



AL-HAQ

Annexing Energy



**Exploiting and Preventing the Development Of Oil and Gas
in the Occupied Palestinian Territory**

AL-HAQ

AUGUST 2015



AL-Haq - 54 Main Street 2nd & 3rd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
P.O.Box: 1413 - Ramallah - West Bank - Palestine
Tel: +972 (0) 2 2954646/7/9
Fax: +972 (0) 2 2954903
www.alhaq.org

Authors Dr. Susan Power
ISBN 978-9950-327-48-1
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*Dedicated to the Memory of
Yousra Mahmoud Hussein*

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GLOSSARY

Annexation: The unilateral forcible acquisition of the territory of one State by another State. Article 2(4) of the United Nations Charter prohibits the threat or use of force against the territorial integrity of another State and the acquisition of territory by force.

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

Area A: The 1995 Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo II) divided the West Bank into three Areas. Area A includes those parts of the West Bank that are under full Palestinian civil and security control. In Area A, which includes (parts of) six major West Bank cities, the Palestinian authorities assumed “the powers and responsibilities for internal security and public order,” and the administration of civil spheres, such as health, education, policing and other municipal services. However, since 2002, Israel has retained responsibility for overall security in all areas of the West Bank, and does not abdicate full authority over Area A.

Area B: Includes those parts of the West Bank that are under full Palestinian civil control and joint Israeli-Palestinian security control. Within Area B, which encompasses many Palestinian villages and towns, the Palestinian authorities were vested with the same functional authorities as in Area A, including public order for Palestinians. However, Israel retained overriding responsibility for security.

Area C: Includes those parts of the West Bank that are under full Israeli civil and military control, including land registration, planning, building and designation of land use. It contains the bulk of Palestinian agricultural and grazing land, water sources and underground reservoirs. Area C includes more than 61 percent of the West Bank.

Dunums: A dunum (or dönüm, dunam) is a unit of land equal to 1,000 square meters. Land area in the West Bank, Gaza Strip and Israel has been measured in dunums since the era of the British Mandate of Palestine.

Exclusive Economic Zone: The exclusive economic zone is an area beyond and adjacent to the territorial sea over which the coastal State has rights and duties regarding the exploration, exploitation and conservation of natural resources, including energy production from water and wind.

Expropriation: Defined as a governmental taking or modification of an individual’s property rights, especially for public use or in the public interest.

Fracking (Frac’ing): Hydraulic fracturing or ‘fracking’ or ‘frac’ing’ is the process of drilling and injecting fluid into the ground at high temperatures to recover oil and gas from shale rock.

Green Line: The 1949 Armistice Line, which is internationally accepted as the boundary between Israel and the OPT. Its name derives from the green ink used to draw the line on the map during the peace talks.

Hydrocarbon: Organic compounds composed of hydrogen and carbon.

Israeli Civil Administration: The body responsible for the implementation of Israel’s government policy in the West Bank. It is part of the Coordinator of Government Activities in the Territories, which is a unit in the Israeli Ministry of Defense.

Liquefied Natural Gas: Natural gas that has been cooled to -162° shrinking the gas volume 600 times for storage and transportability.

Occupied Palestinian Territory (OPT): The OPT refers to the territory occupied by Israel since the 1967 Six Day War. It is now composed of two discontinuous regions, the West Bank, including East Jerusalem, and the Gaza Strip. This land encompasses only 6,200 square kilometers (km²) and is only 22 percent of historic Palestine under British mandate.

Operation Cast Lead: The 2008-2009 Israeli wide-ranging military offensive against the Gaza Strip, launched on the morning of 27 December 2008 and lasting for 22 days.

Operation Protective Edge: The large scale Israeli military offensive on the occupied Gaza Strip between 8 July and 26 August 2014, which escalated on 17 July with an Israeli ground invasion.

Subsea Tieback: This is where additional risers are attached to a platform or floating vessel in offshore oil and gas upstream activities.

Thermogenic Gas: Gas formed at great depths through thermal cracking of sedimentary organic matter into hydrocarbon liquids and gas, or through the thermal cracking of oil into gas at high temperatures.

ABBREVIATIONS

AGP – Arab Gas Pipeline
Bbl – Barrel (unit)
Bcm – Billion cubic meters
BG Group– British Gas Group
Btu – British thermal unit
CCC – Consolidated Contractors Limited
EEZ – Exclusive Economic Zone
EMG – East Mediterranean Gas
FCO – Foreign and Commonwealth Office (United Kingdom)
FPSO – Floating Production Storage and Offloading Platform
GEDCO – Gaza Electricity Distribution Company
GWh – Gigawatt-hour (1 million kWh)
ICCPR – International Covenant of Civil and Political Rights
ICESCR – International Covenant of Economic, Social and Cultural Rights
ICJ – International Court of Justice
IEC – Israel Electric Corporation
IEI – Israel Energy Initiatives
IHCJ – Israeli High Court of Justice
IHL – International Humanitarian Law
IHL – International Human Rights Law
JDECO – Jerusalem District Electric Company
Km - Kilometers
KWh – Kilowatt hour
LNG – Liquefied Natural Gas
LNG FPSO -Liquefied natural gas floating production storage and offloading
MM Bbl – Million barrels
MM cfd – Million Standard Cubic Feet per Day
MM Stb – Million stock barrels

MW – Mega watt
NEDCO – Northern Electricity Distribution Company
NEPCO – Jordanian National Electric Power Company
NPV10 – Net present value at ten per cent incremental costs
Nm – Nautical miles

- 1 nautical mile = 1.15078 miles
- 1 nautical mile = 1.852 kilometers
- 1 league – 3 nautical miles

OSC - Outer Continental Shelf
PA – Palestinian Authority
PADICO – Palestine Development and Investment Company
PEC – Palestine Electric Company
PEI – Palestinian Economic Initiative
PETL – Palestinian Electricity Transmission Company
PIF – Palestine Investment Fund
PCI – Projects of Common Interest
PLC – Palestinian Legislative Council
PLO – Palestinian Liberation Organisation
PNA – Palestinian National Authority
PPGC – Palestine Power Generation Company
SELCO – Southern Electric Company
Tcf – Trillion cubic feet
Tscf – Trillion standard cubic feet
Tscm – Trillion standard cubic meters
TW – Terrawatts
UNCLOS – United Nations Convention on the Law of the Sea
UNCTAD – United Nations Conference on Trade and Development
UNTAET – United Nations Transitional Administration in East Timor
USD – United States Dollars
VAT – Value Added Tax

EXECUTIVE SUMMARY

Since 1967 Israel has occupied the Gaza Strip and West Bank including East Jerusalem (OPT). During this time, the occupied Palestinian population has been governed under emergency military rules of belligerent occupation, a legal framework originally intended to regulate short-term military occupations of a few years. The OPT is rich in oil, gas and shale oil resources which if developed, would make Palestine economically self-sufficient negating its reliance on international aid. However Israel has systematically prevented Palestine's development of oil and gas in the OPT by curtailing Palestinian freedom of movement, appropriating Palestinian resource rich land and sea resources, forcibly stagnating the Palestinian economy and manipulating Palestinian energy dependence for private commercial profit.

ENERGY ANNEXATION FOR PROFIT

Israel's governance of natural resources in the OPT has exceeded the parameters of occupation law. Article 43 of the Hague Regulations (1907) requires the military commander to maintain as far as possible the laws in force in the occupied country, subject to military necessity and humanitarian considerations. However in the OPT, the military commander does not govern natural resources instead these are administered directly from Israel's government ministries. This allows Israel to make decisions on the development of natural resources in the OPT based on Israel's local government policy formulated in the interest of Israeli citizens and corporations. This is contrary to the military commanders permitted but limited administration of natural resources, which under international law is subject to military necessity and the humanitarian guarantees of the occupied population.

In 1967, Israel terminated local Palestinian supply agreements for electricity and granted new concessions to the Israel Electric Corporation (IEC) allocating control over the Palestinian electricity grid to the IEC. Through its policies and practices Israel has made the OPT almost completely dependent on Israel for its energy supply. Israel profits substantially from Palestine's energy subjugation. The arrangement is exacerbated by a 'customs union' started illegally under military order during the 1970's and later effectively rubber stamped by the Oslo Accords. Israel controls Palestinian revenues, profiting from customs collected on international imports of oil, gas, petroleum and fuel, among other commodities, collected at its borders but destined for the Palestinian market. These fiscal leakages deprive the Palestinian economy of millions of US dollars (USD) in revenues and amount to an illegal appropriation of Palestinian sovereign wealth in violation of international humanitarian law. In addition, Israel ensures that the OPT remains fragmented and unable to develop its own energy, targeting and destroying power plants and energy infrastructure across the Gaza Strip.

BLOCKING GAS DEVELOPMENT IN THE MEDITERRANEAN SEA

Both Israel and the OPT have large gas reserves in the Mediterranean Sea. In 1999, gas deposits were discovered off the coast of Palestine and leased by the Palestinian Authority (PA) for development to British Gas Group (BG). Since this time, Israel has forcibly prevented Palestinian and BG access to the

Gaza Marine and Border gas fields and intervened politically to obstruct their development. In 2000, large natural gas deposits were discovered in Israel's maritime space at the Noa and Mari-B fields bordering Palestinian waters, located 13 nautical miles (nm) from the Palestinian coast. Israel's gas fields in *inter alia* the Mari-B, Noa, Tamar and Leviathan leases are operated by US company Noble Energy who enjoys a monopoly over Israel's gas resources.

Israel has closed off access to Palestine's territorial waters to protect Israeli gas platforms and export pipelines. In 2005, Israel concluded an agreement with Egyptian company East Mediterranean Gas (EMG) to route a gas pipeline across Palestine's maritime space from Ashkelon in Israel to El-Arish in Egypt. This transpired in the absence of an agreement with the PA required under the Oslo Accords and international law. In particular, pipelines entering territorial waters are subject to the domestic laws of the coastal State. Israel has employed severe security measures to protect its Mari-B gas platform and the El-Arish pipeline by imposing a lethal naval closure of Palestine's maritime zone and occupying the Palestinian continental shelf. Israel routinely attacks, injures and kills Palestinian fishermen fishing within Israel's unilaterally imposed 6 nm coastal limit, governed by Israeli Ministry of Transport and Road Safety mariner notices.

While the maritime closure ensures that Palestinian gas resources remain undeveloped, Israel has unilaterally exploited the Noa gas field, geologically contiguous to Palestine's Border gas field. Generally, when several corporations have an interest in a geologically contiguous structure, a lead operator is appointed between corporations to extract migratory gas from all areas of the geological structure from one well. This is the most economical way of managing the resource. The Oslo Accords requires joint cooperation for the development of contiguous geological resources. Additionally, any exploitation of migratory Palestinian gas would violate Article 55 of the Hague Regulations, which prohibits the exploitation of new wells in occupied territory and customary international law requiring joint cooperation.

Israel has awarded exploration leases to international companies in its declared Exclusive Economic Zone (EEZ). However, title to sea resources in the EEZ have been disputed by Lebanon and leases bordering Palestinian maritime waters may be subject to future legal challenge, should Palestine choose to delimit its EEZ. Israel unilaterally delimited coordinates of an EEZ adjacent to the Palestinian coast and allocated Palestine a small portion of maritime space from the EEZ, a practice with no basis in international law. The State of Palestine may declare a much-expanded EEZ with rights to overlapping maritime areas to which Israel has declared exclusive rights and leased to international gas companies.

PLUNDER AND PREVENTED DEVELOPMENT OF OIL

In 2003, Israel unlawfully appropriated Palestinian village land containing oil deposits at *Rantis* and forcibly blocked Palestinian entry to the land. An Annexation Wall was built forming an enclave around the village. The illegal requisition violated Article 46 and Article 52 of the Hague Regulations and Article 53 of the Fourth Geneva Convention, while similarly violating Palestinian human rights to self-determination and permanent sovereignty over natural resources. On the Israeli side of the Green Line, a massive oil field located at *Rosh Haayin* extends into Palestinian territory at *Rantis*. Israel has leased

rights to commercially exploit the Meged-5 well at *Rantis* without securing PA cooperation required under the Oslo Accords and further violating Article 55 of the Hague Regulations. Together, Israel's policies and practices of appropriating, exploiting and preventing Palestinian development of natural oil and gas resources and revenues in the OPT amounts to an energy annexation. In general, Israeli practices have led to the systematic eroding of the Palestinian productive base, making prospects for development almost impossible.

CONCLUSION

Israel's unlawful appropriation, exploitation and prevented development of oil and gas resources, constitute plunder and further breach Palestine's right to self-determination, a peremptory norm of international law. By their actions, international corporations and States including EU members, concluding pipeline agreements to export gas from Israel's Tamar and Leviathan fields which connect to the Mari-B platform, will effectively support and profit from Israel's continued illegal closure of Palestinian maritime waters to secure its gas distribution network. In particular, the seizure of Palestine's maritime space and prevented commercial development of its natural gas resources in the continental shelf amount to a violation of Article 43 and Article 55 of the Hague Regulations. International corporations must ensure that they are not aiding and abetting state violations of international humanitarian law.

Notably the EU has set out Guidelines on Promoting Compliance with International Humanitarian Law. High Contracting Parties to the Geneva Conventions are reminded of their obligations to ensure that Israel respects the Conventions and that States themselves are not complicit in sustaining and supporting ongoing violations of international humanitarian law. States have a customary and treaty law duty to not recognize as lawful situations where peremptory norms of international law are breached. Further, they must not render or assist the unlawful situation and must actively work to bring it to an end.



1. INTRODUCTION

There are massive commercial quantities of oil, gas and shale oil deposits located in the OPT. In March 2010, the United States Geological Survey estimated that the Levant Basin Province contained “a mean of 1.7 billion barrels of recoverable oil and a means of 122 trillion cubic feet of recoverable gas” making the region one of the most important sources of natural gas in the world.¹ The Levant Basin Province spans from the Nile Delta Cone below the south west of Israel and the occupied Gaza Strip, to the Tartus Fault north of Lebanon. In the northwest of Cyprus, it spans from the Eratosthanes Seamount in the Mediterranean Sea and the Levant Transform Zone, which borders the West Bank, Israel, Jordan, Lebanon and Syria.² Notably the Geological Survey indicated that there were a number of gas fields off the coast of Gaza; one gas field on the border of the West Bank, and potentially two or more oil fields bordering the northern and southern boundaries of the Gaza Strip as well as a potential cluster of gas and oil deposits around the Dead Sea.³ Despite the presence of substantial

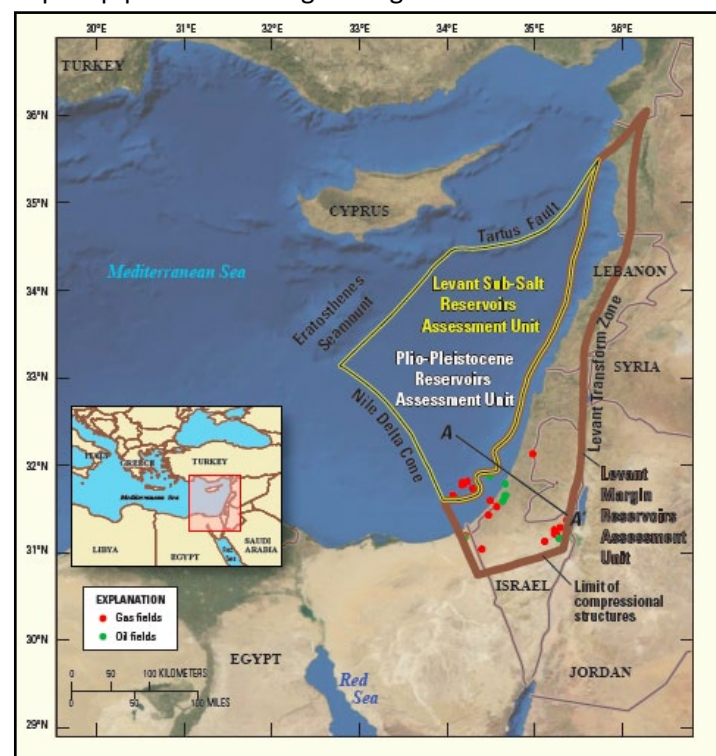
¹ U.S Department of the Interior, 'U.S Geological Survey, Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean' (Fact Sheet 2010-3014. March 2010) 1; James Stocker, 'No EEZ Solution: The Politics of Oil and Gas in the Eastern Mediterranean' (2012) 66(4)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

² *Ibid.*, p. 1.

³ There are also two more potential oil fields, one near Qalqiliya and another near Hebron. Similar to Meged-5, the oil field near Qalqiliya is located near the Israeli border and could potentially be exploited from the Israeli side. United Press International, 'Palestinians say there is oil in West Bank' (8 May 2013).

Palestinian hydrocarbons Israel has systematically prevented the occupied Palestinian population from developing their natural oil and gas resources.

In order to develop and secure Israel's gas platforms bordering Palestinian territorial waters and gas export pipelines running through Palestine's continental shelf, Israel has inflicted a lethal naval closure



Source: U.S Geological Survey, Map of the Levant Basin Province in the Eastern Mediterranean⁶

on the Gaza Strip preventing Palestinian access to its Gaza Marine and Border Field gas resources.⁴ Israel's Mari-B and Tamar gas platforms are located approximately 13.49 nautical miles (nm) off Israel's coast, placing them only marginally beyond Israel's 12 nm territorial sea. The distance is significant in terms of the level of energy security that Israel can legally maintain under international law. While States may apply quite liberal energy security measures within their territorial sea, beyond distances of 12 nm they are limited by international law obligations to facilitate international maritime navigation. Under international law, the maximum safety zone permitted around oil and gas platforms outside the territorial sea is a radius of 500 meters.⁵

Israel has not only employed a 500 meter radius safety zone around the Tamar and Mari-B platforms and connecting pipelines, but has also cut off Palestinian access to the entire Mediterranean Sea beyond an arbitrarily enforced limit fluctuating between 3 nm and 6 nm off the Gaza coast. Furthermore, Noble Energy the lead operator for the Mari-B and Tamar gas platforms, has reported that the Israeli Ministry of Defense prevents fishing vessels within a 5 mile radius from approaching the gas platforms.⁷ In 2014, Israel's business newspaper Globes published a special report on the Navy's protection of Israel's gas rigs:

You have to be there, more than ten nautical miles offshore, to understand how small is the distance a determined terrorist from Gaza has to cover to attack one of the platforms. Only there, a few hundred meters from the two huge platforms that rise from the sea, is it possible to grasp just how difficult, but how critical, it is to protect them....

...two Wasps, -small patrol boats of the Ashdod Patrol Squadron, which are headed to link up for training with a Navy missile corvette at sea, simulate terrorist suicide boats, giving the Shaldag crew an impromptu exercise of an attack that they must frustrate - immediately. There is no time for questions or thought: the machine gun is armed and manned, the combat center already understands the picture and knows where the targets are.⁸

The Israeli navy intercepts vessels breaching its illegally imposed naval closure warning any fishing vessel advancing within 7 nm of the platforms (a distance of under 6 nm from the Gaza coast inside Palestinian territorial waters) and operating a shoot to kill policy (see section 6.2) of those that continue to fish inside Palestinian territorial waters. According to the Israeli Navy:

Vessels that approach within seven miles of the platforms will be intercepted by one of the Navy's patrol boats. The intruder will be ordered to leave and if it refuses, warning shots will be fired. This happens on a daily basis, because Gaza fishermen like to insist on their right to fish wherever they feel like it. If we were not in the sector, the Palestinian fishermen would sail directly to the platforms to fish beneath them. With motorized vehicles they could reach the platforms within minutes. They don't go there only because we're in the fields. They sometimes sail toward the platforms like a swarm of zealots to take them over.⁹

This policy has had a devastating impact on the freedom of movement and right to livelihood of Palestinian fishermen in Gaza.

In the West Bank, Israel has appropriated land belonging to the Palestinian village of *Rantis* containing lucrative oil deposits. Israel has also physically prevented the Palestinian population from accessing and developing their sovereign oil wealth by means of the illegal Annexation Wall. In the meantime, Israel has commercially exploited the Meged-5 oil field extending into the Palestinian territory by applying its domestic petroleum law to facilitate the exploitation of Palestinian natural resources by Israeli and international oil companies.

⁴ State of Israel Ministry of Transport and Road Safety, Notice to Mariners No. 1/2009 Blockade of the Gaza Strip, Jan. 6, 2009.

⁵ Article 60(5), United Nations Convention on the Law of the Sea (1982), "5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones."; Article 5(3), Convention on the Continental Shelf (1958).

⁶ United States Geological Survey, 'Assessment of Undiscovered Oil and Gas Resources of the Levant Basin Province, Eastern Mediterranean' (2010) 1.

⁷ Noble Energy, 'Tamar Expansion Project' (March 2015) 78.

⁸ Globes, 'On the High Seas with Tamar's Defenders' (17 April 2014) <<http://www.globes.co.il/en/article-on-the-high-seas-with-tamars-defenders-1000932479>> accessed 9 May 2015.

⁹ *ibid.*



Source: Israeli Navy Missile Corvette¹¹

Israel's control over Palestinian oil and gas resources is extremely lucrative. The occupied Palestinian population imports approximately 70 percent of its goods and services from Israel including oil, petroleum and gas. In 2007 alone, Palestine imported 100 percent of its petroleum and 92 percent of its electrical energy from the Israel Electric Corporation averaging a cost of 385 million euro.¹⁰ In this manner, Israel has made the occupied Palestinian population completely energy-dependent upon it.

Chapter Overview

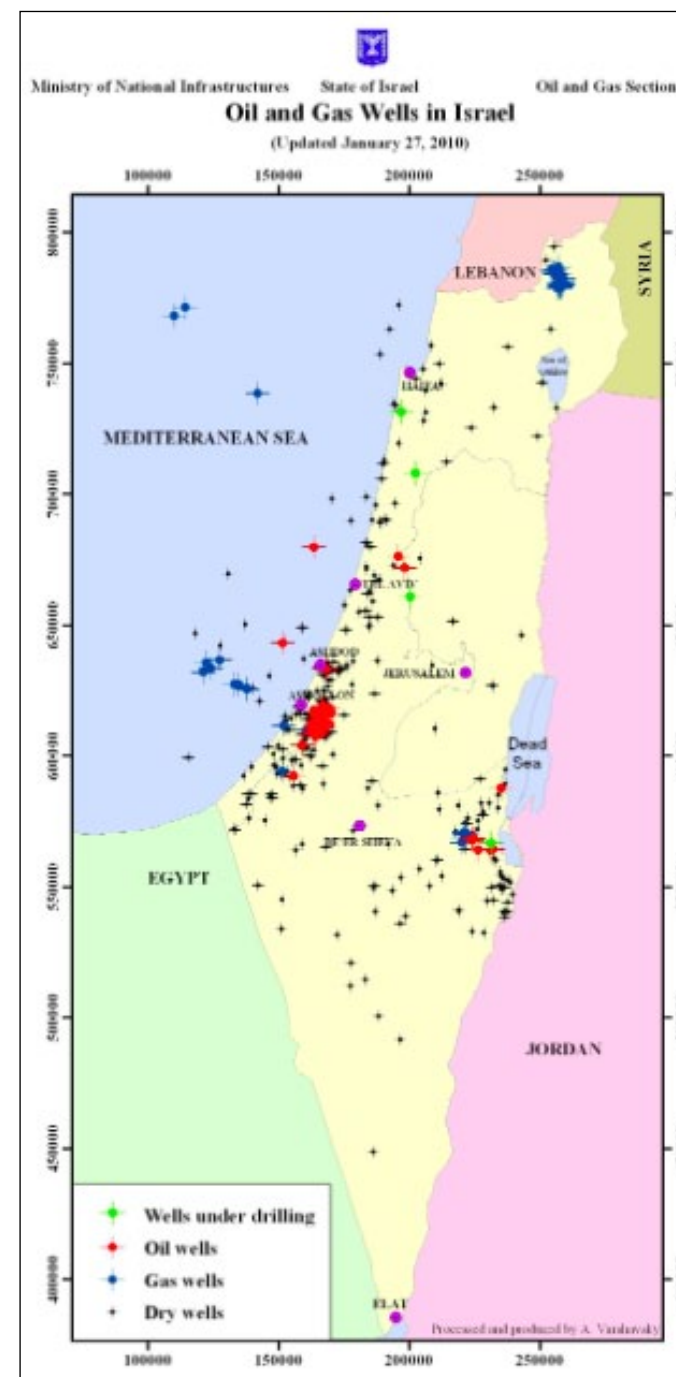
This Report broadly examines Israel's annexation of Palestinian energy resources through the lens of territorial, administrative and economic annexation. The Report demonstrates how annexation pierces all facets of natural resource governance whereby Israel directly administers natural resources in the OPT from its internal government ministries, breaching the limited competence allocated to the military commander under occupation law. Chapter 2 touches on the assimilation of Palestine's energy economy into Israel's under a distorted application of the so-called Oslo 'customs union'. It demonstrates how Israel's energy annexation is executed for the benefit of Israeli and international corporate interests in violation of customary and international law. (While this touches on interesting but ancillary economic questions, any economic analysis is beyond the remit of this Report).

Chapters 3 – 7 examine Israel's policies and practices of forcibly preventing the development of Palestinian oil and gas resources. Israel has illegally exploited contiguous Palestinian gas resources off the coast of Gaza and oil resources in the West Bank. Chapter 5 examines how Israel's prolonged illegal naval closure of the Gaza coast is enforced to secure Israel's gas fields and forms part of Israel's long-term energy security strategy. This effectively amounts to an annexation of Palestine's continental shelf and all the natural resources contained therein, violating Palestinian territorial sovereignty for the benefit of international corporations.

The devastating impact of Israel's energy security on the OPT is the central focus of this Report. However Israel cannot exploit its gas resources without securing gas export markets. For this reason, Chapter 6 outlines in depth Israel's actual and planned gas export agreements with Egypt,

¹⁰ Eng Basel T.Q Yaseen, 'Renewable Energy Applications in Palestine', Palestinian Energy and Environment Research Centre, Energy Authority, 52.

¹¹ By Israel Defense Forces from Israel (Chief of Staff Visits Navy, Jan 2011) [CC BY 2.0 (<http://creativecommons.org/licenses/by/2.0>)], via Wikimedia Commons.



Source: Oil and Gas Wells in Israel¹²

Jordan, Cyprus, Greece and the EU. Israel has annexed Palestine's maritime waters to ensure the security of its gas platforms and pipelines at Mari-B and Tamar and has plans to route additional pipelines through Palestinian waters for its Leviathan field. European and regional agreements to purchase gas from Israel will effectively facilitate the continuation of Israel's illegal energy security policies and practices in Palestinian maritime waters, violating the Palestinian right to self-determination and permanent sovereignty over its natural resources.

Chapter 7 examines Israel's appropriation of Palestinian land at Rantis for 'military training zones' and how Israel's construction of the Annexation Wall severs the Palestinian populations access to their oil fields amounting to an illegal annexation of Palestinian territory. Chapters 8-9 primarily analyses Israel's prevented access and exploitation of Palestinian resources in light of international law. In addition, and for completeness, the provisions of the Oslo Accords and rulings of the Israeli High Court of Justice (IHCJ) are also considered. However, striking a note of caution, the rulings of the IHCJ are not impartial (see section 2.1 and 8.2.2(ii)). In addition, it must be stressed that the Oslo Accords were negotiated between unequal parties and many provisions of Oslo are incompatible with international law.

¹² State of Israel, Ministry of National Infrastructures, Energy and Water Resources, 'Oil and Gas Wells in Israel' at <<http://energy.gov.il/English/Subjects/OilAndGasExploration/Pages/GxmsMniPetroleumAndNaturalGasProspecting.aspx>> accessed 9 May 2015.

Overall the Report underscores the right of the Palestinian people to develop their natural resources during belligerent occupation. Notwithstanding, Israel's deliberate restrictions imposed on Palestinian development in the Gaza Marine, is a manifest violation of its obligations under Article 55 of the Hague Regulations. Israel must continue the functioning of public immovable property already in operation during belligerent occupation. BG Group had already drilled Gaza Marine Wells 1 and 2 in 2000 and therefore Israel is obliged to continue the administration of these wells, to comply with its obligations as belligerent occupant to safeguard the gas wells for the Palestinian population.



2. ANNEXING NATURAL RESOURCES IN THE OPT

Israel occupied the West Bank, including East Jerusalem, and the Gaza Strip in 1967. In so doing, it imposed a military authority and concentrated all governing competence in the hands of the area commander.¹³ A series of military orders were adopted for the administration of natural resources in the West Bank, placing them under military control.¹⁴

On 19 June 1970, Israel introduced *Order Concerning the Investment of Natural Resources (West Bank) (No. 389)* vesting the governance of the natural resources sector in the 'competent authority' appointed by the military commander.¹⁵ Order No. (389) effectively annexed Palestinian natural resources transferring sovereign rights over Palestine's natural resources to the appointed 'competent authority' substantially exceeding the limitations imposed under Article 55 of the Hague Regulations

¹³ R Shehadeh, *From Occupation to Interim Accords and the Palestinian Territories* (Kluwer Law International, 1997) 85.

¹⁴ Order Concerning the Investment of Natural Resources (West Bank) (No. 389), 1970, Published in *Proclamations, Orders and Appointments* (Israeli Occupation, West Bank) Issue No. 23, 30/07/1970 at page 810; Order Concerning the Law on Regulation of the Affairs of Natural Resources (West Bank) (No 457), 1971, Published in *Proclamations, Orders and Appointments* (Israeli Occupation, West Bank) Issue No. 29, 12/09/1972 at page 1118. (This Order amended Article 19 on the Law on Regulation of the Affairs of Natural Resources No. (37) of 1966, governing water and irrigation projects); Order Concerning Law on Regulation of the Affairs of Natural Resources (Amendment) (West Bank) (No 1110), 1984. Published in *Proclamations, Orders and Appointments* (Israeli Occupation, West Bank) Issue No. 66, 17/09/1984 at page 55. (This Order amended Order No. (457) relating to licensing and permits, for water and irrigation projects).

¹⁵ Article 2, Order No. (389), Order Concerning the Investment of Natural Resources (19 June 1970).

on the use of immovable natural resources. For example, the competent authority could issue new mining rights to any person or corporate entity previously holding a certificate of discovery under Article 42(1) of the Jordanian Law No. (37) of 1966.¹⁶ Additionally the amendment granted the competent authority the right to revoke any mining rights previously issued and dispose of the area covered by the mining right, in consideration of the public interest.¹⁷ Paragraph 3 of Order No. (389) allowed the competent authority to furnish “any of its power – in writing – to any person”, thereby placing the governance of Palestinian natural resources beyond the immediate control of the military commander.¹⁸

Following the adoption of the military orders, the administration of the natural resources sector in the Occupied Palestinian Territory (OPT) was fragmented and absorbed into the Israeli Civil Administration (ICA). The ICA maintained authority for zoning, construction and infrastructure in Area C.¹⁹ However, the regulation of the energy sector was further fragmented with competence for marketing, pricing and ownership allocated between various departments outside of the ICA including the Petroleum Commissioner, the Petroleum Unit, the Ministry of Energy and Water Resources, the Antitrust Authority, the Ministry of Environmental Protection, the Ministry of Finance, the Inter-Ministerial Prices Committee and the Planning Authorities.²⁰ As such, this saw the absorption of competence over natural resources, from the military commander back into the Israeli government and ministries. This type of governing structure is more akin to an annexation than temporary belligerent occupation where the military commander administers the territory within the parameters of military necessity. This arrangement has continued beyond the Oslo Accords.

¹⁶ Article 42(1), Law No. (37) of 1966.

¹⁷ Article 42(2)(b), Law No. (37) of 1966.

¹⁸ Article 3, Order No. (389) Order Concerning the Investment of Natural Resources (19 June 1970).

¹⁹ Coordination of Government Activities in the Territories, ‘Civil Administration in Judea and Samaria’ <<http://www.cogat.idf.il/1279-en/Cogat.aspx>> accessed 26 August 2014.

²⁰ U. S Chamber of Commerce, ‘U.S-Israel Business Initiative, Recommendations for Advancing U.S-Israel Cooperation in Energy Exploration and Production’ (May 2013) 7. <<http://www.usisraelbusiness.com/files/2013/05/Energy-Recommendations.pdf>> accessed 22 January 2014.

2.1 FORCED ENERGY DEPENDENCE

“Like any country we want to have energy independence”
(Dr. Omar Kittaneh, Palestinian Energy Authority, 2005)²¹

Since 1967, Israel has made the occupied Palestinian population energy dependent upon it. Prior to the occupation, the Palestinian Electricity Company for the Jerusalem District supplied electricity to the West Bank under a concession agreement from the Jordanian government. Following the establishment of the illegal settlement of *Kiryat Arba* on the outskirts of Hebron, the military commander issued military orders conferring powers for the generation, supply and sale of electricity to the Israeli Civil Administration.²² ICA authorized the IEC to supply and sell electricity to the Hebron municipality. This involved the construction of a permanent high voltage line, which the Israeli High Court of Justice found fulfilled the “obligation of the government to look after the economic welfare of the area’s population”.²³ This decision was taken despite the manifest illegality of altering prior electricity supply arrangements. Furthermore the Israeli High Court factored in the interests of illegal settlers in its appraisal of the “economic welfare of the area’s population” thus distorting Israel’s international humanitarian law obligations to protect the economic welfare of the occupied population.²⁴ This reasoning follows a long line of Israeli High Court of Justice jurisprudence supporting the interests of illegal Israeli settlers over protected Palestinian persons in the OPT, while refusing to rule on the legality of settlements deferring instead to Israeli government policy.²⁵

Israel further terminated a concession agreement with the Jerusalem Electricity Company granted by Jordan in 1967 for the supply of electricity to the West Bank, including East Jerusalem, purchased the plant and granted a new concession to the IEC.²⁶ This measure effectively linked the energy economy of Jerusalem to Israel.²⁷ The IEC currently owns the electrical grid in the West Bank and supplies 95 percent of the West Bank’s electricity to three electricity distribution companies. These companies include the Jerusalem District Electric Company (JDECO), the Northern Electricity Distribution Company (NEDCO) and the Southern Electric Co. (SELCO).²⁸ In the meantime, Jordan supplies 5% of electricity to Jericho in the West Bank.²⁹

²¹ R Bryce, ‘Oil, Peace and Palestine: Energy Key to Holy Land’s Past, Future (2005) 1(4) *World Energy Monthly Review* 10.

²² D Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories* (State University of New York Press, 2002) 64.

²³ HCJ 256/72, Jerusalem District Electricity Co. Ltd. v. Minister of Defense et al., 27(1) PD 124, 138

²⁴ *Ibid.*

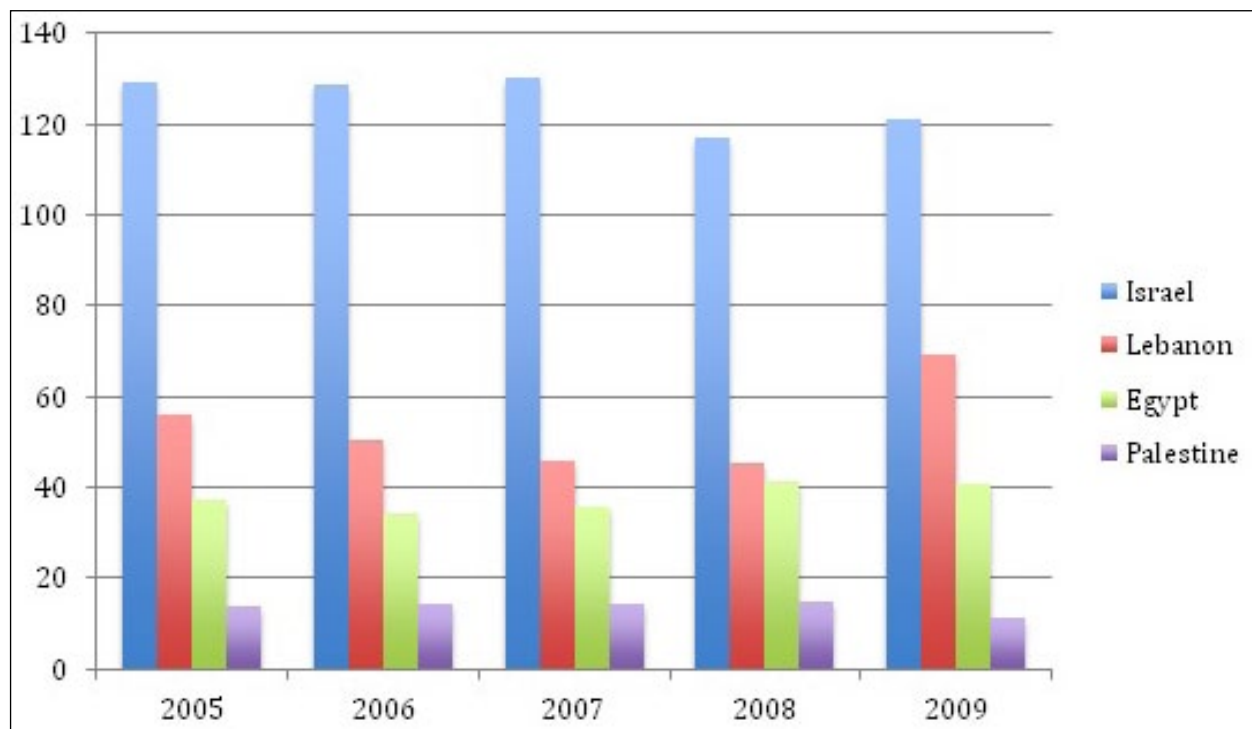
²⁵ Al-Haq, ‘Institutionalised Impunity: Israel’s Failure to Combat Settler Violence in the Occupied Palestinian Territory’ (2013) 8-9.

²⁶ D Kretzmer (n 22) 66.

²⁷ ‘Arab Electricity Company Taken Over’ (1980) 9(3) *Journal of Palestinian Studies* 175.

²⁸ Palestinian Market Briefs, Energy (Oil and Gas Electrical Power).

²⁹ *Ibid.*; West Bank and Gaza Energy Sector Review <<http://unispal.un.org/UNISPAL.NSF/0/99A0D97F24B98A5F85257305006F3507>> accessed 9 May 2015.



Electricity Consumption Figures 2009³⁰

Two thirds of the electricity supply to the Gaza Strip (120 MW) originates from Israel through electricity feeder lines located at a 10-20 meter distance from the fence enclosing the Gaza Strip. The lines are maintained both by the IEC and the Gaza Electricity Distribution Company (GEDCO). However GEDCO requires coordination with the Israeli army to carry out repairs and maintenance on the line, with Israel maintaining ultimate control.³¹ The remainder of the electricity is supplied by Egypt (27 MW) and the Palestine Electric Company (PEC) (65 MW).³²

In addition to the OPT being dependent on the IEC for the majority of its electricity supply, Palestinians are prevented from developing their potential oil and gas reserves inland and off the coast of Gaza.³³ Should gas be supplied from the Gaza Strip to power electricity stations in the West Bank, Palestinians could become economically self-sufficient.³⁴ By maintaining control over Palestine's electricity supply, Israel can cut off or reduce this supply as a coercive and punitive measure.³⁵

30 Independent Statistics and Analysis, U.S Energy Information Administration. Figures for 2009, Total Primary Energy Consumption per Capita, one million Btu (British thermal unit) per person. < <http://www.eia.gov/cfapps/ipdbproject/IEDIndex3.cfm?tid=2&pid=2&aid=2> > accessed 9 May 2015.

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

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

33 R Bryce (n 21) 10.

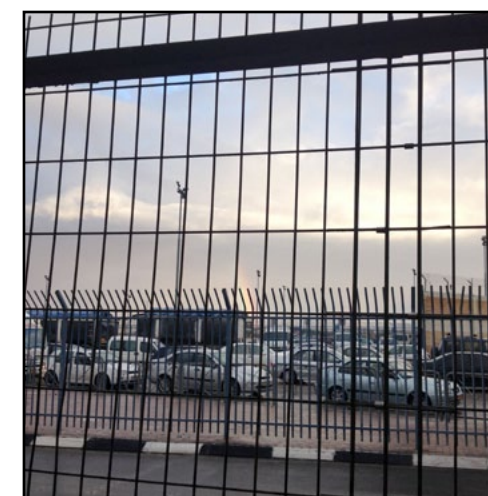
34 V Kattan, 'The Gas Fields off Gaza: A Gift or a Curse?' *Al Shabaka, the Palestinian Policy Network* (April 2012) 2.

35 T Pileggi, 'Israel cuts power to West Bank cities for second time' *The Times of Israel* (25 February 2015).

2.2 ECONOMIC ANNEXATION AND GAS REVENUES

"The Palestinian fiscal situation represents a core challenge. The full, timely and predictable transfer of Palestinian tax and customs revenues by Israel in accordance with the provisions of the Paris Protocol on Economic Relations is essential in order for the Government of the State of Palestine to be able to meet its financial obligations. Key among these is the payment of salaries to civil servants, who have launched strikes in protest against non-payment... Ultimately, private-sector-led economic growth will enable the growth of a vibrant economy, which will benefit Palestinians and provide the tax base necessary to end the cycles of fiscal crisis."

(Report of the Secretary-General, Status of Palestine in the United Nations, 2013)³⁶



Source: Al-Haq, Qalandia Checkpoint

Israel profits from Palestine's energy dependence. The Palestinian economy is deeply embedded within the Israeli economy, with Israel retaining full control over the monetary system, customs and trade, import and export regulations and tax clearance revenues.³⁷ The Protocol on Economic Relations (Paris Protocol) signed between Israel and the PLO in 1994 attempted to create a customs union (a free trade area with a common external tariff) for a strong Palestinian economy, but in effect created a 'semi-customs union'. Indeed, Israel maintains effective control over trade policies beyond the terms of the Protocol and the Hague Regulations, akin to an economic annexation.³⁸ Accordingly, Israel applies its tax rates, tariffs and technical standards to the occupied territory.³⁹

Israel controls access to international borders collecting tax and customs clearance revenues on items earmarked for import to Palestine.⁴⁰ In this manner, approximately 58 percent of imports from third countries are re-exported into Palestine as Israeli 'indirect imports'.⁴¹ Israel resells the goods to Palestinian consumers within the framework of the Paris Protocol customs union. The United Nations Conference on Trade and Development (UNCTAD) estimates that such fiscal leakages cost the

36 Status of Palestine in the United Nations, Report of the Secretary-General (8 March 2013) A/67/738, para 22.

37 Annex V, Protocol on Economic Relations, The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (28 September 1995); Crisis Group Middle East Report, 'Buying Time? Money, Guns and Politics in the West Bank' (Middle East Report No. 142, 29 May 2013).

38 United Nations Conference on Trade and Development, 'Palestinian Fiscal Revenue Leakage to Israel under the Paris Protocol on Economic Relations' 1 <http://unctad.org/en/PublicationsLibrary/gdsapp2013d1_en.pdf> accessed 9 May 2015.

39 West Bank and Gaza Investment Climate Assessment, 'Fragmentation and Uncertainty' 33 <<http://documents.worldbank.org/curated/en/2014/01/20189765/west-bank-gaza-investment-climate-assessment-fragmentation-uncertainty>> accessed 9 May 2015.

