examination of the settlements is Article 49 of the Fourth Geneva Convention; Section III of which deals with occupied territories. As previously shown, the correct description of the Golan under international law is that it is illegally occupied, therefore the Geneva Conventions must be adhered to.

Article 49 states that, 'Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive (Para. 1). Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased (Para. 2). The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies (Para. 6).'

It is worth noting that the ICRC commentary to this article states that the article 'is intended to prevent a practice adopted during the Second World War by certain Powers, which transferred portions of their own population to occupied territory for political and racial reasons or in order, as they claimed, to colonize those territories.'<sup>48</sup>

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<sup>48</sup> Jean S. Pictet (ed) *Commentary : Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross 1958) 283. See also HSRC *Occupation, Colonialism, Apartheid? A Re-assessment of Israel's practices in the occupied Palestinian territories under international law* (Cape Town, 2009) accessed at : <http://www.hsrc.ac.za/Document-3227.phtml>.

Three points can be ascertained from this :

- Settlers cannot be transferred into an occupied territory ;
- The indigenous population of an occupied territory cannot be deported from the occupied territory regardless of motive;
- If a population must be transferred for security or military reasons they must be allowed to return once hostilities have ceased.

These three points have been blatantly ignored by Israel as the process of population transfer began following the 1967 Arab-Israeli War. The transfer of the population has worked in two ways, moving local Syrians out and moving Israeli settlers in. Depopulation of the locals was achieved primarily through the use of Military Orders that declared certain areas to be closed military zones. Military Order 39<sup>49</sup> was the most devastating of these, ordering that 101 villages in the Golan be closed. Following this enforced depopulation, the two cities, 130 villages and 112 agricultural farms were destroyed. In total, as a result of the occupation, approximately 131,000 people expelled to Syria and as the testimonies of the next section will show, this was not out of military necessity. These actions were clearly in direct violation of Article 49(1) of the Fourth Geneva Convention.

Following the end of the conflict, those expelled were not allowed to return by the Israeli government. As stated in paragraph 2 of Article 49, an occupying power is permitted to transfer a population for imperative security or military purposes, but in such cases these evacuated people must be allowed to return as soon as hostilities have ceased.

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<sup>49</sup> Military Order 39, 27 August 1967.

This process began almost immediately after the occupation commenced, as Israeli authorities initiated settlement projects and military orders were enforced regarding the allocation of land and water sources for the purposes of settlement. Successive Israeli governments have all created plans and projects for settlements, despite their clear contradiction of international law.

As the introduction of Israeli settlers has continued, the settlement population now equals that of the indigenous Syrian population and will soon surpass it. This transfer of population is a direct violation of Article 49(6) of the Fourth Geneva Convention. Israel argues against this point by stating that the settlers are moving to the region of their own free will and the state is not deporting or transferring its population. While paragraph 6 does not prohibit an individual's voluntary migration, the reading of said paragraph does forbid the occupying power from contributing to or participating in the process. Land expropriation, destruction of villages and generous tax incentives given to settlers clearly contribute to the process; thus while the state of Israel is not physically transferring the people into the settlements, it is clearing all obstacles for them. The destruction of the Arab villages was not just carried out in order to empty the land; it was carried out to empty the land for the settlers. Having a strong population of settlers creates 'facts on the ground' and strengthens Israel's grip on the region and as with the West Bank, makes it all the more difficult to return the land. It is a practice that Israel hopes to benefit from in the long run. There exists a majority of settlements in the lower Golan region and it would be hoped that any ultimate decision to give back the Golan would have to take these settlements into account as a part of Israel, thus splitting the Golan in two and keeping Lake Tiberias wholly within Israel.

## UN Resolutions Relating to the Settlements

Settlement construction continues to the present day and many view this as the main stumbling block for peace in the region. The United Nations has expressed its criticism of settlement building throughout all the occupied territories, through the issuance of the following Security Council resolutions :

United Nations Security Council Resolution 446 (22 March 1979) 'Determines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.'

United Nations Security Council Resolution 452 (20 July 1979) 'States that the policy of Israel in establishing settlements in the occupied Arab territories has no legal validity and constitutes a violation of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.'

United Nations Security Council Resolution 465 (1 March 1980) 'Deplores the decision of the Government of Israel to officially support Israeli settlement in the Palestinian and other Arab territories occupied since 1967, [and is] deeply concerned over the practices of the Israeli authorities in implementing that settlement policy in the occupied Arab territories, including Jerusalem, and its consequences for the local Arab and Palestinian population. Calls upon all States not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories.'

United Nations Security Council Resolution 471 (5 June 1980) 'Calls once again upon all States not to provide Israel with

any assistance to be used specifically in connection with settlements in the occupied territories.’

Since Security Council Resolution 497 of 1981 which condemned the annexation, the UN passes a General Assembly resolution each year entitled ‘The occupied Syrian Golan’ which reaffirms the illegality of the annexation and the settlement programme. At the time of writing the most recent was General Assembly Resolution 6399/ relating to the occupied Syrian Golan (18 December 2008) which ‘calls upon Israel to desist from changing the physical character, demographic composition, institutional structure and legal status of the occupied Syrian Golan and in particular to desist from the establishment of settlements.’ As with previous resolutions, this request has been ignored. In the OPTs, the High Court of Justice has overlooked these violations of international law, refusing to view them for what they are.<sup>50</sup> Considering the Golan is viewed as Israeli territory by the State, it is even less likely that Israel will recognise the settlements in this region as illegal. In spite of this, it is clearly evident that these settlements are illegal under international law.

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<sup>50</sup> See B'Tselem, '*Israeli Settlement in the occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects*' (March 1997) 28, available at: [http://www.btselem.org/Download/199703\\_Settlements\\_Eng.rtf](http://www.btselem.org/Download/199703_Settlements_Eng.rtf).



The settlement of Alonei Habashan, built on the ruins of the destroyed Arab village of Jwezey.

*Photo sourced from Jonathan Molony archives*

#### **1.4.2 The Destruction of the Arab Villages**

It is not only the construction of the settlements that has infuriated the Syrian locals but also the manner in which they are being built. The principles of necessity, distinction and proportionality provide the backbone of IHL and as the testimonies of Majdal Shams residents in this section will show, these principles have been ignored, as thousands of people have been victims of the settlement expansion and the campaign to destroy the Arab villages. Shhady Nasralla of Majdal Shams recalls an encounter with one such person.

**Shhady Nasralla from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 1.7**

*I met one of these people when I was in Russia studying. He was nine years old at the time of the war and he told us that his father was the boss of the village of Alfahham which they were living in. A jeep with two soldiers came to their house and told them in clear Arabic that they had fifteen minutes to leave the village because the planes will bomb it. What can you get from your house in fifteen minutes? All the people scurried and left the village and they actually bombed it after the people left. No reasons were given.*

The protection of civilian property is a vital facet of international law that has been enshrined in The Hague Regulations and the Fourth Geneva Convention. The Hague Regulations specifically target destruction of property in Article 23(g) which states that ‘in addition to the prohibitions provided by special Conventions, it is especially forbidden... to destroy or seize the enemy’s property, unless such destruction or seizure be imperatively demanded by the necessities of war’.<sup>51</sup> (emphasis added)

This is reinforced by the Fourth Geneva Convention, Article 53 of which states that ‘Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations’.<sup>52</sup> (emphasis added)

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<sup>51</sup> Article 23(g) Hague Regulations 1907.

<sup>52</sup> Article 53, Geneva Convention IV 1949.

In addition to this, the Universal Declaration of Human Rights enshrines the right to property in Article 17 which states that (1) everyone has the right to own property alone as well as in association with others and (2) no one shall be arbitrarily deprived of his property.<sup>53</sup>

Israel has consistently sought to rely on the exception of absolute military necessity. As noted above, 244 towns, villages and farms were destroyed by Israel, leaving just five remaining villages. Given the techniques involved in the village destruction and the lack of an armed resistance, it is highly dubious to claim that every village or farm that was destroyed was done so out of absolute necessity. It must also be emphasised that this destruction of villages continued after the cessation of hostilities. The non-violent nature of the indigenous population has been demonstrated and it is more accurate to say that this process of destruction was carried out in order to pave the way for a long occupation and the economic exploitation of the area's natural resources. Hayil and Samar Abu Jabal speak about the destruction of Jubata Ez-Zeit, the site of which is now a settlement called Neve Ativ.

**Hayil & Samar Abu Jabal from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 1.8**

*The demolition of the villages is to prepare for a long occupation. In Jubata Ez-Zeit some of the people fled from the war and once the occupation had begun the remainder of the population were forcibly removed. In the case of Jubata Ez-*

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<sup>53</sup> Article 17, Universal Declaration of Human Rights 1948.

*Zeit part of the population took shelter in Majdal Shams and the rest stayed put. After the Israeli forces occupied Majdal Shams they allowed them go back to the village and then forced the entire population to walk to Lebanon. The Israeli army collected the people of the village together and they ordered them to begin walking towards Lebanon and they firing over their heads in order to frighten them. From what I know they did not try to kill anyone, just to instil fear in order to get people to leave. There were absolutely no reasons. The villages were evacuated of people. There were no residents; there was no armed resistance there, what was the necessity to destroy these villages?*

*Usually the houses of the villages are just one floor and then it is very easy to bulldoze them. With big houses they used explosives. In the example of Qunaytra it is very clear that they used bulldozers and then in 1974 when they had to withdraw from Qunaytra it has been documented by witnesses that, for non-military needs, they used explosives to dynamite the houses. This is what happened in Qunaytra.*



The ruins of the hospital in Qunaytra

*Photo sourced from Jonathan Molony archives*

The actions in these villages clearly violate the three principles of necessity, distinction and proportionality and it is in Qunaytra that the violations of these principles is most visible. The principle of distinction is covered by Article 56 of the Hague Conventions which states, 'The property of municipalities, that of institutions dedicated to religion, charity and education, the arts and sciences, even when State property, shall be treated as private property. All seizure of, destruction or wilful damage done to institutions of this character, historic monuments, works of art and science, is forbidden, and should be made the subject of legal proceedings'.<sup>54</sup> Distinction and proportionality are also comprehensively covered by the First Additional Protocol to the Fourth Geneva Convention.<sup>55</sup>

<sup>54</sup> *Article 56, Hague Regulations 1907.*

<sup>55</sup> *See Additional Protocol 1 of Geneva Convention IV 1949 8 June 1977, specifically Chapter 2 Civilians and civilian population, Chapter 3 Civilian objects and Chapter 4 Precautionary measures.*

### 1.4.3 Motives and Techniques

The three driving forces behind the settlement expansion in the Golan are military strategy, economic motives and Zionist growth. While settlement building in the West Bank can be seen not only as a system of Zionist expansion but also as a tool for negotiations further down the line, it is the economic motives that rise to the forefront in the occupied Golan.

Israel's military objective is becoming increasingly difficult to justify in the age of modern warfare and in the view of many Syrians, modern missiles and techniques have diminished the significance of the Golan to Israeli security. Reuven Pedatzur notes that 'The next war with Syria, if it occurs, will be characterized less by armor battles and conquest of territory, and more by missile and rocket launches from behind the front lines.'<sup>56</sup> In Israel itself, the Golan question is now more than just a question of security. It is also clearly a question of settlements, water, domestic politics and to some, is even a question of ideology.<sup>57</sup> This issue arose as far back as 1976 when Moshe Dayan, Israel's Minister of Defence at the time, explained to an Israeli journalist that 'There was really no pressing reason to go to war with Syria...the kibbutz residents who pressed the government to take the Golan Heights did it less for security than for the farmland.'<sup>58</sup>

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<sup>56</sup> Reuven Pedatzur, 'Keeping the Golan won't protect Israel from Syria', Haaretz (Tel Aviv, 25 November 2009), accessed at : <http://www.haaretz.com/hasen/spages/1130582.html> accessed 25 November 2009.

<sup>57</sup> Muhammad, Muslih *The Golan: Israel, Syria and Strategic Calculations*, (Autumn 1993) 47(4) Middle East Journal 611, 631.

<sup>58</sup> Report of the London International Conference on the Golan (June 2007), Ghayth N. Armanazi 'The Road to '67' in *The Golan – Ending Occupation, Establishing Peace*, 7.

Regarding these economic motives, as has been shown above, the Golan is known for its fertile land and bountiful water resources. This water, combined with the rich volcanic soil, is crucial to agricultural development and this is a key motivation underpinning the occupation. This is also the key difference between the occupation in the Golan and that in the West Bank. As has been shown, Israel has expropriated land and evicted Arab inhabitants, expanded settlements and diverted the area's natural resources to support those settlements (of which there are already approximately 37).<sup>59</sup> Additionally, the Israeli population is expected to increase by 15,000 over the next three years. As with the West Bank, these settlements are illegal under international law but the motives and techniques employed are somewhat different.

The practice of building on top of the ruins of destroyed villages is an effective method of hiding the evidence. To an untrained eye looking around parts of the Golan, it is almost impossible to tell that Arab villages once existed, but as Figure 6 shows, there were dozens of villages where now only barren land and settlements remain. Aside from the imposing skeleton of the village of Qunaytra, there are very few traces left of these old villages. In many cases, stones from the destroyed village have been used to build the new settlement homes as well as the military points, in a move which physically overwhelms the foundation of the original village.<sup>60</sup>

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<sup>59</sup> United Nations Security Council, Report of the Secretary-General on the Middle East (2006) para. 39. Reports vary on the official figure from between 33 and 39.

<sup>60</sup> Golan For Development, '*The Tactic Erasure*' available at <http://www.jawlan.org/english/golanheights.htm> accessed 10 November 2009.

**Shhady Nasralla from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit**

**Extract 1.9**

*They [the Israelis] used the stones of the destroyed houses to build the military points. When you go to any military point you see the black stones, these are from the destroyed houses. They needed a lot of loose stones so the easy thing to do was not to try collecting them, but to destroy the houses. You will see a lot of these points throughout the Golan.*



Entrance to the border-crossing military checkpoint near Qunaytra

*Photo sourced from Jonathan Molony archives*

A continuation of this deception is the practice of naming these new settlements the Hebrew version of their Arab names. In time, this leads to a sense that this settlement had always existed in its present guise, as many Israeli maps will only show the Hebrew names of the villages.<sup>61</sup> Additional practices

<sup>61</sup> *Ibid.*

such as importing fully grown plants and trees add to the sense that the settlements have been around a lot longer than they actually have. All of these techniques are designed to make the settlements seem as legitimate as possible by essentially creating the illusion of an empty land exclusively populated with long established Jewish towns and villages. The strategic placement of these settlements also limits the capabilities of the indigenous population to expand their villages.

**Hayil and Samar Abu Jabal from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 1.10**

*For the people that remained in the Golan, our lives changed and it is very difficult and took a long time to adjust to the changes. The settlers have a problem with us because they cannot confiscate our lands in these villages but some protest that they do because they control everything else; Ram Lake, the rivers, the springs, the underground hydro-resources. They control the sky and the land, but our lands are still ours. They did try on different occasions to confiscate our land but they failed. So they have begun competing with us by growing the same products as us.*

Much of the discussion in this section has related to principles of IHL but one must remember that international human rights law continues to be applicable alongside IHL in occupied territories. Israel's stance in relation to international human rights law is equally abysmal. Despite being a state party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), there is a clear disregard for its provisions, in particular Article 2(2) of which states that 'The States Parties to the present Covenant undertake to guarantee that the rights

enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>62</sup>

Again, as with many other aspects of international law, this provision has been ignored by Israel in favour of a biased system, put in place to help the settlers and frustrate the locals. The settlement expansion scheme is universally derided and even the United States has expressed its displeasure at the practice recently, with President Obama stating 'I think that additional settlement building does not contribute to Israel's security, I think it makes it harder for them to make peace with their neighbours.'<sup>63</sup> The construction of settlements is widely viewed as the main stumbling block to peace in the region. As long as the settlements continue to be built and Israel establishes further facts on the ground, then the economic exploitation of the Golan's natural resources will continue. Following on from this, section two will examine the ways in which settlement expansion has affected the economic well-being of the indigenous Arab population of the occupied Golan with a particular focus on discriminatory policies relating to land and water.

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<sup>62</sup> *Article 2(2), the International Covenant on Economic, Social and Cultural Rights 1966.*

<sup>63</sup> 'Obama Warns Israel on Settlements' BBC online (18 Nov. 2009) at [http://news.bbc.co.uk/2/hi/middle\\_east/8366596.stm](http://news.bbc.co.uk/2/hi/middle_east/8366596.stm) accessed 21 November 2009.



