NGO MONITOR
Making NGOs Accountable

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WRITTEN SUBMISSION OF NGO MONITOR TO THE HUMAN RIGHTS COMMITTEE AND ITS RELEVANT SPECIAL RAPPORTEUR ON THE OCCASION OF THE COUNTRY REPORT TASK FORCE CONSIDERATION OF THE PERIODIC REPORT OF ISRAEL (112TH SESSION)

SEPTEMBER 2014

Israel is a vibrant parliamentary democracy facing many complex challenges, such as balancing the individual rights of its population (including its Arab minority) with the need to protect against daily attacks on its civilians launched from Hamas-controlled Gaza, the West Bank, and Hezbollah-controlled Southern Lebanon. The civil society (NGO) network in Israel, the West Bank, and Gaza is thriving and often provides valuable humanitarian assistance, including health services, education, and other basic requirements under difficult conditions. Regrettably, however, this network also often plays a counterproductive role in the Arab-Israeli conflict.

As NGO Monitor and others have documented systematically, human rights NGOs often produce reports and launch campaigns that stand in sharp contradiction to their own mission statements claiming to uphold universal values. They regularly obscure or remove the context of terrorism, provide incomplete statistics and images, and disseminate gross distortions of the humanitarian and human rights dimensions of the Arab-Israeli conflict. This activity often stresses the rights of Palestinians at the expense of Israelis, and promotes the protection of some human rights such as a vague "right to work" at the expense of more fundamental rights such as the right to life or the right to self-defense. Moreover, violations of human rights and international humanitarian law committed by Palestinian actors or terror groups such as Hamas are ignored or minimized. As a result, NGO publications and campaigns provide an incomplete and often non-credible picture of the state of human rights in Israel.

In conjunction with the factual distortions and missing context, these publications also twist international law relating to human rights and armed conflict beyond all logical meaning. For example, NGOs view rights in a myopic and isolated framework. The vast majority of individual rights are not absolute, and governments are tasked with the difficult work of interpreting and balancing different rights, the realization of which may create conflicts and tensions. Otherwise, it would be impossible for society to function. Too many NGOs and even UN committees do not take these vital points into consideration. NGOs also often view individual rights in the abstract or invent interpretations of ICCPR provisions that extend beyond the intended meaning.

These processes end up diluting and weakening the very rights at issue. Moreover, they play into the hands of critics who claim that international human rights law is of minimal value because it is devoid of specific and applicable content. In fact, many national courts have declined to apply international human rights law in domestic cases specifically for this

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reason. The Committee would do well to pay heed to these jurists. If human rights law is so abstract, inflexible, and incompatible with the real world and the complex issues and problems facing society, then it serves no purpose.

Unfortunately, the majority of distorted factual and legal claims presented to the Committee are simply recycled and reinforced by a closed and narrow circle of UN officials and NGOs. There is little to no critical or independent evaluation of this information, which leads to unworkable and unproductive policy prescriptions.

To date, several NGOs have submitted lengthy reports and statements to the Human Rights Committee (HRC) regarding the forthcoming October 2014 review of Israel. These include Amnesty International, Defense for Children International–Palestine Section (DCI-PS), Adalah - The Legal Center for Arab Minority Rights in Israel, Negev Coexistence Forum for Civil Equality, Bimkom, the Israeli Committee against House Demolitions (ICAHD), and others.

The following examples highlight problematic NGO activity reflected in their submissions to the HRC:

Right to Self-Determination (Article 1)

The right to self-determination is a core principle in the ICCPR. All too often, however, in UN frameworks (particularly the Human Rights Council) and in NGO publications relating to Israel, including those presented to this committee, self-determination rights are presented as if they belong to the Palestinians alone; the equal rights of the Jewish people are ignored. Moreover, many of these statements seek to erase or deny the Jewish historical presence and connection to the region.

ICAHD, for instance, repeatedly and offensively accuses Israel of engaging in a policy of "Judaiziation." The PLO developed the term "Judaization" to erase the Jewish historical connection to the region, as well as to suggest that the very presence of Jews is alien and unacceptable. The use of the term Judaization, therefore, is an expression of anti-Jewish racism. While it is perhaps not surprising that the PLO would employ such terminology, it is immoral for human rights organizations to use phrases supporting ethnically-based exclusion.

In addition to erasing the self-determination rights of the Jewish people, many NGOs distort this vital concept as it applies to Palestinians. Between 1993-95, the State of Israel and the Palestine Liberation Organization (designated representative of the Palestinian people) freely entered into a series of agreements (Oslo Accords) regarding the governance and administration of the West Bank and Gaza. These agreements established the Palestinian Authority, the governmental body for the Palestinian people that exercises jurisdiction over more than 95% of the Palestinian population. In 2005, Israel relinquished all claims to the territory of Gaza and removed its armed forces and civilian population. Since that time, Gaza has been entirely self-governing. In 2006, Palestinians elected the Hamas terrorist organization as the majority party in power. In 2007, Hamas took over total control of the Palestinian Authority in Gaza and expelled the Fatah party in a bloody civil clash.

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Despite the fact that Palestinians are able to exercise their rights to self-determination, many NGOs continue to falsely accuse Israel of related violations. The accusations not only misrepresent the facts, but they also misrepresent the law. For example, ICAHD, claims that Israel's law requiring homes to be constructed in accordance with permitting and zoning regulations denies the Palestinian right for self-determination. This is an absurd charge essentially claiming that it is illegal for States to enact zoning and planning laws that are necessary for safety, public health, environmental, and quality of life concerns, on the basis that they would somehow be violating "self-determination."

ICAHD's further charge that Israel does not grant building permits to Palestinians is similarly false. Such claims are contradicted by information available from the Jerusalem municipality and the Israeli Civil Administration, which grant permits and formulate master plans for many Palestinian communities in Area C. In addition, a study released by the Israeli newspaper *Ma'ariv* notes that house demolitions for Israeli settlers is actually higher than the number of demolitions carried out on Palestinian homes. It is also important to note that only approximately 90,000 Palestinians (3% of the Palestinian population) are subject to Israeli planning regulations. The other 97% are under Palestinian Authority jurisdiction and are subject to Palestinian planning regulations.

In addition, ICAHD falsely claims that the Israel government has a "deliberate intent to limit the Palestinian population growth in the city of Jerusalem." In stark contrast to these statements, available statistics reveal that the Palestinians population in Jerusalem has increased. In 2010 the Arab population of Jerusalem was reported to be 285,000. The Central Bureau of Statistics states that the Arab population of Jerusalem in 2012-2013 was 300,100.

Moreover, in reality, the Jerusalem Municipality provides Palestinian residents with services and infrastructure even under difficult circumstances. For instance, in July 2014 there were several days of intense violent rioting by the Arab population in East Jerusalem. This rioting severely damaged the light rail stations serving East Jerusalem's neighborhoods. *Ha'aretz* reported that about 25% of the light rail's daily traffic comes from the Shoafat neighborhood, but that "[t]wo stations, at Shoafat and Es-Sahl, were completely destroyed during the rioting. The control system that governs a section of the signal lights and roads was torched and several traffic lights themselves were torn off their poles. Ticket dispensing machines were also ripped out and destroyed. Rioters attempted to saw apart the track itself and apparently they were successful in several locations, although overall damage to the track was not substantial."

Despite predictions that it would take months to repair the damage and again provide light rail service to East Jerusalem's residents, the rail system was fully functional a week after the riots. Jerusalem Mayor Nir Barkat "was determined not to let the rioters interfere with the course of daily life in Jerusalem."

Bimkom laments that "A major impact of the lack or inadequacy of planning in East Jerusalem is lack of infrastructure and the inability to receive occupancy permits, which are required before connecting to the electricity and water infrastructure." Yet, ironically, the NGO ignores that a significant reason that infrastructure improvements in East Jerusalem are delayed or incomplete is due to intensive lobbying by NGOs (including several that

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submitted statements to this Committee) of companies and funders to prevent these projects from being completed.

For instance, in 2013, several NGOs heavily lobbied the Dutch government and the engineering firm Royal Haskoning DHV to pull out of a project to build a water treatment plant in East Jerusalem. Other NGOs were involved in heavy lobbying to stop the light rail, even going so far as to file a lawsuit in France to block it (the lawsuit was thrown out of court).

NGOs cannot have it both ways. They cannot complain that Israel is not doing enough to improve Arab neighborhoods of East Jerusalem, but yet actively work against all projects that seek specifically to remedy these issues.

As former Deputy Major of Jerusalem Naomi Tsur has stated,

> As a general premise, it is extremely problematic for the City of Jerusalem and indeed, the government of Israel to address infrastructure improvement for East Jerusalem, which is so much needed, if every time an attempt is made, whether it is transport or sewage, we are constantly under threat of international reprimand about doing the things those same people are angry at us for not doing. This enigma is one that the EU needs to have a serious discussion about. We are in limbo -- we don't know right now where Israel ends and Palestine begins and the only way it will be bearable is if the infrastructure can function together. Otherwise, it is a recipe for human suffering. [1]

Right to Life (Article 6)

Article six of the ICCPR states that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Yet, the majority of submissions to the Committee erase this fundamental right as it is applied to Israelis by completely erasing the context of Palestinian terrorism and deliberate attacks on Israeli civilians.

Palestinian Terrorism

On June 12, 2014, three Israeli teens, Naftali Fraenkel (16), Gilad Shaer (16), and Eyal Yifrah (19), were kidnapped and murdered by Palestinian terrorists.

Israel launched Operation Brother's Keeper in an attempt to locate and rescue the teens. During this operation, many Hamas leaders were arrested, including the leader of the terrorist cell that carried out the abduction. On June 30, 2014, the bodies of the three teenagers were found north of Hebron, and it was revealed that they were murdered immediately after their abduction. Despite extensive efforts of Israeli forces, Palestinian terrorists continue to shield the perpetrators from accountability, and the murderers remain at large.

Even before Palestinian terror groups fired thousands of indiscriminate rockets and mortars on Israeli population centers in June 2014, which lead to Operations Brother's Keeper and

[1] Anne Herzberg, "When International Law Blocks the Flow: the Strange Case of the Kidron Valley Sewage Plant," 10 *Regent J. of Int'l L.* 71 (2014) (copy attached).

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Protective Edge (see below), Israeli civilians faced unrelenting terror attacks in 2014. According to the General Security Services (GSS), between January and May 2014, there were 670 attacks on Israeli civilians. This includes 131 rockets and mortar shells launched into Israel from Gaza and two rockets launched from the Sinai desert at the city of Eilat in February 2014. On the eve of the Jewish holiday of Passover, a terrorist shot and killed an Israeli man driving his family to a Passover Seder.