40 Palestinian Ministry of National Economy, 'Economic Costs of the Israeli Occupation for the Occupied Palestinian Territory' (September 2011) 32.

41 *Ibid.*, p. 33.

Palestinian economy approximately USD 300 million annually.⁴²

However, the majority of fiscal leakages stem from direct imports between Israel and Palestine.⁴³ The relationship is extremely lucrative for Israel as Palestine imports approximately seventy percent of its goods and services from it.⁴⁴ In the West Bank, revenues from petroleum taxes and fuel imports have increased by 48 percent.⁴⁵ Although Palestine derives its taxes from VAT at 16 percent and revenues from third country imports,⁴⁶ Israel continues to control the collection of VAT on goods and services sold in Israel for the Palestinian market including *inter alia* electricity, petroleum, gas and fuel imports.⁴⁷ According to Palestine's Minister of Economy "the energy bill constitutes the highest contributor to Palestine's trade deficit with Israel".⁴⁸

Israel routinely suspends the transfer of collected revenues to the PA for punitive purposes and prioritizes the use of tax revenues to pay monies owed to Israeli corporations, leaving the PA unable to pay public sector salaries.⁴⁹ In 2011, Israel suspended the transfer of revenues to collectively punish the Palestinian population for a reconciliation agreement signed between Fatah and Hamas.⁵⁰ In September 2014, Israel deducted \$55 million from Palestinian tax revenues to pay off the IEC debt owed by the PA.⁵¹ Israel seized a further \$400 million from Palestinian tax revenues in response to Palestinian accession to the Rome Statute of the International Criminal Court in late December 2014.⁵²

42 Palestinian Fiscal Revenue Leakage (n 38) 39.

43 World Bank, 'Economic Monitoring Report to the Ad Hoc Liaison Committee' (25 September 2013) 27; World Bank, 'West Bank and Gaza Investment Climate Assessment' (n 39) 4.

44 *Ibid.*

45 U Kock, H Qassis, 'West Bank and Gaza, Recent Developments in Clearance revenues' < <https://www.imf.org/external/country/WBG/RR/2011/102711.pdf>> accessed 9 May 2015.

46 Palestinian Fiscal Revenue Leakage (n 38) 1

47 B'Tselem, 'Restriction of Movement, The Paris Protocol' (19 September 2012) < http://www.btselem.org/freedom_of_movement/paris_protocol> accessed 9 May 2015.

48 M Mustafa, 'Palestinian National Development Plan 2011-2013, current priorities, challenges, opportunities' (United Nations Seminar on Assistance to the Palestinian People, 27-28 February 2013) 9.

49 Update, 'Israel Seizes PA Tax Revenues, Official Says' *Ma'an News Agency* (1 September 2014) <<http://www.maannews.net/eng/ViewDetails.aspx?ID=724676>> accessed 9 May 2015. Israel routinely suspends the transfer of collected revenues to the PA for punitive purposes and prioritizes the use of tax revenues to pay monies owed to Israeli corporations, leaving the PA unable to pay public sector salaries. In 2011, Israel suspended the transfer of revenues to collectively punish the Palestinian population for a reconciliation agreement signed between Fatah and Hamas. In September 2014, Israel deducted \$55 million from Palestinian tax revenues to pay off the Israel Electric Corporation debt owed by the PA.

50 U. Kock, H. Qassis (n 45); M. Elkhafif, 'United Nations Seminar on Assistance to the Palestinian People' (Cairo 6-7 February 2012) <<http://www.un.org/depts/dpa/qpal/docs/2012Cairo/P1%20Mahmoud%20AT%20Elkhafif%20E.pdf>> accessed 9 May 2015; United Nations Conference on Trade and Development, 'Report on UNCTAD Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory' (7 July 2014) 2.

51 Israel Seizes PA Tax Revenues Official Says (n 49); World Bank, 'Economic Monitoring' (n 39) 17.

52 Al Haq, 'Israel's Retaliatory Seizure of Tax: A War Crime to Punish Palestinian ICC Membership' (2015) < <http://www.alhaq.org/publications/publications-index/item/the-unlawful-seizure-of-palestinian-taxes-israel-s-collective-punishment-of-a-people>> accessed 9 May 2015.

2.2.1 Divide and Conquer: An Economic Punishment for the Gaza Strip

Israel purposefully depressed the economy of the Gaza Strip to the "brink of collapse without quite pushing it over the edge", as a stated security measure of the prolonged occupation.⁵³ Businesses in the Gaza Strip are blocked from exporting goods⁵⁴ to the West Bank and Israel, accounting for 85 percent of the former export market. The closure of international borders, economic siege on the Gaza Strip and restrictions on freedom of movement, ensures the economic division of the West Bank and Gaza Strip, in violation of the Paris Protocol customs union.⁵⁵ In February 2014, Dr. Salem Salama of the Palestinian Legislative Council announced the discovery by fishermen of a new gas field off the Gaza coast. This gas field, located within 200-300 meters of the central province coastline, was reportedly verified through testing by the Islamic University.⁵⁶ Considering its location, the new field could make gas accessible for exploration and development within the limits of Israel's imposed six nautical mile naval closure. However, Israel's continued land, sea and air closure makes it impossible to import the materials necessary to develop the gas infrastructure. Israel's severe restrictions on importing certain materials under the pretext of "dual use" items, restricts Palestinians from competing in local and regional markets. To the South of Gaza, Egypt who has gas deposits nearby and gas import agreements with Israel, has enforced a 1-kilometre wide buffer zone along the Gaza border making access impossible.⁵⁷

Even if Palestinians had access to their natural resources, these economic measures are designed to ensure the crippling of the Palestinian economy. As such, Palestinians can neither access their resources, such as gas fields off Gaza's coast, nor import the materials necessary to make use of such resources.

53 'Cashless in Gaza?' (3 November 2008)

<http://www.wikileaks.org/plusd/cables/08TELAVIV2447_a.html#efmAgJAjaBHCbKahttp://www.haaretz.com/news/diplomacy-defense/wikileaks-israel-aimed-to-keep-gaza-economy-on-brink-of-collapse-1.335354> accessed 9 May 2015. "Requests by Palestinian banks to transfer shekels into Gaza are ultimately approved, partially approved, or denied by the National Security Council (NSC), an organ of the Israeli security establishment, not by the Bank of Israel (BOI). As part of their overall embargo plan against Gaza, Israeli officials have confirmed to econoffs on multiple occasions that they intend to keep the Gazan economy on the brink of collapse without quite pushing it over the edge."; Before the imposition of the blockade of Gaza, approximately 18% of clearance revenues derived from imports destined for Gaza. However this has since reduced to 4-5% deriving mainly from petroleum excises. U. Kock, H. Qassis (n 45).

54 With the exception of limited goods facilitated by international donors.

55 See Article 4, Gaza Jericho Agreement Annex IV, Protocol on Economic Relations between the Government of the State of Israel and the P.L.O Representing the Palestinian People (Paris, 29 April, 1994) <<http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/gaza-jericho%20agreement%20annex%20iv%20-%20economic%20protoco.aspx>> accessed 9 May 2015; Article XXIII (6), Gaza-Jericho Agreement.

56 'Natural Gas Field Discovered on Gaza's Coast' *Middle East Monitor* (25 February 2014) < <https://www.middleeastmonitor.com/news/middle-east/9957-natural-gas-field-discovered-on-gazas-coast>> accessed 19 January 2015.

57 M. Sabry, 'More Rafah Residents Ordered to Evacuate as Buffer Zone Expands' *Middle East Eye* (29 April 2015); Similar to Israel, Egypt is in possession of significant hydrocarbon resources. Notably, in the early 1970's there were indications that oil and gas fields were located near Gaza's southern border at Rafah. The gas fields are currently located in concession area 104-New Law, leased to Egypt's General Petroleum Company who is currently inviting exploration companies to bid on the Southern part of the Sinai concession. Egypt Oil and Gas Web Portal, 'GPC Invites E and P Companies to New Bid Round in South Sinai' (13 January 2015); Arab Republic of Egypt, Ministry of Petroleum, Concession map at <http://www.petroleum.gov.eg/en/Investment/Pages/Concessionmap.aspx> accessed 2 May 2015.



3. BLOCKING THE DEVELOPMENT OF PALESTINIAN GAS: A TWISTED PLAY OF POLITICS

*"It's [gas] a gift from God to us, to our people, to our children.
This will provide a solid foundation for our economy,
for establishing an independent state
with holy Jerusalem as its capital."
(Yasser Arafat, 2000)⁵⁸*

3.1 THE GAZA MARINE

In November 1999, a consortium comprised of Consolidated Contractors Limited (CCC), the British Gas Group (BG) and the Palestine Investment Fund (PIF) concluded an agreement with Yasser Arafat, for the development and commercialization of the Gaza Marine fields.⁵⁹ The Gaza Marine is located

58 I. Barzak, 'Arafat: Natural Gas Good for Economy' *Associated Press* (27 September 2000) < <http://www.apnewsarchive.com/2000/Arafat-Natural-Gas-Good-For-Economy/id-428946bb0f1e30805e3cb3bdeb51e031> > accessed 9 May 2015.

59 V. Kattan, (n 34) 1; A. Antreasyan, 'Gas Finds in the Eastern Mediterranean: Gaza, Israel, and other Conflicts' (2013) XLII (3) *Journal of Palestinian Studies*, 30.

36 kilometers west of Gaza City in the Mediterranean Sea, 603 meters below sea level, within the contiguous zone attached to Palestinian territorial waters.⁶⁰ In 1999, the Palestinian Authority (PA) granted a twenty-five year exploration license with 90 percent equity to British Gas.⁶¹ The terms of the exploratory license have not been publicly released, but have instead been withheld under various exempted provisions of the UK Freedom of Information Act.⁶² After receiving security clearance from former Israeli Prime Minister Ehud Barak in 2000, BG drilled two wells in the Gaza Marine finding substantial reserves estimated at 1.4 trillion cubic feet (tfc).⁶³

There have been serious political and military impediments to the development of Palestine's gas. In order to make gas production viable it is imperative to secure an export market. Initially the PA had planned to export gas to Egypt where it would be converted for international export into liquefied natural gas (LNG).⁶⁴ However, Israel blocked the development of the pipeline at political levels.⁶⁵ Meanwhile, BG unsuccessfully tried to negotiate an export arrangement with Israel and Egypt to pipe gas from the Gaza Marine to BG Group's LNG plant in *Idku*, Egypt.

In addition to Palestinian and international markets, one alternative presented was that gas from the Gaza Marine could be sold to Israel. On the recommendations of BG's technical review this would involve developing the Gaza Marine field with a pipeline supplying an onshore processing terminal.⁶⁶ Although the PA approved the plan in 2002, Israel once again politically impeded its development. In 2003, Israeli Prime Minister Ariel Sharon blocked a government proposal that would have facilitated the purchase of Gaza gas by Israel worth \$50 million USD per year to the Palestinian economy. Sharon argued that Israel would not have full oversight over gas revenues. However BG Group had proposed that gas revenues would be deposited into a special account used for tax revenues, that Israel already exercised full control over.⁶⁷ In 2007, gas export negotiations between BG, Israel and Egypt collapsed. BG withdrew from negotiations and closed its office in Israel.⁶⁸ BG retained the licensing rights over the Gaza Marine however the two exploratory wells remained undeveloped.

60 V. Kattan, (n 34) 2.

61 Under Article 27 of Law No. (1) of 1999 for Natural Resources, licenses can be obtained for periods of not more than thirty years, but these may be subject to renewal within one year of the contract expiry date. Article 27, Natural Resources Law (No.1), 1999, Published in Palestinian Gazette (Palestinian National Authority), Issue No. 28, 13/03/1999 at page 10.

62 Freedom of Information Requests by Kelly Bornshlegel to the Department for International Development <https://www.whatdotheyknow.com/request/documents_related_to_bgs_gaza_ma_3> accessed 9 May 2015.

63 V. Kattan, (n 34) 2; A Antreasyan, (n 59) 31.

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

65 Palestinian Ministry of National Economy, 'Economic Costs' (n 40) 27.

66 S. Henderson (n 64) 2.

67 R Bryce, (n 21) 10. This was the second time since 2001 that President Sharon vetoed decisions to purchase Palestinian gas; Under the terms of the 1994 Paris Protocol, Israel collects three kinds of payments on behalf of the PA: direct taxes – income tax on the wages of Palestinians working in Israel or in settlements; indirect taxes – VAT, purchase taxes and any other taxes, excise or levies on goods traded between Israel and the OPT; import taxes - as levied on OPT imports from the international market via Israel. Palestine Economic Policy Research Institute (MAS), 'Background Paper: On the Clearance of Tax Revenue between Israel and the Palestinian Authority', 2013; Articles 3, 5 & 6, and Appendices 1 & 2, Protocol on Economic Relations 1994 (Paris Protocol), annexed to The Palestinian-Israeli Interim Agreement on the West Bank & The Gaza Strip 1995 (Oslo II).

68 'British Gas and Israel Eyeing Gaza's Natural Gas Reserves', *The Daily Star*, (26 April 2010).

3.2 THE PALESTINIAN ECONOMIC INITIATIVE (PEI)

Following the recognition of the State of Palestine in 2012, as a non-member observer State by the General Assembly, the development of an independent Palestinian energy sector was recognized as a vital step for an independently functioning economy and sustainable economic development. At the domestic level, the Palestine Investment Fund (PIF) launched its economic plan for the development of the energy sector. Meanwhile at the international level, John Kerry spearheaded the Palestinian Economic Initiative (PEI) fostering a radical transition towards private sector orientated development for Palestine.

At the heart of the Initiative, *inter alia* energy and water were identified as key areas for economic development.⁶⁹ In anticipation of the Initiative, a national governmental company, the Palestinian Electricity Transmission Company (PETL) was established to become the sole designated buyer of electricity transmitted to the Palestinian market.⁷⁰ The strategy behind the establishment of PETL was to resolve an Israel Electric Corporation (IEC) debt and conclude a new commercial contract between PETL and IEC.⁷¹ In so doing, long-term gas supply contracts would be concluded either with the IEC or Palestinian gas companies.⁷² Gaza would solely receive its electricity supply from Israel “through new and improved high-voltage transmission lines, upgrading the distribution network”.⁷³

Significantly, the Gaza Marine was earmarked for development and would “ensure security of supply of gas-generated power plants in the Palestinian Territories”.⁷⁴ Hydrocarbons were also slated for development and exploration, including the *Rantis* oil field, and potential oil shale in the Palestinian Territory.⁷⁵ The development of oil and gas resources would supply Palestine’s electricity, enabling Palestine to extricate itself from energy dependence on Israel, thereby providing the key for an independent and viable Palestinian state.

However the PEI suffered significant defects, namely the radical transformative neo-liberal agenda that was intended to take place in the context of an ongoing belligerent occupation. Even minor resource development would necessitate cooperation by Israel, and long-term agreements would continue to bind the State of Palestine *post bellum*.⁷⁶ For example, any attempts by the State of Palestine to renationalize later on might prove difficult, especially where a concession agreement is subject to arbitration under international investment law, which in practice has generally tended to find against

⁶⁹ *Ibid.*, p. 1.

⁷⁰ Naouri Group, ‘The launching ceremony of the Palestinian Electricity Transmission Company Ltd. (PETL) was held Monday in Ramallah and was attended by Palestinian high-ranking officials and an EU representative’ (3 February 2014) < <http://www.naouri.com/latest-news/27-latest-news/palestine-news/71-140007> > accessed 9 May 2015.

⁷¹ Ad Hoc Liaison Committee Meeting, (n 43) 38

⁷² *Ibid.*, p. 5.

⁷³ *Ibid.*, p. 10.

⁷⁴ *Ibid.*, p. 37.

⁷⁵ *Ibid.*

⁷⁶ *Republic of Iraq v ABB AG et al*, No 08 Civ 5951 (GEL) (SDNY) (2013). See generally, S. Power, ‘State Responsibility and the Exploitation of the Oil for Food Scheme: *Republic of Iraq v ABB AG et al* (2013)’ (2013) 36 *Dublin University Law Journal*, 374.

States for these types of claims.⁷⁷

3.3 ISRAEL’S PLANNED UNILATERAL GAS DEVELOPMENT OFF THE GAZA COAST

In March 2013, while the Kerry peace negotiations were ongoing, Israel engaged in talks with BG over the development of Gaza Marine 1 and 2. Such development would benefit the Palestinian economy and supply excess gas for sale to Israeli domestic and regional markets.⁷⁸ Quartet Middle East Envoy Tony Blair and Israel’s Adv. Yitzhak Molcho⁷⁹ hosted the talks in the absence of the PA and the Consolidated Contractors Company (CCC). There was significant political pressure on the IEC to engage with the discussions, despite its reluctance to consent to a gas purchase agreement for Palestinian gas that would cost 25 percent more than Israeli gas.⁸⁰ On 27 November 2013, talks resumed between the IEC negotiating team, BG and Adv Yitzhak Molcho, at the request of Israeli Prime Minister Netanyahu.⁸¹ At that point, the development of the Gaza Marine was considered a matter of some urgency. Following delays in securing permits to produce gas from Israel’s Leviathan field, Noble Energy⁸² and Delek Working Group delayed the production and supply of gas to the Israeli market and at that time, Israel potentially faced substantial gas shortages by 2015.⁸³

It also transpired that the Tzemach Committee charged with developing Israel’s gas export policy, had failed to include the selling of 50 percent of gas needed to supply Jordan’s potential deficit in the electricity sector in its projections on cumulative demand between 2013-2040.⁸⁴ Overall, by 2013 Israel was budgeting on gas exports it could not yet provide. At this time the possibility of developing the Gaza Marine to supply the Jordanian market took shape.⁸⁵

⁷⁷ See generally, T Waide, ‘The Serbian Loans Case: A Precedent for Investment Treaty Protection of Foreign Debt?’ in T Weiler, *International Investment Law and Arbitration: Leading Cases from the ICSID, Bilateral Treaties and Customary International Law* (Cameron May, 2005) 383.

⁷⁸ A Barkat, ‘Israel in Secret talks with BG on Palestinian Gas, The talks concern development of the Gaza Marine license for the Palestinian population in the West Bank and Gaza’ *Globes* (13 March 2013). <<http://www.jpost.com/Breaking-News/Israel-in-secret-talks-with-British-Gas-on-Palestinian-gas>> accessed 9 May 2015.

⁷⁹ Adv. Yitzhak Molcho is Netanyahu’s personal envoy to the Palestinian negotiations and notably was the first representative to the Gaza negotiations with Yassar Arafat in 1996. N Guttman, ‘Netanyahu’s Representative will attend Peace talks along with Livni’ *The Jewish Daily Forward* (26 July 2013); A. Barkat, ‘Israel in Secret Talks with British Gas on Palestinian Gas’ *Globes* (14 March 2013).

⁸⁰ A Barkat, ‘IEC renews Palestinian gas purchase talks’ *Globes* (27 November 2013).

⁸¹ *Ibid.*

⁸² Noble Energy has the majority operating interests in the Yam Tethys, Tamar and Leviathan fields. See < <http://www.nobleenergyinc.com/operations/eastern-mediterranean-128.html> > accessed 9 May 2015.

⁸³ State of Israel, ‘The Recommendations of the Inter-Ministerial Committee to Examine the Government’s Policy Regarding Natural Gas in Israel, Executive Summary’ (September 2012) 3-4. <<http://energy.gov.il/English/PublicationsLibraryE/pa3161ed-B-REV%20main%20recommendations%20Tzemach%20report.pdf>> accessed 9 May 2015; A. Barkat (n 80) Production from the Tamar field had been expected to start in April 2013. A Varshavsky, ‘Current Status of Offshore Oil and Gas Exploration in Israel, Ministry of Energy and Water Resources’ (July 2012) 3.

⁸⁴ The Israeli Institute for Economic Planning, ‘The Use of Natural Gas in the Israeli Economy’ (March 2013) 16. The Israeli Institute for Economic Planning warned against conservative projections of national gas outlining “underestimation of true demand can result in a greater long term economic risk since tight supply may push up prices and starve sectors from getting the gas they need”.

⁸⁵ M Ghazal, ‘Jordan, Cyprus to Work on Gas Deal Details ‘Within Weeks’ *The Jordan Times* (9 September 2014) <<http://jordantimes.com/jordan-cyprus-to-work-on-gas-deal-details-within-weeks>> accessed 9 May 2015.

3.4 GAZA MARINE EXPORTS TO JORDAN - AN UNLIKELY DEAL

The possibility of exploiting Palestinian gas to bridge a gap in supply to Jordan was potentially an option, where Israel could not fulfill its export requirements. However by 2014, Israel's domestic energy crisis was averted following a direction to accelerate gas production at the Yam Tethy's fields. On 9 September 2014, The Jordan Times reported that the Jordanian National Electric Power Company (NEPCO) planned to sign a letter of intent for the supply of gas from BG for gas in the Gaza Marine.⁸⁶ Jordan's Minister of Energy and Mineral Resources announced that Jordan intended to import one third of its energy from the Gaza Marine, at a rate of 150-180 million cubic feet per day.⁸⁷ The gas worth 6 billion USD would be exported through the Arab Gas Pipeline already linking Jordan and Egypt and bypassing Israel.⁸⁸ However at that time, Jordan was concluding a massive gas deal with Israel for the supply of gas from its Leviathan field. The Palestinian dimension was in effect a sweetener to deflect from a publicly unpopular agreement with Israel. It later emerged that John Kerry who was instrumental in negotiating the gas deals between Israel and Jordan held over 1 million USD in Noble Energy shares.⁸⁹

Despite political indications that Palestinian gas would be developed, by January 2014, it became clear that Palestine would continue to buy gas from Israel long term. On its website and in its Annual Report (2012), the PIF indicated that the future development of the Palestinian Power Generation Company (PPGC) in the West Bank and the modification of the PPGC in Gaza to gas-fired electricity generators would be critical for the utilization of newly explored gas of the Gaza Gas project (the Gaza Marine and the Border field).⁹⁰ However, by January 2014, the PPGC concluded a gas supply agreement with Israel's Leviathan partners to supply the future power plant in Jenin with Israeli gas for a twenty-year period, indicating that the Gaza Marine would not be developed during that time. The export of Leviathan gas to supply the Palestinian power plant at Jenin was designed to encourage future Israeli gas deals with Egypt and Jordan. In April 2014, Delek Group published its Bond Offering Procedure, stating, "it is unlikely that the Gaza Marine Field (30 BCM offshore Gaza) will be developed in the coming years".⁹¹ Instead the Report forecast that Palestine would begin self-generating natural gas in 2030, around the same time the PPGC contract was expected to run out.⁹² This illustrated the effect that the PPGC contract had in dealing a blow to the development of the Gaza Marine.

However by March 2015, following serious national backlash, the PPGC cancelled the Leviathan deal, thus removing any Palestinian impediment to developing the Gaza Marine. In April 2015, in a radical new development, Royal Dutch Shell bought out BG taking over the reigns as primary operator of the yet to be developed Gaza Marine lease.⁹³

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ Palestine Investment Fund, 'Investing for our Children's Future' 9 <<http://www.pif.ps/resources/file/booklets/pif-brochure-english.pdf>> accessed 9 May 2015.

⁸⁹ A. Bar-Eli, 'John Kerry Held up to \$1 m in Noble Energy Stock' *Haaretz* (25 June 2015) <http://www.haaretz.com/business/.premium-1.662924> accessed 23 August 2015.

⁹⁰ Palestine Investment Fund, 'Gaza Gas Project' <<http://www.pif.ps/index.php?lang=en&page=1367843910902>> accessed 9 May 2015.

⁹¹ Delek Group, 'Bond Offering Procedure' (Tel Aviv, April 28, 2014) 20.

⁹² *Ibid* p. 83.

⁹³ 'Royal Dutch Shell to Buy BG Group in £47bn Deal' *BBC* (8 April 2015).

GAS COMPANIES INVOLVED IN GAZA MARINE

British Gas Group, Consolidated Contractors Company, Palestine Investment Fund:

British Gas Group has a 90 percent working interest and is lead operator in the Offshore Gaza Marine License which was awarded by the Palestinian Authority in 1999. The area covers the two exploratory wells drilled in the Gaza Marine in 2000. The 90 percent equity in the license may be reduced to a 60 percent interest if the other two operators in the, Consolidated Contractors Company (10 percent working interest) and the Palestine Investment Fund choose this at development at a later stage. Until 2015, British Gas Group was still investigating options for developing the Gaza Marine with the PA and Israel.

Talks with Gazprom:

In January 2014, it was reported that President Abbas and President Putin met to discuss the possibility of a USD 1 billion investment by Russian company Gazprom in the Gaza Marine for 30 BCM of natural gas. However there have not been any more developments to date.

Royal Dutch Shell:

In April 2015, Royal Dutch Shell announced plans to buy British Gas Group (BG), which has a 90 percent working interest in the Gaza Marine.



4. ISRAEL'S EXPLOITATION OF PALESTINIAN GAS

4.1 RESTRICTING PALESTINIAN MARITIME ACCESS TO NATURAL RESOURCES UNDER THE OSLO ACCORDS

The Oslo Accords prevent Palestinian access to oil and gas resources in Palestinian maritime waters bordering Israel and Egypt. Article XI, Annex I, of the *Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip Provide for Security Along the Coastline and in the Sea of Gaza*, establish three maritime activity zones K, L and M. Currently Zone K extends 20 nautical miles (nm) into the sea from the northernmost part of Gaza and is 1.5 miles wide southward. Zone M extends 20 nm into the coast and is 1 nautical mile wide from Egyptian waters.⁹⁴

Zone L is located between Zones K and M and also extends 20 nm into the sea, spanning most of the Gaza coastline. Zone L, the largest zone, is “open for fishing, recreation and economic activities”.⁹⁵ The Gaza Marine field is located under 20 nm offshore, bringing it just within the agreed area of economic development under the Interim Agreement. However Israel has prevented access to most of Zone L through an illegally imposed naval closure.

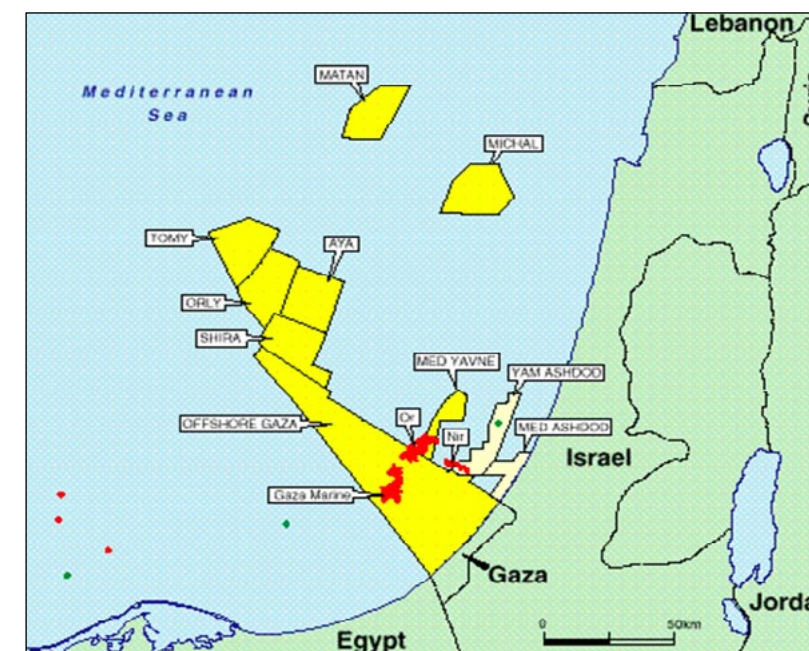
⁹⁴ Article XIV, The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (28 September 1995).

⁹⁵ *Ibid.*



Source: Maritime Activity Zones Map No.6⁹⁸

The two smaller zones, K and M, along the boundaries of Israel and Egypt are “closed areas, in which navigation will be restricted to activity of the Israel Navy”. However one of Palestine’s gas fields, the Border Field⁹⁶ (an extension of Israel’s Noa South field) is located within Zone K. Palestinian access to contiguous geological resources in the Border field are restricted by the Zone K ‘closed area’ policy despite the Oslo Accords establishing Palestinian and Israeli rights to co-develop contiguous geological natural resources under cooperation agreements. This deprives Palestinians of an estimated 3 billion cubic meters (bcm) of natural gas.⁹⁷ In this manner the Oslo Accords serve to buttress and legitimize the illegal situation where Israel prevents Palestinian access to develop their sovereign natural gas resources.



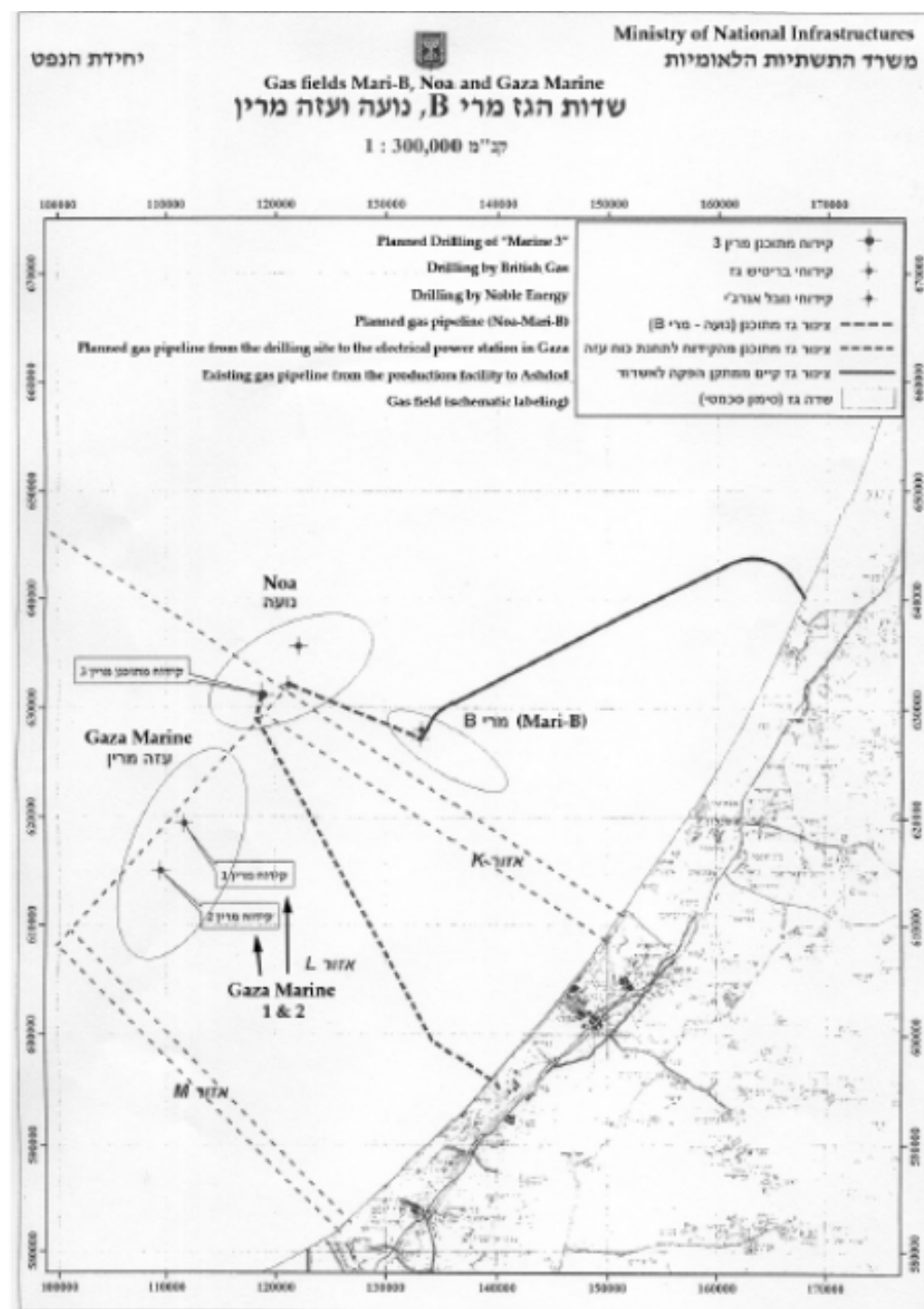
Source: Gaza Marine Lease, Hebrew Energy Dictionary⁹⁹. Illustrating joint geological structure at the Border and Noa Fields.

⁹⁶ Palestine Investment Fund, ‘Annual Report 2012’ <http://www.pif.ps/resources/file/annual_report/EnglishAnnualReport.pdf> accessed 9 May 2015; United States, Energy Information Administration, Palestinian Territories <http://www.eia.gov/countries/country-data.cfm?fips=pt> accessed 9 May 2015.

⁹⁷ *Ibid.*, Palestine Investment Fund, Annual Report 2012; Report No 39695-GZ, ‘West Bank and Gaza Energy Sector Review’ Sustainable Development Department Middle East and North Africa Region (May 2007) 35.

⁹⁸ Israeli-Palestinian Interim Agreement (Oslo 2) <<https://www.jewishvirtuallibrary.org/images/gjmap6a.gif>> accessed 9 May 2015.

⁹⁹ Gaza Marine Lease, Hebrew Energy Dictionary <<http://www.hebrewenergy.com/starts/G?page=5>> accessed 9 May 2015.



Source: Gas Fields Mari-B, Noa and Gaza Marine¹⁰⁰

4.2 JOINT COOPERATION REQUIRED FOR JOINT GEOLOGICAL STRUCTURES

Despite some curtailment of freedom of movement in the Maritime Activity Zones, the Oslo Accords attempted to create energy independence for Palestine. Under Oslo I, the Palestinian Electricity Authority and the Gaza Sea Port Authority were established¹⁰¹ to ignite economic growth, subject to cooperation agreements with Israel. Both sides agreed to establish an Israeli-Palestinian continuing Committee for Economic Cooperation.¹⁰² Annex III provided for “cooperation in the field of energy, including an Energy Development Program” for the exploitation of oil and gas for industrial purposes “particularly in the Gaza Strip and in the Negev” and encouraged “joint exploitation of other energy resources”.¹⁰³ The article further envisioned the construction of a petrochemical industrial complex in the Gaza Strip and the construction of oil and gas pipelines.¹⁰⁴

The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995), Oslo II superseded the Gaza-Jericho Agreement, the Preparatory Transfer of Powers and Responsibilities, and the Protocol on Further Transfer of Powers and Responsibilities.¹⁰⁵ A full transfer of competence over gas, fuel, petroleum, quarries and mines from the military government and its Civil Administration to the Palestinian Authority was proposed, with gradual transfer of competence in Area C. Article 15 (1)(b) and Article 31 (2) of the Interim Agreement (1995) provided that powers and responsibilities pertaining to the licensing, and supervision of the establishment, enlargement and operation of quarries, crushing facilities and mines, and the exploration and production of oil and gas in the West Bank and the Gaza Strip, would be “transferred gradually” to Palestinian jurisdiction.¹⁰⁶

The broad cooperation agreements covering the general development of natural resources reminiscent of Oslo I were narrowly construed in Oslo II and limited to the development of contiguous oil and gas resources. Article 15(4)(a) guaranteed that Palestine would notify Israel of any exploration and production of oil and gas, while Article 15(4)(b) required both sides to cooperate concerning the production of oil and gas in joint geological structures. However attempts to segregate Palestinian energy from the Israel Electric Corporation (IEC) were unsuccessful.¹⁰⁷ The agreement guaranteed IEC “unrestricted and secure access” to Palestine’s electricity grid until a future agreement could be reached.¹⁰⁸

¹⁰¹ A Palestinian Development Bank, a Palestinian Export Promotion Board, Environmental Authority, a Palestinian Land Authority and a Palestinian Water Administration Authority, were to be established also.

¹⁰² Annex III, Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs, Declaration of Principles on Interim Self-Government Arrangements, 1993; Annex II, Protocol on Withdrawal of Israeli Forces from the Gaza Strip and Jericho Area, 1993.

¹⁰³ Annex III, Declaration of Principles on Interim Self-Government Arrangements, 1993 para 3.

¹⁰⁴ *Ibid.*

¹⁰⁵ Preamble, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995).

¹⁰⁶ Article 15 (1)(b), Article 31 (2), Appendix 3, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995). (See Annex 1 of Annexing Energy page 120).

¹⁰⁷ Article 10, Appendix 3, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995).

¹⁰⁸ *Ibid.*

¹⁰⁰ J Stocker (n.1) 591. Israeli Ministry of National Infrastructure Map

4.3 ISRAEL'S UNILATERAL EXPLOITATION OF JOINT GEOLOGICAL GAS STRUCTURES

"I think that the Noa development is required to bridge the gap in the gas supply between the depletion of the Mari-B and the commissioning of the Tamar field. That small field, which would not have been developed otherwise, is required to supply gas or serve as a backup for supplying gas to oil refineries and possibly to other consumers in case there is a lack of gas during this interim period. This will be an important insurance to securing the supply of gas during this interim period in case there is a lack of gas due to geopolitical reasons (Egyptian gas) or technical delays in Tamar."

(Dr. Amit Mor, CEO and energy specialist at the Eco Energy consulting firm, 2011)¹⁰⁹

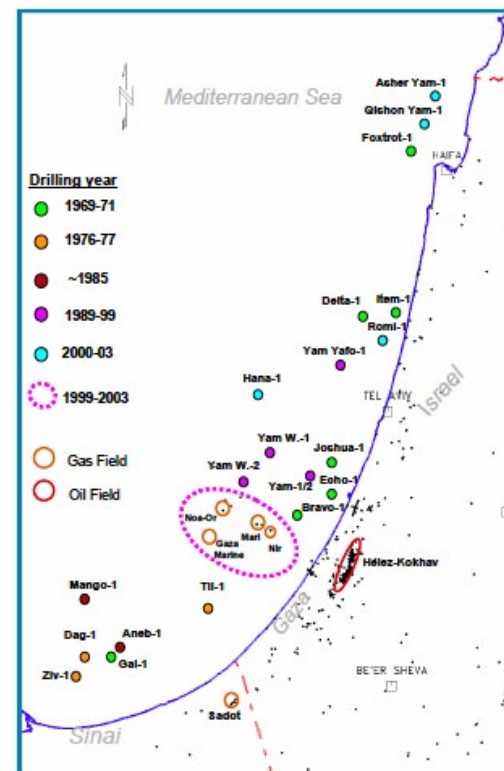
4.3.1 Exploiting Gas from Palestinian Territorial Waters

In 2011, two main issues prompted the Noble Energy partners operating under the Yam Tethys venture to quickly deplete their gas wells located in the Noa lease. Firstly, there had been serious disruptions to Israel's gas imports from Egypt following pipeline attacks in the Sinai, requiring urgent supply of gas to Israel's domestic market. Secondly, it became apparent that the Tamar and Leviathan fields could not be developed for export until a gas storage facility was secured. Mari-B was an old gas reservoir, which would work ideally for this purpose once depleted. A decision was made to rapidly extract and wind up the Yam Tethys field containing the Noa and Mari-B reservoirs. However Israel and the OPT share a geologically contiguous gas structure that includes Israel's North and South Noa reservoirs and Palestine's Border field.

In 2011, media reported that joint development of the Noa South gas well might be the subject of a cooperation agreement between Israel and the Palestinian Authority.¹¹⁰ At a minimum, the report highlighted Israel's intention to develop the Noa South reservoir under a cooperation agreement necessitated by the Oslo Accords. Article 15(4)(b), Annex III of the Israeli-Palestinian Interim Agreement (1995)¹¹¹ requires "Israel and the Palestinian side agree to cooperate concerning production of oil and gas in cases of joint geological structures."¹¹² The Noa field straddles Palestinian waters located adjacent to Gaza Marine 1, with the Border field extending into Palestinian territorial waters.¹¹³ In its 2012 Annual Report, Delek Drilling indicated that exploratory wells had been drilled in the Noa holdings ('Noa' and 'Noa South 1') and highlighted the discovery of commercial quantities of gas.¹¹⁴ Should drilling extend into the Palestinian continental shelf this would amount to a violation of the Palestinian population's right to sovereignty over its natural resources.

On the Israeli side, the Noa field is divided into the Noa North and Noa South wells, with the Noa South well extending into the Palestinian Border field. Any exploitation of the Noa South well would certainly drain gas from the Border field. There is also the possibility that gas resources from the

South and South-West reservoir would migrate to the Noa North reservoir should this be exploited. On this basis exploitation of Noa North would also require Palestinian cooperation.¹¹⁵ In its 2011 Annual Report, Delek Group reported that it had developed the Noa North field. It had capped production at 1.2 BCM subject to the Commissioner for Petroleum Affairs instruction "to prevent allegations of gas production from other parts of the reservoir extending beyond the lease area".¹¹⁶ Similarly Delek Group's partners, Noble Energy confirmed in their 2012 Annual Report "during 2011, due to unexpected natural gas supply disruptions into Israel, we decided to develop Noa/Noa South".¹¹⁷ From 2004 to 2013 the Yam Tethys partnership developed the reservoirs in the Noa lease at a rate of 23 BCM. By September 2014, it was reported that gas from the Yam Tethys lease was finally nearing depletion.¹¹⁸ However the unilateral exploitation of a contiguous geological structure even within Israel's leased area would still violate the Oslo Accords, regardless of arbitrary imposed caps on production.



Source: Israel's Offshore Drilling History¹¹⁹

In June 2012, the Noble Energy conglomerate¹²⁰ began selling gas from the Noa north well to the IEC,¹²¹ exploiting the well "at a higher production rate" than other projects, thus taking the risk of

115 See Avner Oil Exploration, 'Annual Report' (2011) <http://www.delekenergy.co.il/_Uploads/dbsAttachedFiles/Final_Avner.pdf> accessed 9 May 2015.

116 *Ibid.* See also Delek Drilling, Annual Report (n 114).

117 Noble Energy Inc., 'Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934' (for fiscal year ended December 31, 2012) 119, 120.

118 S. Udasin, 'IEC Stops Receiving Gas from Yam Tethys' *The Jerusalem Post* (23 November 2014) <<http://www.jpost.com/Breaking-News/IEC-stops-receiving-gas-from-Yam-Tethys-337689>> accessed 9 May 2015.

119 M. Gardosh et al., 'The Levant Basin Offshore Israel: Stratigraphy, Structure, Tectonic Evolution and Implications for Hydrocarbon Exploration' *Geological Survey of Israel* (April 2008) 7.

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

121 Noble Energy Inc., 'Annual Report' (n 117) 17, 24; Noble Energy News Release, 'Noble Energy, Inc. Announces Startup of Natural Gas Production From the Giant Mari-B Field Offshore Israel'. <<http://investors.nobleenergyinc.com/common/mobile/iphone/releasedetail.cfm?releaseid=359787&CompanyID=ABEA-2D0WMQ>> accessed 9 May 2015; 'Noa well starts supplying Israel with Natural Gas' *Reuters* (24 June 2012) <<http://www.reuters.com/article/2012/06/24/us-noa-israel-idUSBRE85N0GR20120624>> accessed 9 May 2015.