Figure 5 : List of Israeli settlements built in the ruins of Syrian villages

Map developed by Al-Marsad

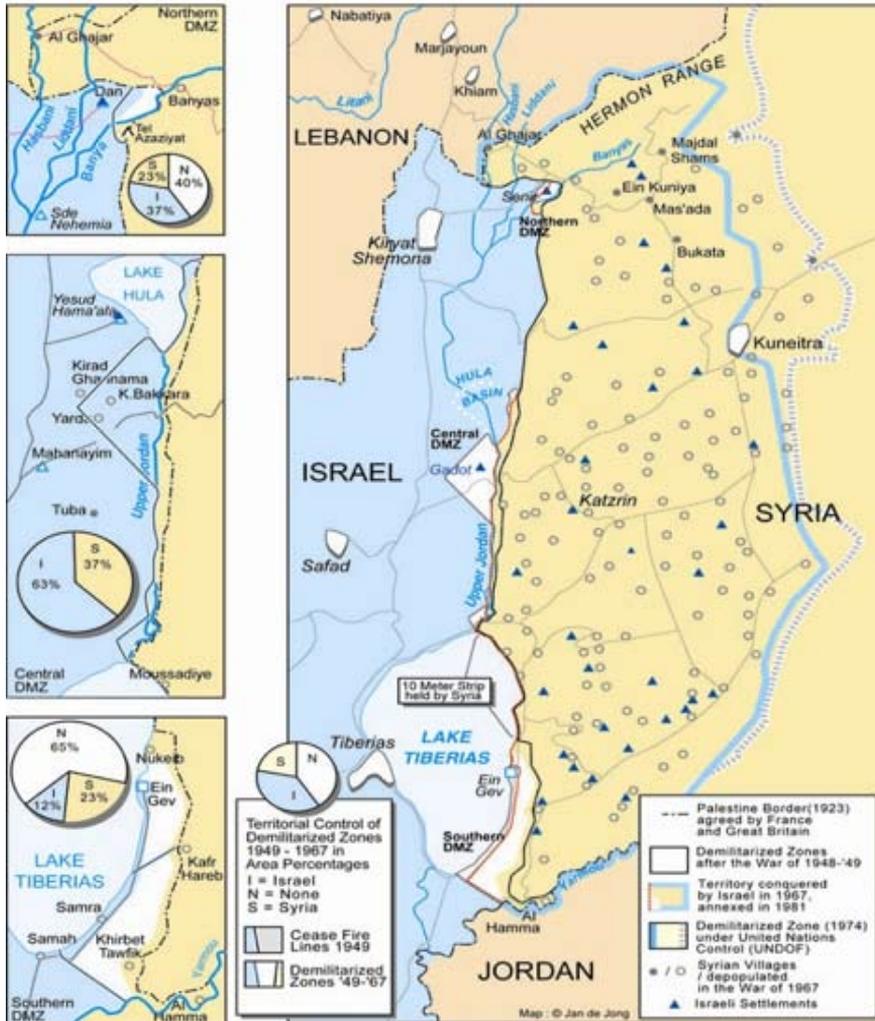


Figure 6 : Approx. sites of former Syrian villages indicating where settlements have been built on their ruins

Map sourced from Foundation for Middle East Peace at :

<http://www.fmep.org/maps/golan-heights/golan-heights-1923 - 2008>

## **Section 2 :**

**The Business of Colonisation – the Untold Cost  
of the Settlement Industry**

## 2.1 Economic Motivations Behind the Settlements

Strong economic motivations underpin the establishment of Israeli settlements in the Golan. The occupied Syrian Golan is a rich volcanic plateau with extremely fertile soil.<sup>64</sup> The region is home to a huge variety of valuable natural resources, making it an ideal location for settlements and settlement industries. Since the occupation began, the Israeli authorities have aimed to implement policies which control the valuable resources in the region, in particular the land and the water. In recent times, this has manifested itself through Israel's encouragement of the establishment of industries and businesses in the region, which exploit these natural resources for commercial gain.

In order to attract more settlers each year, the Israeli authorities are 'building new infrastructure and factories and creating various other economic opportunities'.<sup>65</sup> Today, the economy in the Golan is dominated by settlers whose products – such as beef, cherries, apples, wine and mineral water – provide for a significant proportion of Israel's needs. Approximately 20% of the Golan's settlement produce is exported to twenty different countries, including Canada, Australia and the United States and several in Europe.<sup>66</sup>

The natural beauty of the Golan region also lends itself to tourism, 'drawing 2.1 million visitors per year.'<sup>67</sup> The natural

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<sup>64</sup> Dr Ray Murphy and Declan Gannon, '*Changing the Landscape: Israel's Gross Violations of International Law in the occupied Syrian Golan*' (2008) Al-Marsad, the Arab Centre for Human Rights in the occupied Golan 15.

<sup>65</sup> UN General Assembly, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the occupied Territories : note / by the Secretary-General', 9 September 2009, A/64339/, para. 90.

<sup>66</sup> *Ibid.*

<sup>67</sup> Report of the London International Conference on the Golan (June 2007), Abdulkader Husrieh, '*Strategic Economic Significance of the Golan*' in *The Golan – Ending Occupation and Establishing Peace*, 11.

diversity of the area is remarkable; visitors can swim in Lake Tiberias, ski on Mount Hermon and visit hot mineral springs. The majority of the tourist industry in the Golan is controlled by the Israeli settlements, and although some of the local Arab population work within the sector, this is often because little alternative employment is available to them. The abundant natural resources of the region make the Golan a prime location for agriculture, tourism and industry. Without doubt, Israel recognises the inherent commercial profitability of its continued occupation of the region.

### 2.1.1 The Settlement Industry in the occupied Golan

There are three forms of corporate involvement in settlement industries in the occupied Golan: settlement products, Israeli construction on occupied land and services to the settlements. The first category involves Israeli companies located within the settlements that make use of local land and labour, such as the Golan Heights Winery. Companies in the Golan range from small businesses which serve Israeli settlements to large factories which export their products to the global market, in particular to Europe and the United States. A number of settlements in the occupied Syrian Golan also produce agricultural goods like flowers and fruit which are marketed both in Israel and abroad.<sup>68</sup> The true origin of such settlement products, sold abroad is often deliberately obscured by circumvention of labelling and origin laws.

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<sup>68</sup> Who Profits? *'The Settlement Industry: Settlement Products'*  
[http://www.whoprofits.org/Involvements.php?id=grp\\_inv\\_settlement](http://www.whoprofits.org/Involvements.php?id=grp_inv_settlement) accessed 15 October 2009.

The second category concerns companies which are involved in construction of the settlements and the infrastructure which connects them to Israel proper. In the occupied territories, infrastructure and housing serves two purposes: to annex more land and resources for Israel while simultaneously excluding local residents. The construction industry in the occupied Golan includes real estate agents, planners, contractors and suppliers of materials.<sup>69</sup> Certain Israeli settlements in the Golan, such as Neve Ativ, were constructed with the help of local building contractors from Syrian villages like Majdal Shams. Since the occupation began, Israel has instituted policies designed to exclude the indigenous population from many of their local private economies such as livestock rearing, while at the same time monopolising control over the natural resources of the region. As in the occupied Palestinian Territories, this has resulted in the exploitation of the local population, who often have no choice but to engage in the construction of settlements and work on settlement farms due to a lack of alternative employment caused by Israel's economic policies in the region.

The third category consists of companies involved in the provision of services to the settlements.<sup>70</sup> This includes services which help connect the settlements to Israel and normalise their existence, as well as services which are in some way discriminatory to local residents. A special water company - Mey Golan - set up exclusively for Israeli settlers in the region, is one example of this.

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<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

There exist a variety of incentives provided by the Israeli government to encourage settlement production. These include special tax incentives, low rents, lax enforcement of labour and environmental laws and extra governmental support.<sup>71</sup> Many Israelis have developed businesses and established homes in the Golan due to the encouragement and incentives offered by the government.<sup>72</sup> By setting up businesses and factories in an occupied territory like the Golan, the authorities have bolstered the view of many Israelis that the Golan is 'an inherent, inseparable part of their sovereign territory'.<sup>73</sup> Moti Bar, owner of a microbrewery in the settlement Katzrin, illustrated this attitude when he stated that, 'We're living our life as if we'll be here forever.'<sup>74</sup> Such assured investment serves to both encourage and sustain the continuing occupation of the Syrian Golan.

## 2.2 Economic Sanctions and Restrictions Imposed on the Local Population

The success of the settlement industry in the Golan must be viewed against the wider backdrop of the multiple discriminatory economic practices Israel has instituted against the region's protected Arab population since the occupation began. The thriving economy of the settlements only exists because of policies and practices which remove competition and distribute vital resources in an inequitable manner, stunting the growth of the local Arab economy.

<sup>71</sup> *Ibid.*

<sup>72</sup> Elliot M. Repko, 'The Israeli-Syrian Conflict: Prospects for a Resolution' (2007) 7 *The Journal of International Policy Solutions* 25 - 31, 27 .

<sup>73</sup> *Ibid.*

<sup>74</sup> Scott Wilson, 'Golan Heights Land, Lifestyle Lures Settlers' *Washington Post*, 30 October 2006.

Following the general strike in 1982, the Israeli authorities proposed a compromise put forward by a Druze qadi (judge) from the Galilee, who stated that the Israeli government would not interfere with the basic civil, water and land rights of the residents of the Golan.<sup>75</sup> However, as the following discussion will illustrate, these conditions were not fulfilled by the Israeli authorities. Indeed, ‘...economic measures became a major tool of the occupying authorities’<sup>76</sup> and the Golan has ‘undergone a continual and systematic process of annexation, not least in economic terms, to the State of Israel’.<sup>77</sup> In the years since the occupation, the Israeli authorities have instituted numerous policies aimed at curtailing and restricting the economic practices of the native population.

### 2.2.1 Land Expropriation Following the 1967 War

Following the forced expulsion of 131,000 Syrian inhabitants in 1967, the occupied Golan was declared a closed military zone by the Israeli military and Military Order No. 20 declared that private moveable properties and immovable properties of the expelled inhabitants, such as money and real estate, were ‘abandoned property’. The official in charge of the so-called abandoned property placed the land under the command of the Israeli Occupying Power and the settlers. The settlers were thus able to use the property as they wished, while the dispossessed Syrian landowners were not permitted to

<sup>75</sup> Daoub Kuttab, ‘*Nationalism Flares*’ *Al Fajr* (Jerusalem) (International English Edition) 7 October 1983, 7, in R Scott Kennedy, ‘*The Druze of the Golan: A case of non-violent resistance*’ (1984) 13(2) *Journal of Palestine Studies* 48 - 64, 55.

<sup>76</sup> Tayseer Mara’i and Usama R. Halabi, ‘*Life under occupation in the Golan Heights*’ (1992) 22(1) *Journal of Palestine Studies* 82.

<sup>77</sup> R Scott Kennedy, ‘*The Druze of the Golan: A case of non-violent resistance*’ (1984) 13(2) *Journal of Palestine Studies* 50.

engage with the authorities in any dispute regarding the true ownership of the land.<sup>78</sup>

Military Order No. 21, issued on 20 July 1967, reclassified both property belonging to the Syrian government and private property in the Golan, as Israeli government property. Moveable and immovable property was placed under the control of a prominent individual allied with Israel, who was responsible for administrating and disposing of it. In this way, the Israeli authorities deliberately misinterpreted international humanitarian law provisions which allow an Occupying Power to administer government land and property for use by the military; as stated in Article 53 of the Hague Regulations :

An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

The Israeli policy created the necessary 'legal' foundation upon which property belonging to the Syrian government and native Arab inhabitants could be redistributed amongst Israeli settlers.

By issuing these orders as military decrees as opposed to civilian laws, the Israelis believed they had managed to circumvent the provisions of IHL. However, in reality their actions were in violation of numerous provisions of IHL, which

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<sup>78</sup> 'The occupied Syrian Golan: Background', Al-Marsad, the Arab Centre for Human Rights in the occupied Syrian Golan (2005) 7.

prohibit the acquisition and annexation of land by force,<sup>79</sup> the expulsion of its indigenous population,<sup>80</sup> and the creation of settlements in an occupied territory.<sup>81</sup> It is also clearly stated in Article 46 of the Hague Regulations that ‘private property cannot be confiscated’.

### 2.2.2 Obstacles Affecting Agricultural Land Use

Following the 1967 war, Israel seized 1250 km<sup>2</sup> of the 1860 km<sup>2</sup> of the Golan region.<sup>82</sup> As time went on, further areas of land were declared closed military zones; some land was simply fenced off by the authorities. Often, this land lay unused for many years. Prior to the 1967 War, the inhabitants of the Golan had an economy based primarily on agriculture and livestock, with 62% of the workforce engaged in this sector. The industrial sector was less developed, accounting for 20% of workers. Many of the Arab residents in the Golan lost up to half their agricultural land following the occupation, which was the backbone of the local economy.<sup>83</sup>

Land used for pasture was often expropriated, resulting in a loss of livestock rearing, another cornerstone of the pre-1967 Arab economy. Owners of large areas of agricultural land and pasture were denied access to them to make way for military

<sup>79</sup> UN Charter (Art. 2, para. 4), Hague Regulations IV 1907 (Articles 43 and 55), Geneva Convention IV 1949 (Articles 47 and 54).

<sup>80</sup> Geneva Convention IV 1949 (Articles 45, 46 and 49), Geneva Convention Protocol I 1977 (Article 85 subsection 4b).

<sup>81</sup> Geneva Convention IV 1949 (Article 49), Geneva Convention Protocol I 1977 (Article 85 subsection 4a).

<sup>82</sup> ‘Golan for Development, *Golan Heights: Facts and Figures*’, 15 October 2009, [http://www.jawlan.org/english/openions/read\\_article.asp?category=15&source=5&link=11](http://www.jawlan.org/english/openions/read_article.asp?category=15&source=5&link=11) accessed 12 December 2009.

<sup>83</sup> ‘*The occupied Syrian Golan: Background*’ Al-Marsad, the Arab Centre for Human Rights in the occupied Syrian Golan (2005) 13.

zones and minefields.<sup>84</sup> As a result of this land expropriation, the production of field crops and dairy products was irrevocably damaged and in effect, disappeared completely. The Arab population of the Golan was then forced to depend on Israeli agricultural products and settlement products (in particular for dairy products).<sup>85</sup>

**Mufeed Al Wili from Bqa'atha, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 2.1**

*At the beginning of the occupation, in Bqa'atha , there were four thousand goats and sheep. Now, 42 years later, there are three hundred heads... In a bigger society, we have less. It makes the Golan connected, in the issue of milk and meat, to the Israeli market. The main reason for this [decrease in grazing] is the confiscation of land around the village of Bqa'atha for the settlers, and the border, the ceasefire line also, and the mines. Bqa'atha is surrounded by mines at three sides. One of the grazing areas was used for this purpose. The rest was taken to be used for the settlers' agriculture. The places we used to graze our flocks became agricultural fields for the settlers. What we have left is only the forest of Mas'ada... the nature reservation authority in Israel declared that the presence of the sheep and goats in the forest is harmful. They tried to stop this economic activity in different ways ... by confiscating the flocks and selling them for the benefit of the State of Israel. They did this three times. They brought trucks and the army and they confiscated the flocks. They took them. Usually they took them to be quarantined in Ram Lake and then sold to the*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid 14.*

*butcher but not for the benefit of the people. Also, in many cases the people had to pay taxes or punishments [fines] because it costs the State money to bring trucks, to bring army, to bring labour ... You have to finance your confiscation.*

*...People cannot have the flocks inside the village, they must be outside the village. And then they need licences to build constructions for the flocks. The State didn't give permission. And if you build without permission you have to pay high taxes and punishments [fines] and sometimes they threaten to destroy it. Also there's a limited amount of land available outside the villages.*

In the years since the occupation began, farming in the Golan has become intensive rather than extensive in nature. The intensive farming practices employed by the settlements can be harmful to both the land and the environment in the region.

**Mufeed Al Wili from Bqa'atha, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 2.2**

*I think the prevention of this [grazing] wasn't an accident. Something was planned by the authorities. It was a target. [The production of] meat and milk is flourishing in the settlements. They put tens of thousands of cows in the forests there. They close it here and they open it there. In spite of the fact, if you study the case, concerning environmental issues, the family farm of animals is better for the environment than the intensive one they use in the Israeli settlements. If you put thousands of cows in one place, it can be more harmful. In agriculture, there are two methods: intensive use of land, and extensive use of land. In the oriental system, here in Syria,*

*we use the extensive method. We are not damaging the land by using extensive agriculture. We use organic ways. When the Europeans invade these places, including the Israelis, they deal with the land like thieves. They don't take care and consideration for the generations. They want now. In Syria for instance, we are planting the same lands for tens of thousands of years... Before the occupation, we were using the land in the extensive way, because we were peasants, poor people, we need small quantity of product. We get it, then we rest the whole year, while the settlers want maximum money in minimum time. They don't take care.*

The traditional land-holding system of the Arab villages meant that one half of the land was collectively owned by the villagers, while the other half was individually owned. Prior to 1967, a large proportion of this individually-owned land was not properly registered, and with the occupation the opportunity to register land ended. Mara'i and Halabi noted in 1991 that this lack of registration did not bode well for the future; indeed, that same year the authorities claimed that a large, built up area of Majdal Shams was in fact 'state land'.<sup>86</sup>

The collectively owned lands were sometimes rocky and poor, and therefore used for grazing rather than cultivation. Such lands were a prime target for confiscation as 'state land' and consequently, the collective land was divided up and planted with apple trees under the assumption that the more developed the land, the more difficult it would be to confiscate.<sup>87</sup>

<sup>86</sup> Al Hamishmar, 22 May 1991 in Tayseer Mara'i and Usama R. Halabi, 'Life under occupation in the Golan Heights' (1992) 22(1) Journal of Palestine Studies 85.

<sup>87</sup> Golan for Development, 'The occupied Syrian Golan', 29 September 2009, available at : [http://www.jawlan.org/english/openions/read\\_article.asp?category=13&source=3&link=8](http://www.jawlan.org/english/openions/read_article.asp?category=13&source=3&link=8) accessed 12 December 2009.

The agricultural economy of the Syrian inhabitants has thus come to be based almost exclusively on apples. Shortly after the occupation, the elected 'collective committees' in each village which co-ordinated with Syrian government on farming issues were dissolved. As a result, the government services normally channeled from Damascus – agricultural loans, free fertiliser, the provision of young trees for planting, the marketing of produce – were discontinued. The local inhabitants were not only cut off from Syrian assistance and markets, but forced to sell their produce to Israel instead.<sup>88</sup>

Local Arab farmers in the Golan are further limited in the type of crops they can grow due to the water restrictions imposed on them by the Israeli authorities.

**Mufeed Al Wili from Bqa'atha, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 2.3**

*It's very suitable here to plant kiwi or Pink Lady apples. But kiwis need a lot of water which we don't have. The Pink Lady ... we have to irrigate it until November. We come again to the main problem of water. We have a very specific problem. We mostly need the water in September, the most important month for irrigation. In this month, [for] many years, we reach our quotas and they stop giving us water when we need it very much. It is a paradox. At the beginning of the season we have more water than at the end, but we need the water at the end of the season more than at the beginning. In many cases, our quota is finished at the beginning of September, but we need water for October and November also. This is the reason you cannot plant Pink Lady apples here.*

<sup>88</sup> Tayseer Mara'i and Usama R. Halabi, 'Life under occupation in the Golan Heights' (1992) 22(1) Journal of Palestine Studies 85.

In addition, it is extremely difficult for Arab land owners in the Golan to expand their agricultural businesses given the land limitations enforced by the Israeli authorities.