There were also numerous incidents of rock and firebomb throwing, in addition to IED and small arms attacks. GSS data shows that in May 2014 alone there were 14 IED attacks, 88 firebombing incidents, thousands of incidents of arson, and 4 small arms attacks. Many civilian homes have been subject to Palestinian firebombing attacks, including in neighborhoods in western Jerusalem. Stone throwing continues to be a significant security threat. On August 23, 2014 a car was stoned north of Hebron. The Israeli civilian driving was critically wounded after being hit in the head by a melon-sized rock and his vehicle overturned. In November 2013, a well-known peace activist was stoned in his car by Palestinians in Sur Bahir, causing a deep gash in his head. In May 2013, two-year old Adele Biton became comatose after the car her mother was driving was stoned by Palestinians. She continues to suffer extensive brain damage. In 2011, 24 year-old Asher Palmer and his infant son were killed after a stone thrown by Palestinians at their car caused it to crash.

Violence Against Palestinians/"Price Tag" Attacks

There have been some cases of attacks by Jewish settlers against Palestinian communities ("Price Tag" attacks). All acts of vigilantism and vandalism are illegal and reprehensible and should be punished to the full extent of the law. The Israeli government must take steps to prevent such activity.

Publications from political advocacy NGOs that seek to force an "end to the occupation" by accusing Israel of human rights abuses, have frequently made false claims regarding the Israeli government's response to "Price Tag" attacks. Contrary to NGO claims, the Israeli government and Knesset repeatedly condemned these attacks in 2014 (and before). Treasury Minister Yair Lapid even labeled these attacks "terrorism."
According to Yesh Din, the "IDF and the Israel Police do not provide the necessary protection to Palestinians attacked by Israeli civilians." In fact, the Israeli police and prosecutor's office have arrested and indicted a number of suspects. These include: 1) July 8, 2014, an Israeli man indicted for slashing the tires of dozens of car in the Israeli Arab village of Abu Ghosh and for spraying racist graffiti on walls in the village; 2) May 28, 2014, a young man indicted for slashing the tires of cars owned by Arab Israelis; and 3) February 5, 2014, three Israelis indicted for burning cars and spraying graffiti in a Palestinian village in the northern West Bank, among other cases.

However, it must be stressed that the quantity and seriousness of alleged attacks by Jews against Palestinians is miniscule in both scale and scope compared to the number of attacks against Israelis, as discussed above.

The murder of Mohammad Abu Khdeir is a notable exception. On July 2, 2014, Mohammad Abu Khdeir was abducted from the east Jerusalem neighborhood of Shoafat by three Israelis

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– an adult and two minors. The three kidnappers proceeded to a forest on the outskirts of Jerusalem where they beat and burned him to death.

Israeli police swiftly arrested a number of suspects four days after the murder. Three of these suspects confessed and claimed they acted out of "revenge" for the murder of the three Israeli teens. The suspects are now in custody awaiting trial. The murder of Mohammad Abu Khdeir was condemned by Prime Minister Netanyahu, as well as members of Knesset from across the political spectrum.

"Operation Protective Edge"

On July 8, 2014, Israel launched Operation Protective Edge in response to increasing rocket fire from Hamas in Gaza. The purpose of the operation was to seek out and destroy Hamas terrorist infrastructure, including rockets and tunnels from Gaza into Israel.

During this operation, thousands of rockets and mortar shells were launched into Israel by terrorist organizations in Gaza, resulting in the deaths of six Israeli civilians, the wounding of hundreds, and the displacement of thousands. Sixty-six Israeli soldiers were also killed in the fighting.

As in the past, throughout this conflict, highly politicized Israeli, Palestinian, and international NGOs issued numerous statements condemning Israel. These NGOs made unverifiable claims, distorted international law, and continued to fuel the international delegitimization campaign against Israel. At the same time, NGOs did relatively little to investigate, report, acknowledge, or condemn deliberate Palestinian terrorist attacks against Israeli civilians or the use of Palestinians population centers to carry out terror activity.

When condemning Israeli anti-terror operations, many of the NGOs involved in submitting reports to the HRC disregard Israel's unequivocal international legal right to self-defense. For instance, rather than acknowledging Israel's right to self-defense, Amnesty labels Israel's attempts to stop the smuggling of arms into Gaza "collective punishment" or "war crimes."

As with the discredited 2009 Goldstone process, NGOs initiated calls for a UN "fact-finding" investigation of the conflict and submitted statements to the UN that alleged "deliberate, systematic, and widespread targeting of Palestinian civilians"; "collective punishment"; "war crimes and crimes against humanity"; and "grave violations of international humanitarian law." These accusations were echoed in the UN Human Rights Council's resolution, which created another Goldstone-like inquiry of Israel's conduct, to be headed by Professor William Schabas. Schabas should be deemed ineligible for the post based on ethics and fact-finding standards due to his prior prejudicial statements made towards Israel.

NGOs are very involved in accusations that the Israeli army is responsible for deliberate attacks against civilians. Israel-based B'Tselem and Gaza-based NGOs, Palestinian Center for Human Rights (PCHR) and Al Mezan are also leading members of the UN Office for the Coordination of Humanitarian Affairs (OCHA) "Protection Cluster." Along with the Hamas-controlled Health Ministry in Gaza, they serve as the main sources for casualty statistics.

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In this context, we note that the fact-finding methodologies of B'Tselem, PCHR, and Al Mezan are not consistent with best practices for a human rights fact-finding investigation.

PCHR and Al-Mezan determine civilian status at Gaza hospitals and morgues. These NGOs do not conduct independent research on the status of a casualty. If there is no conclusive evidence, for instance, a terrorist arriving with a weapon, these NGOs will ask biased sources, such as family or terrorist organizations, if the casualty was a member. These NGOs do not conduct investigations into the background of casualties. Independent research concluded that some of these alleged "civilians" were actually combatants. In some cases, uniformed members of Hamas security forces were deemed "totally civilian" by these NGOs despite evidence that many were in fact combatants.

The NGO statistics are not based on any legal or moral standard. Instead, they are rooted in categories such as "were involved in combat" versus "did not participate in hostilities." This simplistic comparison of civilian death counts creates the impression that armed conflict is merely a "numbers game." In actuality, according to international law, military objectives should be proportionate to the civilian harm caused. However, NGOs have no capacity for assessing this standard.

These NGOs have a history of inflating casualty statistics. During and after Operation Cast Lead (the December 2008 - January 2009 Gaza War), these groups published unsupported allegations that the vast majority of Palestinian casualties were civilians, claiming that the number of dead was 1,387 (B'Tselem), 1,417 (PCHR), and 1,410 (Al Mezan). The discredited Goldstone report repeated these numbers.

However, in a November 2010 interview given by Hamas Interior Minister Fathi Hamad to the *Al-Hayat* newspaper, Hamad acknowledged that 600-700 Hamas members were killed in the Gaza fighting. This is more than double the number of combatants acknowledged by the NGOs' and Goldstone's unreliable version of events, and halves the number of civilian deaths. There is no reason to suspect that Hamas and other Palestinian terror groups have operated differently during the most recent conflict.

Freedom from torture and cruel, unusual and degrading punishment (Article 7)

Amnesty International accuses Israel of "torture and other ill-treatment" of Palestinian prisoners, claiming as an example that one minor suffered "six days" of alleged "torture." As demonstrated, many of these claims regarding torture rely on unreliable NGO reports, based on "witness accounts," which have been proven to be false or a distortion of reality.

It is also important to note that NGOs frequently refer to detainees as "political prisoners," even though many of them have been convicted of murder and other serious crimes, including bombings, kidnappings, stabbings, and shootings. Again, to accept Amnesty's characterization would mean that States are not allowed to try and punish those who have committed crimes. It is quite strange for an NGO that promotes "accountability" and "ending impunity" for human rights violations believes that Palestinians should not be held to account for violations.

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In 2014, a large group of Palestinian prisoners initiated a hunger strike, protesting the use of "administrative detention" and demanding, with the support of various NGOs, that they be "charged or freed." At the same time, the Israeli government proposed a bill that would allow the Israel Prison Service to "force-feed" prisoners who starved themselves close to death. Amnesty has called this practice "a serious infringement of the prisoners' basic human rights," and other NGOs have also claimed this is a violation of "a person's right to refuse medical treatment, right to physical autonomy and right to dignity." Yet, Amnesty does not offer concrete solutions and there is no doubt that if such prisoners began to die in Israel's custody, the NGO would issue many condemnations of Israel blaming the prison officials for such deaths.

Freedom of Movement (Article 12)

Article 12 of the ICCPR states that every person has "the right to liberty of movement and freedom to choose his residence." In this context, Amnesty International claims that Israel is violating Palestinian "freedom of movement" (Article 12) "by the Israeli-imposed siege [on Gaza]."

Amnesty ignores subsection 3 of Article 12, which limits the right to movement for purposes "necessary to protect national security, public order, public health or morals or the rights and freedoms of others." Moreover, under international law, countries have an absolute right to control their borders and to set conditions for entry. And such conditions can be made based on the nationality of those who seek to enter. There is no right under international law for Gazans to be granted access to Israel. In addition, Amnesty ignores the many terror attacks that have taken place at Israeli border crossings, including an April 2008, attack on the Nahal Oz fuel depot and a May 2008 truck bomb attack at the Erez crossing, and more recently – the August 2012 massive terrorist attack on both Israeli and Egyptian security forces next to the Kerem Shalom Gaza crossing, which resulted in 15 Egyptian soldiers killed.

It is also completely false and inflammatory to claim that Israel has imposed a "siege" on Gaza. Restricting the flow of goods in a war environment does not constitute a "siege" under international law and does not refer to the legal act of retorsion (e.g. sanctions, blockades). In fact, pursuant to Article 23 of the Geneva Convention (which sets standards for the provision of limited humanitarian aid), Israel has no obligation whatsoever to provide any goods, even minimal humanitarian supplies, if it is "satisfied" that such goods will be diverted or supply of such goods will aid Hamas in its war effort.

As numerous accounts have reported, Hamas has diverted supplies from Gaza's civilian population. Although Israel is under no legal obligation, and despite the diversion as well as attacks on the Israeli border crossings, Israel continues to provide thousands of tons of humanitarian supplies and goods to Gaza on a weekly basis.

Right to Freedom of Expression and to Hold Opinions (Article 19)

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Adalah states that the Israeli government had "escalated its attacks on expression of dissenting opinions." In order to support this claim, it presents a number of laws that it terms "restrictive bills." These include the "Anti-Boycott Law," which allows the filing of civil suits against individuals and groups calling for boycotts of Israel; the "Nakba Law," which denies state funding for events which mark Israeli Independence Day as a day of mourning; and the "NGO Foreign Funding Bills," which seek to limit foreign government funding for Israeli NGOs. Adalah claims these bills harm the "freedom of expression and association."