109 S Udasin, 'Infrastructures Ministry Approves Drilling in Noa Field' *The Jerusalem Post* (13 June 2011) <http://www.jpost.com/Business/Business-News/Infrastructures-Ministry-approves-drilling-in-Noa-field> > accessed 9 May 2015.

110 A Barkat, 'Israel sees Palestine gas fuelling Gaza power station' *Globes* (8 March 2011).

111 See Annex 1, 'Annexing Energy' 120.

112 Article 15(4)(b), Annex III, The Israeli-Palestinian Interim Agreement (28 September 1995). See Annex 1 'Annexing Energy' 120.

113 PIF, Gaza Gas Project (n 90).

114 See Delek Drilling, 'Annual Report' (2011) 250 http://www.delekenergy.co.il/_Uploads/dbsAttachedFiles/Final_Avner.pdf accessed 9 May 2015.

damaging the wells from the high rate of gas exploitation.¹²² In August 2013, Netherland, Sewell and Associates Inc (NSAI), compiled a report on proved and probable reserves in Noa and Mari-B. This time, the quantities cited for the Noa field were “contingent upon the removal of the production limitation imposed by Israel” in Noa North. This raised the possibility that gas located in Palestinian territorial waters might also be the subject of direct unilateral exploitation.¹²³

4.4 DISPUTED LICENSES

“Our position was that if the maritime borders are demarcated, the land border should be jointly demarcated as well. Now that they’ve suddenly sent maps, we have no choice but to set the borders ourselves.”

(Israeli Deputy Minister of Foreign Affairs Danny Ayalon, 2011)¹²⁴

Following the conclusion of an agreement with Cyprus, Israel asserted its right to a 200 nm exclusive economic zone, laying claim to natural resources contained therein. By claiming an exclusive economic zone (EEZ), States may assert sovereign rights over marine resources, whether living or non-living “for the purpose of exploring and exploiting, conserving and managing the natural resources”.¹²⁵ States may also assert rights in the EEZ for economic exploitation, exploration and production of energy in waters superjacent to the seabed, and of the seabed and its subsoil.¹²⁶ Jurisdiction over the EEZ extends to the establishment and use of artificial islands, installations and structures, marine scientific research and the protection and preservation of the marine environment.¹²⁷ Most notably, States have sovereign rights to explore and exploit oil and gas resources in the EEZ.¹²⁸

¹²² Annual Report 2012 (n 117) 24, 77; A Barkat, 'Israel in secret talks with BG on Palestinian gas' *Globes* (13 March 2013) <<http://www.globes.co.il/en/article-1000829662>> accessed 9 May 2015; Annex III, Article 15(4)(b), Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995). See Annex 1, Annexing Energy 120.

¹²³ Netherlands, Sewell and Associates Inc., Report on Proved and Probable Reserves and Future Revenue (August 20, 2013) 3.

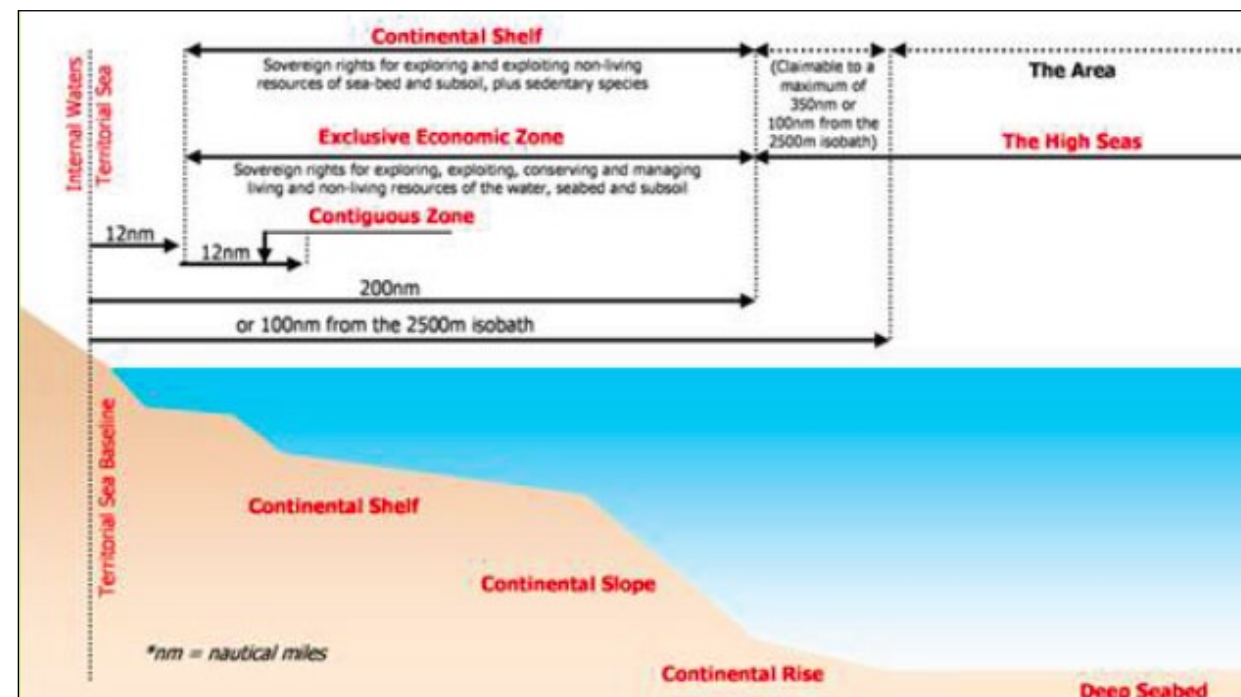
¹²⁴ 'Cabinet Approves Maritime Economic Zone Proposal' *Globes* (10 July 2011). <http://www.globes.co.il/en/article-1000662096> accessed 9 May 2015.

¹²⁵ *North Sea Continental Shelf Cases* (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) ICJ Reports 1969, p. 22.

¹²⁶ Article 56, United Nations Convention on the Law of the Sea, Agreement Relating to the Implementation of Part XI of the Convention

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*



Source: Fisheries and Oceans Canada¹²⁹

4.4.1 Delimiting Israel's Southern EEZ

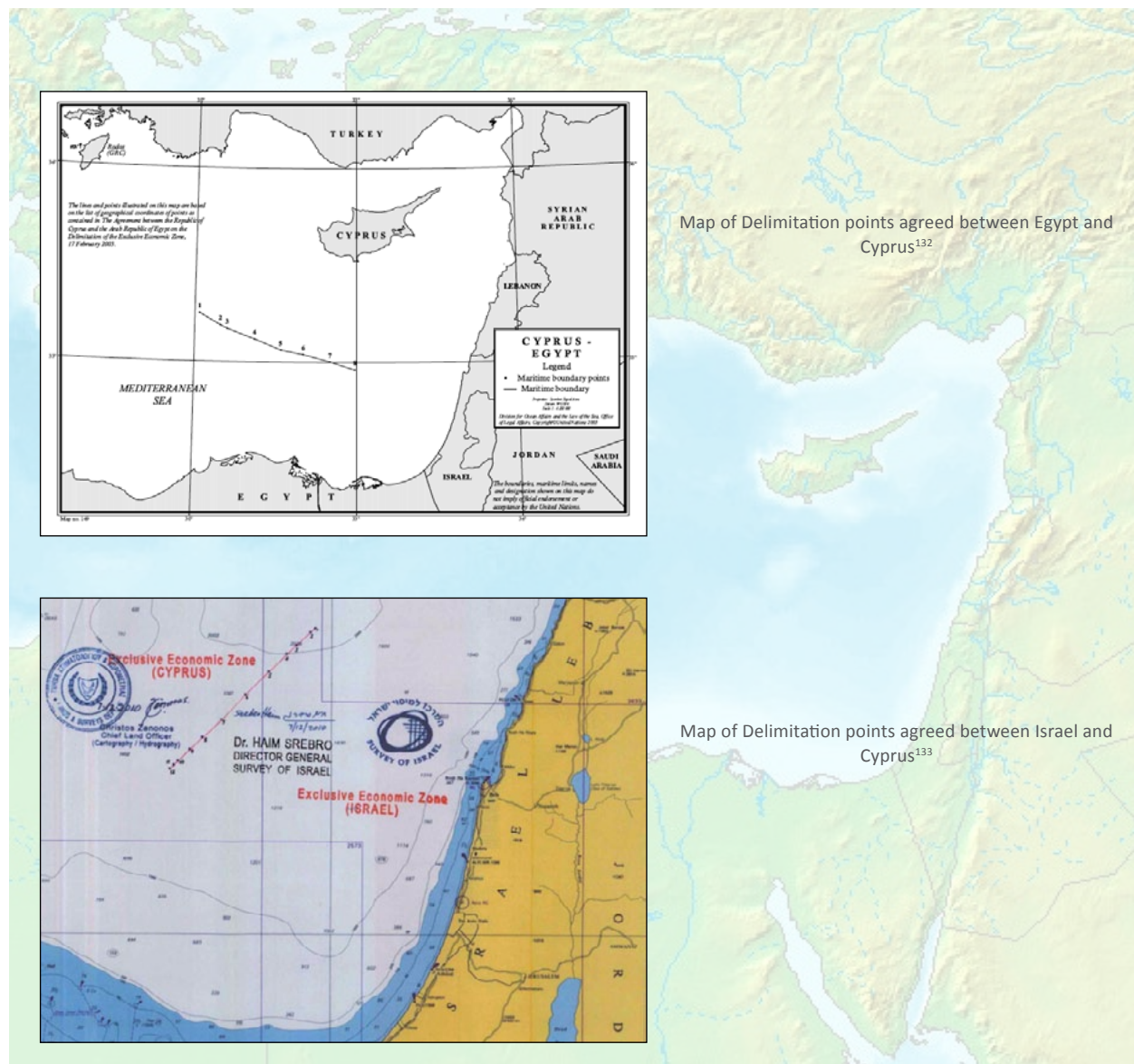
Israel awards leases and licenses for exploration and production from maritime space it has claimed as its EEZ. Israel and Cyprus have concluded coordinates of delimitation for an EEZ which runs parallel to the Palestinian coast. However the terms of the Israel/Cyprus EEZ agreement indicate that the coordinates may be subject to further negotiation.

In 2003, Cyprus and Egypt agreed on eight geographical coordinates of a median line on the delimitation of an EEZ between the two States.¹³⁰ Similarly, in 2010 Cyprus and Israel agreed to twelve geographical coordinates of delimitation, continuing and concluding the delimitation of Cyprus's EEZ in the southernmost quadrant of the Mediterranean Sea.¹³¹ Article 74 of the United Nations Convention on the Law of the Sea (UNCLOS) establishes that the delimitation of the EEZ is concluded between States with opposite or adjacent coasts. Coordinates delimiting the median line between Palestine's coast and Cyprus were concluded bilaterally between Israel and Cyprus. However both the Egyptian and Israeli agreements concluded with Cyprus indicate that coordinates Latitude 32°53'20"N and Longitude 32°58'20"E where Israel's EEZ starts and Egypt's EEZ ends may be subject to further negotiation. Despite this, Israel has carved up its EEZ and awarded exploration licenses based on the current EEZ agreement.

¹²⁹ Canada's Ocean Estate: A Description of Canada's Maritime Zones < <http://www.dfo-mpo.gc.ca/oceans/canadasoceans-oceansducanada/marinezones-zonesmarines-eng.htm>> accessed 9 May 2015.

¹³⁰ Agreement between the Republic of Cyprus and the Arab Republic of Egypt on the Delimitation of the Exclusive Economic Zone (17 February 2003) < <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/EGY-CYP2003EZ.pdf>> accessed 9 May 2015.

¹³¹ Agreement between the Government of the State of Israel and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone (with Annexes) Nicosia (17 December 2010) <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp_isr_eez_2010.pdf> accessed 9 May 2015.



4.4.2 Palestine and the unilaterally allocated EEZ

The State of Palestine has not yet concluded a delimitation agreement of its EEZ with opposite or adjacent States. Nevertheless, Israel has unilaterally allocated a narrow triangular sliver from its

132 United Nations, Division for Ocean Affairs and the Law of the Sea Office for Legal Affairs, Bulletin No. 52, Law of the Sea (2003) 46. <http://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin52e.pdf> accessed 9 May 2015. (Background image of Mediterranean Sea credited: By edited by w:nl:hanhil (own work based on PD map) [Public domain], via Wikimedia Commons).

133 Annex II, Agreement between the Government of the State of Israel and the Government of the Republic of Cyprus on the Delimitation of the Exclusive Economic Zone, signed in Nicosia on 17 December 2010 (entry into force: 25 February 2011; registration #: I-48387; registration date: 9 March 2011 <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/cyp_isr_eez_2010annex.jpg> accessed 9 May 2015.

declared EEZ to Palestine.¹³⁴ In maps this features as a triangular space off the Gaza coast. However Israel does not have the sovereign authority to declare an EEZ for Palestine, and there is no legal basis for the allocated triangular sliver of maritime space.

Although both the Egyptian and Israeli agreements with Cyprus include a clause indicating that coordinates eight and twelve may be reviewed and/or extended as necessary, this may be difficult



Source: BG Group Gaza Marine License¹³⁶

to renegotiate where long term gas production concessions have already been awarded to international corporations.¹³⁵ Should Palestine negotiate coordinates of delimitation with Cyprus, it may be necessary for Israel, Egypt and Cyprus to review and extend coordinates eight and twelve.

Nevertheless, for now Israel has mapped its exclusive economic zone into licensing fields. On this basis, the Israeli Ministry of Energy and Water Resources estimates that Israel has approximately 1400 BCM offshore natural gas reserves valued at between \$60 billion and \$290 billion over a sixty year development period.

4.4.3 Delimiting Israel's Northern EEZ

In the North, Israel has laid claim to part of Lebanon's declared EEZ. In 2007 Lebanon agreed to six coordinates of delimitation of its EEZ with Cyprus leaving the starting terminal point for future agreement.¹³⁷ In 2010, Lebanon, deposited charts and lists of geographical coordinates defining

134 In maps, Palestine's future EEZ as depicted by Israel, stems singularly from the shared eighth and twelfth coordinates (Latitude 32°53'20"N and Longitude 32°58'20"E) agreed between Egypt and Cyprus, and Israel and Cyprus. A line joining the Egyptian/Gaza border with the twelfth coordinate represents a potential although yet to be agreed 'boundary' depicting the eastern part of Egypt's EEZ and/or the western boundary of Israel's EEZ. A line intersecting the boundary, drawn from the northernmost part of Gaza, forms the basis of a leftover minimal EEZ for Palestine. The delimitation of the EEZ between Israel and Cyprus continues seamlessly from Egypt, and would appear to include coordinates of delimitation that would more accurately delimit the sea between Cyprus and the State of Palestine.

135 Bulletin No. 52 (n 132) 47. The coordinate may become be later negotiated as Palestine's point of delimitation with Cyprus; N. Ioannidis, 'Emerging Voices: The Law of the Sea as a Tool for Stability and Progress in the Eastern Mediterranean Sea' *Opinio Juris* (13 August 2015).

136 BG Group Data Book 2014, Areas of Palestinian Authority <<http://www.bg-group.com/databook/2014/26/where-we-work/areas-of-pa/>> accessed 9 May 2015.

137 ASDEAM, 'The Legal Framework of Lebanon's Maritime Boundaries: The Exclusive Economic Zone and Offshore Hydrocarbon Resources' (November 2012) 16 <<http://bric.lebcsr.org/bric/img/LegalFramework.pdf>> accessed 9 May 2015. The agreement was not ratified by Lebanon nor was it deposited with the Secretary General of the United Nations, under UNCLOS. Deposit and Due Publicity, <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/background_deposit.htm> accessed 9 May 2014. Later Lebanon proclaimed a further point seven in the North and point twenty-three in the south as its EEZ boundaries. D Meier, 'Lebanon's Maritime Boundaries: Between Economic Opportunities and Military Confrontation' (June 2013) 3 <<http://lebanesestudies.com/wp-content/uploads/2013/10/maritime.pdf>> accessed 9 May 2015.

Lebanon's EEZ at the UN¹³⁸ and later proclaimed point twenty-three in the south as its southernmost EEZ delimitation coordinate.¹³⁹

In 2011, following Noble Energy's gas finds in the Leviathan,¹⁴⁰ Israel lodged a list of geographical coordinates with the UN delimiting its northern EEZ.¹⁴¹ The delimitation was based on coordinate one as a terminal point, rather than the new coordinate twenty-three advanced by Lebanon significantly expanding Israel's EEZ into Lebanon's declared maritime space. Lebanon responded with a letter to the Secretary General of the United Nations denouncing Israel's absorption of part of Lebanon's EEZ as "a flagrant attack on Lebanon's sovereign rights over that zone".¹⁴² Accordingly the Norwegian Ministry of Foreign Affairs has recommended against Norwegian investments in the Israeli continental shelf, which it considered 'disputed area'.¹⁴³



Source: Daniel Meier, 'Lebanon's Maritime Boundaries'¹⁴⁴

The warning underscores Israel's lack of title to gas resources in the part of the EEZ bordering and extending from Lebanon. It also illustrates, by way of comparison, the gravity of Israel's unilateral expansion of its EEZ in maritime waters off the coast of Gaza.

138 Permanent Mission of Lebanon to the United Nations, Ref 1506/10 <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/lbn_mzn79_2010.pdf> accessed 9 May 2015.

139 D Meier, (n 137) 3.

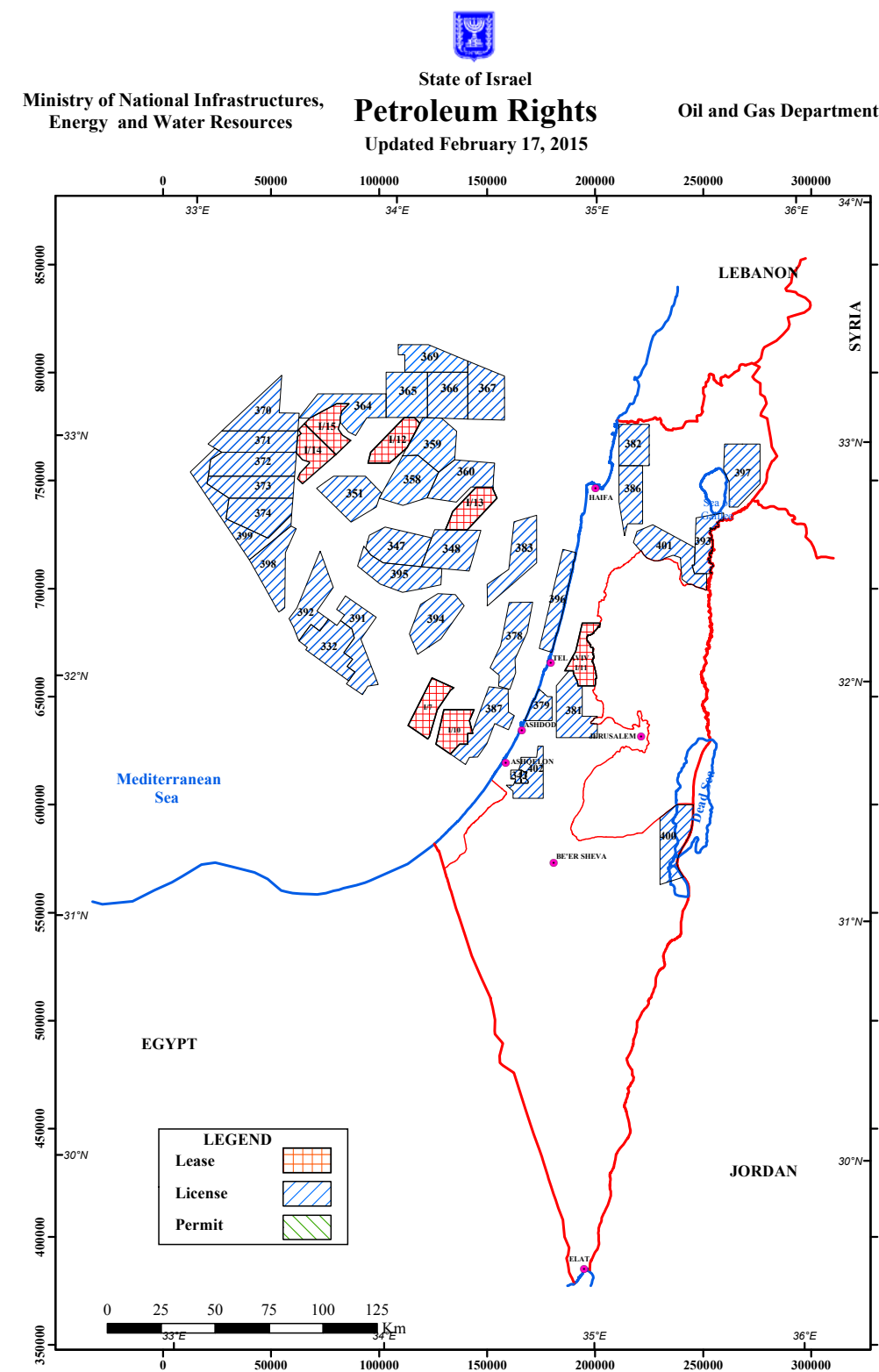
140 A Antreasyan, (n 59) 36.

141 Permanent Mission of Israel to the United Nations, 'List of geographical coordinates for the delimitation of the Northern Limit of the Territorial Sea and Exclusive Economic Zone of the State of Israel' <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/isr_eez_northernlimit2011.pdf> accessed 9 May 2015.

142 Letter to UN Secretary-General, from Adnan Mansour, Minister for Foreign Affairs and Emigrants (14 July 2011) <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/communications/lbn_re_cyp_isr_agreement2010.pdf> accessed 9 May 2015.

143 J. Solsvik, 'Norske selskaper inne i israelsk gasseventyr' *Dagen* (20 November 2014) <<http://www.dagen.no/Nyheter/INVESTERINGER/Norske-selskaper-inne-%E2%80%A8israelsk-gasseventyr-137232>> accessed 9 May 2015. However despite the warning, a number of contracts were signed between Norwegian and Israeli companies following the attendance of Israeli Minister for Energy at a conference in Stavanger in 2013. To date, Noble Energy has concluded contracts with Norwegian company Aker Solutions, to supply 240 km of steel tube umbilicals for connection to the Tamar and for a mono ethylene glycol (MEG) reclamation unit to remove blockages from Tamar's subsea pipelines. Update, 'Tamar Natural Gas Field, Israel' *Offshore Technology* <<http://www.offshore-technology.com/projects/tamar-field/>> accessed 9 May 2015; In June 2010 Noble contracted Aker Solutions to provide subsea control equipment for the Tamar field. Speaking with Norway's *Dagen* newspaper, Ole Paulsen, Director of Strategy and Operations at Aker Solutions stating "we want our commitments in Israel to have a low profile. It is however known that Norwegian participation has been ongoing for quite a while, as for example in the Tamar field"; J. Solsvik, 'Norske selskaper inne i israelsk gasseventyr' (20 November 2014) <<http://www.dagen.no/Nyheter/INVESTERINGER/Norske-selskaper-inne-%E2%80%A8israelsk-gasseventyr-137232>>; In 2010, Norwegian company *Høeg LNG* and South Korean company Daewoo Shipbuilding and Marine Engineering Co (DSME) concluded a contract with the Noble Energy conglomerate to own and operate Tamar's liquefied natural gas floating production storage and offloading platform (LNG FPSO); Energy Today, 'Hoegh LNG, DSME to Work on LNG FPSO for Israel's Tamar Field' (2 December 2011) <<http://www.offshoreenergytoday.com/hoegh-lng-dsme-to-work-on-lng-fpso-for-israels-tamar-field/>>; Noble Energy concluded a contract with United States oil company Delmar to install five subsea trees using a Heave Compensated Landing System in the Tamar gas field. Delmar Awarded Subsea Contract for Tamar Project <<http://www.delmarus.com/site122.php>>

144 D. Meier, (n 137) 5.

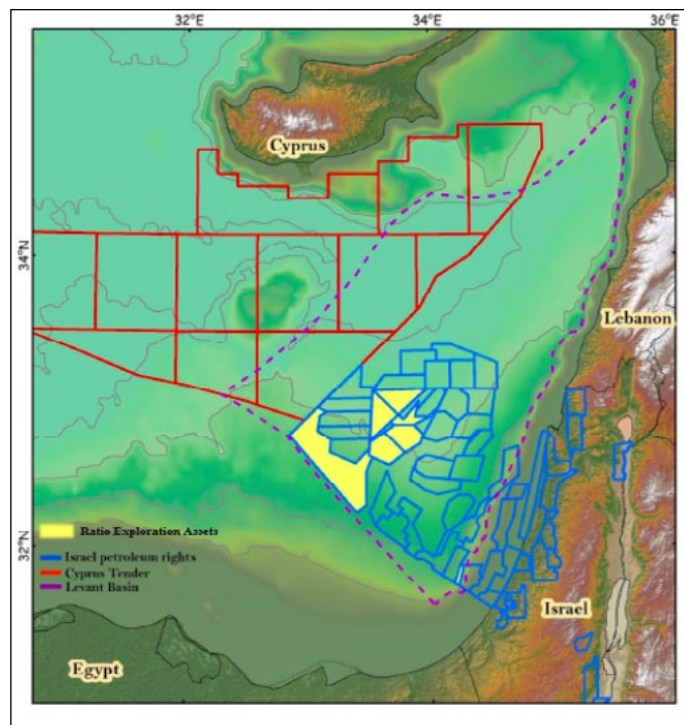


Source: State of Israel, Ministry of National Infrastructures¹⁴⁵

145 <<http://energy.gov.il/english/subjects/oilandgasexploration/documents/petroleumrightsmap.pdf>> accessed 9 May 2015.

4.4.4 Developing Disputed EEZ Fields

According to Israel's gas policy, every gas reservoir located within Israel's exclusive economic zone should be connected to the nationwide distribution system. This policy does not differentiate between reservoirs that are located within the disputed EEZ and undisputed areas, as well as areas that are Palestinian.¹⁴⁶ As such, Israel has awarded exploration licenses for parts of the southernmost EEZ parallel to the Palestinian coastline. Should the State of Palestine conclude points of delimitation with Cyprus, this would mean a much-expanded EEZ zone far broader than the triangular sliver unilaterally allocated by Israel. This could potentially affect title to oil and gas wells in Israeli leases along the current unofficial and yet to be agreed Israeli/Palestinian maritime boundary, including Lease I/7 Noa, Lease I/10 Ashqelon, Lease 332 Shimshon, Lease 335 Heletz-Kokhav, Lease 342 Hof Ashqelon, Lease 387 Shemen, Lease 392 Daniel Maarav, Lease 398 Neta, and Lease 399 Royee.¹⁴⁷



Source: Ratio Oil Exploration (1992) Limited¹⁴⁸

While the Noa and Mari-B leases have now been fully exploited by Israel, exploration at Lease 399 Royee has recently revealed large gas deposits based on a geologic risk assessment. Israel awarded an exploration license for the Royee and Neta fields to Israeli corporations Ratio Oil Exploration Limited (70%) and Israel Opportunity (10%) and Italian corporation Edison (20%).¹⁴⁹ Edison is reportedly the "official operator of the exploration process".¹⁵⁰ In December 2014, NSAI filed a report with the Israel Securities Authority indicating that the Royee lease area contained large gas deposits estimated at between 1.9 and 5 tcf, making the discovery the third largest in Israel.¹⁵¹ However the report also

146 State of Israel, Ministry of Energy and Water Resources, 'Directorial Abstract' 3. <<http://energy.gov.il/Subjects/NG/Documents/מייניבה20חור/DIRECTORIALABSTRACT.pdf>> accessed 9 May 2015.

147 See Annex 1, 'Annexing Energy' 120.

148 Ratio Oil Exploration (1992) Limited Partnership, Partnership Presentation (January 2013) 5 <<http://www.chamber.org.il/images/Files/21775/Ratio.pdf>> accessed 9 May 2015.

149 State of Israel Ministry of Energy and Water Resources, Oil and Gas Section ownership in Petroleum Rights Updated (26 February 2015). <http://energy.gov.il/subjects/oilsearch/documents/ownershippetroleumrights.pdf> accessed 9 May 2015; Israel Opportunity Limited, 'Developments in Israel's Oil and Gas Industry' (April 2013) <<http://energy.gov.il/subjects/oilsearch/documents/ownershippetroleumrights.pdf>> <http://www.oilandgas.co.il/SiteData/1/file/מייניבה20חור/IO-%20April%202013.pdf>> accessed 9 May 2015.

150 S. Udasin, 'Two Israeli Energy Firms Exploring New Underwater Natural Gas Prospects West of Hadera Sign JOA With Italian Partner' *The Jerusalem Post* (16 June 2013) <<http://www.jpost.com/Enviro-Tech/Second-intl-firm-signs-on-Israeli-gas-exploration-316753>> accessed 9 May 2015.

151 H. Cohen, K. Yeshayahu, 'Report Estimates Royee Gas Prospect at 3.2 TCF' *Globes* (14 December 2014) <<http://www.globes.co.il/en/article-resources-report-estimates-royee-gas-prospect-at-32-tcf-1000993173>> accessed 9 May 2015.

outlined that there was no certainty that any of the prospective resources would be discovered at Royee and should prospective resources be discovered there was no guarantee that they would be commercially viable.¹⁵² Nevertheless, some or all of this lease area may be disputed should the State of Palestine negotiate coordinates of delimitation with Cyprus.

In May 2013, the United States Chamber of Commerce submitted its Recommendations for Advancing U.S-Israel Cooperation in Energy Exploration and Production, to the Government of Israel, advising that natural resources located in the Outer Continental Shelf (OCS), be leased in tracks to "private, profit-seeking firms whose exploration and development efforts are guided by market forces".¹⁵³ It warned against "onerous compliance obligations" and against environmental hazards or a "cumbersome regulatory process" that would stifle the development of international economic interests.¹⁵⁴ Arguably, some of the cited fields in the outer continental shelf would include fields at the outer edge of the disputed Egyptian/Palestinian/Israeli continental shelf and disputed Israeli/Lebanese outer continental shelf.



The Atwood Advantage Drillship¹⁵⁵

152 Netherland, Sewall and Associates Inc., Report for Israel Securities Authority (12 December 2014) <<http://mayfiles.tase.co.il/RPdf/937001-938000/P937056-00.pdf>> accessed 9 May 2015.

153 U. S Chamber of Commerce, U.S-Israel Business Initiative, Recommendations for Advancing U.S-Israel Cooperation in Energy Exploration and Production (May 2013) 5. <<http://www.usisraelbusiness.com/files/2013/05/Energy-Recommendations.pdf>> accessed 9 May 2015.

154 *Ibid* p. 6.

155 Atwood Oceanics, 'Annual Report' (2013) <<http://www.slideshare.net/AtwoodOceanics/atwood-oceanics-2013-annual-report>> accessed 9 May 2014.

Table of the Key Licenses Awarded to Gas Companies Operating in Palestinian and Israeli Gas Fields:¹⁵⁶

FIELD	LICENSE	ESTIMATED RESERVES	DISCOVERY	START OF PRODUCTION	PARTNERS
Leviathan	Rachel/Amit	17-21 tcf	June 2010	2018	Noble Energy (operator) (39%) Avner (22.67%) Delek Drilling (22.67%) Ratio Oil Exploration (15%) *In December 2014 the Antitrust Committee decided this lease must be sold to end Noble conglomerate market monopoly.
Tamar	Matan	5-8.4 tcf	January 2009	April 2013	Noble Energy (operator) (36%) Isramco Negev 2 (28.75%) Delek Drilling (16.62%) Avner (15.62%) Dor Gas (4%)
Dalit	Michael	0.5 tcf	March 2009	2013	Noble Energy (operator) (36%) Isramco Negev 2 (28.75%) Delek Drilling (15.63%) Dor Gas (4%)
Noa	Noa	0.04 tcf	June 1999	June 2012	
Mari-B	Asqelon	0.97 tcf (Depleted)	February 2000	2004	Yam Tethys Joint Venture: Noble Energy (operator) (47%) Delek Drilling (25.5%) Avner (23%) Delek Investment (4.4%)
Pinnacles		0.4 tcf	March 2012	July 2012	
Tanin	Alon A	1.2 tcf	January 2012	n/a	Noble Energy (operator) 39.66% Avner Oil (22.67%) Delek Drilling (22.67%) Ratio Oil (15%)
Karish	Alon C	1.8 tcf	May 2013	n/a	*The Antitrust Committee decided the operators must sell this lease
Dolphin	Hanna	2.87 tcf	January 2012	n/a	Noble Energy (operator (39.6%) Delek Drilling 22.67% Avner 27.67% Ratio Oil Exploration (15%)
Sarah and Myra	Sarah, Myra	0.23 tcf	November 2012	2015-2016	Geo Global Resources (operator) (5%) Emmanuelle Energy (43.78%) ILDC (5%) Blue Water (8.78%) Modin Energy (19.28%) IDB Holdings (5%)
Yam Hadera	Yam Hadera	1.4 tcf	December 2011	n/a	Modin Energy (operator)(100%)
Gabriella and Yitzhak	Gabriella, Yitzhak	1.4 – 1.8 tcf	December 2011	2012	Modin Energy (operator) (70%) Adira Energy Israel(15%) Brownstone Energy (15%)
Royee	Royee, Neta	1.9 – 5 tcf	December 2014	n/a	Edison (operator) (20%) Ratio Oil Exploration (70%) Israel Opportunity (10%)
Gaza Marine	Gaza Marine	1.4 tcf	2000	n/a	British Gas (operator) (60%) Consolidated Contractors (CCC)(30%) PIF (10%)
Border Field		0.1 tcf	2000	n/a	

156 IEMED, 'Maritime Borders and Main Gas Fields in the Levant Basin' <http://www.iemed.org/observatori-en/recursos/documents/mapes/arxius-mapes-anuari-med.2012/Map_A17_en.pdf-en> accessed 2 June 2015.



5. FORCIBLY CLOSING THE GAZA STRIP TO PROTECT ISRAEL'S PLATFORMS AND PIPELINES

5.1 PROTECTING ISRAEL'S GAS INFRASTRUCTURE BY MILITARY BLOCKADES, CLOSURE AND ATTACKS ON THE GAZA STRIP

Israel has adopted an array of devastating measures in its military arsenal to ensure the security of its massive gas resources in the Mediterranean Sea. While Israel purposely blocked the development of the Gaza Marine, the development of Israel's natural gas market became the centerpiece of Israel's energy policy. This followed the discovery of vast natural gas resources off Israel's coast.¹⁵⁷ (To date, 5 oil fields and 12 gas fields have been discovered in Israel). To put it into perspective, Israel's claimed exclusive economic zone dwarfs its mainland territory and is nearly double its size. The discovery of the Tamar field alone is worth approximately \$52 billion USD to the Israeli economy and Israel's Leviathan field is three times larger than Tamar again.¹⁵⁸

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

158 A. Barkat, 'E&Y Israel partner Shlomo Alfia estimates the savings at \$42 billion and the government's take at \$10 billion in capitalization value' *Globes* (7 January 2014).

A number of gas fields in Israel's claimed EEZ, border Palestinian territorial waters such as the Noa and Mari-B licenses under the Yam Tethys operators. Israel has extended its military security measures into Palestinian maritime space to protect Israeli gas platforms on the maritime border and to protect the export supply routes of companies operating off the Israeli coast through Palestinian territorial waters. At first, Israel introduced military measures to ensure that gas imports from Egypt, reached Israel's domestic market unimpeded. In addition Israel implemented military measures to protect gas platforms located near Gaza's maritime border.

However, as the scale of Israel's gas wealth unfolded, the Gaza Strip in its entirety was perceived by Israel as a threat to its gas resources. Israel has forcibly closed the Gaza Marine and closed off the entire land, air and sea space of the Gaza Strip. According to one IDF navy commander:

"Immediately following Operation Protective Edge, the Palestinians went back to commercial fishing. We enforce fishing bans in order to prevent irregularities. At this time the fishing zone range is six miles. The Palestinians requested that it be extended to 12 miles. Such extension will produce an operational problem, as it would place them substantially closer to the Tethys and Tamar offshore rigs, while we maintain a very intensive defensive effort around those rigs. It will shorten our response intervals. One should bear in mind the fact that the drilling rigs are located 16 miles off shore".¹⁵⁹

In addition, Israel has systematically attacked the Gaza Strip in military operations Summer Rains, Cast Lead, Returning Echo, Pillar of Defense, and Protective Edge. Each operation is designed to devastate, ensuring that the Palestinian population remains unable to mobilize against Israel's gas empire.

5.1.1 Israel's Key Gas Discoveries at Yam Tethys, Tamar and Leviathan

The Mari-B gas field is Israel's oldest but most important gas field, especially in terms of its strategic importance to Israel's gas distribution infrastructure and proximity to the Gaza Strip. In March 2000, American company Noble Energy discovered a large gas deposit 13 nm west of Ashkelon and 243 meters below the seabed, contiguous to the Palestinian territory.¹⁶⁰ Between 2000 and 2003, Noble Energy constructed and installed the Mari-B jacket and platform.¹⁶¹ Gas from Mari-B was developed for Israel's domestic market since 2004. However, now depleted, the Mari-B reservoir is licensed for use as a storage facility.¹⁶² The use of Mari-B as a storage facility is an integral part of any gas export plan underscoring its importance within Israel's gas infrastructure. Since 2000, coincidentally the same time Mari-B was discovered, Israel's navy has forcibly restricted Palestinian access to Gaza's maritime space to a 6 nm limit from the 20 nm agreed under the Oslo Accords.¹⁶³ In essence, Israel has created a 7 nm illegal security zone around Noble Energy's Mari-B gas field.

159 O. Heller, 'We Must be Alert and Well Prepared' IsraelDefense (16 December 2014).

160 R Bryce (n 21) 11; A Antreasyan (n 59) 36.

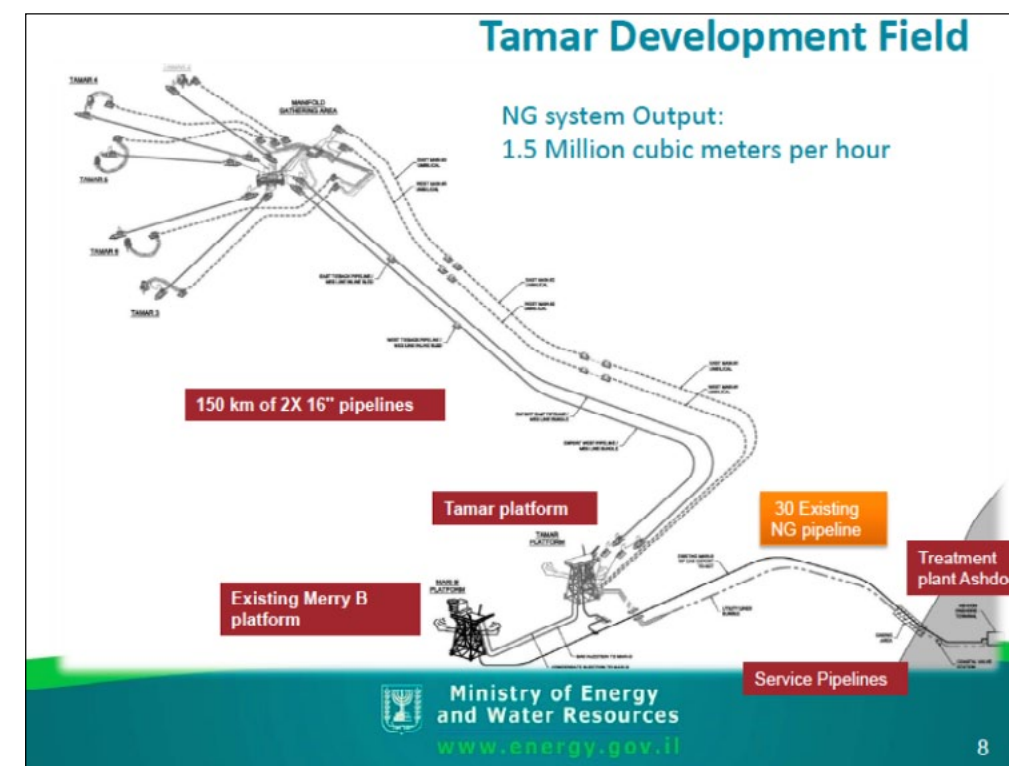
161 Noble Energy, 'Noble Energy Ready to Deliver gas to the Israeli Electric Corporation; Company Waiting for Israel to Complete Transportation Authorisation' <<http://investors.nobleenergyinc.com/common/mobile/iphone/releasedetail.cfm?ReleaseID=360313&CompanyID=abea-2d0wmq&mobileid=>> accessed 9 May 2015.

162 'Directorial Abstract' (n 146) 3; and sold to the IEC with shares divided between Noble Energy (47%) and Israeli companies Delek Drilling (25.5%), Avner Oil Exploration (23%) and Delek Investments and Properties Limited (4.4%). Noble Energy, 'Eastern Mediterranean' <<http://www.nobleenergyinc.com/Operations/International/Eastern-Mediterranean-128.html>> accessed 9 May 2015; A Antreasyan (n 59) 36.

163 The Office of the Prosecutor, 'Report on Preliminary Examination Activities 2013' (November 2013) para 90.

In 2009, Noble Energy and its partners Israeli corporations Delek Group and Dor Gas Exploration discovered the Tamar gas reservoir 90 km off the coast of Israel with massive estimated reserves of 8 tcf.¹⁶⁴ In March 2013, gas production began on Israel's Tamar field supplying 50 to 80 percent of the Israeli domestic market via gas piped to the IEC power plants in Ashdod.¹⁶⁵ The Tamar platform is linked both to the Mari-B storage facility via a subsea tieback for export purposes, and to a gas-processing platform at Ashkelon where it connects to an onshore reception station in Ashdod for domestic supply.

In December 2010, Noble Energy discovered the Leviathan gas field approximately 81 miles off Haifa with a staggering 16 tscf of reserves. The Leviathan reserves are double that of Tamar, effectively altering Israel's geostrategic position as a regional gas power.¹⁶⁶ It is estimated that production will begin in 2018.¹⁶⁷ However, gas cannot be produced until Israel secures gas export agreements with other States.



Source: Layout and Planning of NG Infrastructure in Israel from Offshore to Land¹⁶⁸

164 Ministry of National Infrastructures, 'Energy and Water Resources' <http://energy.gov.il/English/Subjects/Natural%20Gas/Pages/GxmsMniNGEconomy.aspx> accessed 9 May 2015.

165 A Antreasyan, (n 59) 36.

166 *Ibid.*, 29; Noble Energy operates the Rachel and Amit license at Leviathan with Israeli companies Ratio Oil Exploration 1992 LP, Delek Drilling LP and Avner Oil and Gas Ltd. holding minor interests; SubseaIQ, 'Offshore Field Development Projects, Leviathan' <http://www.subseaIQ.com/data/Project.aspx?project_id=814&AspxAutoDetectCookieSupport=1> accessed 19 January 2015.

167 A Antreasyan (n 59) 36. However the exploitation of gas from Leviathan is likely to generate controversy, as it is "part of a larger basin that extends into the territorial waters of Israel, Lebanon, and Cyprus".