### Mufeed Al Wili from Bqa'atha, occupied Syrian Golan Al-Marsad Affidavit

#### Extract 2.4

*Most of the Israeli projects in the Golan are subsidised. The land is given free [to the settlers]. We have another problem – if we want more land, we must buy it or rent it from the Israeli authorities. And we cannot recognise the Israeli occupation. And we cannot buy or rent land from the Israelis because we don't consider them the owners of the land. How can we rent the land or buy it from those who don't own it? This is a moral and political issue. They [the Israeli authorities] will not allow us [to buy or rent the land]. And even if they did allow us, we wouldn't accept it, we wouldn't do it.*

### 2.2.3 Obstacles Affecting Residential Development of the Golan's Arab Population

The Israeli authorities have undertaken a number of measures aimed at restricting the development of the protected Syrian population in the occupied Golan. For example, landmines placed in and around the Syrian villages of the region create substantial obstacles for the building of new houses. In 1990 the Israeli state Ombudsman published a report stating that for the most part the mines were unnecessary and of no military value.<sup>89</sup>

<sup>89</sup> Al Marsad NGO Report, 'Suggested issues for Consideration Regarding Israel's Combined tenth, eleventh, twelfth, and thirteenth Periodic Report to the UN Committee on the Elimination of Racial Discrimination (CERD)' 25 January 2007, Al Marsad, the Arab Centre for Human Rights in the occupied Golan 4.



Landmines located in a residential area of the occupied Golan

*Picture sourced from Jalaa Maray archives*

The Israeli law imposed on the Golan means that the opportunities for building are determined according to zoning plans which designate permitted and prohibited areas for building. In the Golan, these zoning plans only permit construction in the Israeli settlements, while imposing severe restrictions on the Syrian villages.<sup>90</sup> The Israeli authorities use urban planning as a political tool to severely curtail the residential development of the Syrian villages in the occupied Golan.

<sup>90</sup> *Ibid* 5.

## Nazeh Brik from Majdal Shams, occupied Syrian Golan Al-Marsad Affidavit

### Extract 2.5

*There are two ways that development is restricted. The first way is that they confiscate land directly, and the second thing is the village building plan, which is made by the authorities, that's another way. The main struggle between the Arabs and Israel is who controls more land. This is the main point. One of the Israeli systems that they use to limit Arabic society development [...] is urban planning. They use it as a tool to limit the Arab society development in this case.*

*... For example if you take Majdal Shams, from the east side, the houses they are close to the [Syrian] border, to the electric fence. And from the west, you have the main street to the Hermon [mountain], which is a military street. So we are closed from all sides. From the north you see the Hermon mountain and the hard topography. In the beginning, the distribution was from inside to outside. But we reach a point where we have to go back inside. Twenty years before, we had public spaces inside, but because we don't have places to build they had to use these public places for residential building. And this process you can see in all the Arab residential areas, even inside Israel, the same process.*

Consequently, residential housing for Syrian Arabs is extremely limited, given the growing population, and residents have been forced to build upwards rather than outwards.

**Nazeh Brik from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit**

**Extract 2.6**

*In all the urban planning made by the State and sometimes permitted by the State, I notice a special attention to high building. In all the Arab places, there is a high density of people and instead of enlarging the space of the village, they build upwards. What is called intensive building, high density. Now they allow in Majdal Shams, six stories, in spite of the fact that it's not suitable for the landscape of Majdal Shams.*

Arab residents who wish to obtain a legal permit in order to build residential housing are forced to concede that land which rightfully belongs to Syria in fact belongs to the State of Israel; for this reason, this is not a viable option for the vast majority of the Golani who still vigorously oppose Israel's ongoing occupation.

**Nazeh Brik from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit**

**Extract 2.7**

*The Israeli administration, they claim that even here in the village, some of the land belongs to the State. So you know if you want to build a house you have to get a permit from the land authority and it's very, very difficult. You have to sign for them that it belongs to Israel. Then they will give you a permit. But a permit doesn't mean that it belongs to you, it means you rent the building land from the Israeli authorities. And the people, they refuse that, most of the people, because it means you know, recognition, accepting the occupation.*

In stark contrast to this, the illegal settlements in the region are set to steadily increase due to an Israeli policy which aims to attract at least one hundred new settlers each year.<sup>91</sup> The Israeli settlements in the Golan provide a striking counterfoil to the Arab villages, in terms of their superior urban planning which encompasses appropriate infrastructure, services and open spaces, as Nazez Brik describes :

### **Nazez Brik from Majdal Shams, occupied Syrian Golan Al-Marsad Affidavit**

#### **Extract 2.8**

*If we compare something, we have the settlement of Neve Ativ. The urban space of Neve Ativ is three times bigger than Majdal Shams and the population of Neve Ativ is maybe one hundred people. In Majdal Shams, there are 10,000. The border of the municipality of Neve Ativ is three times bigger than Majdal Shams...*

*...If you compare Israeli settlements with Arab residential places is that you see a big difference between the two sectors, between the Arab sector and the Jewish settlement. They have large places, green places, but in Majdal Shams for example it is high density, the houses are very close to each other and there are no parks or open places.*

In October 2009, the townspeople of Majdal Shams convened a meeting in the town hall, where it was decided they would reclaim approximately 3000 dunums of land from the mountainside near the village which had been expropriated by the Israelis

<sup>91</sup> UN General Assembly, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the occupied Territories : note / by the Secretary-General' 9 September 2009, A/64339/, para. 90.

in the years since the occupation began. The land acquired is to be distributed equitably among the younger generations of the village (approximately half a dunum each) in order that they be able to build houses when they marry and move out of the family home. Nazeh Brik explains, '...if you look to the Hermon Mountain, the people here in Majdal Shams, they take the initiative to prepare the land for building in spite of the Israeli authorities' refusal. Because, you know, we don't have places to build.'<sup>92</sup> A camp has been established to ensure the continuous presence of villagers on the mountainside while the digging and excavation of the new sites continue.

The Israeli military have allegedly been monitoring the activity taking place on the mountainside. As of yet no confrontation has taken place, however it is uncertain whether the Israeli authorities will permit this reclamation of land without recriminations. The actions of the inhabitants of Majdal Shams are unsurprising, given the harsh restrictions placed on their growing population which prevents extremely necessary and natural expansion.

### 2.2.5 Water Restrictions

Israel is notorious for its expropriation of water resources in the Golan region. The headwaters of the Jordan River are located in the Golan's mountain ranges and Israel sources 121 million m<sup>3</sup> per annum from the Banias River.<sup>93</sup> In light of the scarcity of water resources in the Middle East, the Golan region is of extreme strategic importance to Israel. Indeed, it has been

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<sup>92</sup> Interview with Nazeh Brik, 13 December 2009, Al-Marsad offices, Majdal Shams, occupied Syrian Golan.

<sup>93</sup> UN General Assembly, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the occupied Territories' 9 October 2006, A/61500/I, para. 84.

posited that the 1967 war was instigated in order for Israel to gain control of the Golan's water supply.<sup>94</sup> According to a UN report, the occupied Golan provides Israel with one third of its water consumption.<sup>95</sup>

Shortly after occupation began, the Israeli authorities began implementing numerous policies, in the guise of military orders, aimed at controlling the water resources of the region. Indeed, when talks with Syria vis-à-vis the Golan looked like a real possibility in 1995, the Israeli Prime Minister Yitzhak Rabin proclaimed that 'the greatest danger Israel has to face in the negotiations with Syria is the possibility of losing control over the Golan Heights' water resources'.<sup>96</sup> The issue of water may indeed prove to be a critical stumbling block for future peace negotiations with Syria. Arab grievances in the Golan have been said to centre on 'the preferential treatment Israeli settlements receive in allocation of water, which is scarce and expensive for many Arab farmers.'<sup>97</sup>

Military Order No. 120 decreed on 24 March 1968 appointed an official who had complete authority over all water resources in the Golan and stated that '...no person is allowed to carry out or operate any work related to water, unless by an official permit issued by the official in charge and according to the conditions set on obtaining the permit.' Discriminatory policies

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<sup>94</sup> Michael B. Oren, *Six Days of War: June 1967 and the making of the modern Middle East* (Penguin, 2003) 2.

<sup>95</sup> UN General Assembly, Economic and Social Council Report, 3 May 2007, A/6275-E/200713/, para. 72.

<sup>96</sup> Frederic C. Hof, 'The Water Dimension of Golan Heights Negotiations' (Ch. 6) in Hussein A. Amery and Aaron T. Wolf (eds.), *Water in the Middle East: A geography of peace* (University of Texas Press 2000) 157.

<sup>97</sup> Scott Wilson, 'Golan Heights Land, Lifestyle Lures Settlers' *Washington Post* (Washington DC 30 October 2006).

such as this severely affected the supply of water to the indigenous Syrian population; in contrast, the illegal settlers in the region greatly benefited from the policies.

Native Syrian inhabitants were forbidden from accessing or utilising the water for agricultural purposes, which had a devastating impact on the primarily agricultural economy. In contrast, unlimited amounts of water were provided to the settlements at a low cost.<sup>98</sup> Currently, the Israeli authorities provide settlers with five times the amount of water allocated to Arab farmers, with the former receiving 450 m<sup>3</sup> per dunum<sup>99</sup> of land while the latter are limited to 90 m<sup>3</sup> per dunum. Blatant discrimination exists with regard to both water quotas and costs for the Arab inhabitants of the Golan.

### Mufeed Al Wili from Bqa'atha, occupied Syrian Golan Al-Marsad Affidavit

#### Extract 2.9

*One dunum of apples, to yield a good product, it needs 700 - 800 m<sup>3</sup> [of water] per year. What they [the water company] offer us, is 300 m<sup>3</sup> of water...Also, the price of the water, we pay between 3.8 and 4 shekels per cubic metre, the settlers pay 1.8 to 1.9 shekels.*

<sup>98</sup> Al Marsad Report, 'The occupied Syrian Golan' (2005) Al-Marsad the Arab Centre for Human Rights in the occupied Golan 7 - 8.

<sup>99</sup> International Labour Organization 'The situation of workers in the occupied Arab territories' (International Labour Office, Geneva 2008) para. 84. These quotas were recently reduced from the original 750 m<sup>3</sup> allocated to settlers and 150 m<sup>3</sup> allocated to Arab farmers.

## Shhady Nasralla from Majdal Shams, occupied Syrian Golan Al-Marsad Affidavit

### Extract 2.10

*For the settlers, on average per hectare they use about 8000 m<sup>3</sup> [of water] per year. To compare, the average here for us is about 3000 m<sup>3</sup>. So it's a big difference. It's bad for the crops, the amount, the quality, and how you can store it in the cold storage. It can't be kept for as long a time. And the quality is affected, when you have less water, the crops don't grow as big and they don't weigh as much. It directly affects all the crops. The settlers have less fields than us but [produce] more crops, because they get more water, that's the reason. This is the main problem in the Golan, I was an agronomist in the Golan for about ten years, and we solved all the problems that we had, except the water problem, which was very hard to solve, because there are no resources. From Mekorot [Israel's national water company] we are getting about 1500 - 1600 m<sup>3</sup>, that's all, the rest is our own sources, like tanks.*

The taxation on water in the Golan is structured according to the percentage of water used. Syrian farmers, by necessity, use a higher percentage of their smaller water quota in comparison to that used by the illegal settlers. As a result, the taxation system indirectly discriminates against Syrian farmers.<sup>100</sup> Consequently, the indigenous Syrian farmers are prevented

<sup>100</sup> Ibid 20, at footnote 14. The tax structure is described as follows: ' the first 20 per cent of the allocated water quota costs 1.2 new Israeli shekels (NIS) per m<sup>3</sup> (tariff A). The following 60 per cent costs 2.4 NIS per m<sup>3</sup> (tariff B) and the last 20 per cent are charged at 3.6 NIS per m<sup>3</sup> (tariff C). Owing to their much smaller water quota, Syrian citizens are obliged to use it entirely. They must thus use more water charged at tariffs B and C than Israeli settlers, and, as consequence, pay more on average for water '.

from producing the same quantities of produce as the illegal settler farmers, which has a negative impact on the local Arab economy.<sup>101</sup>

### Mufeed Al Wili from Bqa'atha, occupied Syrian Golan Al-Marsad Affidavit

#### Extract 2.11

*We have [an apple] company operating in two parts of land near Bqa'atha. One [part] belongs to local people, one belongs to the settlements and they rent both. The distance between the two fields is ten metres of road. They contain the same trees, the same systems, the same people work in both. In the local field, we are yielding 40% of what we are yielding from the settlers' field. And there is no difference between the fields. The same trees, the same methods, the same system... They limited the water for the locals' land. In this case, we can prove a good case. Sometimes the yield is even less than 40% [from the locals' land] when we consider the quality. In the apples of the settlers ... the tree itself yields more in terms of weight, quality and quantity. It's a very clear case – the only difference here is the water. In one field, we irrigate what we need, the maximum of 700 m3 of water; the other field, has a maximum of 300 m3.*

In accordance with the Israeli Water Law of 1959, all water resources in the region are considered the property of the state of Israel. The water of Lake Ram, which collects 2 - 3 million

<sup>101</sup> International Labour Organization 'The situation of workers in the occupied Arab territories' (International Labour Office, Geneva 2008) 20.94 Michael B. Oren, Six Days of War: June 1967 and the making of the modern Middle East (Penguin, 2003) 2.

m<sup>3</sup> of water per year,<sup>102</sup> vital for livestock and local irrigation, is piped to Jewish settlements 70 km away.<sup>103</sup> Arab locals currently have only limited access to the lake's water.



Lake Ram

*Picture sourced from Al-Marsad archives*

<sup>102</sup> Anthony H Cordesman, *Peace and War: The Arab-Israeli Military Balance Enters the 21<sup>st</sup> Century* (Praeger, 2001) 354

<sup>103</sup> Golan for Development, '*The occupied Syrian Golan*', 29 September 2009, available at : [http://www.jawlan.org/english/openions/read\\_article.asp?category=13&source=3&link=8](http://www.jawlan.org/english/openions/read_article.asp?category=13&source=3&link=8) accessed 12 December 2009.

**Mufeed Al Wili from Bqa'atha, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 2.12**

*The main source of water for irrigation in the north is... the Ram Lake. It's our water, it's our lake, it's ours. It was confiscated by the national water company Mekorot.*

**Shhady Nasralla from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 2.13**

*Lake Ram was once smaller than it is now. Israel, at the start of the occupation, they took it from the people here, and we were not able to use it. Except at that time the [apple] orchards were lower, they went all the way down to the lake edge. [The Israeli authorities] pumped all the water in the winter from the Banias river into the Lake, and the level of the water [in the lake] went up and up and up, over the orchards. They were collecting the water for the settlers, and [Lake Ram] was a good reservoir and not expensive. So it flooded the orchards. Some of the people got some money, but not a true price. Some didn't, some didn't want to deal with the Israelis... Before that, people living around the lake were using the water for free, all the time, you could pump as much water as you want, before the occupation. But after the occupation, no-one was able to pump water from the Ram Lake.*

Fearful of the possible confiscation of their major spring, "Ras al-Nab'a" (some of which was already being diverted by the Israelis during the winter months), the local population undertook economic projects to ensure their continued access to water in spite of the occupation. The traditional irrigation system of open channels was discontinued for fear

of vulnerability to Israeli claims of excessive water use. A new modern irrigation project was completed in 1974, the cost of which was entirely borne by the townspeople themselves.<sup>104</sup>



Iron tank erected by a local Syrian farmer in the occupied Golan

*Picture sourced from Al-Marsad archives*

The local Syrian farmers also erected approximately 650 iron tanks in their apple orchards as a way of accessing water. The Israeli authorities banned the construction of these tanks between 1983 and 1985. Consequently, heavy fines were imposed on the farmers and several of the tanks destroyed on grounds that all water resources, even rainwater, belonged to the state. Later, permits could be obtained for tanks if precise

<sup>104</sup> Tayseer Mara'i and Usama R. Halabi, 'Life under occupation in the Golan Heights' (1992) 22(1) *Journal of Palestine Studies* 86.

designs were submitted; however the ban on the construction of new water tanks remained, as Shhady Nasralla explains :

**Shhady Nasralla from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit**

**Extract 2.14**

*In the 1980s... people started to build metal water collectors for about 700 - 800 m<sup>3</sup> per year... It was very expensive. The people had trouble with the authorities here, the Israeli authorities. They wanted a licence to build these tanks. For them [the authorities], it was important to have a counter on every tank, to count how much water you are using and to pay to the authorities for the water collected. So it was a long conflict between the authorities and the people here, and at the end, they reached a compromise. No counters, no meters to count the water that you are collecting from the rain, but the people had to have a licence for the tanks.*

The Israeli settlements in the Golan derive much of their water supply from numerous reservoirs located in the region. The reservoirs provide approximately 80 million m<sup>3</sup> of water per year which is sufficient to support the agricultural activities of the settlers. Certain reservoirs are in fact located on the ruins of villages destroyed by the Israeli military in the aftermath of the 1967 war.

**Shhady Nasralla from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit**

**Extract 2.15**

*At the start, the water in the reservoirs was provided by Mekorot, but now the reservoirs in the Golan are made by the settlers themselves. They have a company called Mey*

*Golan, which is specifically for the settlers only, without us. We cannot [utilise that water]. We are not settlers. So it's a company for the Golan settlers ... Some reservoirs are built on destroyed villages. When the level of water goes down, you can see the houses.*

Policies aimed at controlling the water resources of an occupied territory violate Article 55 of the Hague Regulations which states that the Occupying Power 'shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct'.

Israel's exploitation of the Golan's water resources also violates the right of the Syrian population to freely utilise their natural resources as stated in Article 1(2) ICCPR. The discriminatory water policies affecting Syrian farmers violate Article 2(1) ICCPR and Article 2(2) ICESCR, as well as Article 2 of CERD. In a 2009 report, the UN General Assembly drew attention to the water situation in the occupied Syrian Golan, in particular the discriminatory policies which ensure that settlers receive unlimited water at minimal cost, while Arab farmers pay more and are allocated less.<sup>105</sup>

### **2.2.6 Failure of the Occupying Authorities to Subsidise Services and Infrastructure**

Several self-supporting community projects have been initiated by the indigenous inhabitants of the Golan over the years. As

<sup>105</sup> UN General Assembly, 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the occupied Territories : note / by the Secretary-General' 9 September 2009, A/64339/, para. 91.

in the other occupied territories, the Israeli authorities have failed to equip the Arab towns and villages of the region with basic infrastructure and services, despite the taxes paid by the inhabitants. The existence of essential facilities, such as schools, is often dependent on the initiative of the local Arab community rather than being provided by the state authorities as one would expect.