In contrast to Adalah's claims, these bills do not prevent in any way the holding and expression of opinions. Israeli citizens are free to commemorate the "Nakba." The "anti-boycott bill" has not yet been implemented, and is pending a decision by the Israel High Court of Justice (HCJ) on its legality. The various NGO funding bills mentioned by Adalah, did not pass the initial stages of legislation, and have no impact on NGO activities. The sole legislation on foreign government funding for NGOs which was accepted it the "Transparency Law" (2011), which requires NGOs to file quarterly reports on foreign government funding they receive. This law serves as a model of real-time transparency, and allows the Israeli public to fulfill their right to know about the extent of this funding.

Rights of the child (article 24)

Both DCI-PS and Amnesty International claim that Palestinian children are subject to various human rights violations by Israel. Amnesty accused Israel of "torturing" children, and DCI-PS discounts all the measures that Israel has implemented in order to ensure that the rights of Palestinian children are respected and claims that they "had little substantive effect."

For instance, Israel has changed the military laws in force in the West Bank (introducing order 1676), which includes the creation of juvenile military courts and raises the age of majority to 18. While the long term effects of these measures are yet to be determined, they reflect a willingness on Israel's side to protect children's right, even in cases where children have committed serious crimes and life threatening offenses such as firebombing and stone throwing.

Adalah complains that "the ban on family unification severely violates the fundamental rights of individuals to family life, privacy, protection for the child, equality before the law, and protection of minorities" in violation of articles 24, 26, and 27.

Like other claims in its statement, Adalah misrepresents and erases the context of the reunification law. For instance, the law is temporary and is subject to judicial review in Israel's high court. Nothing in the statute prevents an Arab citizen of Israel from marrying a Palestinian located in the West Bank or Gaza. Nor does the law prevent that citizen from living with his/her spouse in the Palestinian Authority.

More importantly, the law was enacted because more than 23 terrorist attacks, including a March 2002 suicide bombing in Haifa that killed 15, were carried out by those exploiting family entry into Israel. More than 135 Israelis were killed and more than 700 injured in these attacks. In 2012, "a West Bank Palestinian naturalized through a family reunification procedure" planted a bomb on a bus in Tel Aviv. The resulting explosion injured 28.

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Despite NGO allegations that Israel interferes with a "right to family life," there is no "right" to automatic citizenship, nor the right to live in any particular country. Moreover, family considerations do not trump higher order rights such as the "right to life." There is, in fact, no principle in international law that mandates that married persons can live in whichever country they choose. All the more so when individuals abuse this status and perpetrate terror attacks against civilians.

Under international law, countries have the right to set conditions for entry. Such conditions can be set based on nationality. Indeed, the U.S. has a preferred visa program where nationals of particular countries may visit the U.S. without going through the full visa procedures. Article 1(2) of the Convention on the Elimination of Racial Discrimination specifically mentions that distinctions made between citizens and noncitizens do not constitute racial discrimination. In addition, most countries do not grant automatic citizenship or even residency rights to non-nationals as a result of marriage to a citizen. Moreover, many Arab and Muslim states categorically refuse entry to Israelis on the basis of their nationality, and yet, Adalah has never complained about these policies.

Equality before the law/Rights of minorities (article 26/article 27)

Article 26 states that the "law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination." Adalah, NCF, Bimkom, Amnesty and GI-ESCR all claim that Israel violates the right to equality by discriminating against the Bedouins in the Negev, by discriminating against them in the "health, education, water and electricity" sectors and violating their right to adequate housing. Adalah claims that "Israel is deliberately not providing thousands of Arab Bedouin families with access to clean water," as well as the "serious and pressing threats of eviction, home demolition, and forced displacement." NCF claims that the "low success of appealing home demolition orders in court," is also indicative of discrimination and the violation minority rights. The "Prawer plan" formulated in order to regulate Bedouin settlement in the Negev, is also considered to be a form of "dispossession."

The complicated and multidimensional relationship between the state of Israel and the Bedouin population in the Negev has concerned Israeli governments for decades. The complex and at times unclear land registration and land tenure legacy of the Ottoman Empire and the British mandate have compounded the issue.

The Negev Bedouin population lives a semi-nomadic life inside Israel's borders, making it difficult to deliver services and collect revenue and information. During this time, the Israeli government has invested hundreds of millions of shekels to find a comprehensive response to this complex issue, balancing the needs of the state, its Bedouin citizens, and the rest of the population. Nevertheless, the NGOs promote a highly biased portrayal of the Bedouin issue and demand that the government recognize all the maximalist land ownership claims made by several groups in the Bedouin sector – ignoring court proceedings that have examined and rejected these claims – including on the matter of water supply, education, and land ownership. These NGOs also ignore the competing rights and claims of other Bedouin groups, the Israeli population at large, and state needs (such as master plans, environmental and social concerns, and building and zoning laws.) The rhetoric and the language that the

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organizations use deny the Israeli government's obligation to apply its laws and sovereignty in these areas.

In supporting and promoting the rejectionist stance of certain segments of the Bedouin population, these NGOs are actually hindering the improvement of the situation of the Bedouin in the Negev through an agreed upon compromise with the Israeli government.

Conclusion

Moral and ethical principles obligate the Committee to present a credible, accurate, and impartial final report. Reliance on NGOs engaged in tendentious political advocacy documented herein is entirely inconsistent with this requirement. The obsessive condemnations of Israeli responses to daily attacks on its civilians, as well as blatant double standards and disproportionate criticism of attempts to balance rights in the context of asymmetrical warfare, further highlight this problem.

Similarly, a study conducted by the Conflict Analysis Resource Center on Colombia reveals that the lack of reliability of NGO reporting is not limited to the Israeli-Arab conflict. On this basis, we urge the Human Rights Committee to carefully examine the credibility and biases in these reports in order to prevent the further weakening of universal human rights.

point to their work and secured them a sufficient backing from governments and public opinion to enable them to achieve success."[146]

146 *Id.*

WHEN INTERNATIONAL LAW BLOCKS THE FLOW: THE STRANGE CASE OF THE KIDRON VALLEY SEWAGE PLANT

Anne Herzberg[†]

Paraphrasing the famous axiom of Clausewitz, it has been said that international law is simply politics by other means.[1] In the Arab-Israeli conflict, however, it is probably more accurate to say that the rhetoric of international law is simply politics by other means. And no example better illustrates this phenomenon than the strange case of Dutch efforts to block remediation of the polluted Kidron Valley River Basin.

On September 6, 2013, Dutch engineering firm Royal HaskoningDHV issued a statement on its website that it was terminating its involvement in a project to build a wastewater treatment plant in the Kidron Valley, a riverbed running to the Dead Sea through Jerusalem and the West Bank. According to the statement, the company believed "future involvement in the project could be in violation of international law."[2] The message came a week after the company reported that the "Dutch Ministry of Foreign Affairs has informed us of possible aspects relating to international law that may influence the project."[3] The announcement was a shock to many who had worked on the project, including environmental activists, academics, and local authorities.

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1 *See, e.g.*, Gerald M. Steinberg, *UN, ICJ, and the Separation Barrier: War by Other Means*, 38 ISR. L. REV. 331, 335 (2005).

2 *Royal HaskoningDHV Terminates Its Involvement in the Wastewater Treatment Plant in East Jerusalem*, ROYAL HASKONINGDHV (Sept. 6, 2013), http://www.royalhaskoningdhv.com/en-gb/news-room/news/20130906-pr-Terminate-involvement-wwtp-East-Jerusalem/727.

3 *Wastewater Treatment in East Jerusalem*, ROYAL HASKONINGDHV (Aug. 27, 2013), http://www.royalhaskoningdhv.com/en-gb/news/wastewater-treatment-in-east-jerusalem/665.

This incident provides an interesting case study of how international legal and human rights discourse is utilized in the Arab-Israeli conflict by non-governmental organizations (NGOs) and other activists, and then in turn, adopted by policy makers. This process represents a closed circuit of policy formation that claims to be based on enforcing international law and protecting human rights. However, as this article shows, this process may be weakening the law and leading to the violation of rights. Moreover, the reliance by government officials on a narrow group of actors supporting a zero-sum inflexible approach, rather than pragmatic win-win solutions for both Palestinians and Israelis, has actually damaged the prospects for peace and hampered the ability to reach a negotiated resolution of the decades-old conflict.

This article will first provide the background surrounding the project to build a wastewater treatment plant in the Kidron Valley. It will then examine the response of the Dutch government to this project and the resulting impact on Royal HaskoningDHV's decision to drop out. Next, it will discuss how the Dutch government's actions were largely motivated by a campaign spearheaded by church organizations and pro-Palestinian activists to block Dutch involvement in the plant. The article will then analyze the international law applicable to the project and whether it does indeed prohibit the plant's construction and the participation of Royal HaskoningDHV. The article will conclude that international law does not require the Dutch company to terminate its participation in the wastewater treatment project. Rather, the rhetoric of international law and human rights was invoked as part of a flawed policy process carried out by the Dutch government. Ultimately, this unsound process damaged international law, human rights, and the chance to further peace in the region.

THE KIDRON VALLEY RIVER BASIN

The Kidron Valley is a scenic riverbed that bisects Jerusalem's Temple Mount and the Mount of Olives, continues through the eastern part of the city, the Arab village of Beit Sahour, Bethlehem, the Mar Saba Orthodox Monastery, the Judean Desert, and finally terminates at the northern Dead Sea Basin. At several points, the Valley crosses from Israeli territory into the West Bank and back again. Unfortunately, the stream running through the valley is one of the most polluted in the region, threatening the area's drinking water, natural environment,

and public health.[4] The pollution is a result of raw sewage emanating from the eastern villages of the Jerusalem area and the city of Bethlehem.[5]

Obviously, the need for safe and clean water is of critical importance across the globe. In the desert environment of the Middle East, however, water can be a significant driver of conflict. Availability is scarce, and watercourses do not necessarily stop at national boundaries. Polluted water in one country can easily become a serious problem for its neighbors. As a result, for more than thirty years, the issue of managing water resources and pollution has been an area of focus for both Israelis and Palestinians and a central aspect of the peace process. Article 40 of the 1995 Interim Agreement (Oslo II) between Israel and the Palestine Liberation Organization (PLO) specifically addresses the issues of water and sewage and, in particular, emphasizes the need for cooperation and protection of water resources, the natural environment, and public health.[6]

For close to ten years, environmental activists and experts, academics, Israeli and Palestinian officials, and international donors have convened meetings to develop plans to resolve the issue of untreated waste spilling into the Kidron Valley.[7] Those involved with these initiatives believe that a solution must be found despite the complicated issues related to the future border between Israel and a Palestinian state. A master plan for the Kidron Basin "based on ecological, historical, physical, economic and geographical terms agreed upon by both sides will serve the best interests of the [V]alley, regardless of present or future political sovereignty."[8]

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[4] Zafrir Rinat, *Price and Politics Complicate Kidron Valley Sewage Clean-Up*, HAARETZ (Apr. 25, 2012), http://www.haaretz.com/news/national/price-and-politics-complicate-kidron-valley-sewage-clean-up-1.426401.