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

5.1.2 Securing the Mari-B Storage Facility

The protection of Mari-B as the only storage facility for Israeli gas has become a vital artery for Israel's export and domestic distribution plans. This means that gas pumped from Tamar or Leviathan (when it comes online) can be injected into the Mari-B reservoir for storage pending domestic distribution into Israel or pending export. Should technical problems (or attacks on pipelines), require the Tamar or Leviathan pipelines to shut down for maintenance, then gas stored in the Mari-B reservoir will be used for distribution to the domestic and/or export markets.¹⁶⁹ Mari-B requires massive security measures for protection, given that it holds enough gas for domestic supply and/or export and given that it is Israel's only gas storage facility.¹⁷⁰

Notably the Mari-B storage facility is located beside Palestine's 'maritime border' and only 13 nm from Palestine's shore.¹⁷¹ Originally Israel had intended to build the gas storage facility in northern Israel. However, the National Planning and Building Commission refused permission to locate the storage facility there on the basis it would be detrimental to the environment.¹⁷² Instead in 2014, Israel's Ministerial Committee on Interior Affairs approved the transmission of natural gas via the Mari-B storage facility under the Tama 37 H Framework.¹⁷³ Mari-B's location outside Israel's territorial waters meant that the regulation of the platform fell beyond the competence of the Territorial Water Committee and other regulatory bodies limited to planning within the territorial sea.¹⁷⁴ However the location of Mari-B just outside Israel's territorial waters, means that under international law the maximum security zone which can be legally placed around the platforms is a radial distance of 500 meters (a mere 0.27 nm).¹⁷⁵ In order to protect its gas platform, Noble Energy has reported that the Israeli Ministry of Defense maintains a 500-meter buffer zone around the Mari-B platform and gas pipelines, along with a 5-mile fishing restriction.¹⁷⁶ In addition, the Ministry of Defense has imposed naval restrictions on shipping under Notice to Mariners No. 6/2008 (13 August 2008), and later blockaded the entire Palestinian Sea under Notice to Mariners No. 1/2009 (6 January 2009), leaving only a narrow sliver of 3 nm to 6 nm

169 Delek Drilling, 'Yam Tethys' <<http://www.delekenergy.co.il/?CategoryID=170&ArticleID=83>> accessed 9 May 2015.

170 I. Trilnick, A. Bar-Eli, 'Landau Awards Mari-B Rights Without a Tender' *Haaretz* (18 December 2012) <<http://www.haaretz.com/business/landau-awards-mari-b-rights-without-a-tender.premium-1.485542>> accessed 9 May 2015.

171 The Mari-B platform is reportedly located outside Israel's territorial waters. Vice Admiral (Ret.) Eliezer Marum, Oil and Gas Security and Strategy, Universal Oil and Gas Conference, David Dead Sea Resort, Ein Bokek, Israel (18-20 November 2014). Although Noble reports that the Mari-B platform is located 25 km or 13 nm off the coast of Israel at co-ordinates 622,624 easting; 3,511,745 northing. Noble Energy Mediterranean Ltd., 'Environmental Impact Assessment, Tamar Field Development Project Offshore Israel' (September 2012) 3, 6.

172 A. Barkat, 'Gov't Mulls Building Marine Gas Pipeline Network' *Globes* (27 June 2012) <<http://www.globes.co.il/en/article-1000760704>> accessed 19 January 2015; However environmental concerns have arisen in relation to pollution from Mari-B as well. In 2003, Galil and Herut reported contaminated sediments from drilling fluids in an environmental survey at the Mari-B platform; Noble Energy, Environmental Impact Assessment (n 171) 50.

173 S. Udasin, 'Ministerial Committee Approves New Land, Sea Gas Reception Terminals' *The Jerusalem Post* (27 July 2014) <<http://www.jpost.com/Enviro-Tech/Ministerial-committee-approves-new-land-sea-gas-reception-terminals-369076>> accessed 9 May 2014.

174 Vice Admiral (Ret.) Eliezer Marum (n 171). See for example, E. Sas et al., 'The Demarcation of Arbitrary Boundaries for Coastal Zone Management: The Israeli Case' (2010) 91 *Journal of Environmental Management*, 2358, 2362.

175 Article 60(5), United Nations Convention on the Law of the Sea (1982), "5. The breadth of the safety zones shall be determined by the coastal State, taking into account applicable international standards. Such zones shall be designed to ensure that they are reasonably related to the nature and function of the artificial islands, installations or structures, and shall not exceed a distance of 500 metres around them, measured from each point of their outer edge, except as authorized by generally accepted international standards or as recommended by the competent international organization. Due notice shall be given of the extent of safety zones."; Article 5(3), Convention on the Continental Shelf (1958).

176 Noble Energy Mediterranean Ltd, 'Tamar Field Developments Project Offshore Israel' (September 2012) 154; Noble Energy, 'Tamar Expansion Project' (March 2015) 78.

for fishing from the Palestinian coast. Meanwhile Israel has consistently refused to supply "reasons and a legal basis for establishing a limited fishing zone" off the Gaza Strip.¹⁷⁷ The imposition of a prolonged and unspecified blockade is an egregious violation of international law.¹⁷⁸ The prolonged blockade represents not just a closure of Palestine's maritime space, but an annexation of Palestine's maritime waters for Israel's energy security.



Source: Layout and Planning of NG Infrastructure in Israel from Offshore to Land¹⁷⁹

177 A/HRC/12/48, Report of the United Nations Fact-Finding Mission on the Gaza Conflict, 25 September 2009, Para 324.

178 Notably, Paragraph 94 of the San Remo Manual requires of the blockade notification that "the declaration shall specify the commencement, duration, location, and extent of the blockade and the period within which vessels of neutral states may leave the blockaded coastline".

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

5.1.3 Securing the El-Arish Pipeline

The military security of the El-Arish pipeline lies at the heart of Israel's reasons for maintaining the ongoing illegal naval closure of Gaza's maritime waters. On 30 June 2005, Israel and Egypt signed a Memorandum of Understanding Relating to the Purchase and Transmission of Natural Gas Through a Pipeline.¹⁸⁰ Given the trajectory of the pipeline through Palestinian maritime waters, the PLO were conspicuously absent from the agreement. The El-Arish pipeline is a 100 km submarine gas pipeline connecting El-Arish in Egypt and Ashkelon in Israel.¹⁸¹ The \$550 million USD pipeline was built by East Mediterranean Gas Company (EMG) and completed in February 2008.¹⁸² The EMG is a private consortium co-owned by Israeli and Egyptian business interests.¹⁸³ EMG would supply 206 MMcfd of gas to IEC for a period of fifteen years via the pipeline at the rock bottom rate of \$1.5 per million Btu prompting allegations of corruption that Egypt's gas resources had literally been given away to Israel.¹⁸⁴

The precise location of the El-Arish pipeline is unclear. At a minimum it traverses Palestinian waters at a distance of 13 nm (location of Mari-B) across Palestine's coast to El-Arish. This would place it within Palestine's contiguous zone. However, should the pipeline slope towards the Palestinian coast, then the pipeline would enter Palestine's territorial sea. Pipelines entering Palestinian waters must be subject to Palestinian agreement, and pipelines entering the territorial sea are subject to Palestinian domestic law. (It does not appear that the Palestinian Authority objected to the El-Arish pipeline. However in July 2005 the Palestinian Authority and Egypt had signed a separate protocol agreement for a separate export pipeline to be built between the Gaza Marine and El-Arish in Egypt, which never materialized).¹⁸⁵

By February 2008, operational trials of gas began between Egypt and Israel through the El-Arish pipeline with "full scale export of gas to Israel" expected by early March 2008.¹⁸⁶ By August 2008, Israel placed major fishing restrictions on Palestinian waters off Gaza and in December 2008 Israel invaded the Gaza Strip using the operation as a pretext for the imposition of a naval blockade on the entire Gaza maritime zone. On 3 January 2009, on the day of Israel's ground invasion of the Gaza Strip,

¹⁸⁰ Memorandum of Understanding Relating to the Purchase and Transmission of Natural Gas Through a Pipeline between the Government of the State of Israel and the Government of the Arab Republic of Egypt. < <https://www.jewishvirtuallibrary.org/jsource/Peace/mou2005.pdf> > accessed 9 May 2015.

¹⁸¹ Oil and Gas, 'Arish-Ashkelon Pipeline' <<http://www.gulfoilandgas.com/webpro1/projects/3dreport.asp?id=100808>> accessed 9 May 2015.

¹⁸² The Merhav Group of Companies http://www.moital.gov.il/CmsTam/Rsrc/ICA/Industrial_cooperation_in_israel2011-2012/pdf/Rashpat_216.pdf accessed 9 May 2015.

¹⁸³ Including the Israeli Merhav Group whose President and CEO is Mossad agent Yosef Maiman (8.1%) and businessman Hussein Salem, also a former Egyptian intelligence agent. Other shareholders include Thailand's Energy Company PTT Pcl (25%), Ampal American Israel (12.5%), Egyptian Natural Gas Holding (10%), EMI EGI LP (12%), Israel Infrastructure Fund (4.4%) and Mediterranean Gas Pipeline (25%). As early as 2004, Israeli businessmen Maiman and Shavit explored gas opportunities in Egypt where "Shavit exploited the connections he had made in Egypt while heading the Mossad, while Maiman brought along the strong ties he had developed when he was one of the owners of the oil refineries in Egypt."; The Merhav Group of Companies (n 182); Y. Melman, 'Maiman, Shavit go back to the 1980's' *Haaretz* (20 July 2004) < <http://www.haaretz.com/print-edition/news/maiman-shavit-go-back-to-the-1980s-1.129008> > accessed 9 May 2015; D. Hearst, 'Israel has Egypt over a Barrel' *Middle East Monitor* (9 June 2014) < <https://www.middleeastmonitor.com/articles/africa/11989-israel-has-egypt-over-a-barrel> > accessed 9 May 2015; Oil and Gas (n 181).

¹⁸⁴ Update, 'PPT Buys 25% of East Mediterranean Gas Company' *Oil and Gas Journal* (12/07/2007) < <http://www.ogj.com/articles/2007/12/ppt-buys-25-of-east-mediterranean-gas-co.html> > accessed 9 May 2015.

¹⁸⁵ A. Mihailescu, 'BG, PA in Gas Deal Without Israel' *UPI* (20 July 2005).

¹⁸⁶ A. Morrow, K. Moussa al-Omrani, 'Egypt begins pumping gas to Israel despite Gaza siege' *The Electronic Intifada* (29 February 2008) < <http://electronicintifada.net/content/egypt-begins-pumping-gas-israel-despite-gaza-siege/7387> > accessed 9 May 2015.

Israel established a naval closure prohibiting foreign vessels from entering Gaza's maritime space along the 20 nm limit.¹⁸⁷ When Israeli troops withdrew on January 21, the naval closure remained in force.¹⁸⁸ This meant that fishing vessels could not go beyond the arbitrary imposed 6 nm limit from Gaza, and additionally international vessels could not enter Gaza's maritime space from international waters.¹⁸⁹ As such, it created a military corridor around the El-Arish pipeline, which was destined to start operating at full capacity that year to export gas to the Israeli market.

Maintaining the security of the pipeline is important for business.¹⁹⁰ IEC and EMG are currently suing the Egyptian government in international arbitration for disruptions to the gas supply in 2011 following pipeline attacks.¹⁹¹ Now that Israel plans to reverse the flow of gas and export from Israel through the pipeline, it also needs to prevent Israel's exposure to similar arbitration by international companies, should gas exports be disrupted due to unforeseen events.

In November 2014, Noble Energy announced plans to build a new underwater pipeline from the Tamar platform to supply the Union Fenosa Gas plant in Egypt by 2017.¹⁹² Although the Tamar partners have indicated that the EMG pipeline will be used to export gas to Egypt, EMG has strenuously denied any such agreement.¹⁹³ Either way, gas exported via a new pipeline or the existing EMG pipeline must be subject to Palestinian agreement.

¹⁸⁷ State of Israel Ministry of Transport and Road Safety, Notice to Mariners No. 1/2009 Blockade of the Gaza Strip, Jan. 6, 2009.

¹⁸⁸ J. Kraska, R. Pedrozo, *International Maritime Security Law* (Brill, 2013) 897.

¹⁸⁹ During Operation Protective Edge Israel further reduced the maritime zone to 3 nm.

¹⁹⁰ Article 58, UNCLOS (1982) "Rights and duties of other States in the exclusive economic zone"

1. In the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in article 87 of navigation and overflight and of the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.

(...)

3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part."

¹⁹¹ A. Barkat, 'IEC May Withdraw \$4.2 b suit against Egypt' *Globes* (15 December 2014) <http://www.globes.co.il/en/article-iec-may-withdraw-42b-suit-against-egypt-1000993761> accessed 9 May 2015.

¹⁹² Delek Drilling, 'Financial Statements as of September 30, 2014 Unaudited' (2014) 4 <http://www.delekenergy.co.il/_Uploads/dbsAttachedFiles/DelekFinal.pdf> accessed 9 May 2015; E. Azran, 'Tamar Partners Eye Big Expansion of Offshore Gas Field' *Haaretz* (22 November 2014) <<http://www.haaretz.com/business/premium-1.627724>> accessed 9 May 2015.

¹⁹³ However on 18 March 2015, *Globes* reported on a gas supply deal concluded between Tamar and Egyptian company Dolphus Holdings, which would see gas transported bi-directionally via the East Mediterranean Gas Company's El-Arish pipeline. In an odd turn of events, the following week, East Mediterranean Gas Company issued a statement from its lawyer rejecting any involvement with Tamar stating:

"EMG is not a party to the reported transaction, and was not included in these negotiations. In order to remove all doubt, no talks are taking place between EMG and Dolphus for such a deal, and no negotiations took place between them in the past."

In response, the Tamar partners indicated that to their knowledge the EMG pipeline was being used for gas exports, but distanced themselves from the issue stating:

"The gas delivery point, in accordance with the deal, is in Ashkelon and, therefore, the Tamar partners are not part of the contacts between Dolphus and the EMG company".

At no point did the Tamar partners revisit their earlier statements intending to build a new gas pipeline from Tamar to supply Union Fenosa Gas in Egypt. Again the pipeline may be routed through Palestinian maritime space; H.Cody, 'Tamar Partners Sign \$1.2b Gas Deal with Egyptian Company' *Globes* (18 March 2015); H. Cohen, 'EMG Denies Consenting to Tamar' *Globes* (22 March 2015); S.Udasin, 'Eastern Mediterranean Gas: Egyptian Pipeline not part of Tamar partners, Dolphus Gas Deal' *Jerusalem Post* (23 March 2015)

5.1.4 Enhanced Military Security

In light of the discoveries of gas at Leviathan and Tamar and the need to secure gas distribution networks, Israeli OC Navy Admiral Ram Rothberg indicated that Israel's naval capabilities would be further enhanced to protect Israel's economic interests. He explained that "the size of the gas reservoirs is larger than the size of the State of Israel and has significant consequences for how we



Israel Navy Dolphin II Class Submarine¹⁹⁸

operate and how we grow...the main solution is to be present in the area to protect the rigs and ensure that the gas reaches Israel."¹⁹⁴

The enhanced military security includes the purchase of four naval vessels with advanced radar systems, the deployment of missile interceptors on gas rigs and anti-ship Barack missile defense systems.¹⁹⁵ Israel has purchased a number of submarines from Germany which according to the Israeli navy, will enable Israel to "stay in enemy territory for weeks" and "act in any enemy coast".¹⁹⁶ In October 2014, it emerged that Germany had subsidized the price of Israeli submarines by \$382 million, only six weeks after Israeli attacks on Gaza killed 2,205 Palestinians and injured thousands more, during Operation Protective Edge.¹⁹⁷

In March 2014, the United States House of Representatives adopted the United States-Israel Strategic Partnership Act placing Israel in the unique position of major strategic partner of the United States. In particular, "energy cooperation and the development of natural resources by Israel" were earmarked as strategic interests of the United States.¹⁹⁹ It amended the United States Naval Transfer Act of 2008 to include "improved reporting on enhancing Israel's qualitative military edge and security posture".²⁰⁰ In

¹⁹⁴ Y. Katz, 'Concerned by Missile Threat, Navy Seeks New Ships' *The Jerusalem Post* (7 September 2012) < <http://www.jpost.com/Defense/Concerned-by-missile-threat-navy-seeks-new-ships> > accessed 9 May 2015.

¹⁹⁵ *Ibid.*

¹⁹⁶ Y. Lappin, 'We will operate off any enemy coast to protect Israel,' Navy chief says' *The Jerusalem Post* (22 September 2014) < <http://www.jpost.com/Israel-News/We-will-operate-in-any-enemy-coast-to-protect-Israel-navy-chief-says-376040> > accessed 9 May 2015.

¹⁹⁷ B. Ravid, 'Missile Boat Crisis Ends as Germany Gives Israel \$382 Million Discount' *Haaretz* (19 October 2014) < <http://www.haaretz.com/news/diplomacy-defense/premium-1.621447> > accessed 19 January 2015; OCHA, 'Occupied Palestinian Territory, Gaza Crisis' < <http://www.ochaopt.org/content.aspx?id=1010361> > accessed 9 May 2015; B. Ravid, 'Israel to Purchase Four German Missile Boats to Protect Gas Facilities' *Haaretz* (25 December 2014) < <http://www.haaretz.com/news/diplomacy-defense/premium-1.633814> > accessed 9 May 2015.

¹⁹⁸ By shlomiliss (shlomiliss) [GFDL (<http://www.gnu.org/copyleft/fdl.html>) or CC BY 3.0 (<http://creativecommons.org/licenses/by/3.0/>)], via Wikimedia Commons.

¹⁹⁹ 113th Congress, 2d Session S. 2673, An Act to Enhance the Strategic Partnership Between the United States and Israel (United States Strategic Partnership Act of 2014)

²⁰⁰ *Ibid.*

addition, a research programme was launched to enhance Israel's border, maritime and aviation security capabilities. The Act pledged to provide robust security assistance to Israel and reaffirmed the security cooperation provided for under the United States-Israel Enhanced Security Cooperation Act of 2012.²⁰¹ As such, it placed the United States in a partnership role providing for Israel's enhanced gas security.

5.2 ISRAEL ATTACKS PALESTINIAN FISHERMEN

Israel routinely uses force to unilaterally restrict maritime access. Between July and December 2011, Al-Haq recorded 29 arbitrary arrests and attacks on fishermen,²⁰² and 50 arbitrary arrests and attacks in 2012,²⁰³ two of which, resulted in death.²⁰⁴ Al-Haq has documented instances where the Israeli navy has indiscriminately attacked fishermen as close as 200 meters from the Gaza shoreline near Rafah in the South. In addition, Israel's lethal dominance and control of the sea surrounding Gaza has extended beyond the Maritime Zones and into international waters. On 31 May 2010, the Israeli military intercepted a humanitarian convoy of six ships, some 64 nm from the Gaza maritime zone and opened fire leading to the deaths of nine persons aboard the *Mavi Marmara*.²⁰⁵

Affidavit No. 9161/2013

I, the undersigned, Mohsen Akram Diab Zayed, of Palestinian nationality, born on 16 December 1988, a fisherman, and a resident of Al-Salatin neighbourhood, in Beit Lahia, North Gaza governorate, would like to declare the following:

"At approximately 17:00, on Sunday 17 November 2013, I set off from the beach in Al-Sudaniyya area north-west Jabaliyya town in the North Gaza governorate on a fishing trip on the boat along with my cousin, Ammar Sultan, 20. We threw our net into the sea and headed north of the sea until we were around one nautical mile into the sea opposite Al-Nawras area south to Al-Waha resort north of the Strip, in the area allowed for us to fish in.

At 18:00 while we were pulling out the fishing net from the sea, I saw an Israeli gunboat heading towards us and then I heard gunshots fired in our direction. We were very scared and I could see the bullets hitting the water around us. The gunboat came 30 meters close to us and it was going around us while the soldiers kept shooting at us. Then I heard one of the soldiers speaking through the microphone, ordering us to leave the fishing net, take off our clothes and jump into the sea immediately and swim towards their boat. I jumped first then Ammar and we swam towards the gunboat...

...During the interrogation the officer asked me about the details of my family members and their jobs. Then he told me that he'd confiscate the boat as a punishment for my working in a forbidden area. Then they took me back to the same room and took Ammar for interrogation. I sat inside the room, blindfolded and tied for about an hour. Then Ammar returned to the room and we both sat on the ground tied and blindfolded for about two hours..."

²⁰¹ *Ibid.*

²⁰² Al-Haq, 'July – December 2011, Field Report, Monitoring and Documentation Department' 14.

²⁰³ Al-Haq, 'January – June 2012, Field Report, Monitoring and Documentation Department' 12.

²⁰⁴ Al-Haq, 'July – December 2012, Field Report, Monitoring and Documentation Department' 13.

²⁰⁵ Report of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident (September 2011).

Affidavit No. 9065/2013

I, the undersigned, Salim Khalil Salim Al-Fasih, of Palestinian nationality, born on 1 November 1955, a fisherman, and a resident of Al Shate' Camp, North Gaza governorate, would like to declare the following:

"We were six miles into the sea, which is the distance allowed by the Israeli Naval Force for Palestinian fishermen. We threw our net into the sea while we made sure we didn't cross over the six mile limit and stopped to wait for the fish to gather around the fishing net.

At 16:30, I saw a big Israeli gunboat heading towards us really fast from the middle of the sea. Then the soldiers on the gunboat started shooting at us heavily and randomly and without any warning. They kept shooting at us from a 100-meter distance and our boat had holes from the bullets from different sides. My colleagues decided that they should escape towards the beach and we did so as quickly as possible in our boat. We lay on the boat's surface because we were afraid we'd get shot as the Israeli soldiers kept shooting, even though we were four nautical miles from the beach.



Source: Salim Khalil Salim Al-Fasih, Photograph Al-Haq

The bullets hit the ring sling of the boat, which we use to lift the fishing net loaded with fish from the sea water... The ring sling fell on my right hand...

... I was transferred to Al-Shifa hospital in Gaza city. The doctors there informed me that I required surgery to remove my finger."

Affidavit Number 7742/2012

I, the undersigned, Zahir "Muhammad 'Ali" Yousef al-Sultan, of Palestinian nationality, born on 7 October 1991, a fisherman and a resident of the al-Salatin neighbourhood of Beit Lahya, North Gaza governorate, state the following:

On Friday 28 September 2012, at around 9:30 am, I was with 30 other fishermen fishing the mullet ... We were fishing with nets on the seashore northwest of Beit Lahya in the North Gaza governorate, 60 meters away from the Israeli water borderline. Of the fishermen, I knew my neighbour Fahmi Salih Abu Riyash, 23, a football player at the Beit Lahya club and a former member of the Palestinian team. He is married and has a child who is almost one year old. His brother Yousef Abu Riyash, 20, was also there.

Suddenly, we heard gunshots fired from the border in our direction. I looked behind me and saw ten Israeli soldiers taking position above a sand dune about 15 meters away from the border and shooting at the fishermen. At that moment, I ran away along with most of the fishermen and took shelter from the gunfire behind the sand dunes on the seashore. Later on, I saw the Abu Riyash

brothers; they were the closest ones to the border, about five meters away from the coast, in the sea and almost 20 meters from the border fence. They were trying to escape south but were visible to the soldiers above the hill. The soldiers were shouting at them. While they were escaping, the soldiers fired at them directly in sniper fashion. Fahmi was shot in the left foot and fell to the ground, and his brother Yousef was shot in the left hand while trying to help him.

After that, I saw Fahmi trying to get up and continue running away from the area, but the soldiers fired at him, and he was shot again and fell to the ground. At that moment, I, along with other fishermen, started shouting at the soldiers to stop shooting so that we could help Fahmi. I stepped away from the sand dune with my hands up. Then I took off all of my clothes except for my underwear, so that the soldiers would not shoot me. The soldiers then signalled to me to get closer to the wounded Fahmi and Yousef. When I got closer to them, I saw that Fahmi was wounded in the left thigh and in the left groin. He was bleeding heavily from his wounds. I also saw that Yousef was slightly wounded in the left hand...A number of fishermen helped us carry Fahmi for about another 300 meters, where we put him in a civil defence ambulance that had arrived. We took him to the Kamal Odwan hospital in Beit Lahya.

At around 3:00 pm, the doctor took Fahmi into surgery because of severe abdominal bleeding. That evening, at around 10:00 pm, the doctors pronounced him dead. The following afternoon, on Saturday, 29 September 2012, we received Fahmi's body and buried him in the Beit Lahya cemetery in the North Gaza governorate.



5.3 ISRAEL'S DESTRUCTION OF PALESTINIAN ENERGY INFRASTRUCTURE IN THE GAZA STRIP

During past Israeli military offensives, Israel has targeted vital energy infrastructure located in the occupied Gaza Strip. Israel frequently attacks Palestinian fishermen and regularly launches bombing campaigns on the Gaza Strip, leaving Palestinians unable to access and develop their natural resources infrastructure. This allows Israel to maintain ultimate control over energy supplies to the occupied Palestinian population as well as ensure the continued fragmentation of the OPT.

i. Operation Summer Rains 2006

On 28 June 2006, Israel launched 'Operation Summer Rains' in response to the kidnapping of Israeli soldier Gilad Shalit. During the offensive, Israel attacked six transformers at the Gaza Power Plant. The attacks resulted in damage worth USD 15 million to the only domestic source of electricity in the Gaza Strip.²⁰⁶ At the same time Israel closed the Nahal Oz energy pipeline - the only line supplying fuel to the Gaza Strip.²⁰⁷ Additionally, during a military incursion into *As Shoka*, electricity cables were cut by the IDF.²⁰⁸ The power plant's transformers were replaced later in November 2006. However, the new transformers operated at 40 megawatts or 30 percent less than original capacity of 140 megawatts. Hence, the destruction of the transformers made the occupied Palestinian population in the Gaza Strip dependent on the supply of electricity from the IEC.²⁰⁹ The Gaza Strip needs approximately 240 megawatts of electricity to supply the territory.²¹⁰

Al-Bassiouni v. The Prime Minister: Electricity argued in Court

Following the 2006 operation, on 19 September 2007, the Israeli Security Cabinet declared the occupied Gaza Strip a hostile territory and unanimously decided "to restrict the passage of various goods to the Gaza Strip and reduce the supply of fuel and electricity".²¹¹ In *Al-Bassiouni v The Prime Minister*, non-governmental organizations sought an injunction to provide for gasoline and diesel for the running of hospitals, water and sewage pumps as well as electricity or industrial diesel for the Gaza power plant to supply the needs of the civilian population.²¹² Israel argued that "damaging the enemy's economy is in and of itself a legitimate means in warfare" falling within the permitted qualifications

on free passage of consignments under Article 23 of the Fourth Geneva Convention.²¹³ The Israeli High Court of Justice satisfied that Israel had intended to supply "the essential humanitarian guarantees of the Gaza Strip" and would eventually do so, upheld the government's decision to restrict fuel and electricity in the face of a massive humanitarian crisis, once again reinforcing the illegitimate acts of the government.²¹⁴

On 7 February 2008, the IDF announced plans to further reduce the supply of fuel and electricity by 1.5 megawatts to the Gaza Strip. As a result the occupied population in the Gaza Strip faced 8 hours of electricity per day, with the IEC supplying 120 megawatts of the 240 megawatts of electricity needed.²¹⁵ Consequently, the United Nations Office for the Coordination of Humanitarian Affairs reported that cuts to electricity had forced hospitals to suspend operations, 40 million liters of untreated wastewater per day had to be released into the sea and almost half the population in Gaza had no access to running water.²¹⁶ By October 2008, the World Bank reported that the closure had affected industrial employment with a drop from 35,000 employed in 2005 to 840 in 2008.²¹⁷ In November 2008, Israel further suspended the supply of fuel to the Gaza Strip for a week, resulting in the closure of the power plant.²¹⁸

ii. Operation Cast Lead

During 'Operation Cast Lead' in 2008-2009, Israel destroyed an electrical factory containing spare parts used for general repairs to the electrical grid.²¹⁹ The report of the UN Fact-finding mission on the Gaza Conflict of 2009 concluded that there was "a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites".²²⁰ During the ground offensive, Israel targeted and damaged seven of the twelve electrical power lines connecting Gaza to Israel and Egypt.²²¹ By 2009, Israel was supplying 51 percent of the Gaza Strip's electricity, (Egypt 7 percent, Gaza 34 percent, deficit 8 percent) but often reduced the supply leaving Gaza with only 41 percent for civilian life.²²²

In 2011, Israel stopped supplying industrial diesel fuel to the Gaza Strip. By 2012, the Office for the Coordination of Humanitarian Affairs in the Occupied Palestinian Territory reported an electricity and

²¹³ *Ibid.*

²¹⁴ *Ibid.*, para 11, 22.

²¹⁵ A/ES-10/412. Identical letters dated 7 February 2008 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General and the President of the Security Council (8 February 2008) <<http://unispal.un.org/UNISPAL.NSF/0/2BB943A5DF03B5F2852573EF004DCFDC>> accessed 15 January 2015; OCHA, 'Electricity Shortages' (n 210); Al Haq, 'End the Siege of the Gaza Strip' (21 January 2008) <<http://www.alhaq.org/advocacy/topics/gaza/159-end-the-siege-of-the-gaza-strip>> accessed 9 May 2015.

²¹⁶ OCHA, 'Electricity Shortages' (n 210).

²¹⁷ Human Rights Watch, 'Deprived and Endangered: Humanitarian Crisis in the Gaza Strip' (13 January 2009) <<http://www.hrw.org/news/2009/01/12/deprived-and-endangered-humanitarian-crisis-gaza-strip>> accessed 9 May 2015.

²¹⁸ M Tyran, 'Israel Ends Suspension of Fuel Supplies to Gaza' *The Guardian* (11 November 2008) <<http://www.theguardian.com/world/2008/nov/11/israel-palestinians-fuel-blockade>> accessed 9 May 2015.

²¹⁹ Amnesty International, 'Israel/Gaza, Operation Cast Lead, 22 Days of Death and Destruction' (2009) 61-61.

²²⁰ Report of the United Nations Fact Finding Mission (n 177) p 217, para. 1026.

²²¹ Human Rights Watch, "I Lost Everything" Israel's Unlawful Destruction of Property During Operation Cast Lead' (2010) <http://www.hrw.org/sites/default/files/reports/ipt0510webwcover_1.pdf> accessed 9 May 2015.

²²² Report of the United Nations Fact Finding Mission (n 177) p. 259, para. 1221.

²⁰⁶ B'Tselem, 'Act of Vengeance: Israel's Bombing of the Gaza Power Plant and its Effects' (September 2006) <http://www.btselem.org/publications/summaries/200609_act_of_vengeance> accessed 9 May 2015; Global Security, 'Operation Summer Rains' <http://www.globalsecurity.org/military/world/war/intifada2_summer-rains.htm> accessed 9 May 2015; OCHA, 'Situation Report Gaza Strip' (7 August 2006) <<http://unispal.un.org/UNISPAL.NSF/0/CA44B47C045A2183852571C40050C3ED>> accessed 9 May 2015.

²⁰⁷ OCHA, 'Situation Report, Electricity, Water and Fuel Supplies Dwindling Within the Gaza Strip – Concerns Over Deteriorating Humanitarian Crisis' (30 June 2006) <<http://unispal.un.org/unispal.nsf/3822b5e39951876a85256b6e0058a478/b9940b30f85e3d058525719d00699f2f?OpenDocument>> accessed 9 May 2015.

²⁰⁸ *Ibid.*

²⁰⁹ B'Tselem, (n 206). OCHA, 'Gaza Situation Report' (31 January 2007) <<http://electronicintifada.net/content/ocha-gaza-situation-report/3096>> accessed 9 May 2015.

²¹⁰ OCHA, 'Electricity Shortages in the Gaza Strip' (8 February 2008) <<http://unispal.un.org/UNISPAL.NSF/0/CA8D2E2B5820F480852573E900529E2A>> accessed 9 May 2015.

²¹¹ Israel Ministry of Foreign Affairs, Security Cabinet Declares Gaza Hostile Territory (19 September 2007) <<http://www.mfa.gov.il/mfa/pressroom/2007/pages/security%20cabinet%20declares%20gaza%20hostile%20territory%2019-sep-2007.aspx>> accessed 9 May 2015.

²¹² HCJ 9132/07, *Al-Bassiouni v The Prime Minister*, para 1 (Not published. Translation at Gisha) <<http://www.gisha.org/UserFiles/File/Israelusestheclosureaseconomicwarfare.pdf>> accessed 9 May 2015.

fuel crisis in the Gaza Strip resulting in a chronic electricity deficit brought on by the closure of the Strip and restrictions on importation.²²³

iii. Operation Protective Edge

As the Kerry Peace Initiative collapsed, the prospect of an independent energy distribution system in Palestine collapsed with it. On 8 July 2014, Israel launched 'Operation Protective Edge'.²²⁴ Once again, Israel targeted the Gaza Power Plant. Israel attacked the plant on five separate occasions, causing damage to its turbines.²²⁵ On 29 July 2014, Israel further destroyed one of the three fuel tanks at the Gaza Power Plant.²²⁶



Source: Al-Haq, Houses Demolished in Beit Hanoun during Operation Protective Edge

Whilst 'Operation Protective Edge' was unfolding, Israel negotiated gas export deals with Egypt and Jordan. These followed Israel's January 2014 agreement with the PA that gas from Leviathan would be used to supply a future power plant in Jenin. However even these supply agreements absent parallel agreements to develop the Gaza Power Plant would serve to further fragment the OPT along energy lines. Israel would retain full control over oil and gas export VAT revenues and would still profit from its reduced supply of electricity to the Gaza Strip and nearly full supply of electricity to the West

²²³ OCHA, 'The Humanitarian Impact of Gaza's Electricity and Fuel Crisis' (March 2012) < http://www.ochaopt.org/documents/ocha_opt_electricity_factsheet_march_2012_english.pdf > accessed 9 May 2015.

²²⁴ Al-Haq, 'Palestinian Children Continue to be put in Harms Way due to Israel's Continued Occupation of Palestinian Territory' (October 2014) para. 6.

²²⁵ Gisha, 'Gaza's Power Plant Renews Operations, Despite Lack of Guarantees About Safety' (24 July 2014) < <http://gisha.org/updates/3085> > accessed 9 May 2015.

²²⁶ Al-Haq, 'Divide and Conquer' (2015) 67. K Laub, P Enav, 'Massive Explosions in Gazas' only Power Plant and Hamas Leaders Home Destroyed' *Haaretz* (29 July 2014) < <http://www.haaretz.com/video/1.607832> > accessed 9 May 2015.

Bank. Closure of Palestine's maritime space and political prevention of Gaza Marine development would continue while ensuring economic and energy independence remained unviable. Meanwhile the development of Israel's gas reserves seen by some as key to peace in the Middle East, would see the full scale military closure of Palestine's maritime space and the denial of Palestinian access to its sovereign natural oil and gas resources.





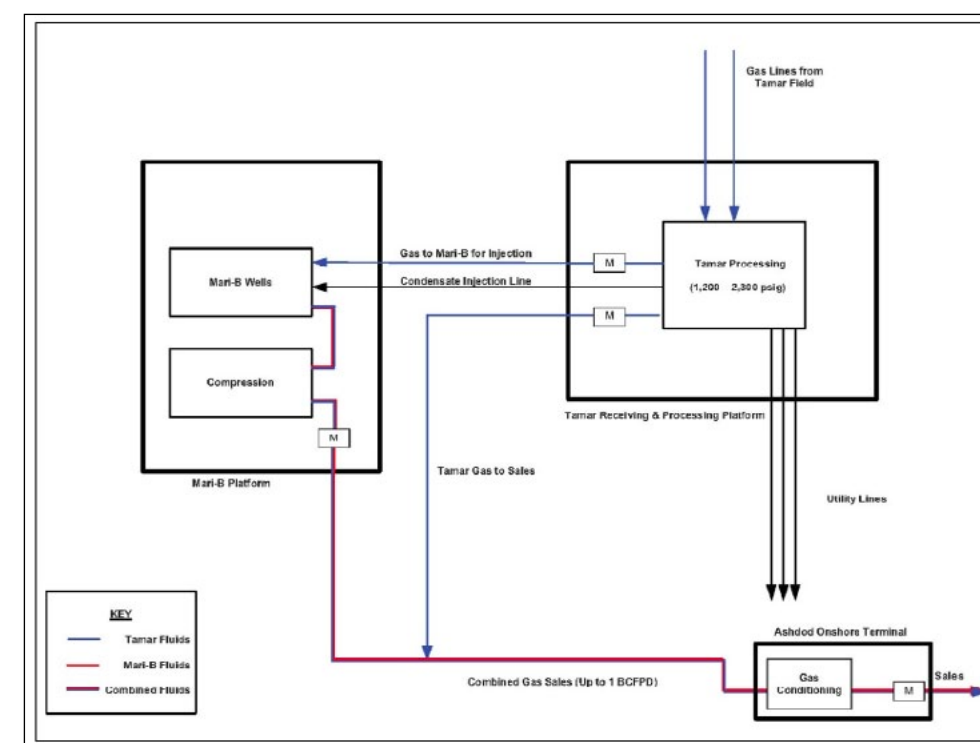
6. ISRAEL'S GAS DISTRIBUTION INFRASTRUCTURE

6.1 ISRAEL'S GAS SUPPLY TO THE DOMESTIC MARKET

Supplying the Domestic Market: Israeli Gas Policy

In 2012, the Prime Minister of Israel and the Minister of National Infrastructures convened the Inter-Ministerial Committee to examine the government's natural gas policy. The Committee proposed that the gas sector be radically altered to create the conditions necessary for Israel's full economic dependence on domestic gas. Among the proposals was the creation of an advanced gas distribution system, which would see an increase in the number of gas suppliers, an increase in gas handlers and handling facilities such as pipelines, and an increase in the number of sea to shore inlets. The capacity of privately owned power plants to distribute energy to the public system would also be increased by means of a synchronized gas and electricity system.²²⁷ The decision to pipe liquefied natural gas onshore, was approved under Government Resolutions 2178, 3260 and 177. As a result, a buoy based liquefied natural gas receiving terminal was constructed off the Hadara Coast, linking

gas reserves in the Mediterranean Sea to mainland Israel.²²⁸ In this manner, most of Israel's vast natural gas reserves, including gas from the disputed EEZ will be connected to the mainland with 40 percent intended for domestic consumption.²²⁹ Much of the gas is purchased by Israel Electric Corporation to fire publicly owned power stations and private power stations, such as Alon Tavor, Ramat Gabriel and Sorek.²³⁰



Process Flow from Tamar and Mari-B to Ashdod Onshore Terminal²³¹

228 'Natural Gas in the Eastern Mediterranean: Economic Impacts and Strategic Implications' Friedrich Ebert-Stiftung and the Institute for National Security Studies (Tel Aviv, November 2013) 13.

229 Israel has unusual "non-normalised" domestic gas consumption patterns, where some 90% of gas is directed towards generating electricity as distinct from a global average of 35%. The Israeli Institute for Economic Planning, 'The Use of Natural Gas in the Israeli Economy' (March 2013) 8.

230 H. Cohen, 'The Tamar Partners are about to sign Natural Gas Deals with the Alon Tavor, Ramat Gabriel, and Sorek Private Power Plants' *Globes* (24 March 2015); Delek Group, 'Amended Agreement Signed with IEC and Negotiation with other Consumers' (22 July 2012).

231 Noble Energy, Environmental Impact Assessment (n 171) 5 <<http://energy.gov.il/Subjects/OilSearch/Documents/Sviva/Tamar%20Field%20Project%20EIA%20-%20Sep%202012.pdf>> accessed 9 May 2015

Companies doing business in oil and gas in Israel

Atwood Oceanics	Atwood Oceanics is an American offshore drilling contractor in the field of oil and gas. The company is on the New York Stock Exchange. Atwood Advantage is an ultra-deepwater rig belonging to Atwood Oceanics.
Avner Oil Exploration	Avner Oil Exploration is an Israeli oil and gas exploration and production company. The company is listed on the Tel Aviv Stock Exchange. The company is a subsidiary to Delek Energy Systems and it is in partnership with Delek Drillings. Delek Energy Systems holds 47.5 percent of its shares.
Delek Drilling	Delek Drilling is an Israeli oil and gas exploration and production company. The company is listed on the Tel Aviv Stock Exchange. The company is in partnership with Avner Oil Exploration. Delek Energy Systems holds 63 percent of its shares.
Delek Energy Systems	Delek Energy Systems is an Israeli oil and gas exploration and production company. Delek Group holds 87 percent of its shares.
Delek Group	Delek Group is an Israeli gas exploration and production company. The company is listed on the Tel Aviv Stock Exchange. Delek Drilling and Avner Oil Exploration are subsidiaries of the company.
Noble Energy	Noble Energy is a U.S. energy exploration and production company in the field of crude oil, natural gas, and natural gas liquids. The company is listed on the New York Stock Exchange.
East Mediterranean Gas Company	The EMG is a private consortium co-owned by Israeli and Egyptian business interests, including the Israeli Merhav Group whose President and CEO is Mossad agent Yosef Maiman (8.1 percent) and businessman Hussein Salem, a former Egyptian intelligence agent. Other shareholders include Thailand's Energy Company PTT Pcl (25 percent), Ampal American Israel (12.5 percent), Egyptian Natural Gas Holding (10 percent), EMI EGI LP (12 percent), Israel Infrastructure Fund (4.4 percent) and Mediterranean Gas Pipeline (25 percent).
Ratio Oil Exploration	Ratio Oil Exploration is an Israeli oil and gas exploration and production company. The company is listed on the Tel Aviv Stock Exchange.

6.2 ISRAEL'S EXPORT INFRASTRUCTURE

“Jordan really has no real alternative to Israeli gas, but still, there are real problems in doing business with them...There needs to be a reasonable political environment for a country like Jordan to sign on. A political process [with the Palestinians] will soften public opinion and enable us to get the signatures, not the other way around.”

(Nimrod Novik, 2014)²³²

6.2.1 Export Pipelines

The location of pipelines is central to any economic development of natural gas resources and securing pipeline agreements has been a contentious issue geopolitically. Israel cannot develop its vast gas resources in the Mediterranean Sea without first establishing gas export markets and concluding gas export agreements. The Tzemach Committee recommended the removal of all obstacles to the export of gas, underscoring the “great importance in the export of Israeli natural gas for use by Israel’s neighbours”.²³³ Nevertheless, Israel needs to conclude bilateral or multilateral agreements to secure the routing of supply pipelines for the export of liquefied natural gas (LNG).