**Jameel Awad from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 2.16**

*I was involved in building three schools in the village here. These schools were built by volunteers and donations of the local people. In 1987, we enlarged the elementary school with different rooms, and between 1986 and 1987 we added thirteen rooms to another school. The schools were in great need of furniture, infrastructure and labs. There wasn't a budget for these projects and the State didn't offer it. Every year we collect donations from the people for different projects, for instance for the lab. We collected donations from people and put a lab in the secondary school. During the 1990s, we collected more donations to bring computers to the schools...*

*... We wanted to establish a big school and we hadn't land. Then we go to the people who have a place near the football pitch and we offer to take their land in this place and to give them instead another place in the village. By this system, we own the land that we establish the new school on.*

The Israeli authorities fail to provide even the most basic infrastructure for the Golan's Arab inhabitants. The local population are forced to decide which infrastructure is most

urgent, organise a system of donations from the townspeople and oversee the completion of the project; in this case, the building of roads :

**Jameel Awad from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 2.17**

*When we dig the sewage system, we used the roads and then we damaged most of the roads in the village, and when we finished, we collect money, donations from society and we rebuilt the roads again.*

*...A fire flamed up in the mountain and we needed to get there to fight the fire. We were forced to put a road in the mountain, and then we enlarged the road and we have now a new road in the mountain. A lot of houses didn't reach the main road, they were far from the main road. We put single roads to this and that house, to connect all the houses to the road.*

Fundamental services such as healthcare are often neglected by the occupying authorities, compelling the local population to take matters into their own hands when faced with poorly run or inefficient Israeli alternatives.

**Salman Fakhir Aldeen from Madjal Shams, occupied Syrian Golan  
Al-Marsad Affidavit  
Extract 2.18**

*Previously we had one clinic belonging to the Israeli society of health which had a health service consisting of four people, based on membership of the Histadrut, the Israeli workers' trade union. To be served in the clinic, you had to be a member of the Histadrut. And people didn't like it. But usually all the*

*people who worked in Israeli projects they were automatically members of the Histadrut. This clinic was open for three hours a day which wasn't enough. There was a need for the local people to join up in an NGO committee, I was one of them at the time, and the first thing that we did was a survey of the Golan, and we took Majdal Shams as an example. And we decided, according to the survey, to establish a new independent system of health.*

*It was established as a clinic. At that time we had two physicians working in it. We were helped by different Arab physicians who sometimes volunteered, or sometimes worked very long hours. And less than a year after that, the first step taken was that each family had to pay per month fifty shekels. And then they will receive urgent health care in the clinic of the Golan.*

In 1995, three years after the opening of the clinic, Israel introduced the National Health Insurance law which sets forth the state's responsibility to provide health services for all residents of the country. The Arab Committee in the Golan then became a sub-contractor to the state of Israel for the provision of health services in the area.

As Jameel Awad points out, 'The State didn't do these projects. And they didn't finance them. We have to get donations from society and we have to construct it with our own hands. Even though we pay taxes to Israel'.<sup>106</sup> Despite this, the local community have experienced resistance from the Israeli authorities with regard to these projects in spite of their largely non-political nature. This is clear from events surrounding the establishment of kindergartens in several of the Syrian villages :

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<sup>106</sup> Interview with Jameel Awad, 13 December 2009, Al-Marsad offices, Majdal Shams, occupied Syrian Golan.

**Salman Fakhir Aldeen from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit**

**Extract 2.19**

*It was a big competition at the beginning... I remember at that time, when we began this clinic, they renewed the official [Israeli] clinic, they enlarged the services there, and it was supported by the municipality, by the army and the health office. It was only to make competition. But they don't succeed because most of our efforts were done for health, and most of their effort was made for political reasons. And in the issue of proficiency, we succeeded more because we have a 24 hour clinic open; they cannot do it, it is very expensive for them. And by the time we begin gaining new memberships, we make a big campaign for joining the local clinic, because according to the policy of the committee, all the money gained from health has to go back to health.*

Furthermore, the authorities have attempted to compete with this provision of services by the local community. One Committee member involved in the founding of the healthcare clinic in Majdal Shams describes the reaction of the Israeli authorities upon the establishment of the new clinic :

**Salman Fakhir Aldeen from Majdal Shams, occupied Syrian Golan  
Al-Marsad Affidavit**

**Extract 2.20**

*Concerning the kindergarten, this service wasn't given to people here. And in all the villages, they set up kindergartens, and then after that... the Israeli authorities, they began to make kindergartens, in competition with us. We begin and they continue. The Israel authorities fought against the kindergartens. I know for instance, in 'Ein Qinyeh, the society*

*set up a kindergarten there. And some activist from the village donated to them a payment for two months' electricity and water. He paid it. Then he was investigated by the income tax people. They said, 'You paid the electricity for the kindergarten?' He said 'Yes, I donated money to them'. They said, 'No, no, impossible, you didn't donate, you own the kindergarten, and you are working, and you are having this business and you don't declare it.' And they punished him at that time with a \$1500 fine in the court because they don't believe that he donate the money to the kindergarten. It's one case, what we call it in Arabic, 'I will not help you, and I will not let you help yourself.' This is the idea here.*

This plethora of economic restrictions and discriminatory policies imposed by the state of Israel severely curtails the ability of the people of the occupied Golan to develop a strong and independent local economy. Such restrictions contrast starkly with the incentives and financial support provided to businesses and industry in the Israeli settlements of the Golan, where settlement production flourishes.

### 2.3 The Right of Sovereignty over Natural Resources

A variety of United Nations General Assembly resolutions prohibit an Occupying Power from profiting from an occupation. Israel persistently violates United Nations General Assembly resolutions concerning the sovereignty of the Arab inhabitants of the occupied Golan over their natural resources. **UN Resolution 1803 (XVII) Declaration on Permanent Sovereignty over Natural Resources 1962** established that 'the right of peoples and nations to permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well

being of the people of the State concerned' and infringement of this right runs 'contrary to the spirit and principles of the Charter of the United Nations and hinders the development of international cooperation and the maintenance of peace.'

**UN Resolution 3336 (XXIX) Permanent sovereignty over national resources in the occupied Arab territories 1974**

'reaffirms the right of the Arab States and peoples whose territories are under Israeli occupation to full and effective permanent sovereignty over all their resources and wealth' and also 'reaffirms that all measures undertaken by Israel to exploit the human, natural and all other resources and wealth of the occupied Arab territories are illegal and calls upon Israel immediately to rescind all such measures.'

**UN Resolution 38 / 144 Permanent sovereignty over national resources in occupied areas 1983**

'calls upon all States, international organizations, specialized agencies, business corporations and all other institutions not to recognize, or co-operate with or assist in any manner in, any measures undertaken by Israel to exploit the national resources of the occupied Palestinian and other Arab territories.'

**UN Resolution 59/251 Permanent sovereignty of the Palestinian people in the occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources 2005**

'reaffirms the inalienable rights of the Palestinian people and the population of the occupied Syrian Golan over their natural resources, including land and water' and 'calls upon Israel, the Occupying Power, not to exploit, damage, cause loss or depletion of or endanger the natural resources in the occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.'

**UN Resolution 63/201 Permanent sovereignty of the Palestinian people in the occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources 2009** 'reaffirms the inalienable rights of the Palestinian people and the population of the occupied Syrian Golan over their natural resources, including land and water' and 'calls upon Israel, the Occupying Power, not to exploit, damage, cause loss or depletion of or endanger the natural resources in the occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.'

Furthermore, Article 2(1) ICCPR and Article 2(1) ICESCR state that

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

It is abundantly clear that the exploitation of a people's natural resources violates fundamental principles of international law.

## **2.4 Illegality of Settlement Products**

The illegality of settlement products can be argued from a number of legal viewpoints. As already discussed, Israel's exploitation of the natural resources of the occupied Syrian Golan, for use by its own civilian population, is in open violation of international law principles which protect the sovereignty of a people over the natural resources of their region.

Goods produced by Israeli settlements in the Golan rely heavily on the plundering of the region's natural resources; for example, the Eden Springs mineral water company makes use of the Slokia Spring while the various wineries are reliant on vineyards in the Golan. This 'pillage' or 'plunder' is prohibited under international law, specifically under the Hague Regulations which state that 'Pillage is formally forbidden' (Art 47); the Fourth Geneva Convention which asserts that 'Pillage is prohibited' (Art 33), as well as Article 8(2)(b)(xvi) of the Rome Statute of the International Criminal Court.

In addition, the status of Israel in the occupied territories is that of a 'belligerent occupier.' The laws of belligerent occupation can be found in the Hague Regulations 1907 and the Geneva Conventions (and their protocols) 1949. The Hague Regulations provide that 'private property...must be respected...[and] cannot be confiscated' (Art 46). Property and resources may not be requisitioned except for the needs of the occupying army and must be paid for by the Occupying Power (Art 52). Furthermore, the Occupying Power 'shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct' (Art 55).

The Fourth Geneva Convention 1949 forbids 'any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or two other public authorities, or to social or cooperative organisations' (Art 53) and further states that 'the Occupying Power may not requisition foodstuffs, articles or medical supplies

available in the occupied territory' (Art 55). The Commentary to the Convention asserts that the Occupying Power 'may not requisition supplies for use by its own population'.<sup>107</sup> It can be drawn from these elements of IHL that an Occupying Power must not profit from an occupation.

Moreover, and perhaps most importantly, IHL prohibits the very existence of settlements in an occupied territory. Many illegal settlements in the Golan now have thriving industries which produce and sell a range of goods, some of which are exported internationally. The profit from this trade helps to ensure the financial viability of the settlements and thus arguably helps to perpetuate the conflict. As products of illegal entities, it can feasibly be argued, as a corollary, that the settlement products themselves are inherently illegal.

Despite this, the EU continues to import such goods under the remit of its trade agreements with Israel. The following section sheds lights on the issues relating to trade in settlement products, discussing Europe's role in perpetuating Israeli violations of international humanitarian and human rights law.

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<sup>107</sup> Jean S. Pictet (ed) *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross 1958) 311 para 2(1).

## **Section 3 :**

**Active Acquiescence – Settlement Production  
and the Failings of Europe**

### 3.1 EU-Israel Trade Relations: A Brief Overview

Economic and political relations between Europe and Israel have always been of a complex and charged nature. Israel's diplomatic association with the European Community (EC) can be traced back to 1958, when it became one of the first nations, after the United States and Greece, to establish relations with the newly formed Community.<sup>108</sup> The inaugural non-preferential trade agreement concluded between both parties was signed in 1964 and operated to reduce Community tariffs and custom duties on certain goods of particular interest to Israel.<sup>109</sup> Owing to the outbreak of the Six-Day War in 1967, no further agreements were negotiated until 1970, which witnessed the emergence of the First Preference Agreement between the EC and Israel. In the early seventies, however, the EC began to transform its policy approach to the Mediterranean region. The Community envisaged the establishment of a Euro-Mediterranean Partnership, which would serve to promote peace and economic prosperity in the region and eventually give rise to a Free Trade Area. As affirmed at the Paris Summit of Community leaders in 1972, the principle components of this policy would be the liberalisation of trade in the industrial sector, tariff concessions and forms of cooperation with regard to financial assistance.<sup>110</sup>

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<sup>108</sup> Christian Hauswaldt, 'Problems under the EC-Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip under the EC-Israel Association Agreement' (2003) 14 *European Journal of International Law* 591, 594. The Community at that point was comprised of Belgium, Luxembourg, the Netherlands, France, Germany and Italy.

<sup>109</sup> Ilan Greilsammer and Joseph Weiler (eds), *Europe and Israel: Troubled Neighbours* (Walter de Gruyter, 1988) 57.

<sup>110</sup> A.E. Kellerman, K. Siehr and T. Einhorn (eds), *Israel Among the Nations* (Martin Nijhoff Publishers, 1998) 266.

The proposed Euro-Mediterranean Partnership was effectively predicated on achieving regional integration between the EU and third-party Mediterranean countries, in addition to fostering enhanced relations between third-party Mediterranean countries themselves.<sup>111</sup> During this period, European-Israeli trade links were further strengthened in 1975 with the signing of the EC-Israel Co-operation Agreement. This 'Free Trade Agreement', as it is often referred to, provided the legal basis for economic relations between both sides and sought to promote the expansion of trade and increase competition on a reciprocal basis.<sup>112</sup> Furthermore, the Agreement endeavoured to abolish custom duties and other restrictions on trade in both the EC and Israel.

The enlargement of the EC during the 1980s to encompass Spain, Portugal and Greece, proved economically challenging for Israel, in large part due to the substantial increase in market competition amongst agriculture exports, which the accession of these countries engendered. In addition, mounting concerns were raised with regard to Israel's growing trade deficit with the Community. As a corollary, Israel pursued a policy of strengthening ties with Europe and subsequently, its privileged partnership with the EU was underscored at the Essen European Council in 1994. By 1995, Israel had succeeded in renewing negotiations on revising and expanding the remit of the 1975 Agreement, which eventually culminated in the ratification of the EU-Israel Association Agreement in June 2000.

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<sup>111</sup> Communication from the Commission to the Council and European Parliament on the *'Implementation of the Interim Agreement on Trade and Trade-Related Matters between the European Community and Israel'* SEC (1998) 695 final, Brussels, 12.05.1998, 3.

<sup>112</sup> A.E. Kellerman, K. Siehr and T. Einhorn (eds) *Israel Among the Nations* (Martin Nijhoff Publishers 1998) 3.

### 3.1.1 The EU-Israel Association Agreement

The EU-Israel Association Agreement, signed on 20 November 1995 and subsequently ratified by the then Member States parliaments, the European Parliament and the Knesset, entered into force on the 1 June 2000 and is presently the legal basis governing relations between the European Communities and Israel. These association agreements, which Europe entered into with countries in the Mediterranean region, were tasked with fulfilling the broad objectives of the Euro-Mediterranean Partnership under the 'Barcelona Process'. The main components of the EU-Israel Association Agreement deal with diverse areas of common interest and include regular political dialogue, provisions regarding the liberalisation of trade and services, in addition to a strengthening of economic, social and cultural cooperation.<sup>113</sup> The Agreement established two formal institutions, namely the Association Council and the Association Committee. An Association Council was established in accordance with Article 67 of the Agreement and consists of members of the European Council, Commission and members of the Israeli Government. The Council meets once a year to 'examine any major issues arising within the framework of this Agreement and any other bilateral or international issues of mutual interest.'<sup>114</sup> The Council is supported in its functioning by an Association Committee, which is tasked with implementing the provisions of the Agreement.

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<sup>113</sup> The agreement also aimed to ease trading tariffs and requirements, build upon the 1975 Agreement by means of improving the terms of trade in agricultural and manufactured products and furthermore, foster scientific and technological cooperation.

<sup>114</sup> *Article 67 of the EU-Israel Association Agreement.*

The EU-Israel Association Agreement is of considerable economic importance and magnitude to the respective parties involved. Israel is considered one of the largest trading partners in the Euromed region and is ranked as the EU's 25th major trading partner, engaging in trade with the EU in excess of 25.7 billion euro in 2007.<sup>115</sup> Additionally, the EU imported goods from Israel valued in the region of 11.3 billion euro in 2007, a substantial figure which serves to underscore the evolving significance and increasing enormity of trade relations established under the Agreement. The strength and depth of economic ties is also readily discernible in light of the fact that the EU is Israel's largest market for exporting goods and represents its second largest source of imports after the United States.<sup>116</sup> The Association Agreement, however, has been the focus of much controversy and debate, both prior and subsequent to its inception. Much of this controversy has centred on the Israeli Government's practice of certifying or labelling products, originating in illegal Israeli settlements in the West Bank, Gaza, East Jerusalem and the occupied Syrian Golan, as being Israeli in origin, a practice in direct violation of the EU-Israel Association Agreement.<sup>117</sup> Furthermore, the EC has more recently been charged with a failure to comply with its own human rights obligations under the Association Agreement and international Law.

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<sup>115</sup> See European Commission website [http://ec.europa.eu/trade/issues/bilateral/countries/israel/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/israel/index_en.htm) accessed 19 October 2009.

<sup>116</sup> *Ibid.*

<sup>117</sup> Euro-Mediterranean Human Rights Network 'A Human Rights Review on the EU and Israel – Relating Commitments to Actions 2003 - 2004' (December 2004) 17 <<http://www.euromedrights.net/usr/0000002600000234/00000028/00000027/.pdf>> accessed 19 October 2009.

### 3.1.2 'Rules of Origin' Dispute

As early as 1997, the European Commission shed light on the improper application and implementation of the Protocol on Rules of Origin attached to the then EC-Israel Interim Agreement, which governed trade relations pending ratification of the Association Agreement.<sup>118</sup> Under the Agreement, each party granted the other preferential economic status, a corollary of which is that goods exported by either party would be exempt from custom duties and quantitative restrictions. The fundamental problem derived from the parties' differing interpretation of Article 38 of the Interim Agreement (subsequently Article 83 of the Association Agreement) which stated that the Agreement applied to the territories of the EC and 'to the territory of the State of Israel.'<sup>119</sup> The underlying flaw was that no further clarification or definition on what precisely constituted 'the territory of the State of Israel' was provided. Israel applied this agreement with the EC to the territories it has occupied since 1967 and in accordance with 'the same generally rejected interpretations of public international law on which it bases its rejection of its legal status and obligations as an occupying power.'<sup>120</sup> The unilateral annexation of East Jerusalem and the Golan means that, as a matter of Israeli law, they comprise part of the State of Israel. International law and indeed Community law take a decidedly different view, however, one concluding that neither Israeli settlements in the

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<sup>118</sup> Communication from the Commission to the Council and European Parliament on the 'Implementation of the Interim Agreement on Trade and Trade-Related Matters between the European Community and Israel' SEC (1998) 695 final, Brussels, 12.05.1998, 5.

<sup>119</sup> *Ibid* 7.

<sup>120</sup> Euro-Mediterranean Human Rights Network 'A Human Rights Review on the EU and Israel – Relating Commitments to Actions 2003 - 2004' (December 2004) 28 <http://www.euromedrights.net/usr/0000002600000234/00000028/000000271.pdf> accessed 19 October 2009.

Golan nor East Jerusalem form part of the State of Israel.<sup>121</sup> In implementing the Association Agreement, Israel refused to recognise the inherent distinction between products emanating from occupied territories and those emanating from the State of Israel. Products exported to the EC from Israeli settlements in the occupied territories were ineligible for preferential treatment and thus Israel's practice of certifying them as Israeli in origin was in clear violation of the Association Agreement.