[5] Zecharya Tagar et al., *A Seeping Time Bomb: Pollution of the Mountain Aquifer by Sewage*, FRIENDS OF THE EARTH MIDDLE EAST 9 (Feb. 2004), http://foeme.org/uploads/publications_publ30_1.pdf.

[6] The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Isr.-P.L.O., Annex III, App. 1, art. 40, Sept. 28, 1995, *available at* http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement%20-%20annex%20iii.aspx#app-40.

[7] *See, e.g.*, Richard Laster, *Kidron Valley/Wadi Nar International Master Plan*, LASTER & GOLDMAN (Apr. 28, 2012), www.laster.co.il/files/Kidron%20Master%20Plan-final%20version.pdf; *Financing Kidron/Wadi El Nar River Revitalization*, MILKEN INSTITUTE (July 2013), http://www.milkeninstitute.org/pdf/KIDRON%20engl_W_Final.pdf.

[8] Laster, *supra* note 7, at 2.

The various efforts to address discharge of untreated waste into the Valley have included cooperation among representatives from the Palestine Hydrology Group (PHG), Bethlehem University and Al-Quds University, the Peres Centre for Peace, the Jerusalem Institute for Israel Studies, the Milken Institute, the City of Jerusalem, and the Dead Sea Drainage Authority.[9] According to Hebrew University Professor Richard Laster, who spearheaded one such initiative, these efforts are an "unprecedented opportunity for setting up a framework for collaborative integrated basin management between the two parties for a shared water resource in a place of enormous historical, cultural, and ecological importance and beauty."[10]

The process is complicated, however, due to a significant portion of the Palestinian leadership that rejects such cooperation, and instead, advances a campaign known as anti-normalization. This segment opposes any joint initiatives with Israel that it sees as impinging on Palestinian "sovereignty." [11] Dozens of Palestinian NGOs, including some of the most visible, have signed an anti-normalization pledge, bolstering this campaign.[12] Anti-normalization prevents the development of projects that could foster trust amongst Palestinians and Israelis and lead to significant quality of life improvements, most particularly for Palestinians.[13] In the case of the Kidron Valley, it is mostly Palestinians that are impacted by the pollution because of the location of the river basin.

Another main issue for the Palestinian leadership that frustrates cooperation on the Kidron Valley is the presence of Israeli communities, commonly called "settlements," in the West Bank. Plans to build wastewater plants in the West Bank have often met resistance within the Joint Water Committee (JWC), a jointly controlled body established under the Oslo Framework to manage and approve plans related to water and sewage.[14] In particular, the Palestinian leadership will not approve any projects that serve Israeli settlements, even if these same projects primarily benefit Palestinians. For instance, as noted by Ashraf Khatib, advisor to chief Palestinian negotiator Saeb Erekat, "[w]e will not be part of legalizing anything that relates to settlements. We won't approve any project that will later benefit the settlements."[15] Similarly, the head of the Palestinian Water Authority (PWA), Shaddad Attili, stated that "Palestinians will not approve water projects intended to consolidate the presence and facilitate the expansion of illegal Israeli settlements in the West Bank."[16]

This stance has had severe implications for Palestinian public health. For example, Palestinian leaders have rejected connecting the

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9 *Id.* at 1; Interview with Naomi Tsur, former Deputy Mayor of Jerusalem, in Jerusalem (Oct. 29, 2013); Interview with Richard Laster, Faculty of Law and Environmental Studies, Hebrew University, in Jerusalem (Oct. 15, 2013).

10 Laster, *supra* note 7, at 1. Laster's plan calls for building a wastewater treatment plant in the Palestinian village of Ubeidiya (located near Bethlehem), owned and operated jointly by Israelis and Palestinians. Treated wastewater would be sold to local towns and villages for agricultural use. *See* Interview with Richard Laster, *supra* note 9.

11 ZACHARY LOCKMAN & JOEL BEININ, INTIFADA: THE PALESTINIAN UPRISING AGAINST ISRAELI OCCUPATION 138 (Between the Lines 1987); Jeff Wheelwright, Op-Ed, *In a Polluted Stream, a Pathway to Peace*, N.Y. TIMES, Oct. 9, 2013, http://www.nytimes.com/2013/10/10/opinion/in-a-polluted-stream-a-pathway-to-peace.html?_r=0 (describing anti-normalization as "demanding a whole loaf when half a loaf might do.").

12 One of the principles of the Palestinian NGOs Code of Conduct is that "[t]he signatory NGOs also undertake to be in line with the national agenda without any normalization activities with the occupier, neither at the political-security nor the cultural or developmental levels." CODE OF CONDUCT COALITION, PALESTINIAN NGOS CODE OF CONDUCT 10 (2008), http://www.ndc.ps/sites/default/files/1204355297_0.pdf. More than 400 NGOs have signed the pledge. *See* NGO DEVELOPMENT CENTER, THE PALESTINIAN NGO CODE OF CONDUCT, http://www.ndc.ps/node/669.

13 Anti-normalization proponents are also responsible for exerting tremendous pressure and even physical attacks on Palestinians living in East Jerusalem who wish to vote in Jerusalem's municipal elections, engage in co-existence initiatives like sporting events, or those who seek to acquire Israeli citizenship. *See, e.g.*, Jodi Rudoren, *Tradition of Not Voting Keeps Palestinians Politically Powerless in Jerusalem*, N.Y. TIMES, Oct. 22, 2013, *available at* http://www.nytimes.com/2013/10/22/world/middleeast/tradition-of-not-voting-keeps-palestinians-politically-powerless-in-jerusalem.html?_r=0; Richard Behar, *Why so many Palestinian High-Tech Entrepreneurs Hate my Forbes Cover Story*, FORBES, August 28, 2013, *available at* http://www.forbes.com/sites/richardbehar/2013/08/28/why-so-many-palestinian-high-tech-entrepreneurs-hate-my-forbes-cover-story/; Ophir Bar-Zohar, *Peace activists are sick of talking about soccer*, HAARETZ (Apr. 25, 2012), http://www.haaretz.com/news/national/peace-activists-are-sick-of-talking-about-soccer-1.426396.

14 Declaration of Principles on Interim Self-Government Arrangements, Isr.-P.L.O., Annex 3, Sept. 13, 1993, 32 I.L.M. 1525 [hereinafter *Oslo I*].

15 Nathan Jeffay, *Settlers and Palestinians Alike Spew Sewage in Fragile West Bank*, JEWISH DAILY FORWARD, July 5, 2013, *available at* http://forward.com/articles/179462/settlers-and-palestinians-alike-spew-sewage-in-fra/?p=all - ixzz2iMrQB7Dd.

16 Press Release, Shaddad Attili, Minister and Head of Palestinian Water Auth., JWC in Danger of Collapse, While ICA Permits in Area C Destroying Prospects for Palestinian Statehood (Sept. 10, 2012).

northern West Bank to Israeli sewage lines because those lines also serve some settlements. Another project for a wastewater treatment plant was rejected because it would serve the settlement of Ariel, in addition to Palestinian towns.[17] Consequently, Palestinians control only one wastewater treatment plant in the West Bank.

These refusals have also impacted the Kidron Valley. In 1993, the Palestinians rejected the construction of a German financed plant in East Jerusalem meant to be jointly run by both Israelis and Palestinians because the Palestinians did not want to recognize any Israeli authority over territory acquired in the 1967 war.[18] Other projects were rejected because the Palestinian Authority (PA) would not give permission for small sections of pipeline to go through Area A (full Palestinian control), even though they would be primarily situated in Area C of the West Bank (full Israeli control) and the Palestinians would be able to use treated wastewater.[19]

Due to the geography of Jerusalem, the vast majority of sewage emanating from the Western part of the city flows towards the Mediterranean Sea and is treated in Israel at the Sorek Western Sewage Treatment Plant. The Plant also treats waste from parts of Bethlehem and nearby Palestinian villages. Sewage from the Eastern part of the city flows into the Kidron Valley. More than ninety percent of sewage from Palestinian sources in the West Bank is untreated, contaminating the groundwater and damaging the shared Mountain Aquifer.[20]

In 2010, the Israeli Water Authority decided to build a wastewater treatment plant near Jabel Mukaber, an Arab village that falls within the municipal boundaries of Jerusalem, in order to treat the sewage emanating from the Eastern part of the city. This plant would remedy

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[17] Zafrir Rinat, *Most Palestinian Sewage in West Bank Untreated, Contaminating Water Along Green Line*, HAARETZ, (July 3, 2013) http://www.haaretz.com/news/national/.premium-1.533450.

[18] Matt Benyon Rees, *East Jerusalem's Sewage is Flushed Into the Dead Sea as City Fails to Agree on Waste Treatment*, MINNPOST (June 29, 2010), http://www.minnpost.com/global-post/2010/06/east-jerusalems-sewage-flushed-dead-sea-city-fails-agree-waste-treatment; Arieh O'Sullivan, *Where Pilgrims Once Trod, Sewage Flows*, JERUSALEM POST (Sept. 11, 2011), http://www.jpost.com/Video-Articles/Video/Where-pilgrims-once-trod-sewage-flows.

[19] AM-GAR, *Sewage Treatment MAVTI, Jerusalem*, http://www.am-gar.com/en-us/projects/transportation-infrastructure/mavti.asp (last visited Jan 10, 2014). Under Olso, Palestinians and Israelis agreed to divide control of the West Bank into three areas: Area A (full Palestinian control), Area B (Palestinian civilian and administrative control and Israeli security control), and Area C (full Israeli control).