To date, Israel has concluded a gas export agreement with Palestine. Israel has also negotiated agreements with Jordan and Egypt. Ideally, Israel would secure gas export agreements with Cyprus and Turkey, but due to geopolitical tensions there have been no agreements to date. The matter is one of some urgency because gas cannot be developed in Leviathan, Israel’s largest gas field, until gas export markets are secured. Delays in production amount to costs of \$3 billion USD annually.²³⁴

However corporations and States agreements to pipe gas for future export from Israel’s Tamar and (when it comes online) Leviathan fields will inevitably contribute to the lethal military closure of Gaza’s maritime space enforced to secure Israel’s gas platforms and pipelines (see section 6.1). Furthermore they may be using gas pipelines routed without the consent of the State of Palestine and which may be subject to Palestine’s domestic environmental laws and regulations.²³⁵

²³² O Coren, ‘Psst. Palestine wants to Import Israeli Gas, But Don’t Tell Anyone’ *Haaretz* (24 July 2014) < <http://www.haaretz.com/mobile/premium-1.606695> > accessed 9 May 2015.

²³³ Directorial Abstract (n 146) 10.

²³⁴ H Cohen, ‘Not Developing Leviathan costs State \$3 billion a year’ *Globes* (20 November 2014) <<http://www.globes.co.il/en/article-not-developing-leviathan-costs-3b-a-year-1000987948>> accessed 9 May 2015.

²³⁵ *Article 79, UNCLOS (1982), “Submarine cables and pipelines on the continental shelf (...)*

3. The delineation of the course for the laying of such pipelines on the continental shelf is subject to the consent of the coastal State.

4. Nothing in this Part affects the right of the coastal State to establish conditions for cables or pipelines entering its territory or territorial sea, or its jurisdiction over cables and pipelines constructed or used in connection with the exploration of its continental shelf or exploitation of its resources or the operations of artificial islands, installations and structures under its jurisdiction.”



6.2.2 Regional Export Pipelines

• Palestine

On 5 January 2014, the Palestine Power Generation Company (PPGC) and the Leviathan partners²³⁶ signed an agreement worth an estimated \$1.2 billion USD for the supply of natural gas to operate the future PPGC power plant in Jenin.²³⁷ Gas would be supplied when Leviathan came online in 2018 for a twenty-year period to the PPGC or before this time if the PPGC purchased the overall contracted amount of gas. The PPGC was established to provide a domestic source of electrical power to the West Bank.²³⁸ However in March 2015, after increased pressure from Palestinian civil society, PPGC withdrew from the agreement reportedly owing to its commitment to the development of Palestinian natural gas at Gaza and “national independence in the energy sector”.²³⁹

• Exporting to Jordan

Jordan generates 96 percent of its energy from imported fuel, with 80 percent of imports formerly originating from Egypt.²⁴⁰ However in 2014, Jordan suffered an electricity deficit of 15 TW (terra watts).²⁴¹ Political upheaval in Egypt had affected Egyptian gas exports, with Jordan facing an acute energy crisis.²⁴² In February 2014, Noble Energy signed a gas export agreement to supply gas from the Tamar field to the Arab Potash Company and Jordan Bromine Company facilities near the Dead Sea.²⁴³

In September 2014, a week after the conclusion of Operation Protective Edge, Israel's 2014 offensive on the Gaza Strip, Noble Energy signed a Memorandum of Understanding with Jordan's National Electric Power Company under the auspices of the special envoy of the US Secretary of State. Israel will become Jordan's main gas supplier, exporting gas from the Leviathan field over a fifteen-year period.²⁴⁴ The gas exports are expected to commence when Leviathan comes online in 2018.²⁴⁵ A new

²³⁶ Noble Energy Mediterranean Ltd., Delek Drilling Limited Partnership, Avner Oil Exploration Limited Partnership, Ratio Oil Exploration (1992) Limited Partnership.

²³⁷ Press Release, 'Leviathan Partners Signs Agreement with Palestine Power Generation Company for the Supply of Natural Gas' *Delek Group* (6 January 2014) <<http://ir.delek-group.com/phoenix.zhtml?c=160695&p=irol-newsArticle&ID=1887870&highlight=>> accessed 9 May 2015.

²³⁸ Palestine Power Generating Company, Company Overview < http://www.padico.com/Public/English.aspx?Page_ID=674&PPID=1099 > accessed 9 May 2015; Palestine Investment Fund, 'Annual Report' (2012) 33.

²³⁹ BDS Movement, 'Palestine Power Generation Company Withdraws from Israel Gas Deal' (7 March 2015); S. Udasin, 'Palestinian Power Company Nixes Leviathan Gas Import Deal' *Jerusalem Post* (12 March 2015).

²⁴⁰ The Israeli Institute for Economic Planning, 'The Use of Natural Gas in the Israeli Economy' (March 2013) 15.

²⁴¹ *Ibid.*

²⁴² J Mitnick, 'Jordan Israel Weigh Gas Deal: Amman, Plagued by Energy Crisis, Would be First Buyer of Newfound Reserves' *The Wall Street Journal* (2013).

²⁴³ Noble Energy, 'Noble Energy Announces Agreement to Sell Tamar Gas to Multiple Customers in Jordan' (19 February 2014) <<http://investors.nobleenergyinc.com/releasedetail.cfm?ReleaseID=826568>> accessed 19 January 2015; Globes, 'Israel Licenses Gas Exports from Tamar to Jordan' (2 April 2015).

²⁴⁴ M. Newman, 'Israel Signs \$15 billion gas deal with Jordan' *Times of Israel* (3 September 2014) < <http://www.timesofisrael.com/israel-signs-15-billion-gas-deal-with-jordan/> > accessed 19 January 2015; Globes, 'Leviathan Partners Signing \$15 billion Jordanian Gas Deal' (3 September 2014) < <http://www.globes.co.il/en/article-israel-signing-15b-jordanian-gas-export-deal-1000968828>> accessed 19 January 2015; 'Jordan Signs Letter of Intent to Import Gas from Gaza Marine Field' *Wafa Palestinian News and Info Agency* (16 February 2015).

²⁴⁵ 'Jordan Keen on Signing Deal to Buy Israeli Gas' *Xinhua* (9 December 2014) < http://news.xinhuanet.com/english/world/2014-12/10/c_133843537.htm> accessed 9 May 2015.

pipeline connecting a floating offshore terminal will run through “*Jezerrel Valley* in Northern Israel to *Beit Shean* near the border and into Jordan”.²⁴⁶

There has also been some discussion about an alternative pipeline routed through the occupied West Bank to supply Jordan from the Leviathan. At the Universal Oil and Gas Conference (2014), Joseph Paritzky, former Minister for National Infrastructure suggested that laying a gas pipeline through the West Bank for gas exports was more important than geopolitical considerations.²⁴⁷ According to him, routing a gas pipeline through the OPT was “no big deal”.²⁴⁸ Similarly, the Ministry of National Infrastructures indicated that there was no solution yet in relation to gas distribution infrastructure through ‘Judea and Samaria’.²⁴⁹ The statements highlight the casual disregard of Palestine by Israeli actors intending to operate in the OPT.

Laying a pipeline through the immovable property of the occupied territory for the benefit of the belligerent occupant's home economy amounts to a serious violation of Article 55 of the Hague Regulations. The types of ancillary security arrangements employed to protect a gas pipeline through occupied territory would further infringe on the civil and humanitarian rights of the occupied population. This would amount to an illegal annexation of land and curtail the right to freedom of movement of the occupied population.

• Egypt

On 5 May 2014, Noble Energy signed a non-binding letter of intent with Union Fenosa for the export of 2.5 tcf of natural gas from the Tamar field over a fifteen-year period, pending Egyptian government approval.²⁵⁰ Gas will be pumped via the Israel-Egypt pipeline to a liquefaction plant in Damietta for transit to the international market via Spain. Union Fenosa Gas owns 80 percent of the Damietta plant, a joint venture between Spain's Gas Natural and Italy's Eni.²⁵¹ The El-Arish pipeline had previously supplied 37 percent of IEC's natural gas demand from 2009 until the pipeline was damaged during hostilities in 2011.²⁵²

In June 2014, Noble Energy negotiated an agreement to export gas from the Leviathan field to BG's liquefied natural gas plant in Idku in Northern Egypt, for transit to the European and Asian markets.²⁵³

²⁴⁶ J Mitnick, (n. 242). H Cohen, 'The Ministry of Energy wants the Leviathan partners to pay for the pipeline, which will cross into Jordan near *Beit Shean*' *Globes* (10 September 2014) < <http://www.globes.co.il/en/article-israel-jordan-gas-pipeline-to-cost-over-nis-250m-1000970416> > accessed 9 May 2015. (*Beit Shaen* is Israel's name for Palestinian village *Bisan*).

²⁴⁷ Speech of Joseph Paritzky, former Minister for National Infrastructure, Universal Oil and Gas Conference, (David Dead Sea Resort, Ein Bokek, 18-20 November 2014).

²⁴⁸ *Ibid.*

²⁴⁹ *Ibid.*

²⁵⁰ G Carlstrom, 'Egypt and Israel to Reach Another Gas Deal' *Al-Jazeera* (8 May 2014) < <http://www.aljazeera.com/news/middleeast/2014/05/egypt-israel-reach-another-gas-deal-201458823585752.html>> accessed 9 May 2015.

²⁵¹ UPDATE 1 'Israel Tamar gas field partners aim for exports to Egypt LNG plant' *Reuters* (7 July 2014) < <http://www.reuters.com/article/2014/05/06/israel-gas-egypt-idUSL6N0NS5CA20140506>> accessed 9 May 2015.

²⁵² S Even, 'Israel's Natural Gas Resources: Economic and Strategic Significance' (2010) 13(1) *Strategic Assessment* 10; A Antreasyan, (n 59) 38; J Stocker (n 1) 582.

²⁵³ S Solomon, 'Israel Nears Gas Sales to Egypt as Middle East Unrest Flares' *Bloomberg* (21 August 2014) < <http://www.bloomberg.com/news/2014-08-20/israeli-gas-to-reach-global-market-via-pipelines-to-egypt.html>> accessed 9 May 2015.

An underwater pipeline will supply gas from Leviathan to Egypt over a fifteen-year period.²⁵⁴ A senior Egyptian oil official indicated that the government would approve the agreement, if some of the gas supplied the domestic market at a reasonable price.²⁵⁵ Gas exports from Leviathan were planned to be transported by BG in the first quarter of 2015.²⁵⁶ However, in April 2015 Royal Dutch Shell announced plans to buy out BG Group, including the Idku plant in Northern Egypt.

On 19 October 2014, the Noble Energy conglomerate signed a letter of intent to supply 2.5 billion cubic meters (BCM) gas to the Egyptian firm, Dolphinus Holdings Ltd. beginning 2015 through the El-Arish pipeline.²⁵⁷ However the El-Arish pipeline runs through Palestinian waters. The option to pipe gas through Egypt and onto Europe for international export is a less expensive option as there are fewer pipelines to be laid and the waters are shallow. Notably, Egypt and Israel have negotiated the gas supply contract without any agreement from Palestine to grant access through its contiguous or territorial waters. It is for the same reason, that gas agreements with Turkey cannot be concluded, as Cyprus will not agree to the use of its continental shelf to route gas pipelines to Turkey.²⁵⁸

6.2.3 International Export Pipelines

With a view to international export, Israel has considered gas export routes through Cyprus, Greece, and Turkey for export to the European and Asian markets.

- **Cyprus**

For Israel, Cyprus could hold the key to international export markets. Here Israel has two options, firstly Israel could export liquefied natural gas from the Cypriot port of Vasilikos to Greece for the European market, or secondly, it could lay pipelines across the Cypriot continental shelf to Turkey, supplying the Turkish market and international export.²⁵⁹

In 2013, Cyprus granted Israeli oil companies Delek and Avner an oil and gas exploration license for 30 per cent stake in Cyprus' Block 12. At the time, Cypriot Minister of Commerce, hailed a "new era of Cyprus-Israeli strategic cooperation which includes economic and political dimensions".²⁶⁰ However

254 E Azran and Reuters, 'Leviathan partners sign preliminary deal to export gas to Egypt' *Haaretz* (30 June 2014) < <http://www.haaretz.com/business/.premium-1.601980>> accessed 9 May 2015.

255 C Coats, 'Will Egypt Finally Embrace Israeli Gas?' *Forbes* (9 July 2014) < <http://www.forbes.com/sites/christophercoats/2014/07/09/will-egypt-finally-embrace-israeli-gas/>> accessed 9 May 2015.

256 Update, 'Tshuva: BG Leviathan Deal in first quarter 2015' *Globes* (11 December 2014) <http://www.globes.co.il/en/article-tshuva-bg-leviathan-deal-in-first-quarter-2015-1000992843> accessed 9 May 2015.

257 S Udasin, 'Israeli Partners sign bid to sell natural gas to Egyptian firm' *The Jerusalem Post* (19 October 2014) < <http://www.jpost.com/Israel-News/New-Tech/Israeli-gas-firm-signs-bid-to-sell-natural-gas-to-Egypt-379181>> accessed 9 May 2015; H. Cohen, 'The Partners will supply Dolphinus Holdings with 5 Billion Cubic Meters of Gas over Three Years' *Globes* (18 March 2015); However the El-Arish pipeline runs through the Gaza Marine maritime space through Zone L. Gas from Israel must be delivered and received in the final location to ensure the transaction. Should anything happen *en route* to the gas there will be no transaction and the contract may be cancelled on the basis of a *force majeure*. This happened in 2014 to BG who cancelled a supply contract to Egypt on the basis of *force majeure*, when Egypt diverted gas to the domestic market. Israel has effectively annexed Palestine's maritime space to ensure its energy security and prevent a *force majeure*.

258 A Gurel, 'The Cyprus Problem as an Obstacle to Regional Energy Cooperation' (2013) 93 *Oxford Energy Forum* 12.

259 L Elston, P Stewart, 'Israel's Cap on Gas Exports: What will it mean for Leviathan?' (2013) 93 *Oxford Energy Forum* 9.

260 C Ya'ar, 'Israel, Cyprus Sign Gas and Oil Deal' *Arutz Sheva* (21 November 2013) < <http://www.israelnationalnews.com/News/News.aspx/165123#.VL0w4NwXRL0>> accessed 9 May 2015.

larger gas export agreements where gas pipelines are routed from Israel through Cypriot maritime waters to Turkey, revolve around successful resolution of the Turkish-Cypriot peace process, currently in "structured negotiations".²⁶¹ Routing pipelines directly to Turkey is the preferred option for gas exports as it would potentially save gas companies over \$15 billion USD in liquefaction costs.²⁶²



Export Options for Israel's Gas²⁶³

Alternatively, gas export agreements may be concluded between Israel, Cyprus, Greece and Bulgaria. Such an agreement would make it possible for Israel to deliver liquefied natural gas via an East Mediterranean Gas Pipeline to Greece and the Balkan States, while connecting with Italy via the IGI-Poseidon link in the Ionian Sea.²⁶⁴ Economic agreements to develop and transport gas between States do not operate in a vacuum, they are generally accompanied by separate bilateral military agreements to protect resources. In February 2014, to mark its enhanced security agreement, Israel and Cyprus held a joint military exercise codenamed 'Onisilos-Gideon' in Cypriot airspace. During this exercise, the Israeli Air Force simulated firing at targets along the southern Cypriot coast, for exclusive economic zone patrols.²⁶⁵

261 C Ya'ar, 'Israel, Cyprus Sign Gas and Oil Deal' *Arutz Sheva* (21 November 2013) < <http://www.israelnationalnews.com/News/News.aspx/165123#.VL0w4NwXRL0>> accessed 9 May 2015.

262 'Mediterranean Gas not yet the answer for Turkey's ties with Israel, Cyprus' *Al Monitor* (28 May 2014) <http://www.al-monitor.com/pulse/originals/2014/05/eastern-mediterranean-gas-cyprus-greek-cypriots-biden.html> accessed 9 May 2015.

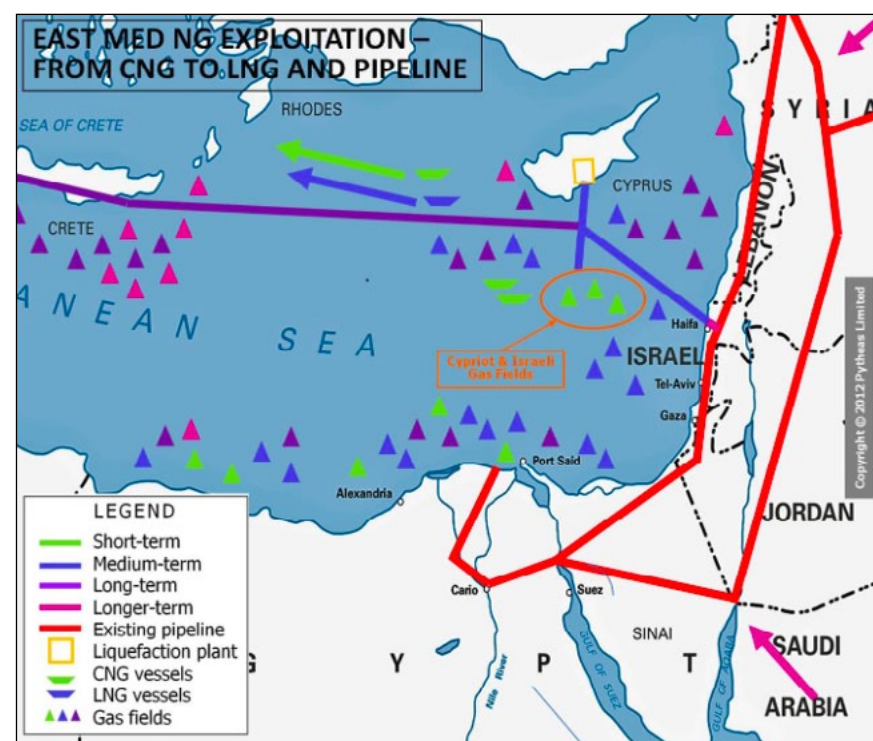
263 G. Cohen, 'Israel Seeks Options to Export Huge Gas Reserves' < <http://gasprocessingnews.com/features/201406/israel-seeks-options-to-export-huge-gas-reserves.aspx>> accessed 9 May 2015.

264 'Increased Activity in the East Med Gas Sector' *Natural Gas Europe* (15 September 2014) < <http://www.naturalgaseurope.com/east-med-gas-sector>> accessed 9 May 2015.

265 Local News, 'Cyprus and Israel mount joint military exercise' *Cyprus Mail* (11 February 2014) < <http://cyprus-mail.com/2014/02/11/cyprus-and-israel-mount-joint-military-exercise/>> accessed 9 May 2015.

• Greece

On a State visit to Greece in 2010, the current Israeli Prime Minister Netanyahu proposed that Israel and Greece consider a connecting gas pipeline.²⁶⁶ The same year, Israel and Greece entered into a military cooperation agreement, known as Minoas 2010. As part of Minoas 2010, Israel and Greece engaged in numerous joint military exercises in Greek airspace and territorial waters to potentially secure the transit of future gas exports.²⁶⁷ In 2012, Israel, Cyprus and Greece established a working group to discuss Eastern Mediterranean Energy Corridor options for exporting gas via a Cypriot liquefaction plant at Vassilikos. Such options included an onshore Israeli liquefaction plant or an East Mediterranean Pipeline to Europe.²⁶⁸ In August 2013, Israel, Greece and Cyprus signed a Memorandum of Understanding exploring the possibility of constructing a 2000 megawatts Euro Interconnector, laying a 1,000 km seabed cable conducting electric power from gas fired plants to the European market.²⁶⁹



The Israel, Cypriot, Greek Subsea Gas Pipeline²⁷⁰

266 D Cronin, 'How Greece Abandoned Palestine' *Electronic Intifada* (13 July 2011) <<http://electronicintifada.net/content/how-greece-abandoned-palestine/10171>> accessed 9 May 2015.

267 P Nastos, 'Greek-Israeli-Cyprus Military And Security Relations: A Preview' *Research Institute for European and American Studies* (15 December 2013) <<http://rieas.gr/research-areas/2014-07-30-08-58-27/greek-israel-studies/2077-greek-israeli-cyprus-military-and-security-relations-a-preview>> accessed 9 May 2015.

268 S Tagliapietra, 'Towards a new eastern Mediterranean Corridor?' *Fondazione Eni Enrico Mattei* (Italy, December 2013) 18.

269 P. de Micco, 'The Prospect of Eastern Mediterranean Gas Production: An Alternative Energy Supplier for the EU?' *Policy Department, Directorate General for External Policies* (April 2014) 15.

270 Defence Greece, 'A New Energy Corridor for the EU?' <<http://www.defencegreece.com/index.php/2012/04/southeastern-mediterranean-hydrocarbons-a-new-energy-corridor-for-the-eu/>> accessed 9 May 2015.

However analysts for the German Marshall Fund have cast doubt over the technical and commercial feasibility of an undersea gas pipeline due to serious physical challenges in terms of the long distance of 1,200 kilometers and extreme water depths of 2000 m between the offshore fields and Greece.²⁷¹

Nevertheless, the European Union (EU) considers the "project [to be] of common interest" thus making it eligible for EU financing and international bank loans.²⁷²

• Turkey

In 2014, Noble Energy consortium tried to engage with Turkey in the hope of exporting gas from the Leviathan field via a subsea pipeline.²⁷³ Although Turkey is a potential export option, Cyprus could politically block a future Israel-Turkey pipeline running through its continental shelf, under the terms of the United Nations Convention on the Law of the Sea.²⁷⁴ However Noble Energy also operates the Aphrodite field in Cyprus, and piping gas from Aphrodite and Leviathan to Turkey is considered the cheapest option for export. In August 2015, the CEO of Turcus Petrol suggested that Turkey may be interested in importing gas from Leviathan.²⁷⁵ This would also grant Israel access via Turkey to international markets.²⁷⁶ While Turkey remains the optimum transit route for gas exports from Israel, politically an agreement is unlikely to take place.²⁷⁷ Instead, Turkey is negotiating a pipeline deal involving the routing of four gas pipelines to Russia, termed the 'Turkish Stream' for the export of Russian gas to Europe.²⁷⁸

• Europe

In 2007, the EU Directorate General for Research published "*Energy Corridors: European Union and Neighboring Countries*" proposing a European Energy Policy linking Europe via 'energy corridors'

271 M Leigh, 'A Subsea Mediterranean Pipeline does not look viable' *Financial Times* (5 December 2014) <http://www.ft.com/intl/cms/s/06e3df88-7b15-11e4-87d4-00144feabdc0,Authorised=false.html?_i_location=http%3A%2F%2Fwww.ft.com%2Fcms%2Fs%2F0%2F06e3df88-7b15-11e4-87d4-00144feabdc0.html%3Fftcamp%3Dcrm%2Femail%2F_2014__12__20141204__%2Femailalerts%2FKeyword_alert%2Fproduct%26siteedition%3Dintl&siteedition=intl&ftcamp=crm/email/_2014__12__20141204__/_emailalerts/Keyword_alert/product&_i_referer=#axzz3MN2uOhNt> accessed 9 May 2015.

272 European Commission, Projects of Common Interest <<http://ec.europa.eu/energy/en/topics/infrastructure/projects-common-interest>> accessed 9 May 2015.

273 O Koskun, 'Turkey snubs possible energy deals with Israel after Gaza conflict' *Haaretz* (9 September 2014) <<http://www.haaretz.com/news/middle-east/1.614932>> accessed 9 May 2015; Natural Gas Europe, 'Turkey Warning on Cyprus Gas' (28 January 2013) <<http://www.naturalgaseurope.com/turkey-warning-on-cyprus-gas>> accessed 9 May 2015.

274 A Gurel, 'The Cyprus Problem as an Obstacle to Regional Energy Cooperation' (2013) 93 *Oxford Energy Forum* 12.

275 H. Cohen, 'Turkish Petrol CEO Batu Aksoy told 'Reuters' that Turkey is Eager to Import Gas Despite the Poor Relations Between the Countries' *Globes* (11 August 2015) <<http://www.globes.co.il/en/article-turkish-energy-ceo-sees-israel-imports-as-win-win-1001060335>> accessed 24 August 2015.

276 *Ibid.*

277 E. Sheshinski, I. Wolfson, 'Introduction: Natural Resource Wealth, Blessings and "Curse"' <<http://2013.presidentconf.org.il/wp-content/uploads/2013/05/5-Presidents-conference-natural-resources-June-2013-final.pdf>> accessed 9 May 2015. S Udasin, 'Report: Turkey Forbids Completion of Gas Deal with Israel until Peace with Gaza is Achieved' *Jerusalem Post* (6 August 2014) <<http://www.jpost.com/Enviro-Tech/Report-Turkey-forbids-completion-of-gas-deal-with-Israel-until-peace-with-Gaza-achieved-370192>> accessed 9 May 2015.

278 D. Graeber, 'Kremlin: No Word yet on Turkish Gas Pipeline' *UPI* (19 August 2015).



to neighbouring supplier States.²⁷⁹ One of the ‘energy corridors’ earmarked as a priority project included the Nabucco Project. This project proposes a pipeline to connect Caspian and Middle East gas resources to the EU market via Turkey.²⁸⁰ A Communication from the Commission to the European Parliament identified the series of transcontinental corridors as “one of the EU’S highest energy security priorities”.²⁸¹

In November 2010, the European Commission recommended diversifying its gas dependence on the Russian Federation, Norway and Algeria making European States less vulnerable to *ad hoc* supply cuts (by Russia in particular).²⁸² Adding new supply sources, the European Commission approved plans to develop an Eastern Mediterranean corridor linking a LNG facility in Cyprus to Greece via an offshore pipeline and further approved the Euro-Asia Interconnector placing them on the list of Projects of Common Interest (PCI), 2014-2020. In 2013, Israel signed a Memorandum of Understanding with Cyprus and Greece, which would see Israeli gas exported via the European Commission’s newly proposed Eastern Mediterranean corridor.²⁸³

Which Way Forward?

On 23 December 2014, Israel’s Antitrust Authority decided that Noble Energy and Delek Group must sell their majority shareholdings in either the Tamar or Leviathan fields in order to end their monopoly over Israel’s gas resources.²⁸⁴ Noble Energy requested a hearing with the Antitrust Authority indicating its intention to oppose the decision.²⁸⁵ In May 2015, the newly elected Israeli government sidestepped the Antitrust Authority’s recommendations and agreed to continue as planned the development of the Leviathan field, despite the existence of an energy cartel.²⁸⁶ In addition, Israel’s Security Cabinet voted to remove gas agreements from the competence of the Antitrust Authority as a national security issue.²⁸⁷ A revised agreement was drafted forcing the sale of Delek Groups interest in Tamar but retaining Noble Energy’s holding albeit at a reduced rate.²⁸⁸ In August 2015,

279 European Commission, ‘Energy Corridors’ <http://ec.europa.eu/research/energy/pdf/energy_corridors_en.pdf> accessed 9 May 2015; The EU Energy Roadmap 2015 identifies natural gas as critical for the transformation of the European energy system. S Tagliapietra (n 268) 25.

280 *Ibid.*, pp. 9, 20.

281 A. Tricarico, E. Gerebizza, ‘Beyond Our Borders: A Critique of the External Dimension of the EU Energy Policy and its Financing Mechanisms’ (2012) 3 <<http://eurodad.org/files/pdf/520a34976f493.pdf>> accessed 9 May 2015.

282 ‘Prime Ministers to Seal North-South Gas Corridor’ *Euractiv* (1 February 2011) <<http://www.euractiv.com/energy/prime-ministers-seal-north-south-news-501765>> accessed 9 May 2015.

283 P de Micco, ‘The Prospect of Eastern Mediterranean Gas Production: An Alternative Energy Supplier for the EU?’ (Policy Department, Directorate General for External Policies, April 2014) 15/

284 A Barkat, ‘Regulator Mulls Ousting Delek, Noble Energy from Leviathan’ *Globes* (22 December 2014) <<http://www.globes.co.il/en/article-regulator-mulls-ousting-delek-noble-energy-from-leviathan-1000995323>> accessed 9 May 2015.

285 H Cohen, ‘Noble Energy Indicates it will fight Gas Cartel Decision’ *Globes* (24 December 2014) <<http://www.globes.co.il/en/article-noble-energy-indicates-it-will-fight-gas-cartel-decision-1000995763>> accessed 9 May 2015.

286 J. Reed, ‘Israel Near Leviathan Gasfield Deal After Antitrust Chief Quits’ *Financial Times* (26 May 2015).

287 S. Udasin, ‘Israel Security Cabinet Deems Gas Issue of ‘National Security’ Allowing Deal to Advance’ *The Jerusalem Post* (25 June 2015) <http://www.jpost.com/Business-and-Innovation/Environment/Israel-Security-Cabinet-deems-gas-issue-of-national-security-allowing-deal-to-advance-407168> accessed 23 August 2015. At this time it transpired that US Senator John Kerry held substantial shares in Noble Energy. S. Winner, ‘Kerry had up to \$1 m Stake in Voided Gas Partnership’ *The Times of Israel* (25 June 2015) <http://www.timesofisrael.com/kerry-had-up-to-1m-stake-in-voided-gas-partnership/> accessed 23 August 2015.

288 *Ibid.*



the gas agreement was approved along with a controversial so-called ‘stability clause’ preventing interference from future governments thereby cementing Noble Energy’s continued interests in the Tamar and Leviathan gas fields.²⁸⁹

Although Israel has considered various export routes with Cyprus, Greece and Turkey, none of these have been successfully concluded to date. In light of the geophysical and political obstacles inherent in Cypriot, Greek and Turkish supply routes, it looks like it might be more expedient for Israel to export gas internationally via the Suez canal in Egypt.²⁹⁰ The deposed Egyptian President Morsi had opposed Israel’s use of the Suez canal for gas exports but this option may now be subject to negotiation under President al-Sisi.²⁹¹ Either way, States planning to import Israel’s gas should be aware that Israel’s gas export infrastructure runs through Palestine’s contiguous and territorial sea, which has been effectively annexed by Israel for the purposes of its own energy security. As such States would be contributing to Israel’s continued violations of international humanitarian law and violations of Palestinian territorial sovereignty and self-determination. An illegal situation, assisted by United States support in continuing “Israel’s energy security” and its role in facilitating Israel’s gas export agreement negotiations.²⁹²

289 L. Harkov, S. Udasin, ‘Cabinet Passes Natural Gas Compromise After 8 Month Impasse’ *The Jerusalem Post* (16 August 2015) <http://www.jpost.com/Business-and-Innovation/Environment/Cabinet-passes-natural-gas-compromise-outline-after-8-month-impasse-412263> accessed 23 August 2015.

290 Reuters, ‘Cyprus to Look to Israel to Back East Med LNG Terminal Plan’ *Haaretz* (19 June 2013) <<http://www.haaretz.com/business/premium-1.530813>> accessed 9 May 2015; Global Risk Insights, ‘Israel set to become major exporter of natural gas’ *Oil Price* (30 April 2014) <<http://oilprice.com/Energy/Natural-Gas/Israeli-Set-To-Become-Major-Exporter-Of-Natural-Gas.html>> accessed 9 May 2015; U.S Energy Information Administration, Egypt, Overview (7 November 2014) <<http://www.eia.gov/countries/cab.cfm?fips=eg>> accessed 9 May 2015.

291 D. Hearst (n 183).

292 United States-Israel Strategic Partnership Act (n 199).

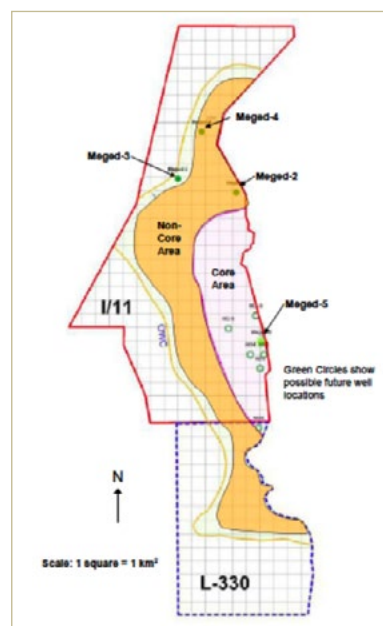
Documents obtained by al-Shabaka under a Freedom of Information request from the UK Foreign and Commonwealth Office (FCO) in 2012, revealed that a Norwegian consultancy firm had concluded that the Palestinians had a petroleum sector.²⁹⁹ According to declassified emails between the FCO and British Consulate General in Jerusalem:

“They could not be sure that any oil field extended below the West Bank. But the strong likelihood is that it did (otherwise why drill so close to the Green Line).

- They had seen “flaring” at the site. While they could not get close enough to make a definite judgement, such “flaring” was normally indicative of drilling for exploration at the least, or more usually extraction itself.

- They had been informed by their Palestinian interlocutors that the drilling was actually being carried out by a Jewish religious organisation and that there was allegedly a theological as well as commercial rationale for the current activity.

-They had also heard of a further oil discovery in the Southern West Bank, near Hebron.”³⁰⁰



Source: Meged Field Map of Wells at the site at Rantis

Petroleum engineer Samer Naboulsi studying the shape of the Meged-5 field commented that “geology doesn’t follow geography, looking at the site of the flare and the shape of the overall field, it’s clear this extends into the West Bank”.³⁰¹

By 2013 the presence of Palestinian oil resources in the village of *Rantis* were openly acknowledged, forming an integral part of the energy strategy under the Palestinian Economic Initiative.³⁰² In 2014, the U.S Energy Information Administration updated its website to include “fields on the Israeli side of the boundaries [which] may extend across the West Bank and Gaza borders”.³⁰³

In April 2004, Israel leased the Meged Field to Givot Olam Oil Exploration Ltd for 30 years. Givot Olam provide in its *Assessment of the Meged-5 well proposal* that the company along with FracTech Ltd considered that reserves of up to 800,000 ³⁰⁴ barrels could be accessed from the area. The company further recommended development of Meged-4 and Meged-2, highlighting the companies intent to use horizontal drilling techniques. In 2010, production test drilling at

299 Declassified Communications: The Possibility of a Petroleum Sector (21 August 2012) < <http://al-shabaka.org/node/474> > accessed 9 May 2015.

300 *Ibid.*

301 United Press International, ‘Palestinians say there is oil in West Bank’ *UPI* (May 08, 2013) < http://www.upi.com/Business_News/Energy-Resources/2013/05/08/Palestinians-say-theres-oil-in-West-Bank/UPI-29751368049686/> accessed 9 May 2015.

302 Office of the Quartet Representative Tony Blair, ‘Initiative for the Palestinian Economy, Energy’ 3 < http://blair.3cdn.net/547ed9bb88685c3e51_klm6bq8i4.pdf> accessed 9 May 2015.

303 United States, EIA, Palestinian Territories (n 96).

304 RDS, A Baker Hughes Company, ‘Meged Field Reserves Classification’ (31 December 2010) 3.0.

Meged-5 found the oil field contained an estimated 1.525 billion barrels of oil.³⁰⁵

Companies leased to extract oil from Israel and the Occupied Palestinian Territory	
Edison SPA	Edison SPA is an Italian electricity and gas company.
Genie Energy	Genie Energy is an American energy company. The company is traded on the New York Stock Exchange.
Givot Olam Oil Exploration	Givot Olam Oil Exploration is an Israeli oil and gas exploration and production company. The company is listed on the Tel Aviv Stock Exchange.
Israel Energy Initiatives (IEI)	IEI is an Israeli oil and gas exploration and production company IEI is a subsidiary of Genie Energy.

7.1.2 How much oil does Meged-5 contain?

There is some uncertainty surrounding the exact reserves in Meged-5. In 2009, Givot Olam estimated that Meged-5 contained reserves in excess of 100 million barrels of oil.³⁰⁶ In 2010, exploratory drilling at Meged-5 indicated that there were approximately 1.525 billion barrels of oil.³⁰⁷ The field may also contain saleable gas deposits.³⁰⁸ However, an independent estimation by NJR Wright Greensand Associates Limited, reached a more conservative estimate, on the basis of a three well development plan, amounting to 29.6 million barrels of oil (MM bbl). In 2010, A Baker RDS, conducted a report into the amount of oil potentially contained in Meged, estimating that there was proven or tested quantities amounting to 10.0 MM stb and an additional 9.0 MM stb unproven reserves in Meged-5, totalling approximately 19 MM stb of oil.³⁰⁹ Despite these conservative estimates, a 2011 report by Israel’s Ministry of Finance considered that the quality and depth of oil at Meged-5, indicated “the existence of significant oil deposits in Israel’s land area too”.³¹⁰

305 L Zeno, ‘Givot Olam: Meged has 1.5b barrels of oil’ *Haaretz* (18 August 2010) <<http://www.haaretz.com/print-edition/business/givot-olam-meged-has-1-5b-barrels-of-oil-1.308683>> accessed 9 May 2015.

306 Baker RDS, ‘Project for Givot Olam Oil Exploration Limited Partnership, Meged Field Reserves Classification’ 13 (31 December 2010) < <http://mayfiles.tase.co.il/RPdf/668001-669000/P668764-00.pdf> > accessed 9 May 2015.

307 L Zeno, ‘Givot Olam: Meged has 1.5b barrels of oil’ *Haaretz* (18 August 2010) <<http://www.haaretz.com/print-edition/business/givot-olam-meged-has-1-5b-barrels-of-oil-1.308683>> accessed 9 May 2015.

308 NJR Wright Greensand Associates Limited, ‘Meged Field Israel, Economic Analysis of 2P Reserves and 2C Contingent Resources’ (25 November 2010) 3. Although in *Economic Analysis of 2P Reserves and 2C Contingent Resources*, consideration of gas prices was omitted from the report, but gas was considered to represent a “significant future resource”. <<http://mayfiles.tase.co.il/RPdf/593001-594000/P593262-00.pdf> > accessed 9 May 2015.

309 Givot Olam Oil Exploration (n 306).

310 State of Israel, ‘Conclusions of the Committee for the Examination of the Fiscal Policy with Respect to Oil and Gas Resources in Israel’ (January 2011) 18.

Despite the varying estimates, Givot Olam began producing oil from Meged-5 in 2011.³¹¹ Since the start of the oil production at Meged-5, there have been reports of increased oil potential. For example, Givot Olam's shares rose by 2.5 percent in October 2013, following reports that Meged-5 contained an extra 610,000 barrels of oil (M bbl) than previously estimated.³¹²



Source: Al-Haq, Entrance to Meged Field

However, striking a note of caution, the upper end of these figures may have been massaged by the company to make it appear more profitable on the Israeli Stock Exchange, in order to attract investors, as the oil fields were not yet self-financing.³¹³ Nevertheless, Meged-5, part of which belongs to the OPT, is currently being commercially exploited by Givot Olam with revenues directed to the State of Israel. This violates Israel's customary international law obligations to co-develop shared oil resources with Palestine.

7.2 POTENTIAL PALESTINIAN OIL RESOURCES

i. Oil in the Mediterranean Sea off the coast of Gaza

Between December 2010 and 2012, Noble Energy discovered commercial quantities of oil at depths below the Leviathan-1 well, in Israel's EEZ.³¹⁴ The company secured the services of Atwood Advantage drillship with the objective of prospecting at 12,000 feet water depth/40,000 feet drill depth at a cost of \$16 million USD.³¹⁵ These significant oil finds, deep below the sea-bed, highlight the potential that similar oil resources may be discovered underneath the Gaza Marine and Border fields. Although Noble Energy temporarily suspended the deep sea drilling in May 2012, citing mechanical limitations, the company was encouraged "by the possibility of an active thermogenic (crude oil generating) hydrocarbon system at greater depths within the basin" under the Leviathan field.³¹⁶ Satisfied with the potential oil exploitation from Leviathan-1, Noble Energy resumed exploratory drilling in January 2013 and developed a drilling

311 L Zeno, E Azran, 'Givot Olam says Meged 5 well producing at 800 barrels a day' *Haaretz* (24 June 2011) <http://www.haaretz.com/business/givot-olam-says-meged-5-well-producing-at-800-barrels-a-day-1.369320> accessed 9 May 2015.

312 D Reich, 'Market Report, Tel Aviv Shares Gain After Volatile Trading' *Haaretz* (October 7, 2013) <http://www.haaretz.com/business/.premium-1.551109> accessed 9 May 2015.

313 R Steinblatt, 'Givot Olam Unit Holders Meeting Ends in Disarray' *Globes* (18 August 2013) <http://www.globes.co.il/serveen/globes/docview.asp?did=1000872983> accessed 9 May 2015.

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

315 *Ibid.*

316 *Ibid.*

plan in 2014 to continue testing for deep-sea deposits.³¹⁷ The U.S Energy Information Administration and the Office of the Quartet Representative Tony Blair, Initiative for Palestinian Economy Energy, have indicated that there are similar potential hydrocarbons located below the Gaza Marine.³¹⁸

ii. Shale Oil in the West Bank

The Palestinian Economic Initiative stated that there were potential but yet unidentified amounts of hydrocarbons including shale oil, in the West Bank.³¹⁹ Israel, holds an estimated 150 billion barrels of oil from oil shale resources in the *Shfela* Basin with some of these resources located near the Green Line.³²⁰ At the 2014 Universal Oil and Gas conference, Dr. Harold Vinegar, Chief Scientist at Israel Energy Initiatives (IEI) suggested that the West Bank was in possession of significant amounts of good quality shale oil.³²¹ The resources located in the West Bank are estimated to be of a larger amount than those located inside Israel.³²² In 2014, IEI sought approval from the Jerusalem District Planning and Building Committee for a pilot shale oil production site located "west of the crossing from the southern West Bank, inside the Green Line" located in Israel.³²³

IEI is a subsidiary of Genie Energy based in Newark NJ and was granted an exploration and production license under Israel's Petroleum Law, 1952.³²⁴ Mining shale oil requires environmentally destructive 'fracking' techniques, where the shale oil is heated to 300 degrees centigrade for the purpose of transforming the shale oil located at depths of 200-300 meters below ground into lightweight oil.³²⁵

Although the 'fracking' process would necessitate drilling deep heating wells, IEI argued that a further 200-meter layer of impenetrable rock separated the shale oil and West Bank aquifer protecting it from pollution. However on 2 September 2014, the Jerusalem District Committee voted against the oil shale drilling pilot project in the *Adulum Valley* finding that it "had the potential to cause extreme environmental damage, including contaminating nearby groundwater and even emitting radioactive material".³²⁶

317 Noble Energy Inc., Form 10-Q Quarterly Report, United States Securities Exchange Commission, Quarterly Report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the Quarterly Period ended September 30, 2013; Noble Energy Inc., Form 10-K Annual Report, (Filed 02/06/2014 for the period ending 12/31/13) 122.

318 States, EIA Palestinian Territories (n 96); Office of the Quartet Representative Tony Blair (n 302) 3.

319 *Ibid.*

320 IEI, Energy Independence While Caring for our Environment < <http://www.iei-energy.com> > accessed 9 May 2015.

321 H Vinegar, 'The Future of Oil and Gas in Israel' (Annual Universal Oil and Gas Conference 2014) Ein Bokek, Dead Sea, Israel.