After years of diplomatic wrangling on the issue, the labelling dispute was purportedly resolved in February 2005 when the EU and Israel implemented a non-binding 'technical arrangement', the purpose of which was to enable custom officials 'to distinguish Israeli settlement products from those originating within Israel's internationally recognised borders for the purpose of denying preferential treatment...to settlement products.'<sup>122</sup> Under this 'technical arrangement', Israel would list on each proof of origin the names and Israeli post codes of production locations relied on to establish if the product in question was entitled to preferential treatment. Member State customs authorities would examine the proof of origin issued by Israel by referring to a list of settlement names and postcodes compiled by the European Commission. Accordingly, customs officials would void any proof of origin and refuse preferential treatment where a product was found to originate from a

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<sup>121</sup> United Nations Security Council Resolution 497 (17 December 1981) which declared the annexation of the Golan null and void and without international legal effect. UNSCR 5933/ on 31 January 2005 reiterated the illegality of settlement construction in the Golan.

<sup>122</sup> Euro-Mediterranean Human Rights Network '*Third Annual Review on Human Rights in EU-Israel Relations – Accommodating to the 'Special' case of Israel 2005 - 2006*' (June 2007) 42  
<<http://www.euromedrights.net/usr/0000002600001339/00000028/00000027/.pdf>>  
accessed 19 October 2009.

settlement location.<sup>123</sup> Whilst the Commission ostensibly considers that the 'technical arrangement' in place should secure the proper functioning of the Association Agreement, the Euro-Mediterranean Human Rights Network has noted that one Member State representative has acknowledged that 'the technical arrangement can be circumvented easily and that is undoubtedly happening.'<sup>124</sup> Furthermore, HM Revenue and Customs has also raised concerns that Israeli settlement products are circumventing import taxes and illegally benefiting from the EU-Israel Association Agreement.<sup>125</sup>

Perhaps the most rudimentary problem regarding the implementation of the Protocol on Rules of Origin under the Association Agreement is that the effective operation of the system relies almost entirely on the 'good faith' assumption that the correct labelling is being applied by the exporting country. Customs officials are not empowered to travel to Israel or the occupied territories and verify the origin of the products being exported and thus 'when Israeli importers deliberately declare an incorrect place of origin, customs agents are powerless to react.'<sup>126</sup> In addition, it has been asserted that some Israeli

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<sup>123</sup> Euro-Mediterranean Human Rights Network 'A Human Rights Review on the EU and Israel: Mainstreaming or Selectively Extinguishing Human Rights? 2004 - 2005' (December 2005) 35  
<http://www.euomedrights.net/usr/0000002600000328/00000028/00000027/.pdf>  
 accessed 20 October 2009.

<sup>124</sup> Euro-Mediterranean Human Rights Network 'Third Annual Review on Human Rights in EU-Israel Relations – Accommodating to the 'Special' case of Israel 2005 - 2006' (June 2007) 42  
<http://www.euomedrights.net/usr/0000002600001339/00000028/00000027/.pdf>  
 accessed 19 October 2009.

<sup>125</sup> 'Concerns over Israel Settlement Products' (BBC News 5 November 2008) [http://news.bbc.co.uk/2/hi/middle\\_east/7708244.stm](http://news.bbc.co.uk/2/hi/middle_east/7708244.stm) accessed 20 October 2009.

<sup>126</sup> Ralf Beste and Christoph Schult, 'EU Eyes Exports from Israeli Settlements' (Business Week 14 July 2009)  
[http://www.businessweek.com/globalbiz/content/jul2009/gb20090714\\_889274.htm](http://www.businessweek.com/globalbiz/content/jul2009/gb20090714_889274.htm)  
 accessed 28 November 2009.

corporations have been known to misrepresent the production address on certificate of origin documentation or duplicitously apply the postcode of a business premises located inside Israel rather than the actual production location, in order to circumvent the application of custom duties.<sup>127</sup>

### 3.1.3 Impending ECJ Judgment on 'Rules of Origin'

Recently, the 'Rules of Origin' issue has come before the European Courts and its impending judgment may well set a precedent for how customs officials deal with incorrect certificate of origin documentation. The Finanzgericht Hamburg (Finance Court, Germany) referred a case to the ECJ for a preliminary ruling, asking the Court 'to rule on whether the EC-Israel Agreement or the EC-PLO Agreement can be applied without distinction to goods certified as being of Israeli origin but which prove to originate in the occupied territories...'<sup>128</sup> The case itself concerned Brita GmbH, a German company importing goods manufactured by Soda-Club Ltd, a company based in Mishor "Adumin" in the West Bank. Brita sought preferential treatment for the goods under the EC-Israel Association Agreement and informed German customs authorities that the products originated in the 'State of Israel'. Although preferential tariff treatment was provisionally granted to the products, the German customs office requested the Israel custom authorities to verify the proof of origin

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<sup>127</sup> 'Settlement Products – the Issues and Advocacy Messages in Relation to the European Union' at 2  
[http://www.oikoumene.org/fileadmin/files/wcc-main/documents/p3/worldweekforpeace/documents/2009\\_settlement\\_products.pdf](http://www.oikoumene.org/fileadmin/files/wcc-main/documents/p3/worldweekforpeace/documents/2009_settlement_products.pdf) accessed 20 October 2009.

<sup>128</sup> Advocate General's Opinion in Case C-38608/ Brita GmbH v Hauptzollamt Hamburg-Hafen (29 October 2009) para. 5.

attributed to the products. The latter's response was to affirm that the goods in question originated 'in an area that is under Israeli Customs responsibility', without properly addressing the question regarding whether they had been manufactured in Israeli occupied settlements.<sup>129</sup> Consequently, German customs authorities withdrew preferential treatment in light of the insufficient information provided, as they could not establish decisively if the goods fell within the remit of the Association Agreement.

Brita subsequently challenged the recovery of custom duties amounting to 19,155.46 euro and the German court stayed proceedings, pending a preliminary ruling on the matter from the ECJ.<sup>130</sup> In an advisory opinion handed down on 29 October 2009, Advocate General Bot held that 'preferential treatment under the EC-Israel Agreement cannot be applied to goods originating in the West Bank and, more generally, in the occupied territories.'<sup>131</sup> Although the Advocate General's Opinion is not binding on the ECJ, if the Court delivers a similar judgment and decides that a custom duty can be levied, 'it will be tantamount to handing down a decision against Israel's settlement policy.'<sup>132</sup> Moreover, an analogous ruling by the ECJ would set a much welcome and timely precedent on the issue. The Brita case serves to highlight that, in its current guise, the non-binding 'technical arrangement' entered into by the EU and Israel remains a deeply flawed mechanism, easily

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<sup>129</sup> *Ibid para. 54 - 57.*

<sup>130</sup> *Ibid para. 58.*

<sup>131</sup> Europa Press Release No 97/09 '*Advocate General's Opinion in Case C-386 / 08*'.

<sup>132</sup> Ralf Beste and Christoph Schult, '*EU Eyes Exports from Israeli Settlements*' (Business Week 14 July 2009)

[http://www.businessweek.com/globalbiz/content/jul2009/gb20090714\\_889274.htm](http://www.businessweek.com/globalbiz/content/jul2009/gb20090714_889274.htm)  
accessed 28 November 2009.

prone to circumvention. Accordingly, it should be subjected to immediate reform if any modicum of credibility is to be restored to EU-Israel trade relations.

### 3.1.4 Product Labelling

The labelling of settlement products is an equally intricate and thorny issue. In this respect, the EU has failed to adequately distinguish between goods produced in Israel and those emanating from illegal settlements in both the occupied Syrian Golan and Palestinian Territories. There is currently no requirement for Israeli settlement products, retailed in the EC, to be labelled as such.<sup>133</sup> The European Parliament and Council Directive 2000/13/EC, contains the main Community law provisions governing the labelling, presentation and advertisement of foodstuffs.<sup>134</sup> The rationale underpinning the Directive is evidenced in recital (6), which affirms that the principal consideration of any rules regarding labelling should be that of ensuring that the consumer is both informed and protected. Furthermore, recital (14) states the labelling laws should prohibit the use of information that would mislead the purchaser. To this end, Article 2(1) provides that :

1. The labelling and methods used must not :
  - (a) be such as could mislead the purchaser to a material degree, particularly:

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<sup>133</sup> 'Settlement Products – the Issues and Advocacy Messages in Relation to the European Union' 2 [http://www.oikoumene.org/fileadmin/files/wcc-main/documents/p3/worldweekforpeace/documents/2009\\_settlement\\_products.pdf](http://www.oikoumene.org/fileadmin/files/wcc-main/documents/p3/worldweekforpeace/documents/2009_settlement_products.pdf) accessed 20 October 2009.

<sup>134</sup> Directive 200013//EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs.

- (i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;<sup>135</sup>

Article 3(8) contains further compulsory measures, requiring that the ‘particulars of the place of origin or provenance where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff’<sup>136</sup> be provided on the label. The labelling of goods such as Yarden wine, which often characterises its place of origin as ‘produce of Israel’, when in reality it originates from an illegal Israeli settlement, is manifestly incorrect. This is particularly so when one considers that such products do not qualify for preferential treatment under the EU-Israel Association Agreement. However, whilst labelling products as originating in the ‘Golan Heights’ might be considered a more precise description of their geographical origin, the use of such terms may prove misleading to customers who do not realise they are purchasing goods produced in illegal Israeli settlements. These forms of misrepresentation are contrary to the principles enshrined in the 2000 Directive. The same can be equally said with regard to ambiguous product labels that state the ‘West Bank’ as a place of origin. However, since the ‘West Bank’ is a recognised geographical area within the occupied Palestinian Territories, labelling products as originating from the ‘West Bank’ does not technically contravene EU labelling rules despite its potentially misleading nature.

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<sup>135</sup> *Directive 200013//EC Article 2(1).*

<sup>136</sup> *Directive 200013//EC Article 3(8).*

Although companies selling settlement products have affirmed that their respective labelling practices are in compliance with EU standards, in reality, a vast majority of consumers are potentially being misled into believing they are purchasing goods from local farms in the Golan when instead, they are inadvertently financing the economies of illegal Israeli settlements.<sup>137</sup> In a shrewdly phrased response to one troubled consumer, British retailer, Waitrose, stated that ‘whatever our own views may be about Israeli products, we do not think it is right to ask our buyers to base their choice of products on any other criteria than the commercial ones of quality and value for money.’<sup>138</sup> This sits at odds with a more recent statement in which a Waitrose spokesman declared that ‘we are not motivated by politics. We label the products as West Bank so customers can make informed decisions.’<sup>139</sup> The Waitrose definition of ‘informed’ is somewhat generous at best. Word wizardry aside, consumers are merely asking for accurate labelling to be provided in order to make an informed decision. Everyone is entitled to base their product choice on ethical and human rights considerations should they so wish. In the absence of any ECJ ruling as to what constitutes ‘misleading the purchaser to a material degree’ in relation to settlement products, the issue of ‘informed labelling’ will continue to remain an exceedingly malleable concept amongst retailers. Accordingly, at present, companies are

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<sup>137</sup> Paul Gallagher, ‘*Illicit settler food Sold in UK stores*’ *The Observer* (London 6 July 2008) <http://www.guardian.co.uk/world/2008/jul/06/israelandthepalestinians.supermarkets> accessed 28 November 2009.

<sup>138</sup> *Ibid.*

<sup>139</sup> James Hall, ‘*Waitrose and Wm Morrison face a week of protests*’ *The Daily Telegraph* (London 3 November 2009) <http://www.telegraph.co.uk/finance/newsbysector/retailandconsumer/6496376/Waitrose-and-Wm-Morrison-face-a-week-of-protests.html> accessed 28 November 2009.

arguably operating within the letter but outside the true spirit of Council Directive 2000 / 13 / EC.

Auspiciously, winds of change, with regard to the labelling of settlement produce, appear to be blowing in Britain. On 10 December 2009 the Department for Environment, Food and Rural Affairs (DEFRA) issued voluntary technical guidance to UK retailers and importers wishing to respond to consumer demand for more accurate information on the origin of food produced in the occupied Palestinian Territories. In its non-binding advisory, DEFRA recommended that supermarkets differentiate between Palestinian produce and products originating from Israeli settlements, stating that labels 'could take the form, for example, of 'Produce of the West Bank (Israeli settlement produce)' or 'Produce of the West Bank (Palestinian produce)' as appropriate.'<sup>140</sup> The recommendation further affirmed that traders would be committing a criminal offence 'if they were to declare produce from the OPT (including from the West Bank) as 'Produce of Israel.'<sup>141</sup> Although the Foreign Office sought to reiterate that it opposed any boycott of Israel or Israeli products, Israeli officials were said to be incandescent with rage, expressing their condemnation of the move to officials at the British Embassy. Israel's foreign minister, Yigal Palmor, expressed his disappointment and concern at DEFRA's advisory, asserting that 'it looks like it is catering to the demands of those whose ultimate goal is the boycott of Israeli products.'<sup>142</sup> Whilst the advisory fails to

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<sup>140</sup> Department for Environment, Food and Rural Affairs '*Technical Advice: Labelling of Produce Grown in the occupied Palestinian Territories*' available at :<http://www.defra.gov.uk/foodfarm/food/pdf/labelling-palestine.pdf> accessed 11 December 2009.

<sup>141</sup> Ibid.

<sup>142</sup> Alex Ralph '*Fury at UK move to label settlement produce as Israel talks of 'concern'*' The Times (London 11 December 2009) <http://www.timesonline.co.uk/tol/news/uk/article6952943.ece> accessed 11 December 2009.

specify how produce, originating from illegal settlements in the occupied Syrian Golan, should be labelled, it is irrefutably a step in the right direction. As one commentator observed, ‘a cooler analysis will recognise that the United Kingdom, which has been a pretty staunch friend of Israel for 30 years, is acting as a “stalking horse” for world opinion that has lost patience with Israel’s expansion...’<sup>143</sup> The issuing of these guidelines represent a small but important triumph for those championing the right of consumers to know the true origins of the products they purchase.

As Oxfam’s chief executive, Barbara Stocking has propounded, ‘trade with Israeli settlements – which are illegal under international law – contributes to their economic viability and serves to legitimise them.’<sup>144</sup> Importing produce visibly obtained from an illegal occupation is wrong in principle and should not continue unabated. The EU-Israel Association Agreement merely applies a tariff to settlement products when it should instead consider prohibiting the entry of such goods in to European markets or indeed suspending the Agreement in its entirety. Maintaining the status quo serves only to solidify the form of economic occupation which the inhabitants of the occupied Syrian Golan and the Palestinian Territories are experiencing, whilst concomitantly enabling multinational companies to profit in the process. The practice of importing illegal settlement products into the EU should thus be brought to a swift and resolute end.

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<sup>143</sup> Julian Kossoff *‘Labels on West Bank products: food for thought for Israel’* The Telegraph (London 10 December 2009) : <http://blogs.telegraph.co.uk/news/juliankossoff/100019576/labels-on-west-bank-products-food-for-thought-for-israel/> accessed 11 December 2009.

<sup>144</sup> Alex Ralph *‘Fury at UK move to label settlement produce as Israel talks of ‘concern’* The Times (London 11 December 2009) <http://www.timesonline.co.uk/tol/news/uk/article6952943.ece> accessed 11 December 2009

### 3.2 Human Rights and EU-Israel Relations

*All States parties to the Fourth Geneva Convention are obliged to ensure compliance by Israel with the international humanitarian law embodied in this Convention.* Israel's defiance of international law poses a threat not only to the international legal order, but to the international order itself. This is no time for appeasement on the part of the international community.<sup>145</sup>

The EU has repeatedly chosen to disregard Israel's practice of implementing the EU-Israel Association Agreement in violation of both established principles of international law and specific provisions of the Agreement itself. The Euro-Mediterranean Human Rights Network has shed light on these 'notable failures by the EU to prevent EU-Israel association and cooperation agreements from being implemented by Israel in an internationally unlawful manner based on the very same internationally unlawful Israeli policies and national legislation that the Commission has wanted to see tackled and reformed.'<sup>146</sup> This acquiescence and willingness on the part of the EU, to accommodate Israel's erroneous interpretation of fundamental provisions of international humanitarian law, sits at odds with the Community's long standing commitment to respect and promote human rights in the conduct of its external relations. At some point in time, many political authorities throughout the world have asserted that threats posed to their national security or the exigencies of certain

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<sup>145</sup> UN Commission on Human Rights, Sixty-first Session '*Report of the Special Rapporteur of the Commission on Human Rights*' 7 December 2004, UN Doc E/CN.429/2005/ para. 50.

<sup>146</sup> Euro-Mediterranean Human Rights Network '*Third Annual Review on Human Rights in EU-Israel Relations – Accommodating to the 'Special' case of Israel 20052006*' (June 2007) 15 : <http://www.euromedrights.net/usr/00000026/00000028/00000027/00001339.pdf> accessed 19 October 2009.

circumstances necessitate the abrogation of fundamental human rights. However, it is for this reason that 'one of the most important elements in the defence of human rights is the strict application of the legal rules that have been developed to restrict such claims and prohibit as unjustifiably harmful state acts based upon them.'<sup>147</sup>

Article 2 of the EU-Israel Association Agreement imposes key legal obligations on the contracting parties, containing an important human rights provision which states that:

Relations between the parties, as well as the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guide their internal and international policy and constitute an essential element of this Agreement.<sup>148</sup>

The text of Article 2 is quite clear and unequivocal. It uses peremptory language in establishing that relations between the contracting parties are predicated on a binding commitment towards fulfilling their respective human rights obligations. Furthermore, it states that respect for human rights represents and 'essential element' of the Agreement. Interestingly, the primary rationale underpinning the incorporation of this standard 'essential element' clause into association agreements was that of enabling the EU to effectively sanction a Euro-Mediterranean Partner's disrespect for fundamental human rights by suspending an agreement.<sup>149</sup> Israeli government practices

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<sup>147</sup> Euromed Euro-Mediterranean Human Rights Network 'A Human Rights Review on the EU and Israel – Relating Commitments to Actions 2003 - 2004' (December 2004) 15 : <http://www.euromedrights.net/usr/0000002600000234/00000028/00000027/.pdf> accessed 19 October 2009.

<sup>148</sup> Article 2 of the EU-Israel Association Agreement.