[20] Jeffay, *supra* note 15; Rinat, *supra* note 17.

a significant portion of the raw sewage flowing into the Kidron Valley.[21] While the plant would treat a small percentage of wastewater from Israeli neighborhoods in Eastern and Northern Jerusalem, it was mainly intended to serve Palestinian communities.[22]

The plant was not an ideal solution to Kidron Valley pollution because it would not have treated considerable amounts of sewage emanating from south of the plant in the West Bank. A Master Plan for the Kidron Valley, which would treat a greater amount of the sewage, was proposed and agreed to by officials of the Dead Sea and Jordan Valley water authorities, the Jerusalem municipality, and the mayor of the Palestinian town of Ubeidiya where the plant was to be built, but was rejected by PWA because the Palestinians "will not agree for the sewage to be channeled to another treatment plant and be used to irrigate [agriculture in] settlements."[23] However, the head of the Jordan Valley Water Association, Dov Kuznetsov, said, "[h]e would agree to any division" upon which the Water authority decided.[24] Moreover, he commented that "he thought the [PA] would not be able to afford the operational costs of the sewage treatment plant" without Israeli or international help, nor "find enough agricultural areas to utilize the [treated] sewage."[25]

Nevertheless, due to domestic Israeli environmental and health laws, which are applied in East Jerusalem and which require wastewater treatment, the Israeli Water Authority decided it could not wait for the political problems to be resolved at the Joint Water Committee. As a result, it decided to go forward with the plant in Jerusalem. Pursuant to the Oslo Accords, projects undertaken in East Jerusa-

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[21] Several of the NGOs and commentators on this incident have appeared to mix up the Jabel Mukaber plant (Jerusalem) with the Ubeidiya plant (West Bank) envisioned under the Master Kidron Plan. It should be noted that the master plan has yet to be approved by the JWC, which is required due to the proposed location of the plant. Although the Mayor of Ubeidiya agreed to host the plant in his jurisdiction, the proposal has been blocked by politics at the JWC. The PA wants sole Palestinian ownership and control over the plant, while the Israelis want international ownership and oversight. The Palestinians also object to the treatment of sewage from "settlements" (some of the sewage that flows into the Kidron originates from within Israeli territory) as well as treated wastewater being sold to Israeli settlements for agricultural use. Interview with Richard Laster, *supra* note 7; Interview with Uri Ginott, Friends of the Earth Middle East, in Jerusalem (Oct. 27, 2013); Interview with Naomi Tsur, *supra* note 9.

[22] *See* Rinat, *supra* note 4.

[23] *Id.*

[24] *Id.*

[25] *Id.*

lem do not require approval of the JWC, and therefore, could be accomplished much more quickly.[26]

The Israeli Water Authority hired Royal HaskoningDHV, a Dutch engineering firm with extensive experience in wastewater management with projects around the world, including in Saudi Arabia, Oman, China, and Qatar,[27] to work on the East Jerusalem plant in early 2013.[28] On August 27, 2013, the company issued a surprising announcement that:

> The Dutch Ministry of Foreign Affairs has informed us of possible aspects relating to international law that may influence the project.
>
> At this moment we are reviewing with all parties involved the consequences of the situation and the influence this may have on the progress of the project with all parties involved. We will not proceed with next steps in the project until the situation has been clarified.[29]

On September 6, 2013, the company revealed it was terminating its involvement in the project completely. The stated reason for the decision was that "[i]n the course of the project, and after due consultation with various stakeholders, the company came to understand that future involvement in the project could be in violation of international law."[30]

Following the announcement, the anti-normalization camp praised the decision. Hanan Ashrawi, head of the Palestinian NGO Miftah and member of the Palestinian Legislative Council, claimed the plant violated international law, primarily serviced "illegal settlements," and was another hurdle to Palestinian state sovereignty.[31] Another Palestinian NGO, Al Haq, welcomed Royal HaskoningDHV's announcement.[32] It previously criticized the planned wastewater treatment plant claiming it would contribute to maintaining and supporting "settlements in East Jerusalem" and would "perpetuat[e] violations of international law."[33] The group admitted, however, that "[a]s the Occupying Power, Israel has the obligation to protect the occupied population and ensure public order and safety."[34]

Similarly, in a press release issued by the UN Office of the High Commissioner for Human Rights, Richard Falk, the controversial UN Special Rapporteur for "the situation of human rights in the Palestinian territories occupied since 1967,"[35] "praised the decision as a major acknowledgement of the arguments made by legal experts and human rights activists," noting it was "part of a growing momentum against Israel's failure to comply with international law in accordance with the provisions of the Fourth Geneva Convention governing belligerent occupation."[36] The release also mentioned that Falk planned to present "a report on corporate complicity in the Israeli settlement enterprise" to the October 2013 session of the UN General Assembly, con-

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[26] Interview with Naomi Tsur, *supra* note 9.

[27] *Projects*, ROYAL HASKONINGDHV, http://www.royalhaskoningdhv.com/en-gb/projects (last visited Jan. 11, 2014).

[28] Jeffay, *supra* note 15; Interview with Naomi Tsur, *supra* note 9. The author is unaware of the Dutch government advising Royal HaskoningDHV against working in any of these countries despite their significant human rights violations. In addition, the author is not aware of any boycott campaigns instituted by any of the NGOs discussed in this paper against companies working in any of these countries.

[29] Royal HaskoningDHV, August 27 announcement, *supra* note 3.

[30] Royal HaskoningDHV, September 6 announcement, *supra* note 2.

[31] *Ashrawi Welcomes Royal HaskoningDHV Decision to Withdraw from Israeli Project in Occupied East Jerusalem*, PALESTINE NEWS NETWORK (Sept. 9, 2013, 8:51 AM), http://english.pnn.ps/index.php/nonviolence/5632-ashrawi-welcomes-royal-haskoningdhv-decision-to-withdraw-from-israeli-project-in-occupied-east-jerusalem

[32] *Al Haq Welcomes Dutch Company's Decision to Terminate Involvement In Wastewater Treatment Project in East Jerusalem*, AL-HAQ (Sep. 9, 2013), http://www.alhaq.org/advocacy/targets/accountability/81-general/737-al-haq-welcomes-dutch-companys-decision-to-terminate-involvement-in-wastewater-treatment-project-in-east-jerusalem.

[33] *Id.*

[34] *Id.*

[35] Falk has faced severe criticism from UN officials for his statements supporting the 9/11 "truther" movement and for posting anti-Semitic cartoons on his blog. *See, e.g.*, *UN's Falk Gives Voice to 9/11 Conspiracy Theory; Radio Host Blames "Zio-Nazis"*, UN WATCH (June 14, 2013), http://blog.unwatch.org/index.php/2013/06/14/uns-falk-gives-voice-to-911-conspiracy-theory-radio-host-blames-zio-nazis/. According to a 2010 U.S. State Department cable, the Palestinian Authorities "were considering seeking the removal of Special Rapporteur for Human Rights in the OPT Richard Falk's due to his poor performance and reference to Hamas in his draft report to the Council." *See Palestinian Ambassador on Goldstone, 4GC, HRC*, WIKILEAKS (Feb. 16, 2010), http://www.cablegatesearch.net/cable.php?id=10GENEVA43. The cable also mentioned anger at Falk's repeated references comparing Israeli actions in the West Bank and Gaza to the Holocaust.

[36] Press Release, U.N. Office of the High Comm'r of Human Rights, Israel: UN Expert Welcomes Dutch Firm's Decision to Pull Out of an Illegal Israeli Project in East Jerusalem (Sept. 10, 2013), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13696&LangID=E.

taining "legal analysis of the specific ways in which business activities potentially implicate companies in international crimes."[37]

THE DUTCH DEBATE

Royal HaskoningDHV's termination prompted an intense debate within the Netherlands and triggered several questions in the Dutch Parliament. During one Parliamentary session, Dutch Foreign Minister Frans Timmermans stated:

> I can imagine very well that Haskoning believes in this project, because it provides a solution to a very serious environmental problem. I hope that they will be successful in proving the usefulness and necessity of this project to the Palestinian Authority. If it succeeds, it is entirely up to Royal Haskoning whether or not to continue with this project. I say that with a lot of emphasis as I saw emotions rising today and think that the situation isn't that bad. Again, the Dutch government has not banned and has also not exerted any pressure. The current policy has been explained, and has also been explained to Royal Haskoning. If the Palestinians agree, it is the responsibility of Haskoning themselves whether or not to continue with this project. The government does not interfere with this.[38]

Two Members of Parliament (MPs), Joel Voordewind and Kees Van der Staaij, challenged the Dutch Foreign Ministry, asking if the reports of government pressure were true and seeking an explanation of the legal basis for the decision.[39] They also wanted to know what the consequences would be for a company that refuses to take the government's advice to refrain from business activity in the West Bank or East Jerusalem.[40] Timmermans replied:

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[37] *Id.*

[38] *General Affairs Council and Foreign Affairs Council*, OVERHEID.NL (Sept. 17, 2013), https://zoek.officielebekendmakingen.nl/kst-21501-02-1288.html?zoekcriteria=%3fzkt%3dEenvoudig%26pst%3d%26vrt%3demoties%2bhaskoning%26zkd%3dInDeGeheleText%26dpr%3dAfgelopenDag%26sdt%3dDatumBrief%26ap%3d%26pnr%3d1%26rpp%3d10&resultIndex=0&sorttype=1&sortorder=4 (translation from original Dutch by Jody Sieradzski).

[39] *Aanhangsel van de Handelingen*, OVERHEID.NL (Sept. 16, 2013), https://zoek.officielebekendmakingen.nl/ah-tk-20122013-3223.html.

[40] *Id.*

> The Cabinet has not advised Royal HaskoningDHV to stop building public facilities in East Jerusalem, rather the Cabinet informed the company of the occupation of the area by Israel and the rights and obligations of the occupying power. The Cabinet considers Israeli settlements illegal and an obstacle to peace and therefore discourages Dutch companies to invest, engage in, or benefit from Israeli settlements. This is standing policy. However, Dutch companies are not prohibited to engage in these types of economic relationships. The responsibility lies with the companies themselves.[41]

The MPs also asked if the Foreign Ministry was "aware that the construction of the water treatment plant is designed for approximately 200,000 civilians, mostly Palestinians, to provide clean drinking water?"[42] In response, the ministry dodged the question, providing a literal response to the question rather than addressing the MPs' criticism that the plant was intended to mostly serve Palestinian residents of Jerusalem and to protect Palestinians located downstream. The response also seemed to imply that treating sewage was not as important as providing drinking water: "The plant would purify sewages in East Jerusalem. However, this is not the equivalent to the preparation of wastewater for consumption. The project will have no impact on the amount of available drinking water."[43]

The Foreign Ministry further refused when asked to provide a list of all cooperation projects being supported by Holland in the West Bank. The reply was that "[t]he association that is being made here regarding Dutch support for development projects in the Palestinian territories is not applicable because these projects are not carried out with the purpose of facilitating settlements."[44]

Another set of questions was asked on September 24, 2013, in response to Parliamentary discussion on a report issued in April 2013 by the Dutch Advisory Council of International Affairs (AIV), a quasi-governmental organization.[45] The Dutch Senate commissioned the report to provide suggestions for reviving the Middle East peace pro-

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[41] *Id.*, (translation from original Dutch by Jody Sieradzski).