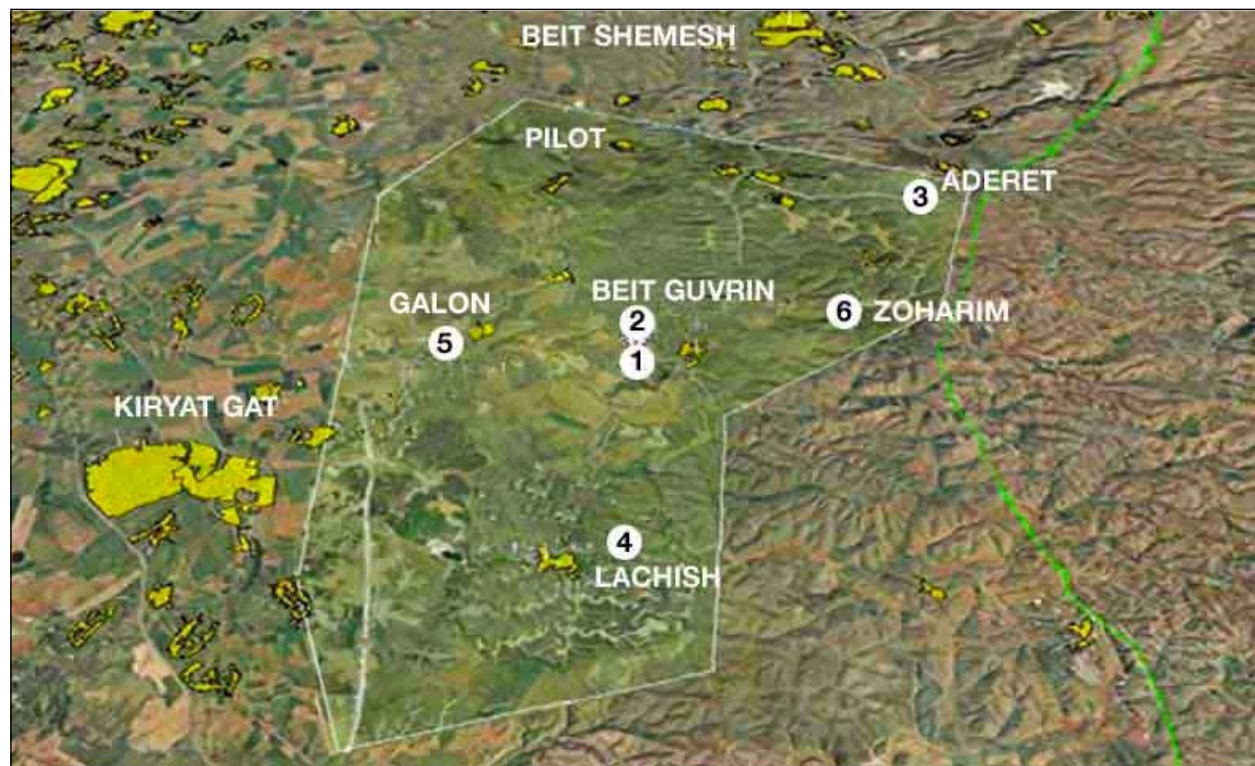
322 *Ibid.*

323 Z Rinat, 'Geologists Warn: Oil Shale Project may Pollute West Bank Ground Water' *Haaretz* (2 September 2014) < <http://www.haaretz.com/life/nature-environment/.premium-1.613601> > accessed 9 May 2015; Green Line < <http://www.haaretz.com/misc/tags/Green%20Line-1.477795> > accessed 9 May 2015.

324 IEI, 'About Us' < <http://www.iei-energy.com/aboutus.php> > accessed 9 May 2015.

325 Eppelbaum et al., 'Israel, Petroleum Geology and Prospective Provinces' (29 October 2013) < http://www.searchanddiscovery.com/pdfz/documents/2013/10533eppelbaum/ndx_eppelbaum.pdf.html > accessed 9 May 2015; S Udasin, 'Jerusalem District Committee Rejects *Shfela* Basin Oil Shale Pilot Project' *Jerusalem Post* (2 September 2014) < <http://www.jpost.com/Israel-News/Jlem-District-Ctee-rejects-Shfela-basin-oil-shale-pilot-project-374265> > accessed 9 May 2015; IEI describes the In-Situ Conversion Process involving: "drilling heating wells into the oil shale with a smaller number of production wells strategically placed in the heating pattern. The heater wells gradually heat subsurface oil shale formation. The elevated temperature converts the kerogen into lighter hydrocarbons fractions, which are then brought to the surface through the production wells as light hydrocarbon fuel, leaving the coke residue in the reservoir." IEI, Production Process < http://www.iei-energy.com/production_process.php > accessed 9 May 2015.

326 Israel Ministry of Environmental Protection, 'Oil Shale Pilot Project Rejected: Peretz: An Important Victory for the Next Generation' (3 September 2014) < <http://www.sviva.gov.il/English/ResourcesandServices/NewsAndEvents/NewsAndMessageDover/Pages/2014/9%20September/Jerusalem-Planning-Committee-Says-No-to-Oil-Shale.aspx> > accessed 9 May 2015.



Enlarged Map of IEI Licensed Area³²⁷

iii. Potential Oil around Hebron

In January 2012, a declassified e-gram communication between the Foreign and Commonwealth Office and British Consulate General in Jerusalem noted the potential for a further oil discovery in the Southern West Bank near *Hebron*.³²⁸ Some exploratory drilling had been conducted at *as-Samu* in *Hebron* during the Jordanian occupation.³²⁹ Moreover, the Palestinian Authority has indicated that attempts to drill for oil had been unsuccessful in *Birzeit* (which literally translates to Well of Oil) near *Ramallah*, during the Jordanian occupation.³³⁰

iv. Potential Oil around Gaza

Both the U.S Geological Survey and the U.S Energy Information Administration have indicated that there are potential oil resources to be discovered inland on the northern and southern borders of Gaza and Israel.³³¹ It has also become apparent that Israel drilled numerous boreholes and wells in

³²⁷ IEI, Our License Area < http://www.iei-energy.com/our_license_area.php > accessed 9 May 2015.

³²⁸ Unclassified Email from BG Jerusalem to BG Jerusalem, (13 January 2012) <http://www.al-shabaka.org/sites/default/files/Kattan_PolicyBrief_FOIAdoc_Aug_2012.pdf > accessed 9 May 2015.

³²⁹ Ma'an News Agency, 'Minister: PA May Drill for Oil in West Bank' (20 April 2012).

³³⁰ *Ibid.*; Declassified Communications (n 299).

³³¹ United States, EIA Palestinian Territories (n 96); U.S Geological Survey (n 1).

occupied Gaza during the 1970's, including Til-1,³³² Kefar Darom 1, Nezarim 1 and Gaza 1.³³³

7.3 ACCESS DENIED: HOW ISRAEL BLOCKS THE DEVELOPMENT OF OIL RESOURCES IN THE OPT

7.3.1 Confiscating Village Land and Preventing Access to Oil

Israel has prevented Palestinian access to develop its oil fields at the Palestinian village *Rantis*, located in the governorate of Ramallah. Much of the village's land has been designated for military training zones and subsequently used for the construction of the Annexation Wall, built on *Rantis* agricultural land.

Since 1948, Israel has expropriated 28,500 *dunums* (approx. 7042 acres) of agricultural land in the area by military order.³³⁴ In 1978, confiscated land to the east of *Rantis* was designated as a military training zone, and in 1980 agricultural lands between the 1948 and 1967 borders were further reclassified as military training zones.³³⁵ Meanwhile, the Ministry of Housing constructed a settlement of 2,500 housing units in the expropriated land between *Rantis* and *Nahalin*.³³⁶ Between 2004-2005 Israel confiscated 3,500 *dunums* of land for the construction of the Wall around the village of *Rantis* under *Military Order 03/ 69/T Judea & Samaria 2003*, citing 'security purposes'. This physically prevented Palestinian access to the expropriated lands.³³⁷



Source: Al-Haq, Checkpoint at Meged Field

The Wall runs between 500 meters to 1 kilometer inside the Palestinian side of the Green Line, cutting

³³² See map < http://www.gsi.gov.il/_Uploads/1074GSI-31-2008.pdf > accessed 9 May 2015; According to Hebrew Energy, "Til-1 was spudded in November 1976 by OEL (Oil Exploration Investments Ltd), during the Israeli occupation of the Gaza Strip and Sinai, following the 1967 War. The well was drilled in 72m water depth, to a TD of 4,807m dbt in the Jurassic and was plugged and abandoned as a dry hole in April 1977. No hydrocarbon shows were encountered, although a 20m thick Lower Pliocene Yafo Sandstone Member section was encountered." <http://www.hebrewenergy.com/category/1?ei=AdIKTZ7QL8GB8gbs66nZDg&page=156&sa=U&usg=AFQjCNEmzz0Js7diRXAIL0eNProQEZTOEw.html&ved=0CB0QFjAG> accessed 9 May 2015.

³³³ G. Gvirtzman et al., 'The Late Tertiary of the Coastal Plain and Continental Shelf of Israel and its Bearing on the History of the Eastern Mediterranean' Geological Survey of Israel 1201 'Israel's Wall: Another Manifestation of Israeli Occupation: The Case of Rantis' Ma'an Development Centre (August 2007) 4 <http://www.ochaopt.org/documents/opt_prot_maan_wall_rantis_aug_2007.pdf > accessed 9 May 2015.

³³⁴ 'Israel's Wall: Another Manifestation of Israeli Occupation: The Case of Rantis' Ma'an Development Centre (August 2007) 4 <http://www.ochaopt.org/documents/opt_prot_maan_wall_rantis_aug_2007.pdf > accessed 9 May 2015.

³³⁵ *Ibid.*; A Hass, 'The Village Against the Fence' *Haaretz* (11 February 2004) <<http://www.haaretz.com/print-edition/features/the-village-against-the-fence-1.113619> >

³³⁶ General Assembly, Report of the Special Committee to Investigate Israeli practices affecting the human rights of the population of the Occupied Territories, A/35/452 (6 October 1980) para.

³³⁷ The Case of Rantis (n 333). Copy of military order (Hebrew only) at < <http://www.poica.org/preview.php?Article=331> > accessed 9 May 2015. In particular, under *Military Order 03/ 69/T Judea & Samaria 2003*, land for Block 2 of the Meged field was expropriated in *Rantis*, from "Karnt Abo Hesh, Sahhab Bear Rees, Krnet Selm, Am Shhab Al Kably, Alkarn, Shob Albta, Karnet Salma, Karnet Al Jahfa, Aheed Almnsa, Shod ber Alhroob, Halat Dear Arab, Almahora Alwasta, Shallal Almbraz" for the cited purposes of "the special security situation in the region".

off access to approximately 6.5 kilometers of *Rantis* village.³³⁸ Across this space, the Meged oil field spans 175 square km between the Palestinian village of *Rantis* and the Israeli town *Rosh HaAyin*.³³⁹ The Wall has created an enclave around *Rantis* effectively trapping 2,688 villagers between the main and secondary depth walls, severely limiting their freedom of movement and preventing Palestinian access to the oil field on the Palestinian side of the Green Line.³⁴⁰

Article 15 of the Interim Agreement (1995) places a further barrier between Palestinians and their sovereign oil reserves. In Area C, powers and responsibilities concerning the exploration and production of oil and gas remain under Israeli control, to be “transferred gradually” to the Palestinian Authority.³⁴¹ *Rantis* straddles Area B and Area C, with 1,317 *dunums* of land in Area B and 9,606 *dunums* in Area C.³⁴² Under the Oslo Interim Agreement, Palestine has full civil control and exercises joint Israeli-Palestinian security control in Area B, while Israel retains full control over security, planning and construction in Area C. In March 2014, the Palestinian Authority issued a global tender for oil exploration in the West Bank.³⁴³ However any plans fostered by Palestine to develop oil in Area C would require advance Israeli approval.³⁴⁴ This political arrangement effectively rubber-stamps the illegal Israeli annexation of Palestinian land around *Rantis*, expediting Israeli exploitation of Palestinian oil resources.

7.4 EXPLOITING PALESTINIAN OIL UNDER ISRAEL'S PETROLEUM LAW 5712-1952

Israel has applied the provisions of Petroleum Law 5712-1952 to oil partially located in *Rantis*, transferring rights of use to Givot Olam. Petroleum Law 1952 requires that commercial quantities are available for exploitation in a petroleum field [see also section 7.1.2]. Initially a license may be obtained for the right to explore and conduct test drilling, while a lease confers the exclusive right to explore and produce petroleum.³⁴⁵ For these purposes a petroleum field includes “the land and all geologic formations underlying it beneath which is a known accumulation of petroleum capable of being produced in commercial quantities”.³⁴⁶ Thereafter a production lease is granted, permitting exploitation and extinguishing any former rights held in the property.³⁴⁷

338 The Case of *Rantis* (n 333) 5.

339 Givot Olam, Overview <<http://www.givot.co.il/Index.aspx?l=2>> accessed 9 May 2015.

340 Applied Research Institute, ‘Undermining Peace: Israel’s Unilateral Segregation Plans in the Occupied Palestinian Territory’ (2003) 73, at <<http://www.arij.org/files/admin/2003/2003%20Israel's%20unilateral%20segregation%20plans%20in%20the%20OPT.pdf>> accessed 9 May 2015.

341 Article 15 (1)(b), Article 31 (2), Appendix 3, Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (1995). See Annex 1, Annexing Energy, 120.

342 Applied Research Institute Jerusalem, ‘*Rantis* Village Fact Sheet’ <http://vprofile.arij.org/ramallah/pdfs/factsheet/Rantis%20_vp_eng.pdf> accessed 9 May 2015.

343 D Hutuqa, ‘Crude Disputes Stain Palestinian Oil Tender’ *Al Jazeera* (19 March 2014) <<http://www.aljazeera.com/indepth/features/2014/03/crude-disputes-stain-palestinian-oil-tender-201431993157794291.html>> accessed 9 May 2015.

344 ‘Oil in Palestine, A Gurgle of Hope’ *The Economist* (20 March 2014) <<http://www.economist.com/blogs/pomegranate/2014/03/oil-palestine>> accessed 9 May 2015.

345 Article 3-4, Petroleum Law, 5712-1952.

346 Interpretation 1, Petroleum Law, 5712-1952

347 Article 6(c), Petroleum Law, 5712-1952.

The Israeli government satisfied that there were commercial quantities of oil in Meged-2, Meged-3 and Meged-4 granted Givot Olam a thirty year production lease 1/11, incorporating the 60,000 acre Rosh Ha’ayin Block.³⁴⁸ Under the Petroleum Law, long-term leases may be subject to renewal for an additional twenty years, granting long-term control of oil resources to private corporations.³⁴⁹ In 2008, Givot Olam indicated that the Meged-5 well had the potential to produce commercial quantities of petroleum earmarking it for commercial development under the Meged lease 1/11.³⁵⁰ By September 2014, Givot Olam had sold 598,000 barrels of oil from Meged-5 amounting to \$64 million (USD).³⁵¹ It is estimated that 40 wells are required to develop the Rosh Ha’ayin Block in its entirety.³⁵² The inclusion of Meged-5 into lease 1/11 brings natural resources which extend into occupied territory, under the domestic law of the belligerent occupant, a measure which exceeds the *usufructuary* limitations of Article 55 of the Hague Regulations.

348 Field Production Lease (n 297).

349 Article 29 (a) and (b), Petroleum Law, 5712-1952.

350 Field Production Lease (n 297) 161. “Scoping economics indicate that if the Meged field is indeed confirmed to contain the 142 MMbo P50 recoverable resource estimate, it could generate an NPV10 in excess of US\$2 billion, based on a flat US\$100/bbl price deck over a 25 year field life”.

351 2014 Givot Olam Report Filed on Stock Exchange (in Hebrew only – translation on file with Al-Haq).

352 T. Abudi, ‘Israel Oil and Gas Opportunities, The Oil and Gas Industry Conference’ (Aberdeen, June 11, 2014) 15.

SNAPSHOT OF OCCUPIED GOLAN

GOLAN HEIGHTS OIL EXPLOITATION

Israel sanctioned oil exploration in the occupied Golan Heights in violation of Article 55 of the Hague Regulations. In April 2013, Israel awarded an exploration license under Petroleum law 5712-1952 to Afek covering 396.5 square kilometers of southern Golan Heights. Afek is a subsidiary of Genie Energy Limited. Israel's former Minister of Infrastructures and IDF Brigadier General (res.) Effie Eitam is Chairman of the Board of Genie Israel Holdings and Avgad Meiri formerly the "Ministry of Defense's representative at the regional planning committees and the advisory council on matters of oil and energy" advises Afek on logistics, licensing and permitting. The exploration license permits the execution of survey wells and production tests subject to the approval of Israel's Regional Planning and Building Committee.

Genie Energy's 2014 Annual Report illustrated its full awareness of the illegality of its Afek operations: "because of the dispute as to the status of the Golan Heights, operations under the license may initiate international criticism, sanctions and boycotts. The political uncertainties surrounding the Golan Heights may result in (i) questions regarding the validity of the license granted to Afek by the State of Israel; (ii) disputed titles to any resources extracted; (iii) possible sanctions on Afek or Genie or restrictions on sale of any extracted resources; and (iv) possible negative publicity or other adverse public activities or perceptions of Afek and the Company. In addition, if the Golan Heights are returned to Syria by Israel, the continuation of Afek's license would be in doubt."

8. LEGAL ANALYSIS

*"What men, what monsters, what inhuman race,
What laws, what barbarous customs of the place,
Shut up a desert shore to drowning men,
And drive us to the cruel seas again."³⁵³*
(Vergil)

8.1 ISRAEL'S LEGAL OBLIGATIONS

Israel, as the Occupying Power, must administer the occupied territory's natural resources according to the rules of international humanitarian law, more specifically the Hague Regulations (1907), the Fourth Geneva Convention (1949) and the Additional Protocol I (1977). Israel is compelled to abide by the Hague Regulations as well as the provisions of Additional Protocol I that largely reflect customary international law.³⁵⁴

³⁵³ Aeneid I, 539-540 [Dryden's translation, I, 760-763].

³⁵⁴ Israel is not a party to the Hague Regulations, however the norms were declared customary international law at Nuremberg, and are binding on this basis. Although Israel has ratified the Fourth Geneva Convention it has refused to apply the Convention in full to the occupied territory, on the irrelevant grounds that Jordan was not sovereign over the territory in 1967. Consequently, this argument has been vehemently rejected by the ICRC, states parties to the Geneva Conventions, and the International Court of Justice, while numerous UN Security Council and General Assembly resolutions have confirmed the applicability of the Fourth Geneva Convention to the OPT.

Legal Framework: The Laws of Belligerent Occupation

Article 42 of the Hague Regulations establishes the criteria for belligerent occupation on the *de facto* basis of military presence and substitution of authority.³⁵⁵ Article 43 of the Hague Regulations follows on from the established *de facto* control of territory where “the authority of the legitimate power” passes in fact into the hands of the occupying power, placing administrative obligations on the invading army for the duration of time that the authority is ‘established and can be exercised’.³⁵⁶ The belligerent occupant’s administration of the territory is therefore temporary and accordingly, the belligerent occupant does not acquire sovereign title in the territory.³⁵⁷ The belligerent occupant must maintain the previous laws in force in the territory “unless absolutely prevented”.³⁵⁸ Nevertheless, the belligerent occupant may implement new laws in limited circumstances to ensure its security³⁵⁹, and indeed is under an obligation to do so to provide for the humanitarian guarantees of the Fourth Geneva Convention.³⁶⁰

Treaty law and State practice support the extension of the laws of belligerent occupation over maritime resources and regulate the exploitation of oil and gas resources in the continental shelf. In particular, Article 88 of the Oxford Manual of Naval War (1913) establishes that maritime territory can be occupied.³⁶¹ Additionally, Judge Tullio Treves, of the International Tribunal on the Law of the Sea, has noted that “the resort to human rights or humanitarian considerations and rules in the context of the

³⁵⁵ Article 42, 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. “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.”

³⁵⁶ *Ibid.*

³⁵⁷ M Sassoli, ‘Article 43 of the Hague Regulations and Peace Operations in the Twenty-First Century’ (International Humanitarian Law Research Initiative, HPCR, 2004) 11 <<http://www.hpcrresearch.org/sites/default/files/publications/sassoli.pdf>> accessed 9 May 2015.

³⁵⁸ Article 43, Hague Regulations (1907).

³⁵⁹ G. von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (University of Minnesota Press, 1957) 100.

³⁶⁰ Article 64; Article 55, Geneva Convention relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287, entered into force Oct. 21, 1950. “To the fullest extent of the means available to it the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate. The Occupying Power may not requisition foodstuffs, articles or medical supplies available in the occupied territory, except for use by the occupation forces and administration personnel, and then only if the requirements of the civilian population have been taken into account. Subject to the provisions of other international Conventions, the Occupying Power shall make arrangements to ensure that fair value is paid for any requisitioned goods. The Protecting Power shall, at any time, be at liberty to verify the state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements.”

Article 59, Fourth Geneva Convention (1949). “If the whole or part of the population of an occupied territory is inadequately supplied, the Occupying Power shall agree to relief schemes on behalf of the said population, and shall facilitate them by all the means at its disposal. Such schemes, which may be undertaken either by States or by impartial humanitarian organizations such as the International Committee of the Red Cross, shall consist, in particular, of the provision of consignments of foodstuffs, medical supplies and clothing. All Contracting Parties shall permit the free passage of these consignments and shall guarantee their protection. A Power granting free passage to consignments on their way to territory occupied by an adverse Party to the conflict shall, however, have the right to search the consignments, to regulate their passage according to prescribed times and routes, and to be reasonably satisfied through the Protecting Power that these consignments are to be used for the relief of the needy population and are not to be used for the benefit of the Occupying Power.”

Article 62, Fourth Geneva Convention (1949). “Subject to imperative reasons of security, protected persons in occupied territories shall be permitted to receive the individual relief consignments sent to them.”

³⁶¹ Oxford Manual of Naval Law, Adopted by the Institute of International Law, 1913, in D Schindler, J Toman, *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions, and other Documents* (4th edition, 2004) 1123, 1135. “Occupation of maritime territory, that is of gulfs, bays, roadsteads, ports and territorial waters, exists only when there is at the same time an occupation of continental territory, by either a naval or a military force. The occupation, in that case, is subject to the laws and usages of war on land.”

Law of the Sea [LOS] is just at a beginning stage. Other situations may be envisioned that are neither foreseen explicitly or implicitly in the LOS Convention nor have been considered by international courts and tribunals”.³⁶² The United States has applied the laws of belligerent occupation to the territorial sea, while Dinstein suggests that occupation law applies at least to the continental shelf on the basis of territorial sovereignty.³⁶³ Article 53 of the Hague Regulations permits the requisition of appliances at sea, while Article 54 of the Hague Regulations governs the use of submarine cables, suggesting that the legal framework of belligerent occupation applies to the sea and by extension to sea bordering the Palestinian territory.³⁶⁴

During belligerent occupation international humanitarian law operates as *lex specialis*³⁶⁵ - with human rights law bridging existing gaps in rights protection.³⁶⁶ The International Court of Justice has repeatedly held that international human rights law is applicable in situations of armed conflict. Similarly, the UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights and the Israeli High Court of Justice have applied the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the African Charter on Human and Peoples Rights respectively to armed conflict.³⁶⁷

Permanent Sovereignty and Self-Determination

According to international law, the occupied Palestinian population has an inherent right to exercise permanent sovereignty over their natural resources. This includes the right to “freely determine their

³⁶² T Treves, ‘Human Rights and the Law of the Sea’ (2010) 28(1) *Berkeley Journal of International Law* 6.

³⁶³ Y Dinstein, *The International Law of Belligerent Occupation* (Cambridge University Press, 2009) 47.

³⁶⁴ Article 53, Hague Regulations (1907).

³⁶⁵ *Legality of the Threat or Use of Nuclear Weapons* (Advisory Opinion) 8 July 1996, ICJ Report. 1996, 226 at 240, para. 25; *Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, ICJ Rep. 2004, 136, at 177-178 paras. 104-106; *Case Concerning Armed Activity on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, (ICJ Judgment) 19 December 2005, paras 216-220. J Romer, *Killing in a Grey Area Between Humanitarian Law and Human Rights: How Can the National Police of Columbia Overcome the Uncertainty of Which Branch of International Law to Apply* (Springer, 2010) 34; O de Schutter, *International Human Rights Law* (Cambridge University Press, 2010) 4.

³⁶⁶ D Thurer, ‘Minorities Their Protection in General International Law and International Humanitarian Law’ in H Durham, T McCormack, *The Changing Face of Conflict and the Efficacy of International Humanitarian Law* (Kluwer Law International, 1999) 60; Council of Europe, *Guantánamo: Violation of Human Rights and International Law* (Council of Europe Publishing, 2007) 97.

³⁶⁷ In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons* the International Court of Justice found that the ICCPR continues to apply during armed conflict subject to Article 4 where certain provisions may be derogated from in times of emergency. *Advisory Opinion, Legality of the Threat or Use of Nuclear Weapons* (n 365) 240. In *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice stated that the ICESCR along with the ICCPR and the Convention on the Rights of the Child (CRC) was “applicable in respect of acts done by a state in the exercise of its jurisdiction outside its own territory.” *Advisory Opinion, Legal Consequences* (n 365) 109. Addressing the restriction of ICESCR rights due to the construction of the wall, the ICJ favoured broad implementation of the covenant rights and found that the construction of the security wall by the Israeli military in Palestinian territory undermined the right to work, health and education of the Palestinian population obstructed by it. Article 4, ICESCR.

In *Armed Activities on the Democratic Republic of the Congo* (2005) the ICJ found that Uganda as occupying power in the Ituri province of DRC had a duty to comply with human rights norms in the ICCPR, the CRC and its optional protocol and the African Charter on Human and People’s Rights according to Article 43 of the Hague Regulations. *Armed Activities* (n 365) paras 217-220. More specifically the *Committee on Economic, Social and Cultural Rights* have stated that Israel’s obligations under the ICESCR “apply to all territories and populations under its effective control.” 31 U.N Doc. E/C.12/1/Add.90 (May 23, 2003).

HCJ 3239/02, *Ma’arabe v. The IDF Commander in Judea and Samaria*, 57(2) PD 349. The Israeli High Court of Justice has applied the ICCPR to the occupied territories. Similarly, the occupied population have a right to development which applies during belligerent occupation.

political status and freely pursue their economic, social and cultural development”.³⁶⁸ Permanent sovereignty over natural resources is considered an integral element of the principle of self-determination, which undoubtedly is *jus cogens* in nature.³⁶⁹ In particular the right of permanent sovereignty over natural resources as part of the economic strand of self-determination, was developed to address foreign ownership over natural resources where newly independent states wished to nationalize and protect their national assets.³⁷⁰ The objective was not to “frighten off” foreign investment in natural resources, but to prevent foreign exploitation.³⁷¹ In particular, the Human Rights Committee considers that the freedom of people to dispose of their natural resources involves a correlative duty on other states and the international community to refrain from interfering with the enjoyment of the right.³⁷² Notably, Israel as Occupying Power does not have sovereign rights over Palestinian territory and may only administer immoveable natural resources under the temporary rules of *usufruct*.³⁷³

Numerous General Assembly resolutions have underscored the right of the Palestinian people to self-determination and to sovereignty over their territory while emphasizing that Israel as Occupying Power has “only the duties and obligations of an Occupying Power”.³⁷⁴ More recently the General Assembly adopted a resolution holding that the “right of the Palestinian people to permanent sovereignty over their natural wealth and resources must be used in the interest of their national development, the well-being of the Palestinian people and as part of the realization of their right to self-determination”.³⁷⁵ This echoed General Assembly Resolution 1803 on the right of peoples and nations to permanent sovereignty over natural resources considered declaratory of customary international law.³⁷⁶ This explicitly suggests that revenues from Palestinian natural and national resources must be used to support their *jus cogens* right to self-determination and the development of the State of Palestine. *E contrario*, the retention of revenues by the State of Israel to frustrate the creation of a Palestinian unity government, or to penalize the State of Palestine for other legitimate actions, violates the right to permanent sovereignty over natural resources, which is *ipso facto* a violation of the right to self-determination, a peremptory norm of international law.

³⁶⁸ Article 1, ICCPR; Article 1, ICESCR.

³⁶⁹ M Shaw, *Title to Territory in Africa* (1986) 91; G Espiel, ‘Self-Determination and Jus Cogens’ in A Cassese, *UN Law/Fundamental Rights* (1979) 167–171; J Dugard, *Recognition and the United*

Nations (1987) 158ff; A Cassese, *intra note* 346, 171–172. UN Human Rights Commission, Res 2003/3.

³⁷⁰ I Scobbie, ‘Natural Resources and Belligerent Occupation’ in S Bowen, *Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories* (Martinus Nijhoff Publishers, 1997) 248.

³⁷¹ B Saul, D Kinley, J Mowbray, *The International Covenant on Economic, Social and Cultural Rights, Commentary, Cases and Materials* (Oxford University Press, 2014) 64.

³⁷² Human Rights Committee, General Comment No. 12.

³⁷³ Article 55, Hague Regulations (1907).

³⁷⁴ A/RES/58/292 (17 May 2004); General Assembly, 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 (30 October 2014) A/C.2/69/L.33.

³⁷⁵ United Nations General Assembly, Right of the Palestinian People to Self-Determination, A/HRC/25/L.36 (24 March 2014).

³⁷⁶ General Assembly resolution 1803 (XVII) of 14 December 1962, “Permanent sovereignty over natural resources”; G Danilenko, *Law-Making in the International Community* (Klewer, 1993) 213. (See jurisprudence of the Arbitral Tribunals in footnote 8); C Tomuschat, ‘Yugoslavia’s Damaged Sovereignty over the Province of Kosovo’, in G. Kreijen et al. *State, Sovereignty and International Governance* (2002) 341.

8.2 INTERNATIONAL HUMANITARIAN LAW

8.2.1 Israel’s Denial of Access to Oil Fields at Rantis

Israel’s appropriation of Palestinian village land belonging to *Rantis* and the construction of the Annexation Wall has prevented Palestinian access to oil fields on the Palestinian side of the Green Line. The confiscation of private property is prohibited under international humanitarian law.³⁷⁷ Article 46 of the Hague Regulations provides that “private property cannot be confiscated”.³⁷⁸ Article 52 of the Hague Regulations outlines the circumstances under which the belligerent occupant can requisition private property, being “for the needs of the army of occupation” and “in proportion to the resources of the country”.³⁷⁹ According to Article 52, requisition must not “involve the inhabitants in the obligation of taking part in military operations against their own country” and compensation must be paid for the requisitioned property as soon as possible.³⁸⁰

Israel has repeatedly argued that it appropriates private agricultural Palestinian land for the construction of the Annexation Wall for security purposes.³⁸¹ Accordingly the military order issued in *Rantis*, “Order to Seize Lands No. 03/69/T (Judea and Samaria) 2003, cites “military reasons” for the seizure of land.³⁸² However “military need” advanced under Article 52 pertains to immediate military needs.³⁸³ Further, Article 52 limits requisitions in kind and services to “matters as billets for the occupying troops and the occupation authorities, garages for their vehicles, stables for their horses, urgently needed equipment and supplies for the proper functioning of the occupation authorities, food for the army of occupation and the like.”³⁸⁴ It would require a quantum leap in interpretation to extend the parameters of military need to the private commercial interests of Givot Olam Oil Exploration for the production of petroleum. Indeed in *Duweikat et al v Government of Israel* (1979), the Israeli High Court of Justice advanced that “the military necessities to which the Article [52] refers cannot include, by any reasonable interpretation, the needs of national security in their broader sense”.³⁸⁵

The reclassification of private agricultural land as military training zones during belligerent occupation

³⁷⁷ Article 46, Hague Regulations (1907).

³⁷⁸ *Ibid.*

³⁷⁹ Article 52, Hague Regulations (1907). This obligation to respect private property has been recognized by Israel in HCJ 2056/04, *Beit Sourik Village Council v The Government of Israel et al.*, (30 June 2004) paragraph 35.

³⁸⁰ Article 52, Hague Regulations (1907).

³⁸¹ *Beit Sourik Village Council* (n 379) para 3. On April 14, 2002, the Minister’s Committee for National Security reached a decision, to erect the ‘security fence’ or wall with the objective “to improve and strengthen operational capability in the framework of fighting terror, and to prevent the penetration of terrorists from the area of Judea and Samaria into Israel”.

³⁸² The Case of *Rantis* (n 333) 4. <http://www.maan-ctr.org/pdfs/Rantis.pdf> (last accessed 23 November 2013). Copy (Hebrew only) of military order.

³⁸³ *Lucchesi v. Malfatti*, Court of First Instance of Florence, December 10, 1945, Annual Digest and Reports of public International Law Cases Year 1946, (London Butterworth & Co. (Publishers), Ltd., 1951) p. 378, Case No. 160; *Play v. Ruffin*, France, Tribunal Civil de Rouen (Summary Jurisdiction) May 13, 1946, Annual Digest and Reports of public International Law Cases Year 1946, (London Butterworth & Co. (Publishers), Ltd., 1951) p. 382.

³⁸⁴ United Nations War Crimes Commission, *Law Reports of Trials of War Criminals* (William S. Hein & Co., 1997) 137.

³⁸⁵ HCJ 390/79 *Duweikat v. State of Israel*, PD LED (1979) p. 17.

results in the destruction of private agricultural property.³⁸⁶ Although the laws of war recognize that circumstances might prevail in the theater of hostilities rendering the destruction of property inevitable, this consideration is qualified by the test of absolute military necessity.³⁸⁷ Furthermore, the destruction of agricultural property for the exploration, drilling and production of oil at Meged-5 exceeds the narrow application of Article 53 of the Fourth Geneva Convention³⁸⁸ and may amount to a grave breach of Article 147 of the Fourth Geneva Convention.³⁸⁹

The International Court of Justice (ICJ) has unequivocally rejected Israel's argument that military security considerations justified the building of the Annexation Wall.³⁹⁰ Taking into consideration the routing of the Wall beyond the 1949 armistice line, the ICJ concluded that the Wall "cannot be justified by military exigencies or by the requirements of national security or public order".³⁹¹ As such, the construction of the Wall in occupied Palestine violated the Palestinian right to self-determination³⁹² by illegally acquiring territory through the use of force.³⁹³

The appropriation of private immovable property for commercial purposes exceeds the narrow conditions for requisition based military need in Article 52 of the Hague Regulations. Conferring title over Meged-5 to private corporations to exploit oil effectively alters the title of Palestinian private

386 HCJ 413/13 *The Association for Civil Rights in Israel et al. v Minister of Defense et al.* (January 16 2013) p. 7. There the petitioner's sought an injunction to prevent the forcible transfer of families from their homes in the area classified as Firing Zone 918. They argued that even "dry" training exercises without live fire, caused damage to farmlands highlighted the levels of destruction caused by general military training. The Israeli High Court of Justice has opted to defer the case to mediation, rather than rule on what is a patent misapplication of international humanitarian law.

387 UK Ministry of Defense, *Manual of the Law of Armed Conflict* (2004) 300-1, para 11.79. Y Arai, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and its Interaction with International Human Rights Law* (Martinus Nijhoff Publishers, 2009) 222; Article 53 of the Fourth Geneva Convention (1949) relates to destruction of property only, rather than seizure and destruction outlined in Article 23(g), and again this is subject to the more stringent test rendered "absolutely necessary by military operations" Article 53, Convention (IV) Relative to the Protection of Civilian Persons in Time of War (Geneva 12 August 1949); For example, the US military manual considers that enemy real property may not be damaged or destroyed unless "such destruction is rendered absolutely necessary by military operations" US Army Field Manual, FM 27-10, *The Law of Land Warfare*, 18 July 1956, par 402;

388 Article 53, Fourth Geneva Convention (1949). "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."

389 Article 147, Fourth Geneva Convention (1949). "Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

390 *Beit Sourik Village Council* (n 379); HCJ 11344/03, *Mayor of Jayyus et al. v. Commander of the Armed Forces in the West Bank et al; Mara'abe et al. v The Prime Minister of Israel et al.*, H.C.J 7957/04; HCJ 8414/05, *Ahmed Issa Abdallah Yassin, Bil'in Village Council Chairman v The Government of Israel*; HCJ 6181/04 *Ahmad Al-Dar'awi and 65 others v. The Minister for Defense et al*; HCJ 1769/10 *Beit Jala Municipality v The Commander of the IDF Forces in Judea and Samaria*, March 16 2010; HCJ 5330/11 *Walaja Village Council v. The Minister of Finance*, September 27, 2011; HCJ 9516/10 *Walaja Village Council v. The Commander of the IDF Forces in Judea and Samaria*, August 22, 2011; HCJ 1960/07 *Al Haq et al. v. The Prime Minister et al.* (July 9, 2008). On 8 December 2003, the General Assembly referred the question of the legality of Israel's Annexation Wall in the West Bank to the International Court of Justice in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004). *Advisory Opinion, Legal Consequences* (n 365) para 78.

391 *Advisory Opinion, Legal Consequences* (n 365) para 137; Benvenisti suggests that in the limited circumstances where the Occupying State can apply its national laws to its citizens residing in occupied territory, this "should not impinge on indigenous interests". E Benvenisti, *The International Law of Occupation* (Princeton University Press, 2nd edition, 2004) 20.

392 *Advisory Opinion, Legal Consequences* (n 365) para 122.

393 *Ibid.*

immovable agricultural property to commercial property for the benefit of enterprises friendly to the occupying forces. Article 52 categorically prohibits altering the title of private immovable property under such circumstances.³⁹⁴ Oppenheim submits that "immovable private enemy property may under no circumstances or conditions be appropriated by an invading belligerent. Should he confiscate and sell private land or buildings, the buyer would acquire no right whatever to the property."³⁹⁵

8.2.2 Limitations on Israel's use of Oil and Gas as Public Immoveable Property on Land and Sea during Belligerent Occupation

i. Appropriation of Public Moveable Property

Israel's mining and exploitation of oil at Meged-5 in *Rantis*, the drilling of exploratory wells in occupied Gaza in the 1970's, and the exploitation of migratory gas resources in the Border Field violate Article 55 of the Hague Regulations. During belligerent occupation, the rights of use that the belligerent occupant acquires over property depend on its designation as public or private property, and whether it is movable or immovable in nature. The general rule deriving from the *laissez faire* nature of international humanitarian law is that private property must be protected and cannot be confiscated. Public moveable property may be requisitioned for use in military operations, and the fruits of public immovable property may be appropriated.³⁹⁶ Accordingly Article 53 of the Hague Regulations allows the army to take possession of 'all moveable property belonging to the State which may be used for military operations.'³⁹⁷

For example, in *N.V De Bataafsche Petroleum Maatschappij and Others v. The War Damage Commission* (1956)³⁹⁸ the leading case on oil expropriation during belligerent occupation, the Japanese occupying forces treated oil stocks owned by private Dutch corporations in occupied Sumatra as public war booty.³⁹⁹ There the court considered that oil could only be requisitioned as public moveable property, where there was a "sufficiently close connection with direct military use" to bring it within the ambit of Article 53(2) as munitions of war.⁴⁰⁰ On this basis it is generally supported by most commentators and case-law, that resources such as oil and gas, which need to be exploited and refined, are not directly usable as *munitions de guerres* for the purposes of requisition. Rather oil and gas is broadly considered to be public immovable property under Article 55 of the Hague Regulations.⁴⁰¹ The issue

394 Schwarzenberger argues "of immovable property, a change in title would mean going too far. All that the Occupying Power really needs is possession." G Schwarzenberger, *International Law as Applied by International Courts and Tribunals, Volume II The Law of Armed Conflict* (London, Stevens & Sons Limited, 1968) 276.

395 L Oppenheim, *International Law, A Treatise, Vol. II Disputes, War and Neutrality* (Seventh edition, edited by H. Lauterpacht, Longmans, 1952) 403.

396 J Garner, 'Contributions, Requisitions, and Compulsory Service in Occupied Territory' (1917) 11 American Journal of International Law 74, 81.

397 Article 53, Hague Regulations (1907).

398 *N.V De Bataafsche Petroleum Maatschappij and Others v. The War Damage Commission*, Singapore, Court of Appeal, April 13, 1956, 23 International Law Reports 1956, (London, Butterworth & Co. (Publishers) Ltd., 1960) p. 810.

399 *Ibid.*, p. 802.

400 *Ibid.*, p. 823.

401 *Ibid.*, 821; E Cummings, 'Oil Resources in Occupied Arab Territories Under the Law of Belligerent Occupation' (1974) 9 Journal of International Law and Economics 557-558; Y Arai, *The Law of Occupation: Continuity and Change of International Humanitarian Law, and Its Interaction with International Human Rights Law* (Martinus Nijhoff Publishers, 2009) 212.

is one of direct usability. For example, extracted oil in storage tanks would be considered moveable property and requisitioned under Article 53(2) of the Hague Regulations provided it is intended for direct use in military operations.

It is important to distinguish between the public and private characterisation of property for the purposes of military use.⁴⁰² Significantly, the laws in force prior to the Israeli occupation categorised oil and gas resources as public. Article 11 of the Palestine Mandate placed natural resources under public ownership, and this law continued in force during the Egyptian occupation of the Gaza Strip. During the Jordanian occupation of the West Bank, Law No. (37) of 1966, Jordan placed minerals including oil and gas under public administration.⁴⁰³ The public character of oil and gas is reflected in Article 85 of the Basic Law (2002) of the State of Palestine which governs the utilisation of natural resources as ‘state owned’ property.⁴⁰⁴ Chapter 1, of Palestinian Legislative Council Law No. (1) of 1999 for Natural Resources defines ‘natural resources’ as including “hydrocarbons, rocks, sand and salt available in the earth’s core or surface, territorial waters, dead sea, regional economic zone and geology and movement of underground water”.⁴⁰⁵ Significantly the definition widely encompasses both immovable and moveable property attached to the land, and present in the territorial waters. Natural resources discovered in the “territorial waters and free zone” are considered public property while quarried materials such as lime, sand stones and sand remain under private ownership for mining purposes.⁴⁰⁶

ii. Usufruct of Public Immoveable Property

Article 55 of the Hague Regulations facilitates the belligerent occupant’s use of public immovable property with the belligerent occupant acquiring temporary *usufructuary* privileges for this purpose. Article 55 of the Hague Regulations provides:

“the occupying state 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.”⁴⁰⁷

The policy underpinning *usufruct* is to ensure that the protection and functional maintenance of the immovable property of the occupied State remains intact for the returning sovereign.⁴⁰⁸ Consequently, Israel’s use of public immovable property is limited by the Article 55 duty to safeguard the capital of the property. Moreover, as *usufructuary*, Israel should not use the property in a wasteful or negligent

⁴⁰² Article 46, Hague Regulations (1907); Article 52, Hague Regulations (1907).

⁴⁰³ Article 11, The Palestine Mandate; Article 45, Basic Law No. 255 <http://www.dft.gov.ps/index.php?option=com_dataentry&pid=12&leg_id=%2014> accessed 9 May 2015; Article 30-48, Law No. (37) of 1966, The Provisional Law on Regulation of the Affairs of Natural Resources.

⁴⁰⁴ Article 85, 2002 Basic Law (May 29, 2002).

⁴⁰⁵ Natural Resources Law (No.1), 1999, Published in Palestinian Gazette (Palestinian National Authority), Issue No. 28, 13/03/1999 at page 10.

⁴⁰⁶ Article 6, Natural Resources Law (No.1), 1999

⁴⁰⁷ Article 55, Hague Regulations (1907).