<sup>149</sup> Euromed Euro-Mediterranean Human Rights Network 'A Human Rights Review on the EU and Israel – Relating Commitments to Actions 2003 - 2004' (December 2004) 19 : <http://www.euromedrights.net/usr/0000002600000234/00000028/00000027/.pdf> accessed 19 October 2009.

and policies over the years have been replete with instances indicating an attitude of selective adherence to human rights standards. With regard to its declarative diplomacy, the EU has frequently issued legally correct declarative statements denouncing Israel's practice of rejecting its obligations under international law. The EU's operative diplomacy, however, has proven to be both flawed and remiss, serving to facilitate Israel's violations of international human rights law through its continued deference and inaction.<sup>150</sup>

Despite the European Parliament and former United Nations Special Rapporteur on the Right to Food, Jean Ziegler, previously calling upon the EU to suspend the Association Agreement, such requests have thus far fallen on deaf ears. In September 2005, a question was put forward by an MEP from the Alliance of Liberal Democrats in Europe (ALDE) enquiring as to whether the European Commission would be prepared to suspend the Association Agreement, and if not, what alternative plan was in place to ensure Israel's compliance with international law.<sup>151</sup> The Commission's response, provided by Commissioner Ferrero-Waldner,<sup>152</sup> advocated continued dialogue as the 'effective way to make known one's view' and further stated that suspension of the Agreement would not 'contribute to the EU's ability to influence events in the region.'<sup>153</sup> Four years on, one could argue that political dialogue has engendered little, if any, effective change or practical reform,

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<sup>150</sup> *Ibid* 27.

<sup>151</sup> European Parliament written question by Sajjad Karim (ALDE) to the Commission 8 August 2005 available at : <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=P-2005-3040&language=EN> accessed 28 November 2009.

<sup>152</sup> EU Commissioner responsible for External Relations and European Neighbourhood Policy.

<sup>153</sup> Commission's response to Sajjad Karim's question issued on 13 September 2005 available at : <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=P-20053040-&language=EN> accessed 28 November 2009.

with the EU exerting minimal influence in the region. The EU's sustained policy approach towards Israel is ostensibly one of 'dangling economic carrots' without giving due consideration to 'wielding human rights enforcement sticks'. It is a policy approach absent any bona fide consideration for implementing suspension as a positive punitive measure.

Although the EU has consistently stated that change is best achieved through a positive and constructive discourse with governments, with sanctions considered a measure of last resort, the Commission has in the past also observed that 'a prerequisite for success is that these states are genuinely ready to cooperate...'<sup>154</sup> in some cases, the third country may have no genuine commitment to pursue change through dialogue and cooperation...' One could possibly contend that Israel has yet to truly demonstrate a resounding commitment to change. Furthermore, in light of the fact that the EU enjoys a considerable trade surplus with Israel, it remains unclear as to whether its decision to avoid suspending the Association Agreement is based entirely on keeping political dialogue channels open or other interests, such as maintaining the status quo in order to ensure that Europe continues to derive unquestionable economic benefits. Notwithstanding the EU's unwillingness to effect positive measures of reform and sanction Israel for its continued violations of Article 2 of the Association Agreement, the EU's inaction may well be in breach of its own legal obligations under the Agreement, in addition to a multitude of other obligations and commitments under Community and international law.

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<sup>154</sup> Communication from the Commission to the Council and the European Parliament on 'The European Union's Role in Promoting Human Rights and Democratisation in Third Countries' COM (1998) 252 final, Brussels, 8 May 2001, 8.

### 3.2.1 Mapping the EU's Legal Obligations

*“It is my firm belief that the only way to peace is to require Israel to comply with international law and that this is in the interests of all parties. The European Commission and member states are failing in their duty to uphold the conditions of our own treaty with Israel and to use these requirements to obtain long term peace and justice”.*<sup>155</sup>

As a matter of EC law, the EU has committed itself to respect fundamental rights and observe international law.<sup>156</sup> These binding obligations stem from Article 6(1) and (2) of the Treaty on the European Union (TEU), the latter of which states that :

The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.<sup>157</sup>

Furthermore, Article 11 of the TEU provides that one of the main objectives of the EU's Common Foreign and Security Policy is to 'develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.'<sup>158</sup> The

<sup>155</sup> Quote attributed to Clare Short MP available at : <http://www.savegaza.eu/index.php/Press-Release/Legal-Action-to-enforce-Human-Rights-Conditions-in-EU-Israel-Association-Agreement.html> accessed 28 November 2009.

<sup>156</sup> Public Interest Lawyers legal action letter to Commission President, José Manuel Barroso and High Representative for the Common Foreign and Security Policy, Javier Solana (1 September 2009) 12 available at : [http://www.savegaza.eu/images/stories/letter\\_to\\_council\\_of\\_ministers.pdf](http://www.savegaza.eu/images/stories/letter_to_council_of_ministers.pdf) accessed 28 November 2009.

<sup>157</sup> *Article 6(2) of the Treaty on the European Union.*

<sup>158</sup> Euro-Mediterranean Human Rights Network 'A Human Rights Review on the EU and Israel: Mainstreaming or Selectively Extinguishing Human Rights? 2004 - 2005' (December 2005) 16 : <http://www.euromedrights.net/usr/000000260000/00000027/00000328/0028.pdf> accessed 20 October 2009.

Euro-Mediterranean Human Rights Network has also noted that in view of the fact that the 'essential element' clause of the EU-Israel Association Agreement is part of Community law and stipulates that the Agreement shall be based on respect for human rights, it therefore 'obligates the EU institutions and individual member states not to permit or accept the agreements' interpretation, application or implementation by the EU, as well as by the partner country, in a manner that disrespects human rights.'<sup>159</sup> The European Court of Justice (ECJ) has also issued a number of seminal judgments reaffirming that respect for human rights is 'a condition of the lawfulness of Community acts'<sup>160</sup> and that the Community 'must respect international law in the exercise of its powers.'<sup>161</sup>

In a timely move, legal action against the Community has recently been instigated by Public Interest Lawyers (PIL) on behalf of United Kingdom MP, Clare Short and the European Campaign to End the Siege of Gaza, requiring the European Union to comply with human rights obligations entrenched in the Association Agreement and international law. In a letter addressed to European Commission President, José Manuel Barroso and Secretary-General Francisco Javier Solana, High Representative for the Common Foreign and Security Policy, the European Council and Commission were asked to respond to the comprehensive case outlined in the letter, which contends that the European Community has thus far failed to fulfil its clear legal obligations 'in light of Israel's violation of

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<sup>159</sup> *Ibid.*

<sup>160</sup> Philip Alston, Mara R. Bustelo and James Heenan (eds.) *The EU and Human Rights* (OUP, Oxford 1999) 677.

<sup>161</sup> Jan Wouters, André Nollkaemper and Erika De Wet (eds.) *The Europeanisation of International Law: The Status of International Law in the EU and its Member States* (CUP, Cambridge 2008) 79.

international human rights and humanitarian law.’<sup>162</sup> The letter submits that Israel has frequently breached peremptory norms of international law, underscoring recent seismic failures to uphold these overriding principles and obligations during its military offensive in Gaza under Operation Cast Lead.<sup>163</sup> In addition to reiterating the prohibition on the use of force in the acquisition of territory and the ‘inalienable right of the people of Palestine’ to self-determination, the case posits that ‘the Community under Article 2 is obliged to ensure not only that its own actions comply with human rights: it also requires it to base its relations with Israel on mutual respect for human rights...Where...the Community does not take appropriate steps against Israel it will be in breach of Article 2. It will also be in breach of Article 79(1) which establishes positive obligations on the Parties to observe human rights.’<sup>164</sup> Article 79(2) of the Association Agreement states that :

If either Party consider that the other Party has failed to fulfil 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.

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<sup>162</sup> Public Interest Lawyers legal action letter to Commission President, José Manuel Barroso and High Representative for the Common Foreign and Security Policy, Javier Solana (1 September 2009) 1 available at : [http://www.savegaza.eu/images/stories/letter\\_to\\_council\\_of\\_ministers.pdf](http://www.savegaza.eu/images/stories/letter_to_council_of_ministers.pdf) accessed 28 November 2009.

<sup>163</sup> For more information see UN Human Rights Council Twelfth Session 15 September 2009 ‘*Report of the United Nations Fact Finding Mission on the Gaza Conflict*’ UN Doc A/HRC/1248/ (‘The Goldstone Report’).

<sup>164</sup> Public Interest Lawyers legal action letter to Commission President, José Manuel Barroso and High Representative for the Common Foreign and Security Policy, Javier Solana (1 September 2009) 11 available at : [http://www.savegaza.eu/images/stories/letter\\_to\\_council\\_of\\_ministers.pdf](http://www.savegaza.eu/images/stories/letter_to_council_of_ministers.pdf) accessed 28 November 2009.

In the selection of measures, priority shall be given to those which least disturb the functioning of the Agreement.

These measures shall be notified immediately to the Association Council and shall be the subject of consultation within the Association Council if the other Party so requests.<sup>165</sup>

Given that Israel's breach of Article 2 of the Agreement 'involves...a violation of jus cogens erga omnes obligations and a serious and persistent violation of human rights'<sup>166</sup>, this would seemingly constitute a case of 'special urgency' under Article 79(2). Accordingly, in light of the EU's comprehensive obligations under the Association Agreement, Community and international law, failure to invoke Article 79(2) and take any effective steps or concrete measures against Israel's persistent breaches of international humanitarian and human rights law is tantamount to a breach of its own legally binding obligations.

On 30 September 2009, Javier Solana, issued what the European Campaign to End the Siege of Gaza has described as an 'unsatisfactory response' to their legal action letter. Secretary-General Solana stated that a decision by the EU, regarding whether to invoke measures pursuant to Article 79(2) against Israel, 'is a matter of political assessment in which a series of complex factors would have to be weighed up. In particular, it would be necessary to consider whether

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<sup>165</sup> *Art 79 (2) of the EU-Israel Association Agreement.*

<sup>166</sup> Public Interest Lawyers legal action letter to Commission President, José Manuel Barroso and High Representative for the Common Foreign and Security Policy, Javier Solana (1 September 2009) at 13 available at : <[http://www.savegaza.eu/images/stories/letter\\_to\\_council\\_of\\_ministers.pdf](http://www.savegaza.eu/images/stories/letter_to_council_of_ministers.pdf)> accessed 28 November 2009.

having recourse to such measures would be more effective in achieving the EU's objectives than relying instead on other means of exerting pressure such as...political initiatives.'<sup>167</sup> Although the EU had put the upgrading of bilateral relations on hold in light of Israel's actions in Gaza since December 2008, a 'business as usual' approach towards economic relations was seemingly advocated at the ninth annual meeting of the Association Council on 15 June 2009.<sup>168</sup> While the EU acknowledged the existence of serious human rights concerns, in addition to urging the government of Israel to halt settlement activity, 'this recognition of serious human rights violations does not appear to have translated into any concrete actions against Israel under the provisions of the Agreement.'<sup>169</sup>

What has become readily apparent, however, is the EU's marked reluctance to allow serious breaches of international law to impede its ever expanding and evolving Euro-Mediterranean trade initiative. The considerable vested interests which both

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<sup>167</sup> High Representative, Javier Solana's letter of response to Public Interest Lawyers (30 September 2009) 3 available at : <http://www.kawther.info/wpr/wp-content/uploads/20090930letter-from-Councilof-Ministers.pdf> accessed 28 November 2009.

<sup>168</sup> Public Interest Lawyers legal action letter to Commission President, José Manuel Barroso and High Representative for the Common Foreign and Security Policy, Javier Solana (1 September 2009) 1 available at [http://www.savegaza.eu/images/stories/letter\\_to\\_council\\_of\\_ministers.pdf](http://www.savegaza.eu/images/stories/letter_to_council_of_ministers.pdf) accessed 28 November 2009. See also 'Statement of the Council of the European Union at the Ninth Meeting of the EU-Israel Association Council' (15 June 2009) 1105709/ para. 1 available at <http://www.euromedrights.net/usr/0000002200003028/00000160/00000051/.pdf> accessed 27 November 2009. "The European Union warmly welcomes the ninth Meeting of the EU-Israel Association Council. This Association Council, organised shortly after the formation of the new Israeli government, confirms the great importance the European Union is attaching to its relations with Israel and its readiness to continue strengthening our bilateral partnership."

<sup>169</sup> Public Interest Lawyers legal action letter to Commission President, José Manuel Barroso and High Representative for the Common Foreign and Security Policy, Javier Solana (1 September 2009) 15 available at [http://www.savegaza.eu/images/stories/letter\\_to\\_council\\_of\\_ministers.pdf](http://www.savegaza.eu/images/stories/letter_to_council_of_ministers.pdf) accessed 28 November 2009.

parties have in economic relations has permitted 'trade in settlement products to flourish over the past decade'<sup>170</sup>, much to the detriment of human rights. As Kattan has surmised :

the Community's record on reacting to violations of human rights is poor, particularly where the country in breach is economically or militarily powerful. However, this does not necessarily excuse complete inaction from the European Community. Israel has been found to be in breach of its humanitarian and human rights obligations under customary international law, which according to the jurisprudence of the European Court of Justice, is binding upon the European Community. That Israel is in material breach of the association agreement is beyond doubt. Israel should not, therefore, benefit from its unlawful act through having preferential access to the common market. Under European Community law, access to the common market is conditional. It is a privilege and not a right.'<sup>171</sup>

### 3.3 Overview of Corporate Complicity

The concept of corporate complicity is pertinent in light of the actions of companies which operate in the occupied Golan and the illegality of the settlement industry. Corporate complicity describes the various means by which 'companies become

<sup>170</sup> Peter Lagerquist, '*On Settlement Trade, Europe Doesn't Stand Tall*' Middle East Report Online 8 April 2003 available at < <http://www.merip.org/mero/mero040803.html> > accessed 28 November 2009.

<sup>171</sup> Victor Kattan, '*The Wall, Obligations Erga Omnes and Human Rights : The Case for Withdrawing the European Community's Terms of Preferential Trade with Israel*' 8 (2004/2005) *The Palestine Yearbook of International Law* 71, 87.

involved in undesirable ways in the perpetration of human rights abuses by other actors.’<sup>172</sup> Various international human rights law bodies have examined this emerging issue in recent years.

The UN Global Compact, launched in 2000, is ‘a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption.’<sup>173</sup> The second principle of the Global Compact requires businesses to ensure they are not complicit in human rights abuses. Accordingly, companies must not encourage or assist in human rights abuses committed by individuals, rebel groups, governments or other companies.

The 2008 report, ‘Protect, Respect and Remedy: A Framework for Business and Human Rights’ by John Ruggie,<sup>174</sup> consists of three core principles: the State’s duty to protect against human rights abuses by third parties, including businesses; the corporate responsibility to protect human rights; and the need for better access to remedies. The second point is of relevance to companies operating within settlements in the occupied Territories.

These notions of corporate responsibility and corporate complicity are illustrative of a shift towards recognition of corporate responsibility for international law violations :

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<sup>172</sup> *Corporate Complicity and Legal Accountability, Volume 1: Facing the Facts and Charting a Legal Path*, Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes (2008) 3, [http://www.icj.org/IMG/Volume\\_1.pdf](http://www.icj.org/IMG/Volume_1.pdf)

<sup>173</sup> United Nations Global Compact ‘What is the Global Compact?’ <http://www.unglobalcompact.org/> accessed 23 October 2009.

<sup>174</sup> UN Special Rapporteur of the Secretary General on human rights and transnational corporations and other business enterprises since 2005.

The corporate responsibility to respect human rights includes avoiding complicity. The concept has legal and non-legal pedigrees, and the implications of both are important for companies. Complicity refers to indirect involvement by companies in human rights abuses - where the actual harm is committed by another party, including governments and non-State actors. Due diligence can help a company avoid complicity.<sup>175</sup>

There are three main types of corporate complicity. Firstly, direct complicity exists where a company actively assists, either directly or indirectly, in human rights violations being committed by others. Secondly, beneficial complicity occurs whereby a company benefits from human rights violations even if it does not actively assist or cause them. Thirdly, silent complicity arises when a company is inactive in the face of continuous or systematic human rights violations.<sup>176</sup>

It is important to note that at present, there exists no conclusive definition or explicit parameters for the concept of corporate legal liability in instances of complicity. Ruggie believes the Unocal case<sup>177</sup> provides the clearest guidelines regarding a definition. The ruling asserted that complicity involves three

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<sup>175</sup> John Ruggie, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, '*Protect, Respect and Remedy: A Framework for Business and Human Rights*' para. 73 : <http://www.reports-and-materials.org/Ruggie-report-7-Apr-2008.pdf> accessed 10 October 2009.

<sup>176</sup> United Nations System Staff College, UN Global Compact E-learning, Module 3: Complicity, Section 4: Types of complicity : <http://www.unssc.org/web/hrb/details.asp?mod=3&sec=4&cur=1> accessed 8 October 2009.

<sup>177</sup> *Doe v. Unocal*, 248 F.3d 915 (9th Cir. 2001). In 1997, thirteen Burmese villagers filed a suit against Unocal and their parent company the Union Oil Company of California under the Alien Tort Claims Act. The suit concerned alleged human rights violations, in particular forced labour, in the construction of a gas pipeline in Myanmar (formerly Burma).

elements: practical assistance being given to the perpetrator, that assistance having a significant effect on the commission of the criminal act, and the knowledge criterion. However, as the case was settled by Unocal before it reached trial, many larger questions regarding the parameters of corporate complicity remain unanswered.

In the case of the occupied Syrian Golan, one can argue that the very existence of the settlement industry in the region is dependent on Israel's continuing illegal occupation of the region, and therefore Israeli companies located in the settlements are complicit in violations of international law. Furthermore, the role of non-Israeli companies which engage in business with or are in some way affiliated with offending Israeli companies must also be examined. While such companies may not act in direct violation of international law, their links with companies operating in illegal settlements raise serious questions of corporate social responsibility and corporate complicity.

### 3.4 Companies Linked to Settlement Production in the Golan

*International trade relations contribute to the economic viability of the settlements. As a result, foreign companies, directly or indirectly, contribute to human rights violations that follow from the presence of the settlements and the regime associated with them. Sustaining such relations is at odds with fundamental principles of corporate social responsibility ...*<sup>178</sup>

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<sup>178</sup> 'Dutch Economic Links in Support of the Israeli Occupation of Palestinian and/or Syrian Territories' Research Report Commissioned by United Civilians for Peace (September 2006) at 1 available at : [http://www.unitedcivilians.nl/documents/docs/2006\\_Report\\_Dutch\\_economic\\_links\\_with\\_the\\_Israeli\\_occupation.pdf](http://www.unitedcivilians.nl/documents/docs/2006_Report_Dutch_economic_links_with_the_Israeli_occupation.pdf) accessed 27 November 2009.