[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS, http://aiv-advies.nl/ (last visited Jan. 24, 2014).

cess.[46] One of the recommendations in the report advocated for the cessation of economic relations between Dutch and European companies and Israeli companies in East Jerusalem and the West Bank.[47]

The new set of questions asked whether "the decision of Royal Haskoning DHV [is] a benchmark for all Dutch companies with economic relations in settlements in occupied territory?" and "are companies, such as Royal Haskoning, that refrain from doing business with Israeli settlements recommended by the PA to engage in business with Palestinians, without Israeli control or interference?"[48] In response, Timmermans noted, that "it is up to the companies to decide to what extent they want to maintain economic relations with settlements in the occupied territories."[49] He also replied that "[t]he Ministry, the Dutch embassy in Tel Aviv and the Dutch Representative office in Ramallah limit themselves to the discouragement of economic relations (with companies) in settlements."[50] In response to a question asking, in the wake of the Royal HaskoningDHV incident, whether the Dutch government planned to "further support the position of the Palestinian Authority in the Joint Water Committee with Israel," Timmermans reaffirmed that "Holland was in close contact on this with the PA.[51]

In response to another question, the Dutch government answered that Royal HaskoningDHV's decision was "taken independently, which the government has no control over. The decision is in line with the position of the government that the expansion of settlement activity is not conducive to a two-state solution."[52] Nevertheless, the Dutch government admitted that it had "been in talks with Royal HaskoningDHV because it considers that there is a relationship between the project in question and the Israeli settlement activity."[53]

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46 *Between Words and Deeds: Prospects for a Sustainable Peace in the Middle East*, ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS (Mar. 2013), http://aiv-advies.nl/ContentSuite/upload/aiv/doc/webversie_AIV83_ENG_new(1).pdf [hereinafter AIV Report].

47 *See id.*

48 *Lijst van Vragen*, OVERHEID.NL (Sept. 24, 2013), https://zoek.officielebekendmakingen.nl (translation from original Dutch by Jody Sieradzski).

49 *Id.*

50 *De Situatie in het Midden-Oosten: Lijst van Vragen en Antwoorden*, OVERHEID.NL (Oct. 8, 2013), https://zoek.officielebekendmakingen.nl (translation from original Dutch by Jody Sieradzski).

51 *Id.*

52 *Id.*

53 *Id.*

Timmermans further admitted that in the matter it had "taken note of the Declaration of the Executive Committee of the PLO."[54] It also appeared to place sole blame on the water issues on the Israeli government, "urging Israel to comply with its international obligations, including in the field of water. The EU also urges Israel to respect the Palestinian water rights and to simplify water accessibility."[55]

THE NGO ROLE

The Dutch government's involvement in the Royal HaskoningDHV affair must be placed in the context of an intensive lobbying campaign aimed at the EU and its member states. This effort is spearheaded by several Dutch NGOs (that are primarily financed by the Dutch government)[56] to target businesses engaged in any activities with Israelis in the West Bank and East Jerusalem, no matter how marginal. These NGOs are Cordaid, the Interchurch Organization for Development Cooperation (ICCO), and IKV Pax Christi (Pax).[57] Their campaign was further adopted and promoted by the AIV, which relied on materials from these NGOs in drafting its report on the Mid-

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54 *Id.* The PLO is the Palestine Liberation Organization, which is an "organization claiming to represent the world's Palestinians—those Arabs, and their descendants, who lived in mandated Palestine before the creation there of the State of Israel in 1948. It was formed in 1964 to centralize the leadership of various Palestinian groups that previously had operated as clandestine resistance movements." *Palestine Liberation Organization (PLO)*, ENCYCLOPAEDIA BRITANNICA (Feb. 17, 2014), http://www.britannica.com/EBchecked/topic/439725/Palestine-Liberation-Organization-PLO.

55 *Id.*

56 Cordaid received €422 million from the Dutch government in 2007-2010. *Cordaid (Netherlands)*, NGO MONITOR, http://www.ngo-monitor.org/article/cordaid (last visited Mar. 20, 2014). In 2011, it was reduced to €69 million, more than half of its budget. *Id.* It is the leading group in an international network expecting €357 million from the Dutch government 2011-2015. *Id.* In 2010, ICCO received €88.8 million in Dutch government funds, representing eighty-five percent of its €103.5 million budget. *Indirect Dutch Government Funding: ICCO and Cordaid support for radical NGOs*, NGO MONITOR (June 27, 2011), http://www.ngo-monitor.org/article/indirect_dutch_government_funding_icco_and_cordaid_support_for_radical_ngos. Pax received more than eighty percent of its budget in 2012 from the Dutch government. *See* IKV Pax Christi Annual Account 2012, IKV PAX CHRISTI (2012), *available at* http://www.ikvpaxchristi.nl/media/files/annual-account-2012-ikv-pax-christi.pdf.

57 *See id.* at n.5.

dle East peace process.[58] The recommendations and claims made by these organizations, in turn, significantly influenced the Dutch Foreign Ministry's approach to the Jerusalem wastewater treatment plant.[59]

THE AIV REPORT

One of the most influential documents for the Dutch government in its subsequent approach to the Royal HasknoningDHV case is the report "Between Words and Deeds: Prospects for a sustainable peace in the Middle East," prepared by the Adviesraad Internationale Vraagstukken (AIV). The AIV is a quasi-governmental advisory body. Although it has independent status, it is housed within and funded by the Foreign Ministry, advising the Dutch government and parliament on foreign affairs.[60]

On October 23, 2012, Fred de Graaf, President of the Senate of the States General, wrote to the AIV seeking an advisory opinion "on the options that exist for the Netherlands in helping to find a workable solution to the Israeli-Palestinian conflict, both independently and at European and international level."[61]

The fifty-four-page document offered eight recommendations to the Dutch government regarding the Middle-East peace process. The suggestions included a new European peace initiative where the Dutch government could play a significant role in training the Palestinian judiciary and police.[62] With regards to water, the AIV called on the Dutch government to take "a more active role in the field of 'water

[58] *See* ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS, BETWEEN WORDS AND DEEDS: PROSPECTS FOR A SUSTAINABLE PEACE IN THE MIDDLE EAST (Mar. 2013), *available at* http://www.aivavies.nl/ContentSuite/upload/aiv/doc/webversie_AIV83_ENG_new%281%29.pdf.

[59] *See Between words and deeds: prospects for a sustainable peace in the middle east*, ADVISORY COUNCIL ON INTERNATIONAL AFFAIRS, http://www.aivadvies.nl/ContentSuite/template/aiv/pag/page.asp?id=1885&language=UK (last visited Mar. 20, 2014).

[60] The AIV "is an independent body which advises government and parliament on foreign policy, particularly on issues relating to human rights, peace and security, development cooperation and European integration." *Information on the AIV*, ADVIESRAAD INTERNATIONALE VRAAGSTUKKEN, http://www.aivadvies.nl/ContentSuite/template/aiv/pag/page.asp?id=1885&language=UK (last visited Mar. 15, 2014) The AIV website translates Adviesraad Internationale Vraagstukken into Advisory Council on International Affairs. *Id.*

[61] AIV Report, *supra* note 46, at Annex I. According to de Graaf, all Senate members supported the request with the exception of those from the Partij voor de Vrijheid (PVV) (Dutch Party for Freedom).

[62] *Id.* at 46–47.

diplomacy,'" such as greater use of desalinization techniques and implementation of technology "for the benefit of the Palestinians as well as the Israelis . . . ."[63] The recommendations also upbraided Israel, commenting that "the Netherlands should join forces with like-minded countries to ensure that the two parties comply with their obligations under international law and, if necessary, help to enforce this. Historical ties and solidarity with Israel must not preclude calling it to account for violating the law."[64]

The AIV also stressed that "the Netherlands, with its tradition of working with other countries to uphold international law, has a duty to take that law extremely seriously and to apply it without double standards and without regard for expediency."[65] It advised that "[t]he Netherlands should indeed be prepared to play the international law card consistently with nations with whom it enjoys friendly relations, like Israel and Palestine, drawing as much as possible on specific knowledge of legal matters."[66] The report did not suggest that sanctions or other punitive measures be imposed on the Palestinians for their failure to comply with numerous provisions of international law relating to terror financing and money laundering, humanitarian law, and human rights law, including incitement, and suppression of free speech and freedom of religion.

The vast majority of the document's text was exclusively directed at Israel and in particular, Israeli settlements. Significant focus was directed towards the highly controversial 2004 ICJ Advisory Opinion on Israel's security barrier. In particular, "the AIV took the view that the Middle East Peace Process required a new approach and that . . . [s]uch an approach must of course be based on a set of principles shared widely internationally, as expressed, for example, in the advisory opinion issued by the International Court of Justice in 2004 on Israel's construction of a wall along the West Bank."[67]

[63] *Id.* at 40–41.

[64] *Id.* at 47.

[65] *Id.* at 18.

[66] *Id.* at 18–19.

[67] *Id.* at Annexe 1. Many legal scholars have levied intense criticism over this decision. *See, e.g.*, Steinberg, *supra* note 1; Ruth Wedgwood, *The ICJ Advisory Opinion on Israel's Security Fence and the Limits of Self Defense*, 99 AM. J. OF INT'L L. 52 (2005); Laurence E. Rothenberg & Abraham Bell, *Israel's Anti-Terror Fence: The World Court Case*, JERUSALEM CENTER FOR PUBLIC AFFAIRS (Feb. 15, 2004), *available at* http://jcpa.org/jl/vp513.htm. It should be noted that the advisory opinion employs much of the same faulty legal reasoning as that relied upon by the AIV, the Dutch NGOs and the Dutch government. Moreover, it must be reiterated

In addition, the AIV stated that "there can be no doubting the fact that the Fourth Geneva Convention is applicable in the Palestinian territories . . . ."[68] The AIV, thus, recommended that "[a]s regards the sensitive issue of taking specific steps against Israeli settlement policy, the AIV believes that the EU, and the Netherlands in an EU context, should do everything it can to comply with the existing treaties and Security Council resolutions and the many political statements based on them."[69]

The report also called for sanctions on Israel:

> A balanced approach must be taken. As regards Israel, this means that until there is a change in the country's actions in the occupied territories, there are no grounds for the Netherlands to upgrade its bilateral relations with Israel, by establishing a bilateral Cooperation Council, for example, as the first Rutte government intended. If anything, Israel's actions in fact give cause to freeze or even restrict those relations, particularly at an economic and military level.[70]

> In the opinion of the AIV, the EU should take a stricter line on ensuring that Israel does not enjoy any benefit from its Association Agreement with the EU when it comes to products from the settlements. The AIV would also urge the Netherlands to actively discourage Dutch and European companies from doing business with Israeli companies in the settlements.[71]

that the court itself acknowledged that its "reply is only of an advisory character," and "has no binding force." Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 131, ¶ 47 (July 9), *available at* www.icj-cij.org/docket/files/131/1671.pdf. Interestingly, the Dutch judge on the ICJ dissented from the court's advice that "[a]ll States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties [sic] to the Fourth Geneva Convention . . . [have an obligation] to ensure compliance by Israel with international humanitarian law as embodied in that Convention." *Id.* at 202.