⁴⁰⁸ This protection of immovable state property in one respect runs parallel with the prohibition on forced transfers of population under Article 49 of Geneva Convention IV in relation to settlements. Permanent settlements on public owned immovable property would offend against the temporary nature of usufruct.

manner as would seriously impair the properties value.⁴⁰⁹ ‘Safeguarding the capital’ prohibits the occupant from any exploitation of the public resource. For example, excess tree felling is proscribed and profuse mining that would impair the resource is forbidden, as both would impact negatively on the owner’s enjoyment of the property on termination of the *usufruct*.⁴¹⁰ Accordingly, Israel is obligated to maintain and continue the functioning of the Gaza Marine 1 and 2 Wells, which BG Group had already started, its failure to do so risks impairing the value of the property.

Israel’s Long Term Lease and the Temporary Usufruct

The temporary nature of belligerent occupation initially established in Article 43 of the Hague Regulations, extends to Article 55.⁴¹¹ The occupant is prevented from making permanent changes to the laws in the occupied territory and this combined with the *de facto* authority established under Article 42 is illustrative of the occupant’s temporary presence on the territory.⁴¹² In *French Claims Against Peru, 1901* (the Guano case), the Franco Chilean Arbitration Tribunal established *inter alia* that the relationship the belligerent occupant enjoys over public immovable property is temporary.⁴¹³ While States may lease or contract out their *usufructuary* rights to companies, the terms of the lease must comport with Article 55.⁴¹⁴ Accordingly, Israel’s grant of long-term thirty-year leases to Givot Olam for the Meged-5 oil well, exceed the temporary nature of belligerent occupation and Article 55 of the Hague Regulations.⁴¹⁵ According to Whitton J. in *Bataafsche*, even an Article 53(2) seizure “never transfers title, and in the case of an expendable product the occupier is under a duty to return to the owner at the end of the hostilities the unexpended portion.”⁴¹⁶

⁴⁰⁹ The US Army Field Manual 27-19 §402 (1956).

⁴¹⁰ Oppenheim warns that the usufructuary is “prohibited from exercising his right in a wasteful or negligent way so as to decrease the value of the stock and plant.” L. Oppenheim (n 395) 398; Greenspan adds that the usufructuary must not “impair” the value of the property. M Greenspan, *The Modern Law of Land Warfare* (University of California Press, 1959) 288.

⁴¹¹ Article 43, Hague Regulations (1907). “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in is power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

⁴¹² Article 31 of the predecessor Lieber Code, 1863 similarly provided that the title to immovable property “remains in abeyance during military occupation, and until the conquest is made complete” and Article 52 of the Oxford Code, 1880 conveyed that the occupant “may only provisionally administer the immovables.” Article 31, Instructions for the Government of Armies of the United States in the Field, Prepared by Francis Lieber, promulgated as General Orders No. 100 by President Lincoln, 24 April 1863.

⁴¹³ *Award in the Matter of the French Claims Against Peru*, 15 U.N.R.I.A.A. 125 (1901). More at ‘Award in the Matter of the “French Claims Against Peru” (1922) 16(3) The American Journal of International Law 480-484; G Schwarzenberger (n 394) 311-313.

⁴¹⁴ The US Army Field Manual 27-19 §402 (1956) states:

“Real property of the enemy State which is essentially of a non-military nature, such as public buildings and offices, land, forests, parks, farms, and mines, may not be damaged or destroyed unless such destruction is rendered absolutely necessary by military operations ... The occupant does not have the right of sale or unqualified use of such property. As administrator, or *usufructuary*, he should not exercise his rights in such a wasteful and negligent manner as seriously to impair its value. He may, however, lease or utilize public lands or buildings, sell the crops, cut and sell timber, and work the mines. The term of a lease or contract should not extend beyond the conclusion of the war”.

⁴¹⁵ (this also applies to Afek Oil and Gas in the Golan Heights). M Greenspan (n 410) 288. “The occupant may lease State property, although leases and contracts in relation to public property should not extend beyond the duration of the occupation.”

⁴¹⁶ ‘*N.V De Bataafsche Petroleum Maatschappij and Ors. v. The War Damage Commission*’ (1957) *The American Journal of International Law*, 51(4) 802, 847-848.

Prohibition on Opening New Mines

Opening and exploiting new oil and gas wells in occupied territory is a violation of Article 55 of the Hague Regulations.⁴¹⁷ While the belligerent occupant can use existing mines in order to maintain the functioning and integrity of the property, there is an explicit prohibition on the development of new mines during occupation.⁴¹⁸ Exploiting new mines would substantially deplete the capital of the property, as oil and gas resources are finite.⁴¹⁹ During the Israeli occupation of the Sinai in the 1970's, Israel drilled new oil wells, commercially exploiting and appropriating Egyptian oil located in the continental shelf. In a Memorandum of Understanding, the United States considered that the regime of belligerent occupation extended to the territorial sea.⁴²⁰ Accordingly, the Memorandum rejected Israel's contention that it had the right to open new mines under the laws of belligerent occupation, concluding "an occupant's rights under international law do not include the right to develop a new oil field, to use the oil resources of occupied territory for the general benefit of the home economy or to grant oil concessions".⁴²¹

The Israeli High Court of Justice (IHCJ) has considered the development of new mines in Area C, not yet transferred to Palestinian Authority control as a political-security issue outside the competence of the military commander.⁴²² In *Yesh Din v IDF Commander in the West Bank* (2011) the IHCJ characterized the exploitation of quarries by Israel in Area C as a political-security-national issue and thus beyond the jurisdiction of the Court subject to future political negotiations.⁴²³ The ruling upheld the Israeli practice whereby the authority to administer natural resources in the OPT, ceded from the military commander and was absorbed into Israeli government departments akin to annexation. The ruling allowed private Israeli corporations to exploit immovable Palestinian quarries for commercial profit, beyond the reach of occupation law. The Courts interpretation facilitates Israel's illegal natural resource exploitation in Area C which clearly violates Article 55 of the Hague Regulations. Israel's drilling into Palestinian territory at Meged-5 and drilling of boreholes and wells in occupied Gaza during the 1970's, including Til-1,⁴²⁴ Kefar Darom 1, Nezarim 1 and Gaza 1, exceeds the *usufructuary* privileges of the belligerent occupant.⁴²⁵

417 Y Arai (n 387) 210; B Claggett, T Johnson, 'May Israel as a Belligerent Occupant Lawfully Exploit Previously Unexploited Oil Resources of the Gulf of Suez?' (1978) 72(3) *The American Journal of International Law* 558, 574-5.

418 B Claggett; T Johnson, (n 417) 558, 574; Article 52, Oxford Code (n 412) "The occupant can only act in the capacity of provisional administrator in respect to real property, such as buildings, forests, agricultural establishments, belonging to the enemy State (Article 6). It must safeguard the capital of these properties and see to their maintenance.

419 D. Kretzmer, 'The Law of Belligerent Occupation in the Supreme Court of Israel' (2012) 94 (885) *International Review of the Red Cross* 220.

420 'United States: Department of State Memorandum of Law on Israel's Right to Develop New Oil Fields in Sinai and the Gulf of Suez' 16 *International Legal Materials* 733, 735; A Gerson, 'Off-shore Oil Exploration by a Belligerent Occupying Power: The Gulf of Suez Dispute', (1977) 71 *American Journal of International Law* 725, 730-2.

421 *Ibid.*, ILM 733, 735.

422 HCJ 2164/09 Expert Legal Opinion, *Yesh Din – Volunteers for Human Rights v Commander of IDF Forces in West Bank et al* (December 26, 2011) para 67.

423 *Ibid.*, para. 6.

424 See map < http://www.gsi.gov.il/_Uploads/1074GSI-31-2008.pdf > accessed 9 May 2015.

425 (This also applies to exploratory wells in the occupied Golan Heights). G Gvirtzman et al., 'The Late Tertiary of the Coastal Plain and Continental Shelf of Israel and its Bearing on the History of the Eastern Mediterranean' (Geological Survey of Israel) 1201.

Exploiting Natural Resources for Commercial Profit

In addition to the above, using the fruits of finite immovable property for commercial profit, is prohibited under Article 55. Generally a *usufructuary* privilege permits the user to appropriate the fruits of the property.⁴²⁶ However, finite non-renewable resources such as oil and gas do not constitute fruits for these purposes and instead form part of the occupied territories capital.⁴²⁷ Immoveable property may be used to help defray the expenses of the administration of the occupied territory, or for purposes benefitting the occupied population. However, it is explicitly prohibited under Article 55 to procure the use of immovable property for economic profit.⁴²⁸ Accordingly, the extractions of oil and gas by Givot Olam and the Noble Energy conglomerate for private commercial gain are prohibited under Article 55.⁴²⁹

8.2.3 Appropriation of Gas Revenues and Taxes

Israel's appropriation of customs clearance revenues including revenues from energy destined for the Palestinian market exceeds its administrative obligations under IHL. Article 48 of the Hague Regulations governs the belligerent occupants administration of taxes and revenues within occupied territory.⁴³⁰ Article 49 allows contributions to be collected "for the needs of the army or of the administration of the territory in question". Drawing on Article 43 of the Hague Regulations, the collection of taxes, dues and tolls are imposed "for the benefit of the State" and are "as far as is possible" based on the rules in force on assessment and incidence in the occupied State. However, it is accepted in international practice that local municipalities will still levy local taxes independently of the belligerent occupant.⁴³¹ Naturally, the rules may be modified where it is in the best interests of the occupied State to do so.⁴³² However in *Abu Aita v Commander of Judea and Samaria (VAT case)* (1983) Justice Shamgar upheld a military order introducing equalising VAT on products and services in the occupied territories, in parallel with Israel's economy and patently for the benefit of Israel.⁴³³ The imposition of disproportionate tax rates and dues which followed were categorically denounced

426 Fruits of the property are described in the German Civil Code, *Bürgerliches Gesetzbuch* [BGB] Section 99. (Übersetzung der Bücher 1 und 2 des Bürgerlichen Gesetzbuches durch ein Übersetzer-Team des Langenscheidt Übersetzungsservice.) (1) Fruits of a thing are the products of the thing and the other yield obtained from the thing in accordance with its intended use. (2) Fruits of a right are the proceeds that the right produces in accordance with its intended use, in particular, in the case of a right to extract component parts of the soil, the parts extracted. (3) Fruits are also the proceeds supplied by a thing or a right by virtue of a legal relationship.

427 Al-Haq, 'Pillage of the Dead Sea: Israel's Unlawful Exploitation of Natural Resources in the Occupied Palestinian Territory' (2012) 28.

428 A Cassese, 'Powers and Duties of an Occupant in Relation to Land and Natural Resources', in *The Human Dimension of International Law: Selected Papers of Antonio Cassese* (Oxford University Press, 2008) 428; E Benvenisti, 'Water Conflicts During the Occupation of Iraq (2003) 97 *The American Journal of International Law* 860, 869.

429 This also applies to Afek Oil and Gas in the Golan Heights.

430 Article 48, Hague Regulations (1907). "If, in the territory occupied, the occupant collects the taxes, dues, and tolls imposed for the benefit of the State, he shall do so, as far as is possible, in accordance with the rules of assessment and incidence in force, and shall in consequence be bound to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound."

431 In *re Lecoq and Others* (1944), the French Council d'État found that the municipal council retained the authority to impose a special tax on commercial transactions for the maintenance of public order provided that such determination did not conflict with the rights of the occupying Power. In *re Lecoq and Others*, (January 7, 1944) France, Conseil d'État, Annual Digest and Reports of Public International Law Cases Years 1943-1945, (London Butterworth & Co. (Publishers), Ltd, 1949) Case No. 161, p. 453.

432 J Stone, *Legal Controls of International Conflict* (New York, 1959) 712.

433 HCJ 69/81, *Abu Aita et al. v. Commander of Judea and Samaria et al. (VAT case)*, 37(2) PD 197, 310. English translation in 13 *IYHR* 348 (1983).

by the UN General Assembly in Resolution 41/63 D.⁴³⁴ Moreover von Glahn argues that “the courts decision did not incorporate convincing evidence that the new tax actually served to improve (or even to maintain) the civil life of the population, nor that there was shown any evidence that the imposition of the new tax served the needs of the occupying Israel Defense Forces”.⁴³⁵

Despite the illegality of imposing the occupants tax regime on the occupied State, the equalizing tax relationship was adopted with the creation of the semi-customs union under the Oslo Accords. Article 7 of the Paris Protocol (1994) required that the Palestinian Authority maintain a fixed level of VAT synchronized within 2 percent of Israel’s VAT rate.⁴³⁶ However Article 7, Article 8 and Article 47 of the Fourth Geneva Convention together prohibit agreements which result in the denial of Convention rights. For example, Article 7 of the Fourth Geneva Convention ensures that protected persons will not be adversely affected by special agreements.⁴³⁷ Article 8 prevents protected persons from renouncing the rights secured to them by the Convention.⁴³⁸ Similarly Article 47 of the Fourth Geneva Convention expands on this protection and ensures that “agreements concluded between the authorities of the occupied territories and the Occupying Power” will not deprive protected persons of their rights under the Convention.⁴³⁹ Although the prohibitions on special agreements derive from the Geneva Conventions, the provisions also apply to agreements concluded in contravention of the Hague Regulations. Article 154 of the Fourth Geneva Convention bridges the Hague and Geneva Conventions, the latter being supplementary to Sections II and III of the Hague Regulations.⁴⁴⁰

Critically, Article 48 strictly establishes that monies may only be used for the purposes of administering the occupied territory. The belligerent occupant is bound by an Article 48 duty, “to defray the expenses of the administration of the occupied territory to the same extent as the legitimate Government was so bound”. Accordingly, taxes, dues and tolls collected under for the administration of the territory are protected from Article 53 requisition for “military operations”.⁴⁴¹ This understanding is succinct with the predecessor 1880 Oxford Manual that “the occupant is not free to dispose of what still belongs to the enemy and is not of use in military operation”.⁴⁴²

434 GA Res. 41/63D (Dec. 3., 1986).

435 G von Glahn, ‘Taxation under Belligerent Occupation’ in E. Playfair, *International Law and the Administration of Occupied Territories* (Clarendon Press Oxford, 1988) 372.

436 Article 7, Gaza-Jericho Agreement Annex IV.

437 Article 7, Fourth Geneva Convention (1949).

438 Article 8, Fourth Geneva Convention (1949).

439 Article 47, Fourth Geneva Convention (1949)

440 Article 154, Fourth Geneva Convention (1949); *Advisory Opinion, Legal Consequences* (n 365) par 89.

441 Dinstein (n 363) 218; Sorensen, *Manual of Public International Law* (New York, MacMillan, St Martin’s Press, 1968) 834; G von Glahn, *The Occupation of Enemy Territory: A Commentary on the Law and Practice of Belligerent Occupation* (University of Minnesota Press, 1957) 180.

442 Article 50, Oxford Code (n 412) “Although the occupant replaces the enemy State in the government of the invaded territory, his power is not absolute. So long as the fate of this territory remains in suspense – that is, until peace – the occupant is not free to dispose of what still belongs to the enemy and is not of use in military operation. Hence the following rules:

Art. 50. The occupant can only take possession of cash, funds and realisable or negotiable securities which are strictly the property of the State, depots of arms, supplies, and, in general, moveable property of the State of such character as to be useful in military operations.”

A distinction may be drawn between Article 53 “cash, funds and realizable securities” belonging to the State, and the collection of Article 48 taxes and revenues used for the administration of the occupied State, the former traditionally was subject to appropriation during armed conflict, while the latter was always specifically protected.⁴⁴³ Accordingly, Israel’s collection and appropriation of customs clearance revenues on electricity, petroleum, gas and fuel imports belonging to the State of Palestine, falls outside the requisition parameters of Article 53 of the Hague Regulations and is absolutely prohibited under Article 48 of the Hague Regulations. Moreover, the measures infringe upon Palestinian peoples rights to permanent sovereignty over their “national resources”.⁴⁴⁴

8.2.4 Appropriation of Natural Resources and Revenues

Israel’s exploitation of oil and gas deposits, forced depression of the Palestinian economy, the appropriation of Palestinian revenues, perpetuated by the forced territorial fragmentation of the State of Palestine amounts to economic spoliation. In *re Farben*, the Military Tribunal at Nuremberg considered the crime of spoliation, as the “wanton, premeditated, and systematic destruction or plunder of the economic substance of occupied territory”.⁴⁴⁵ The terms, ‘spoliation’, ‘plunder’, ‘pillage’, ‘looting’, ‘sacking’ and ‘exploitation’ have been used interchangeably in reference to the appropriation of property in international criminal law.⁴⁴⁶ Alternatively, spoliation appears as the war crime of appropriation in Article 8(2)(a)(iv) of the Rome Statute.⁴⁴⁷ Zimmerman contends that the crime pertains specifically to crimes of appropriation conducted during the context of a belligerent occupation.⁴⁴⁸ Notably the crime covers both private and public property.⁴⁴⁹ Significantly, the act of seizure or taking possession of property, is a component of the crime of appropriation.⁴⁵⁰ This element is especially applicable to the seizure or withholding of Palestinian gas deposits preventing their development in the Gaza Marine and forcible possession by naval closure.⁴⁵¹ Similarly, it is applicable to Israel’s *ad hoc* seizure and withholding of Palestinian revenues also constituting collective punishment.⁴⁵²

Furthermore “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” amounts to a grave breach under Article 147 of the Fourth

443 Italy, Law of War Decree, 1938, Article 60; Philippines, Articles of War, 1938, Article 80.

444 Economic and Social Council resolution 2005/51. E/2005/1.24/Rev.1, par 5. “Reaffirms the inalienable right of the Palestinian people and the Arab population of the occupied Syrian Golan to all their natural and economic resources, and calls upon Israel, the occupying Power, not to exploit, endanger or cause loss or depletion to those resources.”

445 A. Gerson (n 420) 725, 730.

446 K Ambos, *Treatise on International Criminal Law, Volume II, The Crimes and Sentencing* (Oxford University Press, 2014) 171.

447 Article 8 (2)(a)(iv), Rome Statute (1998). “Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”.

448 J Doria, HP Gasser, MC Bassiouni, *The Legal Regime of the International Criminal Court: Essays in Honour of Professor Igor Blishchenko* (Martinus Nijhoff Publishers, 2009) 522.

449 *Prosecutor v Jelisic*, Trial Judgment (No IT-95-10-T).

450 B Garner, *Dictionary of Legal Usage* (Oxford University Press, 2009) 1480.

451 *Armed Activities* (n 365).

452 Article 50, Hague Regulations (1907); Article 33, Fourth Geneva Convention (1907); M Pertile, ‘Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory: A Missed Opportunity for International Humanitarian Law?’ (2004) 14 *The Italian Yearbook of International Law* 121, 147-148.



Geneva Convention.⁴⁵³ Accordingly the appropriation of approximately \$300 million USD per annum in fiscal leakages, may reach the threshold requisite for consideration as a grave breach.⁴⁵⁴ Similarly, the appropriation of Palestinian oil in Meged-5 and the appropriation of Palestinian gas in the Border Field, may further constitute a grave breach.⁴⁵⁵

8.3 INTERNATIONAL HUMAN RIGHTS LAW

In the Commentary on Article 12 of the Guiding Principles on Business and Human Rights, commercial enterprises are directed to not only respect internationally recognized human rights, but also to “respect the standards of international humanitarian law” in situations of armed conflict.⁴⁵⁶ Many international corporations have incorporated the principles into their Corporate Social Responsibility Policies and Codes of Conduct. For example, in its 2013 Sustainability Report, Noble Energy indicated that it would promote the rights detailed in the UN Declaration on Human Rights and apply the Voluntary Principles on Security and Human Rights.⁴⁵⁷

Despite this, Gaza’s maritime space has been closed to protect Noble Energy’s Mari-B investment. Israel’s deliberate targeting and killing of civilian Palestinian fishermen to maintain the security of Noble Energy’s gas investments, violates their right to life guaranteed by Article 6 of ICCPR. The closure of the territorial waters of the Gaza Strip restricting Palestinians to a six-mile limit violates Article 12 of ICCPR on the right to freedom of movement. This is particularly concerning where the infringement prevents Palestinians from accessing and developing their natural gas resources for much needed domestic revenues. The determined efforts of Israel to impede development in the OPT, by leasing rights over natural resources to corporations, also violates the right to development as outlined in the Declaration on the Right to Development.⁴⁵⁸ Preventing the Palestinian population from accessing and developing their natural resources constitutes an infringement of the right to self-determination and to permanent sovereignty over their natural resources (see section 9.1).

8.3.1 The Right to Development

The collective right to Palestinian economic development has been systematically curtailed by Israeli policies and practices, by the imposed closure of borders of the Gaza Strip and West Bank, the annexation of Palestinian land by the Annexation Wall and preventing the development of Palestinian oil and gas energy resources.

At the International Conference on Human Rights in Tehran (1968) the Conference advanced “that the enjoyment of economic and social rights is inherently linked with any meaningful and profound

453 Article 147, Fourth Geneva Convention (1949).

454 Palestinian Fiscal Revenue Leakage (n 38) 39.

455 *Armed Activities* (n 365). (This similarly applies to oil exploited from the Golan Heights).

456 United Nations, Guiding Principles on Business and Human Rights, Implementing the United Nations “Protect, Respect and Remedy” Framework (2011), 15.

457 Noble Energy, ‘Sustainability Report: Standing for the Future’ (2013) <http://sr.nobleenergyinc.com/2013-sustainability-report/#2013-csr-policy> accessed 26 January 2015.

458 41/128 Declaration on the Right to Development; Human Rights Council, Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development, A/HRC/8/5, 7 April 2008.

interconnection between the realization of human rights and economic development.”⁴⁵⁹ Article 55 of the Charter of the United Nations explicitly refers to the promotion of “economic and social progress and development”.⁴⁶⁰ Article 1(2) of the Declaration on the Right to Development establishes “the human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both international covenants on human rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources”.⁴⁶¹ The African Commission on Human and People’s Rights in *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* found Kenya’s removal of the Endorois people from ancestral lands and subsequent prevention of access to land in order to create a game reserve for tourism violated the right to development under the Article 22 of the African Charter.⁴⁶² Drawing on the UN Declaration on the Right to Development, the African Commission considered that the result of development is empowerment, while the right is realized when capabilities and choices are improved.⁴⁶³

Similarly, Israel’s prevention of Palestinian access to natural resources coupled with the policy to frustrate Palestinian plans to develop the Gaza Marine, Border field and oil fields at *Rantis* purposefully prevents the empowerment of the occupied Palestinian population. This further infringes upon Article 28 of the Universal Declaration on Human Rights underscoring the necessity of realizing collective⁴⁶⁴ and individual human rights within a social and international order.⁴⁶⁵ Consequently, denial of the right to development has a knock on effect on the realization of other rights such as the right to work, the right to culture and the general fulfillment of “basic needs”.⁴⁶⁶

459 United Nations ‘Declaration of the right to Development at 25’ <<http://www.ohchr.org/EN/Issues/Development/Pages/Backgroundtrtd.aspx>> accessed 20 January 2015.

460 Article 55, Charter of the United Nations (1945).

461 Article 1(2), United Nations General Assembly resolution 41/128.

462 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 276/2003.

463 *Ibid.*, para 283.

464 H Espiell, ‘The Right of Development as a Human Right’ (1981) 16 *Texas International Law Journal* 189, 191.

465 Article 28, Universal Declaration of Human Rights <<http://www.un.org/en/documents/udhr/index.shtml#a28>> accessed 20 January 2015.

466 UN Committee on Economic, Social and Cultural Rights, General Comment Number 18, The Right to Work (24 November 2005), E/C.12/GC/18, Para 2; E/C.12/GC/21, UN Committee on Economic, Social and Cultural Rights, General Comment No. 21, Right of everyone to take part in cultural life. Art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights), para 3; F Stewart, ‘Basic Needs Strategies, Human Rights and the Right to Development’ (1989) 11 *Human Rights Quarterly* 347, 349; A James, Report of the Special Rapporteur on the Rights of Indigenous Peoples (6 July 2012) A/HRC/21/47, para 50.



8.4 CUSTOMARY INTERNATIONAL LAW

8.4.1 Naval Closure of the Gaza Strip

Israel has enforced an illegal naval closure of the Gaza Strip (see section 5.1). The closure formally declared by Israel under the pretext of Operation Cast Lead has continued beyond the close of hostilities.⁴⁶⁷ More recently, Israeli OC Navy Adm. Ram Rothberg remarked that operations continued in enemy waters to ensure the protection of rigs, gas resources and economic interests.⁴⁶⁸

The closure amounts to an illegal naval blockade of Palestine's maritime space. The 1858 Declaration of Paris provides the *de jure* basis for a naval blockade where the blockading State provides a formal notification coupled with the blockading act of the naval forces to establish a legally binding blockade on neutral states.⁴⁶⁹ The provisions of the 1909 Declaration Concerning the Laws of Naval War (London Declaration) on announcing and notifying naval blockades are considered customary international law.⁴⁷⁰

However establishing and maintaining a naval blockade during an ongoing belligerent occupation is illegal. The West Bank and Gaza Strip constitute one single territorial unit and a blockade of Palestine's maritime space equally affects the West Bank.⁴⁷¹ The 1909 Declaration Concerning the Laws of Naval War narrowly provides for "blockade in time of war".⁴⁷² Additionally, the San Remo Manual outlines that a blockade is prohibited if:

- (a) it has the sole purpose of starving the civilian population or denying it other objects essential for its survival; or
- (b) the damage to the civilian population is, or may be expected to be, excessive in relation to the concrete and direct military advantage anticipated from the blockade.⁴⁷³

Notably the language of 'concrete and direct military advantage anticipated' employed in Article 102(b) mirrors the principle of proportionality in attack, a customary and treaty provision pertaining to conduct of hostilities and not belligerent occupation.⁴⁷⁴ Similarly Greenwood outlines that a blockade is "generally regarded as an act of war".⁴⁷⁵ However the enforcement of a protracted naval blockade

⁴⁶⁷ IDF Chief of General Staff, Gabi Ashkenazi's testimony to the Turkel Committee: Public Commission to Examine the Maritime Incident of May 31, 2010, Session Number 4, 11 August 2010, p. 13.

⁴⁶⁸ Y Katz (n 194).

⁴⁶⁹ C Joyner, *International Law in the 21st Century, Rules for Global Governance* (Rowman and Littlefield Publishers, 2005) 183.

⁴⁷⁰ D Fleck, *The Handbook of International Humanitarian Law* (Oxford University Press, 3rd edition, 2013) para 1052.

⁴⁷¹ Article IV, Jurisdiction, Declaration of Principles on Interim Self-Government Arrangements, in United Nations, *Towards a Two State Solution, An Israeli-Palestinian Dialogue* (United Nations Department of Public Information, May 2004) 188.

⁴⁷² Article 1, Declaration Concerning the Laws of Naval Warfare in D Schindler, J Toman, *The Laws of Armed Conflicts* (Martinus Nijhoff, 1988) 845-856.

⁴⁷³ Article 102, San Remo Manual on International Law Applicable to Armed Conflicts at Sea (12 June 1994).

⁴⁷⁴ Article 51 (5)(b), Additional Protocol 1, Rule 14, ICRC, Customary IHL

⁴⁷⁵ C Greenwood, 'Blockade as an Act of War' *Crimes of War* < <http://www.crimesofwar.org/a-z-guide/blockade-as-an-act-of-war/> accessed 20 January 2015.

outside of actual hostilities during an ongoing belligerent occupation designed to inflict hardship on the occupied population constitutes collective punishment and a war crime under international humanitarian law.⁴⁷⁶ In this vein, the UN Human Rights Council *Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance* found that the 'blockade or closure regime' was a 'single disproportionate measure of armed conflict' constituting an illegal collective punishment of the people of Gaza.⁴⁷⁷ The closure of Palestine's maritime space for the purposes of protecting Israel's commercial gas interests and preventing the development of Palestine's sovereign gas wealth is prohibited under the customary law of blockade.

8.5 THE LAW OF THE SEA

8.5.1 Access to Gaza Marine and Border Field

Through its ongoing closure of the Gaza Strip and maritime space Israel has denied Palestinian access to the Gaza Marine located 19 nm from the coast and the Border field parallel to it.⁴⁷⁸ Notably, the Gaza Marine is located within Zone L under the Oslo Accords which Palestine has rights of access to for fishing recreation and economic activities. The Border Field lies in closed Zone K under the Oslo Accords. Regardless of the agreement, the State of Palestine has customary international law rights to a territorial sea a contiguous zone and an exclusive economic zone.

The territorial sea is governed by Article 2 of UNCLOS which extends the sovereignty of the coastal State "beyond its land and its internal waters" to "an adjacent belt of sea", otherwise known as the territorial sea.⁴⁷⁹ The States sovereignty extends to the airspace above the territorial sea and to the bed and subsoil beneath. Article 3 of UNCLOS provides that every State has a right to establish the breadth of the territorial sea to a distance of 12 nm.⁴⁸⁰ In 1973, the 12-mile rule was regarded as customary international law by the UN Third Conference on the Law of the Sea.⁴⁸¹ Although Israel has not signed

⁴⁷⁶ Article 33, Fourth Geneva Convention (1949).

⁴⁷⁷ Human Rights Council, Report of the international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance, A/HRC/51/21 para 59-61 <http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.21_en.pdf> accessed 20 January 2015.

⁴⁷⁸ Update, Delek, 'Noa Energy begin laying Noa pipeline' *Globes* (15 May 2012) < <http://www.globes.co.il/en/article-1000748979>> accessed 20 January 2015. (The Border field extends from the Noa South field).

⁴⁷⁹ Article 2, UNCLOS (1982); Article 1, Convention on the Territorial Sea and the Contiguous Zone (Geneva, 1958, No. 7477, United Nations Treaty Series, p. 206) at <https://treaties.un.org/doc/Publication/UNTS/Volume%20516/v516.pdf> accessed 20 January 2015; Article 2 UNCLOS, "1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea."

2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.

3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law."

⁴⁸⁰ Article 3, UNCLOS (1982). "Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention."; When the United Nations convened the 1957 conference on the law of the sea, the twelve-mile rule was considered an emerging customary norm, however by United Nations Third Conference on the Law of the Sea in 1973, the measurement was widely practiced and regarded as customary international law. J Crawford, DR Rothwell, *The Law of the Sea in the Asian Pacific Region: Developments and Prospects* (Kluwer Academic Publishers, 1995) 201; ML Lee, 'The Interrelation Between the Law of the Sea Convention and Customary International Law' (2005-2006) 7 *San Diego International Law Journal* 405, 412; LM Macrae, 'Customary International Law and the United Nations' Law of the Sea Treaty' (1983) 13 *California Western International Law Journal* 181, 216-213.

⁴⁸¹ J Crawford, DR Rothwell, (n 480) 201; ML Lee (n 480) 405, 412; 13 *Cal. W. Int'l L.J.* 216-213 1983.

or ratified the UNCLOS, it has amended its laws on the territorial sea, to reflect Convention norms. In 1990, Israel extended its territorial waters from 6 to 12 nm to reflect international practice.⁴⁸²

Article 6 of Palestine's Natural Resources Law (No.1) 1999 outlines that natural resources discovered in the "territorial waters and free zone" are considered public property.⁴⁸³ The free zone extends to 20 nm off the Gaza coast. Customary international law establishes that states may claim a territorial sea of 12 nm and a further 12 nm contiguous zone adjacent and contiguous to the territorial sea. Article 33 of UNCLOS establishes that the contiguous zone may not extend to more than 24 nm beyond the baselines.⁴⁸⁴ In this zone, the State may exercise control necessary to:

- (a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea;
- (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.⁴⁸⁵

The original purpose of the contiguous zone is to police activities in the territorial waters.⁴⁸⁶ These rights far exceed the security limitations of the Oslo Accords. Palestine's customary rights to a contiguous zone to its territorial sea extend its customary international law rights of access by a further 4 nm beyond the 20 nm maritime zone concluded under the Oslo Accords.⁴⁸⁷

8.5.2 Palestinian Continental Shelf and EEZ

The State of Palestine has not delimited its EEZ and continental shelf but has customary law rights to natural resources in the continental shelf beyond the Gaza Maritime Zones. On 1 January 2015, the State of Palestine signed the UNCLOS. The treaty entered into force thirty days following the deposit of instrument of ratification.⁴⁸⁸ Until this time, the customary provisions of UNCLOS applied.

Israel is a party to the Convention on the Continental Shelf (1958) but has not ratified UNCLOS, which only supersedes the Convention on the Continental Shelf for those States party to it.⁴⁸⁹ In North Sea Continental Shelf Case, the International Court of Justice declared Articles 1, 2 and 3 of the Convention on the Continental Shelf customary international law.⁴⁹⁰ Under customary international

law the coastal State exercises sovereign rights to natural resources contained in the continental shelf for the purposes of exploitation and exploration.⁴⁹¹ The rights to exploit natural resources in the continental shelf are exclusive and "no one may undertake these activities, or make a claim to the continental shelf, without the express consent of the coastal State".⁴⁹² Further, the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.⁴⁹³

i. Physical Delimitation

Article 76(1) of UNCLOS provides for the delimitation of the continental shelf and is declaratory of customary international law.⁴⁹⁴ It provides that

"The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance."⁴⁹⁵

Jurisdiction derives from the natural prolongation of the continental shelf as an extension of the States territory or the establishment of a 200 nm continental shelf following legal rules of delimitation akin to the establishment of an EEZ.⁴⁹⁶ The right of a State to establish a 200 nm EEZ is recognized in customary international law.⁴⁹⁷

The continental shelf off the coast of Gaza is 28 km or 15 nm wide in the south and 14 km or 7.5 nm in the north. Beyond this the sea bottom drops to a depth of 25 meters consisting of sand sediments.⁴⁹⁸ The continental slope is also included in the measurement and the southernmost slope off Israel bordering Gaza extending to 85 km or 45 nm off the continental shelf, which would bring the continental slope off Gaza to a distance of approximately 60 nm.⁴⁹⁹ Although States can establish

491 Article 21 Convention on the Continental Shelf (29 April 1958), United Nations Treaty Series, No 7302 (1964) 312.

492 *Ibid.*

493 Article 3, Convention on the Continental Shelf (1958)

494 *Territorial and Maritime Dispute, (Nicaragua v Columbia)*, Application by Cost Rica for Permission to Intervene, Judgment of 4 May 2011, I.C.J. Reports 2011

495 Article 76(1), UNCLOS (1982).

496 Article 74, UNCLOS (1982); Article 83 UNCLOS (1982); *Dispute Concerning Delimitation Of The Maritime Boundary Between Bangladesh And Myanmar In The Bay Of Bengal (Bangladesh/Myanmar)*, International Tribunal For The Law Of The Sea, (14 March 2012) Judgment, p. 135, para 468. There is a trend in state practice and judicial and arbitral decisions for the same boundary line to be drawn for the continental shelf as for the EEZ. This is represented in Articles 74 and 83 of UNCLOS, both reflective of customary international law. A Aust, *Handbook of International Law* (Cambridge University Press, second edition, 2010) 289.

497 K Bárbara, *The 200 [two hundred] mile exclusive economic zone in the new law of the sea* (Martinus Nijhoff Publishers, 1989) 28.

498 M Ali, 'The Coastal Zone of Gaza Strip – Palestine Management and Problems' Presentation for MAMA (11-12 March 2002, Paris) < http://overfishing.org/interesting/documents/fisheries_gaza/2002_gaza_briefing_paper.pdf> accessed 9 May 2015.

499 Israel Atomic Energy Commission, *Tsunamis Induced by Submarine Slumpings off the Coast of Israel* (July 1975) 5.

482 Territorial Waters (Amendment) Law, 5750-1990 of 5 February 1990 <http://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulE16.pdf> accessed 20 January 2015.

483 Article 6, Natural Resources Law (No.1), 1999, 10.

484 Article 33, UNCLOS (1982); S Jiuyong, 'The Wang Tiewa Lecture in Public International Law, The Maritime Delimitation in the Jurisprudence of the International Court of Justice' (2010) Chinese Journal of International Law 271, 272.

485 Article 33, UNCLOS (1982).

486 M Bedjaoui, *International Law: Achievements and Prospects* (UNESCO, Martinus Nijhoff Publishers, 1991) 860.

487 JG Laylin, 'Past, Present and Future Development of the Customary International Law of the Sea and the Deep Seabed' (1971) 5(3) International Lawyer 442, 443.

488 Article 308, UNCLOS (1982).

489 United Nations Conference on the Law of the Sea, 1958 <<http://legal.un.org/diplomaticconferences/lawofthesea-1958/lawofthesea-1958.html>> accessed 20 January 2015.

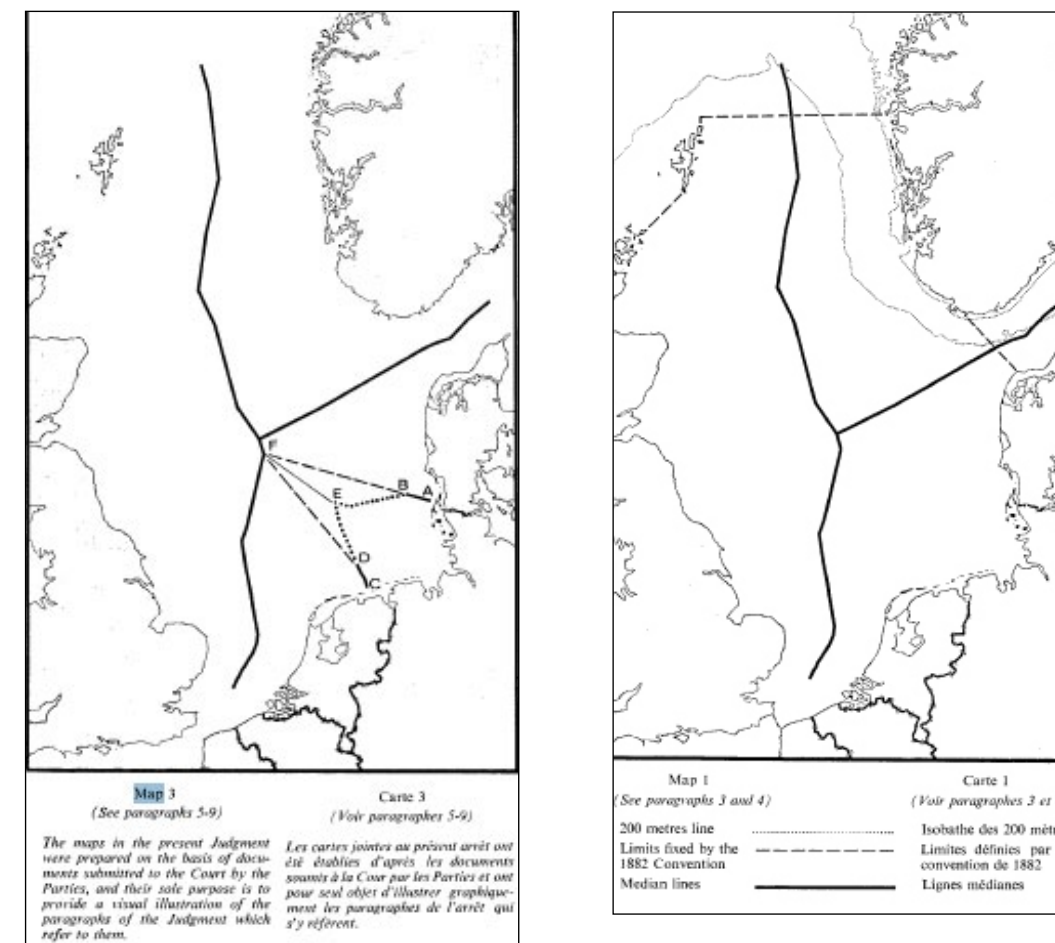
490 *North Sea Continental Shelf Cases* (n 125) 37, 63.

a continental shelf up to a distance of 200 nm and an outer continental shelf to 350 nm,⁵⁰⁰ the natural prolongation off the Gaza coast arguably does not extend that far. Nevertheless, the State of Palestine has customary law rights to its natural continental shelf and slope to distances of approximately 60 nm. The rights of a State over the continental shelf exist *ipso facto* and *ab initio*, by virtue of its sovereignty over the land, and the State does not need to make a good claim over those areas.⁵⁰¹ This would extend Palestine’s rights over its maritime space beyond the Gaza Maritime Zone by a distance of approximately 40 nm. This is space which Israel has allocated as its own and awarded licenses for exploration to international hydrocarbon companies.

ii. Legal Delimitation

Traditionally States have applied an equidistance principle to establish boundaries derived from Article 15 of UNCLOS. For example, “an equidistance line is one for which every point on the line is equidistant from the nearest points on the baselines being used”.⁵⁰² In the *North Sea Continental Shelf Cases*, Germany who was not a party to the Convention argued that the equidistance principle for delimiting the continental shelf, when applied to a concave coastline resulted in an unduly small portion of the continental shelf. The ICJ ruled that Article 6 had not evolved into CIL and used equitable principles, which it considered should be applied to a concave coastline like Germany, or equally a straight coastline should the coasts of adjacent countries protrude immediately on either side.⁵⁰³

Other equitable considerations may include security considerations or geographic disadvantage. In the 1993 *Jan Mayen Case (Denmark v Norway)* the ICJ noted that security considerations could be factored into the measurement of the continental shelf.⁵⁰⁴ Similarly in *Libyan Arab Jamahiriya/Malta* the ICJ found that the delimitation in question was “not so near the coast of either party as to make questions of security a particular consideration”.⁵⁰⁵ Maritime boundaries may be redrawn where security considerations require the boundary to be established further away from one state. The concept of geographic disadvantage is touched upon in relation to the EEZ, but this is more in relation to fishing rights of geographically disadvantaged or landlocked states.⁵⁰⁶



Maps Showing ICJ Delimitation of the German Continental Shelf

Alternatively the State of Palestine can negotiate a legal delimitation of its continental shelf and EEZ with neighbouring opposite and adjacent States of distances up to 200 nm. This would mean that the State of Palestine would have to negotiate points of delimitation with Cyprus. The concave shape of Gaza’s coastline indicate that equitable principles of delimitation may apply to further extend the Palestinian EEZ. Moreover, concepts of geographical disadvantage may be considered given that most Palestinian territory is landlocked, granting additional EEZ fishing rights. A tribunal or court may alter the EEZ to include security considerations. However should the State of Palestine negotiate points of delimitation with Cyprus this would certainly call into dispute Israel’s southernmost EEZ licenses including the Royee license located 150 km or 80 nm from the coast (see section 5.2.4).⁵⁰⁷ Additional coordinates of delimitation could arguably provide for a broader Palestinian EEZ partially absorbing bordering Israeli licenses Noa, Mari-B and Shimson.

⁵⁰⁰ Article 84, UNCLOS (1982).

Charts and lists of geographical coordinates

1. Subject to this Part, the outer limit lines of the continental shelf and the lines of delimitation drawn in accordance with article 83 shall be shown on charts of a scale or scales adequate for ascertaining their position. Where appropriate, lists of geographical coordinates of points, specifying the geodetic datum, may be substituted for such outer limit lines or lines of delimitation.