Under international law, an occupying power is entitled to utilise the economic resources of the territory it occupies, but it must do so in compliance with the rules of usufruct as stated in Article 55 of the Hague Regulations 1907.<sup>179</sup> The occupying power is prohibited from exploiting the economic resources and capital of the occupied territory for the benefit of its own domestic requirements. Accordingly, 'it is required to keep the occupied territory separate, politically as well as economically. To permit otherwise would be to go against the logic of international law which prohibits an occupier from annexing territory it occupies.'<sup>180</sup> Notwithstanding Israel's continued contravention of international humanitarian and human rights law, many multinational corporations are keenly involved in or linked to illegal settlement activities in the occupied Syrian Golan and Palestinian territories. This remains the case, despite the emergence of a growing international consensus that such economic links to settlements and settlement production may simply serve to perpetuate their illegal existence under international law. A recent report, commissioned by United Civilians for Peace, has observed that foreign companies associated with settlement production are disregarding 'the social responsibility which corporations have to fulfil by promoting respect for human rights within the realm of their activities and sphere of influence.'<sup>181</sup> As a

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<sup>179</sup> For more information see T. McCormack and Avril McDonald (eds) *Yearbook of International Humanitarian Law: 2003* (T.M.C Asser Press, The Hague 2006) 156.

<sup>180</sup> Jan Willem van Gelder and Hassel Kroes, 'UK Economic Links with Israeli Settlements in occupied Palestinian Territory' Research Paper (10 February 2009) 4 available at : <<http://www.soas.ac.uk/lawpeacemideast/file49531.pdf>> accessed 28 November 2009.

<sup>181</sup> 'Dutch Economic Links in Support of the Israeli Occupation of Palestinian and/or Syrian Territories' Research Report Commissioned by United Civilians for Peace (September 2006) 1 available at [http://www.unitedcivilians.nl/documents/docs/2006\\_Report\\_Dutch\\_economic\\_links\\_with\\_the\\_Israeli\\_occupation.pdf](http://www.unitedcivilians.nl/documents/docs/2006_Report_Dutch_economic_links_with_the_Israeli_occupation.pdf) accessed 27 November 2009.

corollary, these corporations are either involved in or indirectly facilitating activities that result in the violation of fundamental human rights.

As Chief Executive of War on Want, Louise Richards, has previously surmised, ‘...many companies thrive off conflict.’<sup>182</sup> A diverse array of British high street stores market goods which have been produced in Israeli settlements in the occupied Syrian Golan. Many of these supermarket chains ‘appear to have discounted ethical considerations when selling produced grown on illegally occupied land.’<sup>183</sup> Supermarkets such as Tesco, Selfridges and Waitrose sell Yarden wine, a product which originates from an illegal settlement in the occupied Syrian Golan.<sup>184</sup> The UK Boycott, Divestment and Sanctions (BDS) Movement has also noted Tesco’s acknowledgement that it sources products such as herbs, grapes, avocados and peaches from illegal settlements located in both the West Bank and the Golan.<sup>185</sup> In a paltry attempt to perhaps justify and rationalise the sale of illegal settlement products, a spokesman for Tesco asserted that ‘without our business there would, in some areas, be little or no employment at all.’ The spokesman went on to state that ‘we don’t particularly look at the nationality of the farm owner, only the ethical standards under which it operates.’<sup>186</sup> Evidently, a farm owner cultivating land in an

<sup>182</sup> War on Want ‘Profiting from the Occupation: Corporate Complicity in Israel’s Crimes Against the Palestinian People’(July 2006) 1 available at : <http://www.waronwant.org/attachments/Profiting%20from%20the%20Occupation.pdf> accessed 27 November 2009.

<sup>183</sup> Paul Gallagher, ‘*Illicit settler food Sold in UK stores*’ The Observer (London 6 July 2008) <http://www.guardian.co.uk/world/2008/jul/06/israelandthepalestinians.supermarkets> accessed 28 November 2009.

<sup>184</sup> *Ibid.*

<sup>185</sup> UK BDS Movement ‘*Who Sells Israeli Goods*’ available at [http://www.bigcampaign.org/index.php?page=who\\_sells\\_israeli\\_goods](http://www.bigcampaign.org/index.php?page=who_sells_israeli_goods) accessed 28 November 2009.

<sup>186</sup> Paul Gallagher, ‘*Illicit settler food Sold in UK stores*’ The Observer (London 6 July 2008) <http://www.guardian.co.uk/world/2008/jul/06/israelandthepalestinians.supermarkets> accessed 28 November 2009.

illegal Israeli settlement does not sit at odds with Tesco's 'esteemed' ethical business policies. Companies seeking to put forward the idea that settlement production provides 'a vital source of employment for otherwise impoverished Palestinians'<sup>187</sup> are misguided at best. Countenancing such arguments serves to exacerbate the underlying problems and ignores the crucial point that Israeli settlements, established in the occupied Syrian Golan and on Palestinian land, render the resources of the occupied territory unavailable for exploitation and development by the local inhabitants.<sup>188</sup>

A number of Dutch companies were also found to have links to settlement activity in the occupied Golan. Mapal Plastic Products Ltd, a company located in the Mevo Hama Kibbutz, specialising in manufacturing polypropylene products, has ties to a Dutch marketing subsidiary.<sup>189</sup> A.R.I. Flow Control Accessories Ltd is a manufacturer of air release and check valves located in the Israeli settlement Kibbutz Kfar Charuv in the southern Golan. A.R.I. is affiliated with two Dutch importers, AVK Nederland and Revaho B.V.<sup>190</sup> In addition, the United Civilians for Peace report has shed light on trade links between Israel Aircraft Industries (IAI) and the Royal Netherlands Air Force.<sup>191</sup> In 2008, US energy giant, AES Corporation, reached a preliminary agreement with Mei Golan

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<sup>187</sup> Jan Willem van Gelder and Hassel Kroes, 'UK Economic Links with Israeli Settlements in occupied Palestinian Territory' Research Paper (10 February 2009) 61 available at <http://www.soas.ac.uk/lawpeaceemideast/file49531.pdf> accessed 28 November 2009.

<sup>188</sup> *Ibid.*

<sup>189</sup> 'Dutch Economic Links in Support of the Israeli Occupation of Palestinian and/or Syrian Territories' Research Report Commissioned by United Civilians for Peace (September 2006) at 26 available at [http://www.unitedcivilians.nl/documents/docs/2006\\_Report\\_Dutch\\_economic\\_links\\_with\\_the\\_Israeli\\_occupation.pdf](http://www.unitedcivilians.nl/documents/docs/2006_Report_Dutch_economic_links_with_the_Israeli_occupation.pdf) accessed 27 November 2009.

<sup>190</sup> *Ibid* 27.

<sup>191</sup> *Ibid* 28.

Wind Energy Development to form an equal partnership in a \$600 million wind turbine project in the Golan.<sup>192</sup> The following case studies on Eden Springs water and wineries in the Golan will provide an a more in-depth analysis of two illegal settlement industries operating in the Golan.

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<sup>192</sup> Avi Bar-Eli, 'AES, *Mei Golan to build wind turbine farm*' Haaretz (Tel Aviv 16 April 2008) <http://www.haaretz.com/hasen/spages/974898.html> accessed 28 November 2009.

## Case Study 1 : Eden Springs Ltd

Eden Springs Ltd. (also known as Mey Eden, Mayanot Eden and Mey Golan) is an Israeli water company which began its activities in the occupied Syrian Golan in 1982. The company is listed on the Tel Aviv Stock Exchange and supplies approximately 180,000 clients under the Eden brand, achieving an annual turnover of €144 million.<sup>193</sup> Eden Springs currently operates in fifteen European countries – Denmark, Germany, Spain, Estonia, Finland, France, Luxembourg, Latvia, Lithuania, the Netherlands, Norway, Poland, Sweden, Switzerland and the UK.<sup>194</sup>

Eden Springs extracts water from the Slokia spring in the Golan. The Israeli settlement of Slokia was built on the ruins of an Arab village called Sluqey destroyed as a result of the 1967 War. Eden Springs then bottles this water in Katzrin (also spelt Qatzrin), an illegal settlement in the same region. Katzrin is the largest settlement in the Golan and is regarded by Israel as the region's capital. It was built on the site of a destroyed Syrian village called Kassren which contained 474 Syrian residents prior to the 1967 occupation. The central issue in this case concerns the open violations of international law, in particular human rights law and humanitarian law, by the parent company Eden Springs Ltd.

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<sup>193</sup> Infomat 'Focus Area: About Eden Springs' [http://www.infomat.net/1/focus/foci/eden\\_springs/about.asp](http://www.infomat.net/1/focus/foci/eden_springs/about.asp) accessed 2 November 2009.

<sup>194</sup> Eden Springs 'Our locations: Eden Springs Europe' <http://www.edensprings.com/our-locations,1,4.html> accessed 6 November 2009.



Mey Eden logo

*Picture sourced from [www.easynet.co.il](http://www.easynet.co.il)*

The company profits directly from its illegal exploitation of the water resources in the occupied Syrian Golan. Articles 28 and 47 of the Hague Regulations 1907 declare that ‘pillage is formally forbidden’, prohibiting the use of natural resources in the occupied Golan for commercial gain. In addition, Article 55 of the Hague Regulations places limits on the rights of an Occupying Power to make use of the water sources of an occupied territory, of which privatisation is a breach. As Eden Springs Ltd bottles, markets and distributes water from the illegally occupied Golan, the company is in violation of international law and also complicit in Israel’s illegal occupation of the Syrian Golan.

The human rights of the people of the occupied Golan are directly violated by the actions of Eden Springs. A 1962 UN Declaration established the right of a population’s sovereignty over its own natural resources.<sup>195</sup> This right has been reaffirmed in numerous subsequent UN General Assembly Resolutions with a particular emphasis being placed on the

<sup>195</sup> UN Resolution 1803 (XVII) Declaration on Permanent Sovereignty over Natural Resources 1962.

right of sovereignty in occupied Arab territories such as the Golan. Article 2(1) ICCPR and Article 2(1) ICESCR both assert that the right of all peoples to freely dispose of their natural wealth and resources. However, Eden Springs is an Israeli owned and managed company, and as such, all profits are channelled back to the Israeli economy. This is in spite of the fact that according to international law, the natural resources of the occupied territory, including water, clearly belong to its Arab inhabitants and the use of such resources by Israel for its own commercial gain is illegal under international law.

### Eden Springs and Corporate Social Responsibility

Interestingly, Eden Springs' corporate social responsibility (CSR) policy asserts that 'water is one of our planet's most precious resources, and as our principle product, we are acutely aware of the importance of protecting our environment and using its resources responsibly.'<sup>196</sup> The company places importance on 'community care' and states that 'we encourage our markets to support and help locally in the best way in order to build relationships of trust with the local players.'<sup>197</sup> The policy also expresses concern for the local environment where water is sourced and bottled, stating that, 'In all markets where Eden is present, our water sources, offices and distribution centers are part of both big and small communities and we are committed to reducing the environmental impact in our local communities wherever we can.'<sup>198</sup>

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<sup>196</sup> Eden Springs '*Corporate Social Responsibility: Sustainability*' <http://www.edensprings.com/environment,1,6.html> accessed 20 November 2009.

<sup>197</sup> Eden Springs '*Corporate Social Responsibility: Community care*' <http://www.edensprings.com/community-care,1,19.html> accessed 20 November 2009

<sup>198</sup> *Ibid.*

In 2007, Eden Springs formed a partnership with UNICEF to develop sustainable drinking water resources in Somalia. This project falls within the framework of a collaboration programme on development projects between the European Union and UNICEF. For every €1 collected by UNICEF for this project, the European Union will donate an additional €3. Thus Eden's contribution of €50,000 to the project will in fact raise €200,000.<sup>199</sup>

Eden Springs' corporate social responsibility policy is difficult to reconcile with the blatant violations of international law carried out by the Israeli parent company in the occupied Golan; violations which directly infringe the rights of the native Syrian inhabitants with regard to their enjoyment of their water resources. Furthermore, the policy is surprising given the imposition of blatantly discriminatory water restrictions by the Israeli authorities on the Arab population of the Golan. A company such as Eden Springs only exists due to Israel's continued illegal occupation of the region. In addition, the illegal occupation is granted a sense of permanence by the establishment of companies in the Golan and subsequent European investment in these companies.

It is undisputed that the actions of Eden Springs Ltd infringe international law; however, the involvement of non-Israeli companies (from Europe or the United States for example) with an unethical brand such as this one is a further matter to be explored. The complicity of non-Israeli companies in human rights violations is of particular relevance in light of the Boycott, Divestment and Sanction (BDS) movement.

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<sup>199</sup> Eden Springs 'Eden supports UNICEF 2009: Project supported by the European Union' <http://www.edensprings.com/eden-borama-unicef,1,17.html> accessed 20 November 2009.

In January 2005 the occupied Palestine and Syrian Golan Heights Advocacy Initiative (OPGAI) initiated a call for boycott, divestment and sanctions (BDS) against Israel 'until it complies with international law and universal principles of human rights'. The practical effect of the BDS movement can be observed in the Eden Springs UK Ltd controversy.

### The Eden Springs UK Controversy

Eden Springs operates in Europe in partnership with the Danone Group. The UK branch of the company is known as Eden Springs UK Ltd and provides water coolers and bottled water to city council premises, universities and offices. The Israeli parent company owns, manages and controls Eden Springs UK Ltd. The UK branch of Eden Springs has been eager to obscure its status as an Israeli-owned company. One anonymous insider reported that the manager of Eden Springs has been looking into the possibility of a brand name change, as one way of mitigating the damage caused by the company's association with the Israeli brand and its image as a violator of human rights.<sup>200</sup>

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<sup>200</sup> Scottish Palestine Solidarity Campaign, '*Israel's Eden Springs taking hit from successful boycott campaign*', 25 November 2008  
[http://www.scottishpsc.org.uk/index.php?option=com\\_content&view=article&id=2742:israels-eden-springs-taking-hits-from-successful-boycott-campaign&catid=288&Itemid=200256](http://www.scottishpsc.org.uk/index.php?option=com_content&view=article&id=2742:israels-eden-springs-taking-hits-from-successful-boycott-campaign&catid=288&Itemid=200256) accessed 10 October 2009.



Eden Springs UK bottled water

Picture sourced from [www.edensprings.co.uk](http://www.edensprings.co.uk)

Eden Springs UK Ltd was forced to close its East Scotland depot in Loanhead, Edinburgh in 2008 after losing a substantial amount of its Scottish contracts.<sup>201</sup> According to the Scottish Palestine Solidarity Campaign (SPSC), this loss of contracts was a direct result of a boycott campaign conducted by them. While the water used by Eden Springs UK does not come from the Golan itself, the boycott was based on the conviction that any company or institution which engages in business with Eden Springs UK is effectively supporting illegal settlements and their settlement products, as well as Israel's violations of international law. According to Tom Hastings, of the Friends of Palestine Society, 'Eden Springs is not just a silent partner in violations of international law, it is itself the active violator.'<sup>202</sup>

<sup>201</sup> *Ibid.*

<sup>202</sup> Lisa Stallard 'Friends of Palestine Society call for campus wide boycott of unethical water company', SCANonline, 7 December 2008  
<http://scan.lusu.co.uk/200807/12//friends-of-palestine-society-call-for-campus-wide-boycott-of-unethical-water-company/> accessed 10 October 2009.

In the case of the Eden Springs water company, the Israeli parent company carries out grave breaches of international human rights law through its exploitation of the natural resources in the Golan region, both land and water. Therefore, companies such as Eden Springs UK Ltd under the umbrella of this Israeli parent company are complicit in violations of international law through their dealings with the latter.

According to SPSC, very few UK offices using Eden Springs' water cooler products were aware of its status as the UK arm of an Israeli company. The campaign therefore consisted of raising public awareness of the unethical links between the UK branch and its Israeli parent company. It focused on making universities, companies and local council offices aware of the violations of international law being committed by the Israeli Eden Springs company.

The campaign lobbied city Councillors and members of the Scottish Parliament to cancel all contracts Eden Springs had with the public sector, as 'public money should no longer fund illegal occupation'.<sup>203</sup> Organisations that boycotted the company included Caledonian MacBrae Ferries, East Lothian and West Lothian Councils, the Scottish Trades Union Council and a range of colleges and universities around the UK.

The outcome of the boycott illustrates the potential for the BDS movement to achieve real and practical results. Companies who engage with human rights violators now risk tarnishing their own brand and reputation. Public opinion can therefore be a useful tool with which to pressure corporations to act in

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<sup>203</sup> Scottish Palestine Solidarity Campaign '*Boycott Eden Springs*' leaflet [http://www.scottishpsc.org.uk/index.php?option=com\\_content&view=article&id=2814:eden-springs-flyer-jan-2009&catid=365:what-you-can-do&Itemid=200257](http://www.scottishpsc.org.uk/index.php?option=com_content&view=article&id=2814:eden-springs-flyer-jan-2009&catid=365:what-you-can-do&Itemid=200257) accessed 11 October 2009.

a manner consistent with human rights norms, and adversely impact the illegal settlement industry, the very existence of which is an affront to established principles of international law.

The continued occupation of the Syrian Golan, the Israeli settlements in the region and the subsequent settlement industry – including the Eden Springs water company - are illegal under international law. Therefore Eden Springs Ltd is in direct violation of international law and complicit in the state of Israel's illegal occupation of the Golan. Furthermore, non-Israeli companies with links to Eden Springs Ltd are also complicit in these violations. The boycott of Eden Springs in the UK demonstrates how the BDS movement can be an effective way of voicing protest against Israel's violations of international law and achieving practical results.

## Case Study 2 : Wineries in the occupied Golan

*“The Syrian citizens living in the occupied Syrian Golan have cultivated their lands and fruit orchards over generations. It is this particular aspect of their social and economic life that is also at the heart of their cultural and national identity. ‘The land and the trees are our souls...’”*<sup>204</sup>

The establishment of wineries by settlers in the occupied Syrian Golan represents yet another example of how Israel continues to profit economically from an illegal occupation. Although ‘settlements are usually thought of as residential communities...what is often overlooked...is the business side of Israel’s settlement enterprise...’<sup>205</sup> Owing to its high altitude, rich soil and agreeable climate conditions, the occupied Golan has played host to the emergence of an array of vineyards such as Golan Heights Winery, Chateau Golan and Bazlet Ha Golan. Golan Heights Winery Ltd. is a subsidiary of Galilee and Golan Heights Vineyards, Inc.<sup>206</sup> and was founded in 1983, shortly after Israel’s unlawful annexation of the Golan. Located in the industrial area of Katrzin, the winery is one of the largest operating in the Golan region and is jointly owned by a combination of nearby kibbutzim and agricultural settlements.<sup>207</sup> In a joint venture with Kibbutz Yiron, Golan Heights Winery also has a sister company, namely Galil Mountain

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<sup>204</sup> International Labour Conference 97th Session, ‘*The Situation of Workers of the occupied Arab Territories*’ (Geneva 2008), 20.