68 AIV Report, *supra* note 46, at 17.

69 *Id.* at 41.

70 *Id.* at 39.

71 *Id.* at 47. In response to this recommendation, the Dutch government replied that that "[t]he government discourages economic relations between Dutch companies and companies operating in settlements in the occupied territories. Dutch government institutions perform no services for companies operating in Israeli settlements. The embassy in Tel Aviv provides Dutch companies with information about issues of international law with respect to doing business the occupied territories. Where necessary Dutch companies are held to account for their actions." De Situatie, *supra* note 50 (translation from original Dutch by Jody Sieradzski).

In favoring a boycott, the AIV cites with approval the decision of the Unilever Corporation to relocate its Beigel Beigel pretzel factory from the Barkan Industrial Zone (located in the West Bank) to within the 1949 armistice lines.[72] The report fails to note that 150 Palestinians employed by the factory lost their jobs, depriving 1,500 family members of their livelihood, due to pressure on the company to move the factory.[73]

The AIV report, issued on April 16, 2013, was strongly criticized by Israeli and Dutch officials. In particular, they criticized the AIV's myopic focus on Israeli settlements to the exclusion of nearly all other issues in the conflict, notably Palestinian terrorism and security concerns.

The report also reflected consultation with an extremely narrow range of sources. The document relies on legal arguments and analysis offered by activists with a strong history of anti-Israel and anti-normalization views. It appears that the AIV did not consult with any Israeli officials or NGOs outside of this ideological mold. Moreover, the AIV relied on publications by the highly inflammatory Edward Said and a book criticized by many as anti-Semitic, *The Israel Lobby and U.S. Foreign Policy* by Mearsheimer and Walt.[74]

Most notably, two of the four consultants on the report were H. van den Broek and John Dugard. These individuals have an extensive record of activism targeting Israel, including boycott, divestment, and sanctions campaigns, and have a highly contentious relationship with the country. The choice of these individuals to assist with this report was immediately damaging to its credibility as an objective source of information for the Dutch government. Moreover, their involvement would mean that there could be no expectation of serious engagement with Israel on the substance of the report.

Van den Broek, for example, is a member of The Rights Forum, a Dutch NGO that promotes the Palestinian narrative and solely blames

72 AIV Report, *supra* note 46, at 42 n.95. The 1949 armistice line between Jordan and Israel is also referred to as the "Green Line."

73 Asher Schechter, *EU Settlement Ban Casts Shadow Over Palestinian Industry in the West Bank*, HAARETZ (Aug. 11, 2013), http://www.haaretz.com/news/diplomacy-defense/.premium-1.540861.

74 John Mearsheimer & Stephen Walt, The Israel Lobby and U.S. Foreign Policy, (Farrar, Straus, and Giroux 2007).

Israel for the conflict.[75] He was also involved in organizing and authored the introduction of the NGO report, "Trading Away Peace."[76]

Dugard, also a Rights Forum member, has spearheaded many initiatives singling out Israel. In 2009, he directed a report funded by the South African government claiming to prove that Israel was an "apartheid" and "colonial" state.[77] The report advocated the imposition of sanctions on Israel and called for another ICJ advisory opinion to find that Israel was engaging in the crimes of apartheid and colonialism. He was involved in organizing the Russell Tribunal, a pseudo-court in the model of Bertrand Russell's "peoples' tribunals" of the 1960s and 1970s, that aimed to put Israel and its allies on "trial."[78] As the UN Special Rapporteur of the Commission on Human Rights on the "situation of human rights in the Palestinian territories occupied since 1967," he was criticized for promoting a "right of resistance."[79] He has also accused Israel of committing "genocide" against Palestinians

[75] *Who We Are*, THE RIGHTS FORUM, http://translate.google.com/translate?sl=nl&tl=en&js=n&prev=_t&hl=en&ie=UTF-8&u=http%3A%2F%2Fwww.rightsforum.org%2Fover-ons%2Fwie-wij-zijn (last visited Jan. 24, 2014).

[76] APRODEV ET AL., *Trading Away Peace: How Europe Helps Sustain Illegal Israeli Settlements* (Oct. 30, 2012), *available at* http://www.fidh.org/IMG/pdf/trading_away_peace_-_embargoed_copy_of_designed_report.pdf [hereinafter *Trading Away Peace*]; *see also* Christoph Sydow, *Activists Seek Ban on Trade with Israeli Settlers*, SPEIGEL (Oct. 30, 2012), http://www.spiegel.de/international/world/eu-activists-demand-an-end-to-imports-from-israeli-settlements-a-864355.html; Wim Kortenoeven, *In the Breach: Dutch Foreign Policy on Israel*, THE TIMES OF ISRAEL (June 18, 2013), http://blogs.timesofisrael.com/in-the-breach-dutch-foreign-policy-on-israel. Following the Royal Haskoning decision, the Chairman of the Rights Forum, Dries van Agt, authored an op-ed applauding the decision and repeating PLO claims regarding JWC project approvals. He also falsely claimed that the "*main purpose of this system is to serve and strengthen Israel's illegal settlements*," when, in fact, the point of the treatment plant was to treat the sewage of the Arab neighborhoods of Jerusalem and to prevent further pollution of the Kidron Basin where tens of thousands of Palestinians live. *Who We Are*, *supra* note 75, http://translate.google.com/translate?sl=nl&tl=en&js=n&prev=_t&hl=en&ie=UTF-8&u=http%3A%2F%2Fwww.rightsforum.org%2Fover-ons%2Fwie-wij-zijn.

[77] *Occupation, Colonialism, Apartheid? A Re-Assessment of Israel's Practices in the Occupied Palestinian Territories Under International Law*, HUMAN SCIENCES RESEARCH COUNCIL (May 2009), http://electronicintifada.net/files/090608-hsrc.pdf.

[78] RUSSELL TRIBUNAL ON PALESTINE, http://www.russelltribunalonpalestine.com/en/ (last visited Jan. 26, 2014).

[79] Riaz K. Tayob, *UN Conference Calls for Action on Investigation Findings on Gaza War*, THIRD WORLD RESURGENCE, July 2009, at 35, *available at* http://www.twnside.org.sg/title2/resurgence/2009/227/human1.htm.

and has denied the right of Israel to engage in self-defense against Hamas rockets on Israeli civilians.[80]

TRADING AWAY PEACE

A main source for the AIV report was a publication issued in the fall of 2012 by twenty-two mostly church-affiliated NGOs, titled "Trading Away Peace," that called on the EU to adopt a full ban on products from Israeli settlements.[81] The Dutch NGOs Cordaid, ICCO, and Pax were among the twenty-two NGOs.

The report opens with an introduction by van den Broek, stating that the "decisive" factor for the stagnation in the peace process "is Israel's incessant settlement policy in the West Bank and East Jerusalem."[82] He adds that "its negative impact goes much further: it threatens the viability of the two-state solution and thus the very feasibility of peace."[83] He also condemns European inaction: "[a]s settlement construction has continued and accelerated, however, we Europeans have failed to move from words to action."[84]

The text of the report repeatedly highlights the claim that "[t]he European Union's position is absolutely clear: Israeli settlements in the occupied Palestinian territory are 'illegal under international law.'"[85] The publication also focuses on the issue of water, alleging that "[a]ccess to water also remains hugely unequal with Israel over-extracting West Bank water resources, while restricting Palestinians from drilling new wells and developing their water infrastructure."[86] The document further argues that "the Palestinian economy is severely constrained by Israeli restrictions on access to markets and natural

[80] *HRW Plays Prominent Role at UN Mini-Durban Conference*, NGO MONITOR (July 30, 2009), http://www.ngo-monitor.org/article/hrw_plays_prominent_role_at_un_mini_durban_conference.

[81] Trading Away Peace, *supra* note 76. The 22 NGOs are Aprodev, Broederlijk Delen (Belgium), Caabu (UK), CCFD (France), Christian Aid (UK and Ireland), Church of Sweden, Cordaid, DanChurchAid (Denmark), Diakonia (Sweden), FinnChurchAid (Finland), ICCO, IKV Pax Christi, FIDH (France), Medical Aid for Palestinians (UK), Medico International (Germany and Switzerland), Methodist Church in Britain, Norwegian People's Aid, Norwegian Church Aid, Quaker Council for European Affairs, Quaker Peace and Social Witness (UK), and Trocaire (Ireland).

[82] *Id.* at 3.

[83] *Id.*

[84] *Id.* at 5.

[85] *Id.* at 6.

[86] *Id.*

resources," creating a situation where the PA is "dependent on large amounts of funds from the EU and other foreign donors and is currently facing an acute fiscal crisis."[87]

In addition to claiming that Israel's settlement policy violates Article 49 of the Fourth Geneva Convention, the report argues that:

> purchase of agricultural produce from settlements by third states (e.g. through public procurement) would breach their obligation not to aid or assist the ongoing commission of an internationally unlawful act. This is because settlement agriculture is heavily dependent on water and water distribution in the West Bank is regulated by Israel military orders that contravene the occupier's duty to respect pre-existing laws.[88]

The document also claims that "financing construction of settlement-related infrastructure (e.g., the Jerusalem light rail) may breach the duty of non-recognition, since it contributes to making the occupation permanent."[89]

The publication concludes with the recommendations that EU member states should "issue formal advice to importers and other businesses to refrain from purchasing settlement goods and to avoid all other commercial and investment links with settlements"; ban all settlement products; and exclude any trade or dealings with businesses or individuals connected to the settlements.[90] The recommendation to "issue formal advice" to businesses closely mirrored the approach adopted by the Dutch government towards Royal HaskoningDHV,[91] as described in the answers of the Dutch Foreign Minister to parliamentary questions.[92]

DUTCH NGO REPORT

Another NGO report that influenced Dutch policy in the Royal HaskoningDHV affair was a publication issued in April 2013 by Cordaid, ICCO, and Pax, titled "Dutch economic links with the Occupation."[93] The document provided a detailed list of Dutch companies involved in activities over the 1949 armistice lines.

Cordaid, ICCO, and Pax are active in pro-Palestinian advocacy. As large organizations, they provided millions of euros in funding to some of the most hardline NGOs operating in the Arab-Israeli conflict.[94] Some of their partners engage in extreme anti-Israel and even anti-Semitic rhetoric, and the head of one grantee was convicted after being caught spying for the Hezbollah terrorist organization.[95] Many of their partners in the region reject normalization with Israel and a two-state solution to the conflict. The Dutch NGOs and many of their partners are also active in the anti-Israel boycott movement.