2. The coastal State shall give due publicity to such charts or lists of geographical coordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations and, in the case of those showing the outer limit lines of the continental shelf, with the Secretary-General of the Authority.

⁵⁰¹ *North Sea Continental Shelf Cases* (n 125) para 19.

⁵⁰² Article 15, UNCLOS (1982); US Department of Interior – <<http://www.gpo.gov/fdsys/pkg/FR-2006-01-03/html/05-24659.htm>> accessed 9 May 2015.

⁵⁰³ *North Sea Continental Shelf Cases* (n 125) para. 8; Similarly *Bangladesh v Myanmar* in the ITLOS considered that it was relevant to include the concavity of the Bangladesh coast as a factor for consideration where the continental shelf had a continuing effect beyond 200 nm. *Bangladesh v Myanmar* (n 496) p. 127, para 433.

⁵⁰⁴ *Jan Mayen Case (Denmark v Norway)*, I.C.J Reports 1993, p. 40, para 81.

⁵⁰⁵ *Libyan Arab Jamahiriya/Malta*, I.C.J. Reports 1985, p. 42, para 51.

⁵⁰⁶ Article 70, UNCLOS (1982).

⁵⁰⁷ Reuters, ‘Update 1 – Israel’s Offshore Royee Field may hold 3.2 tcf Stakeholder Says (14 December 2014) <<http://af.reuters.com/article/energyOilNews/idAFL6N0TY09320141214>> accessed 9 May 2015.

iii. Unilateral Allocated Palestinian EEZ Sliver

Israel does not have rights of sovereignty over the OPT and does not have the competence to conclude delimitation agreements for waters adjacent to Palestine's territorial waters. It is imperative that a State first be able to support a claim to sovereignty over the land before an authoritative legal claim to an EEZ be supported.⁵⁰⁸ A State may not unilaterally delimit an EEZ or continental shelf of another State. The allocation of the EEZ in the absence of participation by, and agreement from the PLO is not binding on the PLO.⁵⁰⁹ Even so, where it is impossible for agreements to be concluded, the ICJ has indicated that delimitation should be effected by recourse to a third party possessing the necessary competence.⁵¹⁰ Furthermore, delimitation is to be effected by the application of equitable criteria and by the use of practical methods capable of ensuring, with regard to the geographic configuration of the area and other relevant circumstances, an equitable result.⁵¹¹ It is not evident that Israel did either.

Notably the State of Palestine has not concluded an EEZ agreement with coastal States and the maritime sliver unilaterally allocated on its behalf has no legal basis in international law. Even if the triangular sliver did depict Palestine's EEZ, there would be good grounds for the State of Palestine to challenge it on the principles of equity. The space does not account for the State of Palestine's concave coastline which may warrant the grant of a wider EEZ. Should this be the case, title to licenses in the Yam Tethys basin may be disputed. In particular, the planned storage facility in Mari-B which receives gas piped from Tamar and when it comes online Leviathan, may also be subject to future Palestinian claims.

8.5.3 Maritime Delimitation and Shared Natural Resources

Israel's exploitation of geographically contiguous oil and gas structures is limited by the Oslo Accords. To date, there is no international treaty law governing shared oil and gas resources of geographically contiguous States.⁵¹² States have deliberately left a legal vacuum in treaty law relying instead on the terms of bilateral agreements.⁵¹³ The subject of contiguous offshore oil and gas resources, are linked to

issues of maritime delimitation addressed by States in relation to the resolution of maritime claims.⁵¹⁴ Such delimitation agreements often provide for joint exploitation of oil and gas deposits, which States have considered represent the 'best way forward' for management purposes.⁵¹⁵ For example, States concluding production agreements may decide to cooperate "through joint companies, through setting up enterprises for joint production, through achieving projects in one of the contracting countries or a third country, through specialization in production by countries and through the joint utilization of available production capacities".⁵¹⁶

In this vein, Oslo 1 established an Israeli-Palestinian continuing Committee for Economic Cooperation, to facilitate joint cooperation in the management of *inter alia* energy⁵¹⁷ and an Energy Development Program was agreed for the "further joint exploitation of other energy resources".⁵¹⁸ Similarly, Article 15(4)(b) of the Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (1995) provided that "Israel and the Palestinian side agree to cooperate concerning production of oil and gas in cases of joint geological structures".⁵¹⁹

The Israeli High Court of Justice (IHCJ) has underscored its obligations relating to shared resources. In *Mara'abe v The Prime Minister of Israel*, the IHCJ found that "the construction of the fence does not affect the implementation of the water agreements".⁵²⁰ This is an acknowledgement of Israel's continued obligations derived from international agreements pertaining to shared resources. Moreover parties are bound by the principle *pacta sunt servanda*.

8.5.4 Pipelines

Israel has laid gas pipelines on Palestine's continental shelf without seeking approval from the PLO as required under international law.⁵²¹ Under Article 55 of the Hague Regulations, the belligerent occupant only acquires temporary *usufructuary* rights over the immoveable property of the occupied territory, including the continental shelf. Accordingly, the belligerent occupant may not grant itself or other entities rights over the occupied continental shelf which vest in the occupied population. Only the sovereign State has the competence to conclude international agreements for the use of

⁵¹⁴ *Ibid.*, para 8.

⁵¹⁵ *Ibid.*

⁵¹⁶ G Elian, *The Principles of Sovereignty over Natural Resources* (Netherlands: Sijthoff and Noordhoff International Publishers B.V Alphen aan den Rijn) 197.

⁵¹⁷ Annex III, Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs, Declaration of Principles on Interim Self-Government Arrangements, 1993; Annex II, Protocol on Withdrawal of Israeli Forces from the Gaza Strip and Jericho Area, 1993.

⁵¹⁸ *Ibid.*, Annex III, para 3.

⁵¹⁹ Article 15(4)(b), The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex III, Protocol Concerning Civil Affairs <<http://www.mfa.gov.il/MFA/ForeignPolicy/Peace/Guide/Pages/THE%20ISRAELI-PALESTINIAN%20INTERIM%20AGREEMENT%20-%20Annex%20III.aspx>> accessed 9 May 2015 (See Annex 1, page 103).

⁵²⁰ *Mara'abe v The Prime Minister of Israel* (n 390) para 67.

⁵²¹ Article 58, UNLCOS (1982), "*Rights and duties of other States in the exclusive economic zone: (paragraph 3) (...)*

3. In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part."; Article 79, UNCLOS (1982), *Submarine cables and pipelines on the continental shelf*.

⁵⁰⁸ C Joyner, 'The Exclusive Economic Zone and Antarctica' (1988) 21(4) *Virginia Journal of International Law* 691, 724; Jessup, 'Sovereignty in Antarctica' (1947) 41 *American Journal of International Law* 117, 118; *Whaling in the Antarctic (Australia v Japan: New Zealand Intervening)* (31 March 2014) I.C.J. judgment, para 39 <<http://www.icj-cij.org/docket/files/148/18136.pdf>> accessed 9 May 2015.

⁵⁰⁹ T Scovazzi, 'Maritime Boundaries in the Eastern Mediterranean' (June 2012) 4 <http://www.gmfus.org/wp-content/blogs.dir/1/files_mf/1339504227Scovazzi_MaritimeBoundaries_Jun12.pdf> accessed 9 May 2015.

⁵¹⁰ *Case Concerning Delimitation Of The Maritime Boundary In The Gulf Of Maine Area*, I.C.J. Reports 1984, Judgment (12 October 1984) p. 246, para 112.

⁵¹¹ *Ibid.*

⁵¹² In common law two approaches have developed. Firstly, the 'rule of capture' premised on the migratory nature of oil, gas and shale oil determines that whoever captures the migrated resources may stake a legal claim of ownership. Alternatively, surface ownership confers rights over all related subsurface reservoirs, which may also result in cross border exploitation of migrating oil and gas resources. However these are rules of domestic law applying internally to migratory resources in competing licensing claims. The international system does not provide the adequate monitoring and enforcement safeguards to facilitate such common law practices. Moreover the regime of belligerent occupation under international law places additional limits on the occupying States use of natural resources.

⁵¹³ International Law Commission <http://legal.un.org/ilc/guide/8_6.htm> accessed 9 May 2015. Notably after significant resistance from States the International Law Commissions Special Rapporteur on Shared Natural Resources discontinued work on shared natural oil and gas resources; A/CN.4/621, International Law Commission, S. Murase, 'Shared Natural Resources: Feasibility of Future Work on Oil and Gas' (9 March 2010) para 7.

its sovereign territory and the *de facto* role of the belligerent occupant falls short of full sovereignty in this regard.⁵²² For example, the International Law Commission has indicated that the acts of the belligerent occupant do not represent the acts of the occupied State and the occupied State does not incur international responsibility for wrongful acts on this basis.⁵²³ These limitations in terms of sovereign capacity were duly recognized in the agreement between Israel and the PLO, in Annex III to the *Declaration of Principles of Self-Government Arrangements*, 1993, requiring joint cooperation in the “construction of oil and gas pipelines”.⁵²⁴

i. El-Arish Pipeline

Between 2005 and 2008 Israel and Egypt negotiated and built a gas pipeline connecting El-Arish in Egypt with Ashkelon in Israel running across Palestine’s continental shelf. Israel has employed lethal security measures to protect the pipeline operating from within Palestine’s maritime space. Article 79 of UNCLOS establishes a right of all States to lay pipelines and submarine cables on the continental shelf of coastal States. However the right to lay pipelines and submarine cables is subject to the consent of the coastal State in relation to the delineated course the laying of pipelines will take.⁵²⁵ The coastal State may take reasonable measures to prevent, reduce and control the pollution from pipelines.⁵²⁶ Furthermore, the coastal State may establish “conditions for cables or pipelines entering its territory or territorial sea”.⁵²⁷ For example the coastal State may require permits under its domestic law placing conditions on the operation of pipelines.⁵²⁸

Similarly, Article 58 of UNCLOS regulates the laying of pipelines in the EEZ and requires that States have “due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State”.⁵²⁹ This may include for example laws on bunkering⁵³⁰, environment⁵³¹ or customs.⁵³² While the negotiation of pipeline agreements is a political issue, the Energy Charter Secretariat established under the 1994 Energy Charter Treaty, has prepared model agreements for cross-border pipelines and model agreements for cross-border electricity projects,

consisting of bilateral model agreements between states and between states and investors which reflect “recent accepted practices within their field of concern”.⁵³³

Under UNCLOS, the State of Palestine may withhold consent for the El-Arish pipeline for environmental reasons. Additionally, the Oslo Accords require joint Israeli Palestinian cooperation for the construction of oil and gas pipelines in the Gaza Strip.⁵³⁴

ii. Gaza Marine pipeline

Israel has consistently refused to allow Palestine to develop its Gaza Marine gas resources politically blocking plans for BG to develop a pipeline from the Gaza Marine to El-Arish in Egypt considered logistically vital to secure the export of liquefied natural gas.⁵³⁵ There is an international law right of all States to lay pipelines on the continental shelf subject to the conditions of the coastal State.⁵³⁶ By preventing the laying of the pipeline, Israel is violating international law obligations. Moreover UNGA Resolution 1803, provides 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.”⁵³⁷

522 Article 7, Vienna Convention on the law of Treaties (1969).

523 Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries (2001), A/56/10, p. 44.

524 Annex III, Declaration of Principles on Interim Self-Government Arrangements, 1993 para 3.

525 Article 79(1), UNCLOS (1982).

526 Article 79(2), UNCLOS (1982).

527 Article 79(4), UNCLOS (1982).

528 A Norman, M Gutierrez, *Serving the Rule of International Maritime Law* (Routledge, 2010) 132.

529 Article 58, UNCLOS (1982).

530 *The M/V “Virginia G” Case (Panama /Guinea-Bissau)*, Judgment (14 April 2014), para 62-64. < http://www.itlos.org/fileadmin/itlos/documents/cases/case_no.19/judgment/C19-Judgment_14.04.14_corr.pdf accessed 9 May 2015.

531 P Bergin, ‘The Antarctica, The Antarctic Treaty Regime, and Legal and Geopolitical Implications of Natural Resource Exploration and Exploitation’ (1988-1989) 4 Florida International Law Journal 1, 34; Moreover, in *Fisheries Jurisdiction Case*, the International Court of Justice interpreted the obligation to have “due regard” housed in Article 58(3), to include environmental obligations for the conservation of living resources on the high seas, while also taking account of fishery conservation measures. *Fisheries Jurisdiction Case (United Kingdom v Iceland)* Judgment I.C.J (25 July 1974) para. 72.

532 G Walker, *Definitions for the Law of the Sea: Terms not defined by the 1982 Convention* (Martinus Nijhoff Publishers, 1982) 180; Essentially ‘due regard’ is a procedural obligation to balance rights and obligations of the States with the jurisdictional duties of the coastal state. J Kraska, *Maritime Power and the Law of the Sea: Expeditionary Operations and World Politics* (New York, 2011) 267.

533 Energy Charter, Model Agreements at <<http://www.encharter.org/index.php?id=38>> last accessed 9 May 2015. Energy Charter Secretariat, Model Intergovernmental and Host Government Agreements for Cross-Border Pipelines <http://www.encharter.org/fileadmin/user_upload/document/ma-en.pdf> accessed 9 May 2015.

534 Annex III, Protocol on Israeli-Palestinian Cooperation in Economic and Development Programs, Declaration of Principles on Interim Self-Government Arrangements (1993) para 3.

535 ‘Economic Costs’ (n 40) 27.

536 Article 4, Convention On The Continental Shelf (1958).

537 1803 (XVII) (14 December 1962).

8.6 INTERNATIONAL ENVIRONMENTAL LAW

8.6.1 Fracking

Israel's techniques of accelerated gas production, deep sea drilling and fracking may have damaged joint geological structures impacting on future Palestinian production of oil and gas.

The United Nations Environment Programmes 'Draft Principles of Conduct for the Guidance of States in the Conservation and Harmonious Exploitation of Natural Resources Shared by Two or More States' represents a system of soft law norms which the General Assembly has requested all States take into account with shared geologically contiguous natural resources in bilateral or multilateral conventions.⁵³⁸ States with shared natural resources are required to cooperate by way of exchange of information, notification and consultations carried out in good faith and avoiding unreasonable delays.⁵³⁹ In particular, there is a customary international law duty to exercise due diligence in activities where harm may be caused to underground aquifers. It is "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States".⁵⁴⁰

Israel is obligated to exercise due diligence to avoid environmental hazards. Accordingly, Israel must uphold the decision of the Jerusalem District Committee for Planning and Building halting IEI's pilot project, employing fracking techniques which could pollute the West Bank aquifer.⁵⁴¹

⁵³⁸ UNEP, Environmental Law Guidelines and Principles on Shared Natural Resources http://www.unep.org/training/programmes/Instructor%20Version/Part_2/Activities/Interest_Groups/Decision-Making/Supplemental/Enviro_Law_Guidelines_Principles_rev2.pdf accessed 9 May 2015.

⁵³⁹ *Ibid.*, Principle 7.

⁵⁴⁰ *Corfu Channel (United Kingdom v. Albania)* (Merits) Judgment ICJ Reports [1949] 22.

⁵⁴¹ H Julian, 'Jerusalem says no to Shale Oil Pilot: Is there a Future Elsewhere in Israel?' *The Jewish Press* (7 September 2014). Of concern are preliminary exploration bordering the Green Line took place in 2011 at the *Shfela* Basin. (In particular Israel must refrain from employing fracking techniques for exploratory drilling and extraction at Golan which may pollute the Sea of Galilee. A Barkat, 'Afek Plans to begin Drilling 10 Exploratory Wells in August' *Globes* (15 June 2014) <<http://www.globes.co.il/en/article-residents-warn-golan-oil-drilling-will-contaminate-kinneret-1000946412>> accessed 9 May 2015).



9. LEGAL CONSEQUENCES FOR VIOLATIONS OF INTERNATIONAL LAW

9.1 ISRAEL'S RESPONSIBILITY AS OCCUPYING POWER

Israel has extensively and unlawfully appropriated Palestinian oil and gas resources in the OPT for the sole benefit of its home economy and systematically prevented the Palestinian population from developing their gas resources in the Gaza Marine and oil fields at *Rantis*. These practices are aimed at forcibly stagnating the Palestinian economy and preventing the right to self-determination and the use of revenues for statehood. As such, Israel is in violation of Articles 43 and 55 of the Hague Regulations. In addition, these violations constitute war crimes and amount to grave breaches of the Geneva Conventions. Israel is a High Contracting Party to the Geneva Conventions, and is therefore obligated to put an end to all violations of IHL and investigate and prosecute those responsible for violations of the Conventions.

Furthermore, by maintaining the illegal closure amounting to an annexation of the Mediterranean Sea and maintenance of the Annexation Wall, Israel consistently fails to meet its obligations under international human rights law by refusing to respect, protect and fulfil the right of the Palestinian people to rights to development and freedom of movement. To meet its obligations under international law Israel must immediately cease all internationally wrongful acts, offer appropriate guarantees of

non-repetition and make full reparations for the injury caused, including material or moral damages. Full reparations must take the form of restitution where materially possible, compensation or satisfaction otherwise.⁵⁴²

9.2 CORPORATE RESPONSIBILITY

Notably the Guiding Principles on Business and Human Rights establish a role for corporations “as specialized organs of society performing specialized functions”, and requires compliance with human rights and other applicable laws such as humanitarian and customary law.⁵⁴³

Accordingly, corporations benefitting from business opportunities supported by an environment of human rights violations, may be found complicit in aiding and abetting violations even where they do not positively assist in orchestrating the abuses. In particular the *UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights* provide that “transnational corporations and other business enterprises shall not engage in nor benefit from war crimes, crimes against humanity, genocide.... other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law”.⁵⁴⁴

Corporations operating in Israel’s oil and gas industry are benefitting from violations of international human rights and international humanitarian law. They have facilitated the closure of the Gaza Marine zone to secure gas export pipelines, the protection of the Mari-B storage facility and the unilateral exploitation of the Noa North reserve draining migratory gas from the Border field.

9.3 THIRD STATE RESPONSIBILITY

Israel’s violation of peremptory norms of international law incurs obligations on third States. For example, Article 41 of the ILC Draft Articles provides that States not recognize breaches of peremptory norms as lawful, and that States actively cooperate to bring the unlawful situation to an end.⁵⁴⁵ Furthermore, third States should ensure that Israel makes full reparations for the damages caused by its breaches of peremptory norms of international law. Under common Article 1 to the four Geneva Conventions of 1949, States have obligations to ensure Israel’s respect for international humanitarian law and must refrain from condoning or rendering support to its illegal policies in the OPT. In this vein, States should revise their plans to buy Israeli gas piped through Gaza maritime space, destined for regional and European markets, as this renders support to the continued illegal closure of the occupied Gaza Strip.

⁵⁴² Articles 30, 31, 34-37, Draft Articles on Responsibility of States for Internationally Wrongful Acts with commentaries, International Law Commission (ILC), United Nations, 2001 (ILC Draft Articles on State Responsibility).

⁵⁴³ OCHR, Guiding Principles on Business and Human Rights, 6 <http://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_en.pdf> accessed 20 January 2015.

⁵⁴⁴ Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003).

⁵⁴⁵ See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)* (Advisory Opinion) I.C.J Rep 1971, paragraph 126.

States should further refrain from actively encouraging corporations from negotiating business deals with Israeli companies which may contribute to gross violations of international humanitarian law. The United States has international responsibilities in relation to the business activities of Noble Energy in the OPT. Similarly, States seeking investment opportunities in Tamar and Leviathan should bear in mind their responsibilities. The forcible protection of the gas distribution network for Tamar and Leviathan in the OPT breaches peremptory norms of international law by denying Palestinian sovereignty over natural resources. In particular, the European Union has committed itself to address third states’ compliance with international humanitarian law and there is an onus on European States to take this into account. There are a number of compliance measures under the EU Guidelines on Promoting Compliance with International Humanitarian Law, such as the issuance of *demarches* and public statements and undertaking restrictive measures, which States have agreed to practice.

In addition, under Articles 146 and 147 of the Fourth Geneva Convention, States are obligated to search for and prosecute those responsible for grave breaches of the Geneva Conventions. As noted, “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” amounts to a grave breach under Article 147 of the Fourth Geneva Conventions.⁵⁴⁶ The appropriation of oil extending into Palestinian territory at Meged-5 may amount to a grave breach of the Geneva Conventions.⁵⁴⁷

9.4 INDIVIDUAL CRIMINAL RESPONSIBILITY

Individuals may be held criminally responsible for the war crimes of pillage, collective punishment and appropriation.

i. Pillage

The ICC Elements of Crimes outlines five elements for the war crime of pillage;

1. The perpetrator appropriated certain property.
2. The perpetrator intended to deprive the owner of property and to appropriate it for private or for personal use.
3. The appropriation was without the consent of the owner.
4. The conduct took place in the context of and was associated with an international armed conflict.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁵⁴⁶ Article 147, Fourth Geneva Convention (1949).

⁵⁴⁷ (and oil exploitation in the occupied Golan Heights); *Armed Activities* (n 365).

In particular Afek Oil and Gas, a subsidiary of Genie Energy, reported that its actions exploring and drilling for oil in the occupied Golan Heights may be subject to international condemnation and sanctions.⁵⁴⁸ Members of the Board include a former Minister for Infrastructures and a former advisor to the IDF, on natural resources and planning, with knowledge that title to oil resources belongs to the occupied State. The appropriation has been effected on behalf of Afek Oil and Gas, under the direction of and personally benefitting the board members, which may amount to the crime of pillage.

IEI is also a subsidiary of Genie Energy licensed to exploit shale oil in *Shfela* Basin bordering the Green Line. Any appropriation of oil resources from occupied territory for private or personal use may be prosecuted as pillage.

ii. Collective Punishment

Although collective punishment does not feature as a war crime at the ICC, it has done so at the Special Court for Sierra Leone and the ICTR and may do so in a future *ad hoc* tribunal.⁵⁴⁹ Article 50 of the Hague Regulations and Article 33 of the Fourth Geneva Convention prohibit collective punishment. Appropriating tax revenues and the closure of Gaza's maritime space to protect commercial natural gas interests amounts to a prolonged indiscriminate and excessive penalty on the Palestinian population. As such, this may incur individual criminal responsibility for the war crime of collective punishment.

iii. Appropriation

Israel's closure of Palestine's maritime space as part of its policy to prevent Palestinian access to their gas reserves has frustrated Palestinian economic development and amounts to economic spoliation under the crime of appropriation. The ICC Elements of Crimes outlines 7 elements for the crime of destruction and appropriation of property where;

1. The perpetrator destroyed or appropriated certain property.
2. The destruction or appropriation was not justified by military necessity.
3. The destruction or appropriation was extensive and carried out wantonly.
4. Such property was protected under one or more of the Geneva Conventions of 1949.
5. The perpetrator was aware of the factual circumstances that established that protected status.
6. The conduct took place in the context of and was associated with an international armed conflict.
7. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

⁵⁴⁸ Genie Energy, 10-K SEC Filing < <http://sec.edgar-online.com/genie-energy-ltd/10-k-annual-report/2014/03/17/section2.aspx> accessed 9 May 2015.

⁵⁴⁹ ICTR Statute, Article 4(b); Statute of the Special Court for Sierra Leone, Article 3(b).

Israel has closed Palestine's maritime waters to secure the gas distribution network and export pipelines of private corporations for commercial profit. The appropriation of Palestinian maritime gas resources exceeds the requisition mechanisms of the Hague Regulations and may amount to organized State pillage in breach of Article 33 of the Fourth Geneva Convention. The massive appropriation of gas resources to prevent the State of Palestine's development, may incur the individual criminal responsibility of senior Israeli government and military figures for the war crime of appropriation.

9.5 REPARATIONS

The State of Palestine is entitled to reparations from Israel for expropriated oil and gas resources. Furthermore Israel must return unlawfully seized property such as appropriated energy revenues to the State of Palestine and private village land to respective private property owners. The ICJ advisory opinion on the *Annexation Wall* found that the wall was illegal, and that given its construction "entailed the requisition and destruction of homes, businesses and agricultural holdings". Furthermore, the Court found that Israel had "the obligation to make reparation for the damage caused to all natural or legal persons concerned."⁵⁵⁰ The Court went on to say that Israel had the "obligation to return the land, orchards, olive groves and other immovable property seized" and where restitution is impossible the Court found that Israel had the obligation to provide compensation under the applicable rules of international law.⁵⁵¹

The ICJ opinion and the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* underscore the right to an effective remedy for the exploitation of Palestinian oil and gas resources.⁵⁵² As demonstrated, the exploitation of Palestinian natural resources by Israel breaches both IHL and IHRL. Under the Basic Principles, victims include those that have suffered harm individually or collectively, and both directly and indirectly.⁵⁵³ Significantly, the harm may include "economic loss or substantial impairment of their fundamental rights."⁵⁵⁴ Such victims are entitled to "full and effective" reparation that is proportional to the gravity of the breach, where a State should provide "restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition."⁵⁵⁵ Accordingly, Israel must provide reparations for losses incurred to the Palestinian economy from its continuous blockading of Palestinian natural resource development, appropriation of Palestinian agricultural land rich in oil resources, plunder of Palestinian energy revenues and exploitation of contiguous oil and gas resources.

⁵⁵⁰ *Advisory Opinion, Legal Consequences* (n 365) para 152.

⁵⁵¹ *Ibid.*, 153

⁵⁵² The UN Draft Principles on the Responsibility of States for Internationally Wrongful Acts note that states are obliged "make full reparation for the injury caused by the internationally wrongful act."

⁵⁵³ Principle 8, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.

⁵⁵⁴ *Ibid.*

⁵⁵⁵ *Ibid.*, Principle 18.



10. CONCLUSION

By preventing the development of and exploiting Palestinian natural resources, the punitive conditions imposed by Israel on the Palestinian economy are “impeding any prospects of sustainable growth”.⁵⁵⁶ Accordingly, a Report of *UNCTAD assistance to the Palestinian People: Developments in the Economy of the occupied Palestinian territory* (September 2012) specifically identified the failure to develop Palestinian natural resources, alongside the loss of land and water as the “key long term constraint blocking the emergence of a strong economy”.⁵⁵⁷ As such, institutional reforms and state building efforts are stymied by the failure to secure a normal market economy based on revenue from natural resources.⁵⁵⁸ In March 2012, in its report to the Ad Hoc Liaison Committee, UNSCO identified financial deficits as a “serious and real threat to the Palestinian Authority’s sustainability”.⁵⁵⁹ Notably, the World Bank has reported that the Palestinian economy would prosper and face “substantially

⁵⁵⁶ Economic Costs (n 40) 1.s.

⁵⁵⁷ United Nations Conference on Trade and Development, ‘Report on UNCTAD assistance to the Palestinian people: Developments in the economy of the occupied Palestinian territory’ (13 July 2012), TD/B/59/2, para 5.

⁵⁵⁸ *Ibid.*, para 6.

⁵⁵⁹ Office of the United Nations Special Coordinator for the Middle East Peace Process, ‘Palestinian State Building: An Achievement at Increased Risk’ (Brussels 21 March 2012) iii.

improved prospects for sustained growth” should Israel remove the restrictions it places on natural resources development in the OPT.⁵⁶⁰

The occupied population has sovereign rights to develop their oil and gas resources even during a military occupation.⁵⁶¹ In terms of resource development, the Oslo Accords call for the establishment of an Energy Development Program, to provide for the joint “exploitation of oil and gas for industrial purposes”. Israel’s unilateral development of contiguous gas resources is buttressed by the deliberate denial of the Palestinian right to develop gas deposits and enforced by a military closure to protect gas platforms in violation of international law. Israel’s unilateral development of oil resources is effected through the appropriation of Palestinian agricultural land by way of the Annexation Wall and issuance of licenses extending Israeli law over illegally appropriated resources in violation of international humanitarian law.

States have a responsibility to ensure that their plans to import Israel’s gas do not contribute to continued violations of international humanitarian law and other international law. So far, gas pipeline distribution networks pass through the State of Palestine’s maritime space. By using these pipelines as an import channel, States are contributing to Israel’s closure of the Gaza Strip in violation of international law.

⁵⁶⁰ World Bank, ‘West Bank and Gaza: Area C and the Future of the Palestinian Economy’ (2 October 2013) viii. <http://www-wds.worldbank.org/external/default/WDSCContentServer/WDSP/IB/2014/01/23/000442464_20140123122135/Rendered/PDF/AUS29220REPLAC0EVISION0January02014.pdf> accessed 9 May 2015.

⁵⁶¹ Article 3, Annex III, Protocol on Israeli-Palestinian Cooperation In Economic and Development Programs. “Cooperation in the field of energy, including an Energy Development Program, which will provide for the exploitation of oil and gas for industrial purposes, particularly in the Gaza Strip and in the Negev, and will encourage further joint exploitation of other energy resources. This Program may also provide for the construction of a Petrochemical industrial complex in the Gaza Strip and the construction of oil and gas pipelines.”

11. RECOMMENDATIONS

In light of the above, Al-Haq calls on Israel the Occupying Power and primary duty bearer in the OPT:

The State of Israel must

- Comply with its international humanitarian law obligations and international human rights obligations;
- End its illegal naval closure of Palestine's maritime space and the illegal land closure;
- Immediately stop its illegal expropriation of Palestinian and Syrian oil resources and make reparations to the respective States;
- Stop obstructing the State of Palestine from developing the Gaza Marine including the laying of pipelines and umbilical's necessary for gas import and export;
- Discontinue its annexation of energy in Palestine and facilitate an independent Palestinian energy economy, as required under the Oslo Accords;
- Remove pipelines routed through Palestinian territory;

- Operate with due diligence and prohibit environmentally damaging practices which would cause pollution to trans-boundary water resources;
- Compensate the State of Palestine for all profits generated by the exploitation of oil and gas leakages in contiguous geological structures.
- Ensure the transport of humanitarian supplies to the Gaza Strip for energy reconstruction, including the provision of fuel and electricity to full operating capacity.

In order for Palestine to fulfill its right of control over its natural resources in line with international law, Al-Haq further recommends that:

The State of Palestine should

- Accede to the European Energy Charter Treaty [1994];⁵⁶²
- Bring thereafter a petition to the Commission on the Limits of the Continental Shelf (CLSC), which facilitates the implementation of the Convention on the Law of the Sea and can offer scientific and technical guidelines on the delimitation of the continental shelf;
- Establish jurisdiction over its EEZ either based on its natural continental shelf or legal delimitation. This would be particularly useful given Palestine's accession in 2011 to UNESCO's 2001 Convention on the Protection of Underwater Cultural Heritage, granting states the competence to regulate activities concerning the protection of cultural heritage within the EEZ and continental shelf. In addition given the State of Palestine's recent accession to UNCLOS;
- Amend Chapter 1, of Law No. (1) of 1999 for Natural Resources to reflect sovereignty over its natural resources in the continental shelf and/or EEZ given the State of Palestine's recent accession to the UNCLOS.
- Conclude points of delimitation with Cyprus and Egypt and lodge future concluded coordinates of delimitation with the Repertory of the Law of the Sea;
- Object to the routing of the new pipeline between the Tamar platform and Union Fenosa Gas in Egypt, which will run through Palestine's maritime space;
- Object to future planned pipeline routes from Leviathan to both the Union Fenosa and Damietta plants in Egypt, which will run through Palestine's maritime waters (within an EEZ, or across the continental shelf to which Palestine has inherent sovereign rights);
- Take contentious cases or seek an advisory opinion on the delimitation of the maritime boundary upon accession to UNCLOS, as both Cyprus and Egypt are also parties to the treaty;
- Accede to the Statute of the International Court of Justice, which has jurisdiction to hear cases on the law of the sea.

⁵⁶² The PA would benefit from the protections afforded under the Energy Charter Treaty [1994] governing inter-governmental co-operation on the Energy sector, regulating "energy transit through pipelines and grids; reducing the negative environmental impact of the energy cycle through improving energy efficiency; and mechanisms for the resolution of State-to-State or Investor-to-State disputes." Energy Charter Secretariat, The Energy Charter Treaty and Related Documents: A Legal Framework for International Energy Cooperation, 2004, 14. <http://www.encharter.org/fileadmin/user_upload/document/EN.pdf> accessed 9 May 2015.



- Extend its licensing regime to include natural resources beyond the Gaza Zone;
- Insist on the receipt of monies from gas revenues developed during belligerent occupation to be deposited into an international fund monitored by international auditors for the benefit of the occupied population; and
- Insist that a percentage of gas from the Gaza Marine is reserved for domestic market supply, from future Gaza Marine operators contracted to exploit the reserves. (However it is not commercially viable to supply the internal market alone. Much of the gas will need to be exported to ensure profitability although some gas should be directed to the internal market for domestic use).

Al-Haq further notes the critical role that third states and companies have in ensuring that Palestinian's enjoy their sovereign rights over their natural resources, and provides the following recommendations:

Third States

- Europe should refrain from financing gas exports through the Eastern Mediterranean Corridor with Israel, Greece and Cyprus. The Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL) 2009/C 303/06 establishes operational tools for the promotion of compliance with IHL. The utilization of Israeli gas resources should be premised on the ending of the illegal naval closure of the Gaza Strip. The closure is maintained for the benefit of Israel's gas sector and systematically prevents Palestinian development violating the right to self-determination and amounting to appropriation and collective punishment.
- The EU and individual States must not trade in oil resources exploited from land appropriated from Occupied Palestinian Territory.
- The EU should not import gas from Israel from gas fields operated by the Noble Energy Group conglomerate, which abuse a dominant market position in Israel. Israel's facilitation of Noble Energy Group's dominant market position in the gas industry is inconsistent with Article 36(1)(ii) of the Euro-Mediterranean Agreement (2000). The Agreement between Israel and the EU finds "abuse by one or more undertakings of a dominant position in the territories of the Community or Israel as a whole or in a substantial part thereof" to be "incompatible with the proper functioning of the Agreement". The EU is reminded of its commitment under the Agreement to ensure transparency in this regard.
- States operating under military agreements with Israel must not operate in a manner inconsistent with international law which would see the prolongation of the illegal naval closure of Palestinian maritime space.
- High Contracting parties under the Fourth Geneva Convention must ensure respect for the Convention and ensure Israel's compliance with convention obligations.
- States should commit to Business and Human Rights National Action Plans to ensure corporations registered in their jurisdictions are compliant with IHL and IHRL.
- Egypt must seek agreement from the State of Palestine for pipelines routed through Palestine's maritime space, including the planned pipeline between the Tamar platform and Union Fenosa

Gas plant in Egypt in 2017.

- Jordan must not negotiate export agreements with Israel for Palestinian gas from the Gaza Marine without agreement from the State of Palestine.
- Jordan must not agree to gas exports from Israel's Leviathan field where gas pipelines are routed through the occupied West Bank.

United Nations

- Member States of the United Nations should seek a General Assembly Resolution to take all necessary measures to prevent Israel's exploitation of Palestinian oil and gas resources, ensure Palestinian access to develop oil and gas resources and for Israel to provide reparations for exploited natural oil and gas resources.
- Member States of the United Nations should seek an independent international investigation into Israel's exploitation of Palestine's natural resources.
- The General Assembly should request an Advisory Opinion from the International Court of Justice on the legality of a prolonged belligerent occupation and the legality of continued application of the Oslo Accords in light of prolonged occupation and the exploitation and depletion of Palestine's natural resources.

Corporations should:

- Not undermine international humanitarian and human rights law by effectively conspiring with Israel to exploit Palestinian natural resources.
- Insist on including representatives from the relevant Palestinian governmental bodies when negotiating contracts with Israel that will likely have some trans-boundary effect, including for example environmental effects and appropriation of Palestinian natural resources.
- Stop applying environmentally damaging practices that affect the Palestinian environment.
- Comply with their human rights commitments articulated in the Guiding Principles on Business and Human Rights and reflected in Corporate Social Responsibility policies and Codes of Conduct.
- Corporations operating in the extractive industries in Israel must comply with commitments signed up to under the Voluntary Principles on Security and Human Rights.

ANNEX 1

ANNEX III OF THE ISRAELI PALESTINIAN INTERIM AGREEMENT (1995)

ARTICLE 15 Gas, Fuel and Petroleum

1. a. This sphere includes, inter alia, the planning, formulation and implementation of policies, as well as the licensing and supervision of gas, fuel and petroleum facilities. For the purposes of this paragraph, “gas, fuel and petroleum facilities” shall include, inter alia, all gas and petrol stations, installations, terminals and infrastructure, as well as agencies for the marketing, distribution, transportation, storage, sale or supply of gas, fuel or petroleum products. This sphere also includes the licensing and supervision of the import, export, and transportation in addition to the exploration, production and distribution of gas, fuel and petroleum.

b. In Area C, powers and responsibilities regarding exploration and production of oil and gas shall be transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory except for the issues that will be negotiated in the permanent status negotiations during the further redeployment phases, to be completed within 18 months from the date of the inauguration of the Council.

2. In authorizing the establishment and operation of gas, fuel and petroleum facilities as defined in paragraph 1, the Palestinian side shall ensure that there is no detrimental impact on the environment or on the safety of Israel, the Settlements and military installations and that a safety distance from Israel, the Settlements and military installations is observed. Accordingly, the Palestinian side shall apply the American, British and/or Israeli safety and environmental standards.

3. The color of all gas cylinders in use by Palestinians in the West Bank and the Gaza Strip shall be different than that in use in Israel and by Israelis.

4. a. The Palestinian side will notify the Israeli side of any exploration and production of oil and gas carried out by the Palestinian side or with its permission.

b. Israel and the Palestinian side agree to cooperate concerning production of oil and gas in cases of joint geological structures.

5. a. All transportation of gas or fuel products, in Israel and in the West Bank and the Gaza Strip, shall be in accordance with the respective laws applying which, in any event, shall not fall short of the international requirements and standards concerning safety and environmental protection as applied by Israel. The transportation of gas and fuel products into Israel, the Settlements and military installations shall further be subject to the requirements and modalities regarding entry into Israel.

b. In order to facilitate the movement of transportation of gas or fuel products in the West Bank and the Gaza Strip -

(1) The Palestinian side will issue permits to Palestinian owners, drivers and escorts of vehicles transporting gas or fuel products. The issue of such permits shall be governed by the criteria regarding recruitment to the Palestinian police according to this Agreement. The issue of such permits is not contingent upon the approval of the Israeli side. The Palestinian side shall notify the Israeli side of the permits issued by it.

(2) The Palestinian side shall ensure that vehicles transporting gas or fuel products, as well as their parking lots, shall be guarded against any theft or unauthorized use.

The Palestinian side shall inform the Israeli side, at the earliest opportunity, of any suspected theft or unauthorized use of such vehicles.

6. The Israeli side shall cooperate with the Palestinian side with regard to the establishment by the Palestinian side of 3-4 storage facilities for gas and petroleum, including in facilitating, inter alia, location, land and technical assistance in order to secure the purchasing needs of the Palestinians from the Israeli market.

7. Matters regarding the environment and transportation are dealt with in Article 12 (Environmental Protection) and Article 38 (Transportation), respectively.

ANNEX 2

ANNEX III OF THE ISRAELI PALESTINIAN INTERIM AGREEMENT (1995)

ARTICLE 31 Quarries and Mines

1. Powers and responsibilities in the sphere of Quarries and Mines in the West Bank and the Gaza Strip shall be transferred from the military government and its Civil Administration to the Palestinian side including, inter alia, the licensing and supervision of the establishment, enlargement, and operation of quarries, crushing facilities and mines (hereinafter “quarries”).
2. In Area C, powers and responsibilities relating to this sphere will be transferred gradually to Palestinian jurisdiction that will cover West Bank and Gaza Strip territory, except for the issues that will be negotiated in the permanent status negotiations, during the further redeployment phases, to be completed within 18 months from the date of the inauguration of the Council.
3. a. Rights of Israelis (including corporations owned by Israelis) regarding quarries situated within the areas under the territorial jurisdiction of the Palestinian side, which are not operative, may be purchased by the Palestinian side, with the consent of the Israeli concerned, through a joint committee which shall be established by the CAC for this purpose. The sum to be paid to each Israeli with regard to his rights in the said quarries shall be based upon the investments made by him in the site. The Israeli side shall freeze licenses to such quarries. Pursuant to the date of the signing of this Agreement, such quarries shall not become operative.

b. The above joint committee shall also discuss the issue of quarries operated or used by Israelis. The two sides shall respect the recommendations of this committee. Until the decision of the Committee, the Palestinian side shall not take any measures which may adversely affect these quarries.

c. The provisions of subparagraphs a. and b. will apply to quarries presently situated in Area C, as they come under the territorial jurisdiction of the Palestinian side, commensurate with the gradual transfer of powers and responsibilities in accordance with paragraph 2 above.
4. The Israeli side shall consider any request by Palestinian entrepreneurs to operate quarries in Area C on its merits.



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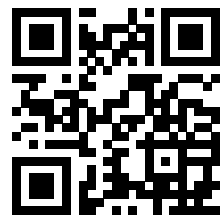


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SMART PHONES



AL-Haq - 54 Main Street 2nd & 3rd Fl. - Opp. Latin Patriarchate
Saint Andrew's Evangelical Church - (Protestant Hall)
P.O.Box: 1413 - Ramallah - West Bank - Palestine
Tel: + 970 (2) 2 2954646/7/9
Fax: + 970 (2) 2 2954903
www.alhaq.org



AL - HAQ

About AL-HAQ

Al-Haq is an independent Palestinian non-governmental human rights organisation based in Ramallah, West Bank. Established in 1979 to protect and promote human rights and the rule of law in the Occupied Palestinian Territory (OPT), the organisation has special consultative status with the UN Economic and Social Council.

Al-Haq documents violations of the individual and collective rights of Palestinians in the OPT, regardless of the identity of the perpetrator, and seeks to end such breaches by way of advocacy before national and international mechanisms and by holding the violators accountable. The organisation conducts research; prepares reports, studies and interventions on the breaches of international human rights and humanitarian law in the OPT; and undertakes advocacy before local, regional and international bodies. Al-Haq also cooperates with Palestinian civil society organisations and governmental institutions in order to ensure that international human rights standards are reflected in Palestinian law and policies. The organisation has a specialised international law library for the use of its staff and the local community.

Al-Haq is also committed to facilitating the transfer and exchange of knowledge and experience in IHL and human rights on the local, regional and international levels through its Al-Haq Center for Applied International Law. The Center conducts training courses, workshops, seminars and conferences on international humanitarian law and human rights for students, lawyers, journalists and NGO staff. The Center also hosts regional and international researchers to conduct field research and analysis of aspects of human rights and IHL as they apply in the OPT. The Center focuses on building sustainable, professional relationships with local, regional and international institutions associated with international humanitarian law and human rights law in order to exchange experiences and develop mutual capacity.

Al-Haq is the West Bank affiliate of the International Commission of Jurists - Geneva, and is a member of the Euro-Mediterranean Human Rights Network (EMHRN), the World Organisation Against Torture (OMCT), the International Federation for Human Rights (FIDH), Habitat International Coalition (HIC), and the Palestinian NGO Network (PNGO).



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