<sup>205</sup> PLO Negotiations Affairs Department ‘*The Business of Colonization*’ Background Brief (October 2008) 1 available at : [http://www.nad-plo.org/news-updates/NSU%20Policy%20Paper%20Business%20Colonization%20FINAL%20\(Oct%202008\).pdf](http://www.nad-plo.org/news-updates/NSU%20Policy%20Paper%20Business%20Colonization%20FINAL%20(Oct%202008).pdf) accessed 28 November 2009.

<sup>206</sup> See <http://www.linkedin.com/companies/golan-heights-winery> accessed 28 November 2009.

<sup>207</sup> See <http://whoprofits.org/Company%20Info.php?id=607> accessed 28 November 2009.

Winery, which is based in the Upper Galilee.<sup>208</sup> The Golan Heights Winery produces wine under the brand labels Yarden, Gamla and Golan, exporting to over thirty countries throughout the world. Vineyards cultivated by the winery encompass an area of approximately 600 hectares and in 2008, annual production reached and estimated six million bottles.<sup>209</sup> With a formidable domestic market share of 18%, Golan Heights Winery is considered to be one of Israel's top three vineyards and its products further comprise approximately 38% of Israel's wine exports, which corresponded to approximately 26.7 million dollars in 2008.<sup>210</sup> The wine industry has therefore proved to be a highly lucrative one for settlements in the Golan. However, as the following map illustrates, the expansion of the settlement wine industry in the Golan has come at a high price for local Syrian inhabitants, with the vast majority of Israeli settlement vineyards located on or near destroyed Arab villages and farms.

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<sup>208</sup> See Golan Heights Winery website [http://www.golanwines.co.il/general\\_eng.asp](http://www.golanwines.co.il/general_eng.asp) accessed 28 November 2009.

<sup>209</sup> 'The Wine Revolution of the Golan Heights Winery' (27 March 2009) available at [http://www.prowein.de/cipp/md\\_prowein/custom/pub/content,lang,2/oid,16712/ticket,g\\_u\\_e\\_s\\_t/~The\\_Wine\\_Revolution\\_of\\_Golan\\_Heights\\_Winery.html](http://www.prowein.de/cipp/md_prowein/custom/pub/content,lang,2/oid,16712/ticket,g_u_e_s_t/~The_Wine_Revolution_of_Golan_Heights_Winery.html) accessed 28 November 2009.

<sup>210</sup> Karen Kozek, 'Israel Boutique Wineries make the Grade' (11 October 2006) available at : [http://www.israel21c.org/index.php?option=com\\_content&view=article&id=14893%AlIsraeli+boutique+wineries+make+the+grade&Itemid=109](http://www.israel21c.org/index.php?option=com_content&view=article&id=14893%AlIsraeli+boutique+wineries+make+the+grade&Itemid=109) accessed 28 November 2009.



## Impact of Settlement Business on the Golan Economy

Settlement businesses in the Golan are effectively profiting from the exploitation of the occupied territories' natural resources and act in a manner that is unequivocally contrary to international law.<sup>211</sup> Factories, farms and vineyards require physical space to develop and expand their operations and thus 'sit atop and/or use land that has been illegally confiscated... and that otherwise could have been productively utilized'<sup>212</sup>

<sup>211</sup> See section 2.3.

<sup>212</sup> PLO Negotiations Affairs Department 'The Business of Colonization' Background Brief (October 2008) at 2 available at : [http://www.nad-plo.org/news-updates/NSU%20Policy%20Paper%20Business%20Colonization%20FINAL%20\(Oct%202008\).pdf](http://www.nad-plo.org/news-updates/NSU%20Policy%20Paper%20Business%20Colonization%20FINAL%20(Oct%202008).pdf) accessed 28 November 2009.

by the local inhabitants of the occupied Golan. The Israeli government foster and encourage the expansion of settlement industry through the provision of diverse incentives whilst concomitantly stifling the local Syrian population's endeavours at economic growth. As a corollary, 'the Golan's economy is now a one-crop economy, based on the apple. Lacking any measure of self-sufficiency, the population cannot sustain itself for any length of time without help from the outside, and the area is hemmed in on all sides by Israel, with no direct links to allies.'<sup>213</sup> Mufeed Al Wili, a local business owner from Bqa'atha, sheds light on this form of economic oppression and subjugation.

### Mufeed Al Wili from Bqa'atha, occupied Syrian Golan Al-Marsad Affidavit

#### Extract 1

*Firstly, we had a lot of grapes before the 1967 occupation, now we have none, except a small amount, but not for wine. The land that we own is a very small amount, we have very limited land for 300 years, and it's still the same amount of land, even though the society has increased and gotten bigger and bigger. If we wanted to develop the grape planting, we would need more land, land that we haven't got which the settlers have.*

This Israeli practice of relentlessly subduing and inhibiting the economic enterprises of Syrian residents of the Golan has compounded the problems already associated with settlement production. With an ever expanding population, local Syrians are faced with the increasingly insurmountable task of finding suitable and adequate work in a region with minimal

<sup>213</sup> Tayseer Mara'i and Usama R. Halabi, 'Life under occupation in the Golan Heights' (1992) 22(1) Journal of Palestine Studies 78, 90.

employment opportunities. Referring to the right to livelihood of the local Syrian inhabitants in the Golan, the International Labour Organization (ILO) observed in its annual report that:

the Syrian citizens living in the occupied Syrian Golan face serious obstacles in pursuing their livelihoods and occupations. Having traditionally relied on agricultural activities, particularly fruit cultivation, they are severely constrained by Israeli measures and policies restricting their access to land and water. Discriminatory water quotas and tariff schemes favour Israeli settlers.<sup>214</sup>

Students who benefit from university education in Damascus, return to the Golan highly skilled in fields such as law, dentistry and medicine but remain unable to utilise their qualifications owing to the considerable dearth of employment prospects in their respective towns and villages. As the ILO has asserted:

the Syrian citizens of the occupied Syrian Golan suffer from a lack of employment in their communities, with no prospect for economic development in the region. For many, employment in Israel, primarily in the construction sector, remains the only option... The absence of employment opportunities in the occupied Syrian Golan particularly affects women, whose occupations and regional mobility is especially restricted.<sup>215</sup>

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<sup>214</sup> UN General Assembly Sixty Fourth Session 'Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the occupied Territories' 9 September 2009, UN Doc A/64339/ para. 93.

<sup>215</sup> *Ibid.*

In many respects, the settlement industry operating in the Golan is a patent and tangible reminder of the immense suffering which the local Syrian population have had to endure under Israeli occupation.

**Mufeed Al Wili from Bqa'atha, occupied Syrian Golan  
Al-Marsad Affidavit**

**Extract 2**

*Firstly, I don't differentiate between products of the settlements and products of Israel. It's one unit. What the settlers are producing, it's an Israeli product. On many occasions they compete with us – we produce apples, they produce apples. It means they cause us problems in the market. We cannot boycott the products because we need them. There is no way to have any alternatives except the Israeli products. But in my family, in my home, I don't use any milk except the goats' milk we have in the village. And I have to wait a long time because we haven't a lot of goats. I like this milk, I like this cheese. My family doesn't use the milk produced in Israel, we use the local milk. Concerning feelings, the most injured people are the refugees who were forced to leave this place, and the memories they left behind. All their memories, all their lives, all their trees, all their houses, rocks, environment, view, landscape; and they fled, and how they are now. When I came back to my village and I saw it from a small distance, and saw the rubble of my family house, it looked like death, like something's missing, like someone died. We have to carry this memory. When I was studying in Damascus, I knew one from Saora, we were in the same class, studying business. When he left here he was a little child. He told me that if he died in his original village it would have been much better than to live here. You have the memory of the people who were*

*here, and the fact that you have people here, the settlers, who make the suffering continue. If there weren't settlers, it would be very easy for the Israelis to withdraw from the Golan...the settlements are an obstacle of peace. The suffering of the locals and the existence of the settlements are two sides of the coin.*

### Settlement Wine on the International Stage

Despite the inherent illegality of settlement production, the international community has done little to reproach or reprimand the marketing and distribution of wines imported from Israeli wineries in the Golan. As has been previously discussed in section three, companies such as Tesco, Waitrose and Selfridges openly stock Yarden wine. In selling settlement products, such companies are watering down their respective corporate social responsibility commitments to nothing more than empty rhetoric. As UN Special Representative, John Ruggie, has observed, 'company claims that they respect human rights are all well and good. But the Special Representative has asked whether companies have systems in place enabling them to demonstrate the claim with any degree of confidence. He has found that relatively few do.'<sup>216</sup> Interestingly, the Golan Heights Winery has received numerous international awards at prestigious festivals such as Citadelles du Vin, the International Wine and Spirit Competition and Challenge International du Vin and was recently named 'Best Foreign Winery' at the Prague Trophy 2008 international wine competition.<sup>217</sup> Fortunately for

<sup>216</sup> Human Rights Council Eleventh Session 'Business and Human Rights: Towards Operationalizing the 'Protect, Respect and Remedy' Framework' 22 April 2009, UN Doc A/HRC/11/13/ para. 49.

<sup>217</sup> See : <http://www.wines-israel.co.il/en/ascrolling%20news/41243.phpBest> accessed 28 November 2009.

the Golan Heights Winery, competition regulations which state that 'each product is to bear the name of its country of origin where the grapes were harvested and made into wine'<sup>218</sup>, are enforced in a haphazard manner, wholly in ignorance of the winery's complicity in breaches of international law.



Golan Heights Winery, located in the Israeli settlement of Katzrin

*Picture sourced from Jalaa Maray archives*

<sup>218</sup> See Les Citadelles Du Vin entry rules available at : [http://www.citadellesduvin.com/pdf/reglement/REGLEMENT\\_GB.pdf](http://www.citadellesduvin.com/pdf/reglement/REGLEMENT_GB.pdf) accessed 28 November 2009.

In 2006, Sweden and Israel became embroiled in a diplomatic dispute regarding the labelling of wines produced by Golan Heights Winery. Sweden's state owned alcohol retailer, Systembolaget, originally labeled wine made by Golan Heights Winery as 'Made in Israel'. After receiving a number of complaints from customers, Systembolaget consulted the Swedish foreign ministry and decided to change the label to 'made in Israeli-occupied Syrian territories'. The amended label provoked widespread outrage amongst senior Israeli government officials and consumers of the wine in Sweden. Golan Heights Winery CEO, Shalom Blayer, was incensed at the decision, stating that 'it appears that some clerk in Sweden really 'likes' us. We will continue to sell wines with the Golan Heights label, because this is where the wine comes from. Whoever doesn't like it, can refrain from buying the wine. We're not selling politics.'<sup>219</sup> The severity of the backlash and protests forced Systembolaget to review the issue and the problem was eventually 'solved' by the removal of all reference to the production country on the wine label.<sup>220</sup> In commenting on the resolution to the controversy, Systembolaget press secretary, Björn Rydberg, stated that 'most have more or less silently accepted this solution. We did this so that everyone would be satisfied.'<sup>221</sup> The local Syrian inhabitants of the Golan might beg to differ with Mr. Rydberg's assertion.

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<sup>219</sup> Itamar Eichner, 'Sweden: Israeli wine made in occupied territory' (6 August 2006) <http://www.ynetnews.com/articles/0,7340,L-3260256,00.html> accessed 28 November 2009.

<sup>220</sup> Erik Hagen, 'Sells Wine from occupied Area' (21 September 2008) <http://www.norwatch.no/200809211130/english/other/sells-wine-from-occupied-area.html> accessed 28 November 2009.

<sup>221</sup> *Ibid.*

More recently in 2008, Israel caused a diplomatic stir by distributing wine, produced in a settlement winery in the Golan, as year-end holiday gifts to staff at the UN. The choice of gift sparked outrage amongst Syrian delegates, who condemned the move as 'provocative and irresponsible behavior by the Permanent Mission of Israel. The action demonstrates contempt for international legitimacy as UN Headquarters.'<sup>222</sup> In a letter to UN Secretary General, Ban Ki-Moon, Syrian Ambassador, Bashar Ja'afari requested all UN staff to refrain from accepting the gift of wine produced in occupied Syrian territory.<sup>223</sup> The Syrian Ambassador went on to reiterate that 'the winery where the wine bottles were produced was built by the Israelis in the occupied Syrian Golan in violation of both Security Council resolutions 465 (1980) and 497 (1981)'<sup>224</sup> and called upon Israel to 'protect private and public land, property and water resources on occupied territory.'<sup>225</sup> Israel's UN mission considered the gift of wine produced in occupied territory to be entirely appropriate, with spokeswoman Mirit Cohen stating that 'the Golan Heights is an integral part of the State of Israel and the wine produced in that region is some of the best in the country. As such, we were pleased to share it with our colleagues.'<sup>226</sup>

The aforementioned incidents serve as a potent indicator that settlement products face minimal meaningful censure on the

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<sup>222</sup> UN General Assembly Sixty-third Session 6 January 2009, UN Doc A /63 /669.

<sup>223</sup> 'Syria Protests Israel's gift of Golan wine to UN Staff' Haaretz (Tel Aviv, 10 January 2009) <http://www.haaretz.com/hasen/spages/1054235.html> accessed 28 November 2009.

<sup>224</sup> UN General Assembly Sixty-third Session 6 January 2009, UN Doc A /63 /669.

<sup>225</sup> 'Syria Protests Israel's gift of Golan wine to UN Staff' Haaretz (Tel Aviv, 10 January 2009) <http://www.haaretz.com/hasen/spages/1054235.html> accessed 28 November 2009.

<sup>226</sup> *Ibid.*

international stage, permeating global markets unhindered and unrestrained. Regrettably, foreign companies importing and distributing such goods are equally culpable and complicit, benefiting economically from illegal settlement industries in addition to directly and indirectly assisting Israel in its violations of international law.

## Conclusion

Israel's ongoing occupation of the Syrian Golan continues to violate international humanitarian and human rights law. While the international community has been vociferous in its objections, actions speak louder than words and in this respect, organisations such as the UN have repeatedly failed the people of occupied Syrian Golan. This report has illustrated that Israel's policy of settlement expansion continues unabated, to the extent that the number of illegal Israeli settlers in the Golan will soon surpass that of the local Arab inhabitants.

The settlement industry has had severe economic repercussions for the local Syrian population. Discriminatory policies and practices have adversely affected the lives of the indigenous people and stifled their ability to develop a prosperous and vibrant economy.

Despite the intrinsic illegality of Israel's exploitation of the Golan's natural resources, settlement industry in the region has flourished. The EU's commitment to promote and respect human rights sit uneasily with its policy of forging stronger trade relations with Israel. This hypocrisy manifests itself on the shelves of supermarkets across Europe, where illegal settlement products are readily available.

With no foreseeable end to the occupation in sight, there exist a number of measures which Israel and the international community could take to improve the daily lives of the native Golan inhabitants :

1. Israel's policy of settlement expansion in the occupied Syrian Golan should be halted immediately;

2. Discriminatory policies and practices enforced by the Israeli authorities against the local Syrian population should be brought to a resolute end;
3. Settlement production and Israel's exploitation of the Golan's natural resources should cease;
4. Multinational corporations with links to Israeli settlement production in the occupied Golan should terminate such ties immediately in order to end the indirect funding of illegal settlements;
5. In line with the stance of the Global Boycott, Divestment and Sanctions Movement (BDS), Al-Marsad advocates participation in a consumer boycott of Israeli settlement products originating in the occupied Golan;
6. The EU should suspend trade relations with Israel in light of the latter's flagrant breaches of international humanitarian and human rights law;
7. Failing an outright suspension of the EU-Israel Association Agreement, the EU should reform the 'technical arrangement' currently in operation, in addition to implementing more rigorous labelling practices in the interest of consumers;
8. International law ought to be clarified and strengthened with regard to issues surrounding the legality of settlement industry in occupied territories;
9. The international community should dispense with empty rhetoric and fulfil its obligations to the people of the occupied Syrian Golan by considering the imposition of meaningful sanctions against the state of Israel until the latter conforms to international law standards.

As John Stuart Mill once surmised, 'A person may cause evil to others not only by his actions but by his inaction, and in either case he is justly accountable to them for the injury.' The continued inaction of the international community with regard to Israel's gross violations of international law have proved highly injurious to the people of the occupied Syrian Golan. The time is therefore ripe for change, in the interest of securing an end to the economic occupation and achieving a lasting peace in the Middle East.

**Al-Marsad, the Arab Centre for Human Rights in the occupied Golan** is an independent non-profit legal human rights organisation, located in Majdal Shams, in the occupied Syrian Golan. The centre was founded in October 2003 by a group of lawyers and other professionals with backgrounds in health, education, journalism, engineering and town-planning – as well as human rights defenders and other interested community members.

We commenced our work on a voluntary basic but as time has passed we have been able to successfully attract funding from local and international resources, which has been used to support many of our projects. We are currently engaged in establishing close ties with a number of local human rights organisations in the occupied Palestinian Territories and with international human rights organisations. We believe these relationships are indispensable to our work, especially given the rich experience these organisations have, as well as their international connections.

#### General Objectives :

The Israeli military and subsequent civilian rule in the occupied Syrian Golan has committed many violations of international human rights law and international humanitarian law. These violations, while taking new forms, persist to the present. The lack of international intervention and the absence of local civil society forms helped to hide the harsh realities of the occupation. It also helped to create a free space for abuse and misadministration in most arenas of social life (including education, health, economic policy, and regional and municipal planning).

### Al-Marsad's main goals are to :

Monitor and document violations of both international human rights law and international humanitarian law committed in the occupied Golan.

Educate the local indigenous community regarding their rights under international law through workshops and forums.

Increase awareness amongst the international community regarding Israel's illegal occupation of the Syrian Golan.

Provide free pro bono legal services to the local indigenous population who have had their rights violated by the occupation.

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