In 2007, another Dutch protestant organization, Kerkinactie, left a coalition spearheaded by Cordaid, ICCO, and Pax, because it "paid 'too little attention . . . to the necessity of security for all peoples in the region, including Israel itself' and due to its 'reputation of being 'one-sidedly pro-Palestinian' UCP could no longer 'be sufficiently effective in its advocacy and lobbying work.'"[96]

One of the Dutch NGO's main points of advocacy is to document Dutch companies that engage in economic relations with Israelis. Its April 2013 publication was part of that campaign, and promoted themes similar to those found in the AIV report and *Trading Away Peace*. It noted that "Israel has established settlements in these occupied territories, which is illegal according to international law, for in-

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87 *Id.*

88 *Id.* at 16.

89 *Id.*

90 *Id.* at 30–31.

91 *Id.*

92 *Aanhangsel van de Handelingen*, *supra* note 39, at Answer 2.

93 JAN WILLEM VAN GELDER ET AL., DUTCH ECONOMIC LINKS WITH THE OCCUPATION, at i (2013), *available at* http://www.ikvpaxchristi.nl/media/files/report-dutch-economic-links-with-the-occupation.pdf [hereinafter DUTCH LINKS].

94 *Indirect Dutch Government Funding: ICCO and Cordaid Support for Radical NGOs*, NGO MONITOR (June 27, 2011), http://www.ngo-monitor.org/article/indirect_dutch_government_funding_icco_and_cordaid_support_for_radical_ngos; *Analysis of Dutch Government Funding for Israeli and Palestinian Political Advocacy NGOs*, NGO MONITOR (Oct. 5, 2011), http://www.ngo-monitor.org/article/analysis_of_dutch_government_funding_for_israeli_and_palestinian_political_advocacy_ngos.

95 *Amnesty International: Defending Those Linked to Terror*, NGO MONITOR (Feb. 3, 2011), http://www.ngo-monitor.org/article.php?operation=print&id=3260; *Electronic Intifada and Ali Abunimah Fact Sheet*, NGO MONITOR (Jan. 14, 2011), http://www.ngo-monitor.org/article/electronic_intifada_and_ali_abunimah_factsheet; *see Badil's Antisemitic Cartoon: Questions for DanchurchAid, Trocaire, and Funders*, NGO MONITOR (Oct. 11, 2010), http://www.ngo-monitor.org/article/badil_s_antisemitic_cartoon_questions_for_danchurchaid_trocaire_and_funders.

96 *Dutch Protestant Aid Group Leaves NGO Coalition Over Bias Against Israel,* 5 NGO MONITOR DIG. (Jan. 22, 2007), *available at* http://www.ngo-monitor.org/article.php?operation=print&id=1288.

stance the Fourth Geneva Convention, the Hague Convention, and many UN Security Council resolutions."[97]

Regarding international law, the NGO authors specifically point to Article 49 of the Fourth Geneva Convention and "UN Resolutions 242 and 338 [that] stipulate that Israel must withdraw completely from these territories."[98] The document also mentions Oslo I, implying that the agreement is somehow invalid because it did not yet lead "to a land agreement between the parties or a withdrawal by Israel."[99]

The report also includes the unsupported legal claim that the 1949 armistice line "marked Israel's borders with Egypt, Jordan, Lebanon, and Syria" and "is known as the *Green Line*, the internationally recognized border of the State of Israel."[100] This claim is made even though the armistice agreement specifically states that the armistice lines do not constitute a legal boundary, and even though the international community did not recognize Jordanian sovereignty over East Jerusalem or the West Bank.[101]

The NGO publication demands "international companies to withdraw from the settlements and the associated industrial zones and to cut business ties to companies profiting from the occupation."[102] In addition to companies that do business with Israeli settlements, the publication also called for a cessation of links to "Israeli government institutions, such as the army;" "companies that supply weapons and security products;" "companies involved in the construction of the Israeli separation wall;" and "companies and financial institutions

97 DUTCH LINKS, *supra* note 93, at i.

98 *Land Settlement Issues*, GLOBAL POLICY FORUM, http://www.globalpolicy.org/security-council/index-of-countries-on-the-security-council-agenda/israel-palestine-and-the-occupied-territories/land-and-settlement-issues.html (last visited Jan. 22, 2014 [hereinafter *Land Settlement Issues]*; Security Council Resolution 242 does not call for withdrawal from all the territories acquired by Israel in the 1967 War. *See* Richard Holbrooke, Former U.S. Ambassador to the UN, The Principles of Peacemaking, Address Before The Jerusalem Center for Public Affairs (June 4, 2007), *available at* http://www.jcpa.org/text/resolution242-holbrooke.pdf ("There is a mistaken notion that for Israel to comply with Resolution 242, it must withdraw from these territories unilaterally.").

99 DUTCH LINKS, *supra* note 93, at 5.

100 *Id.* at 4.

101 The Jordanians in particular did not want the Green Line to become an international border in hopes that it would be able to recapture additional territory from Israel in a future war. Alan Baker, *The Fallacy of the "1967 Borders" – No Such Borders Ever Existed,* JERUSALEM ISSUE BRIEF, Dec. 21, 2010, at 1; *see* General Armistice Agreement, Jordan-Isr., art. 3, 6, Apr. 3, 1949, 42 U.N.T.S. 306, 312.

102 DUTCH LINKS, *supra* note 93, at 1.

providing infrastructural or financial services in occupied Palestinian territories."[103] It also mentioned as areas of concern, "the exploitation of natural resources, in particular water and land, for business purposes" and "pollution, dumping and transfer of waste to Palestinian villages."[104]

Water was also highlighted by the Dutch NGOs, claiming that "Israel controls 80 per cent of the West Bank's water sources, and diverts most of that supply to its own citizens, inside Israel and the settlements. Settlers use many times more water per capita than West Bank Palestinians, who often do not even have access to running water."[105] This claim is made despite the fact that the division and allocation of water resources in the region are governed by the Oslo Treaty, a minimal amount of West Bank water sources are used by Israel per international agreement (and this amount has no overall impact on available water to Palestinians), settlers and Palestinians have nearly identical water use per capita, and more than ninety-five percent of Palestinian towns are connected to a water supply.[106]

The publication was presented by Timmermans to the President of the Second Chamber of the States on May 28, 2013, stating that "[t]he government has taken note of the report of Cordaid , ICCO and IKV Pax Christi on the trade and investment relations between a number of Dutch companies and settlement companies."[107] He then noted, in

103 *Id.* at 2.

104 *Id.* at 7.

105 *Id.* at 24.

106 The Civil Administration of Judea and Samaria, *Factsheet: Water in the West Bank*, 2012, *available at* http://www.cogat.idf.il/Sip_Storage/FILES/4/3274.pdf [hereinafter *Factsheet*] (Israel and the West Bank share the Mountain Aquifer, yet the majority of the aquifer lies under Israel (8900km), while 5600km lies under West Bank); *see, e.g.*, Haim Gvirtzman, *The Israeli-Palestinian Water Conflict: An Israeli Perspective*, BEGIN-SADAT CENTER FOR STRATEGIC STUDIES (Jan. 2012), *available at* http://www.biu.ac.il/SOC/besa/MSPS94.pdf; Gvirtzman, "*The Truth Behind Palestinian Water Libels*," BEGIN-SADAT CENTER FOR STRATEGIC STUDIES, February 24, 2014, *available at* http://besacenter.org/wp-content/uploads/2014/02/perspectives238.pdf; s*ee also* Ben Sales, *Water surplus in Israel? With Desalination, Once Unthinkable is Possible,* JEWISH TELEGRAPH AGENCY (May 28, 2013, 3:46 PM), http://www.jta.org/2013/05/28/news-opinion/israel-middle-east/water-surplus-in-israel-with-desalination-once-unthinkable-is-possible (stating that more than 40% of Israel's water is desalinated from the Mediterranean, which, by 2014, will jump to 80%.).

107 Brief van De Minister van Buitenlandse Zaken, *De Situatie in het Midden-Osten* [Letter from the Minister of Foreign Affairs, *The Situation in the Middle East*]

language that would later mimic the response to Royal HaskoningDHV, that "[a]lthough not prohibited, economic relations between Dutch companies and businesses in settlements is discouraged by the Dutch government in the occupied territories."[108]

The AIV, *Trading Away Peace*, and Dutch NGO reports present a simplistic legal and factual narrative. In particular, their assessment of the water issues in the West Bank is attributed solely to alleged Israeli malfeasance and the existence of Israeli settlements. The main argument proffered by these groups is: were it not for the presence of Israeli settlements, there would be no problems in the amounts, management, and distribution of water for Palestinians.

The reports also repeat several incorrect claims and paint a highly distorted picture regarding water distribution and management over water resources in the West Bank and East Jerusalem. The NGOs claim that Israel uses a disproportionate supply of water and that, under the Israeli occupation, Israel has "stolen" Palestinian water and diverted it for settlement use.[109] In fact, Israel does not use any Palestinian water and provides more than fifty million cubic meters of water per year to Palestinians from its own sources.[110] In addition, water provided to the settlers is supplied via the allocation to Israel as mandated by the Oslo Accords.[111]

Since 1967, despite significant population growth, Israeli water consumption has dropped significantly from 504 m3/year per capita to 137 m3/year per capita in 2009.[112] The Palestinian Central Bureau of Statistics notes that Palestinian per capita use is 135.8 liters/day.[113] Despite claims that Palestinians pay more for their water, the 1998 JWC Pricing Protocol set a price of 2.6 NIS per cubic meter of water for the PWA. The average Israeli municipality pays 3.86 NIS per cubic meter.[114] The actual amount of fresh water available to Israelis and Palestinians is nearly identical (150 m3/year versus 124 m3/year). Yet, Israel has significantly more available water for consumption because it employs desalination technology and recycles eighty percent of its wastewater, the highest amount globally. Spain, the country which reuses the second highest amount only recycles twelve percent.[115] In contrast, the Palestinians have rejected Israeli desalination technology and offers to build a plant for Palestinians on Israeli territory. There is also a significant problem of theft and poor maintenance in the Palestinian sector, contributing thirty-three percent of water loss.[116]

With regards to wastewater, more than ninety percent of Palestinian sewage is untreated.[117] Thirty-two percent of the remaining ten percent is treated in Israel and five percent is treated in the El Bireh treatment plant, the only one run by the PA. The Palestinians have also attempted to build plants in Jenin, Ramallah, Tul Karem, and Hebron, but they have been mostly non-operational due to economic and technical problems.[118]

Regarding the NGO claim that Israelis will not allow Palestinians to drill wells, the Israeli civil administration approves ninety-nine percent of all well requests.[119] In 2010 alone, the Israeli Civil Administration approved fifty-six trunk lines and network systems, 20 well drilling permits, five filling points and six cisterns used for water harvesting. Additionally, in 2010, the Civil Administration increased its staff to more efficiently issue permits for JWC approved projects.[120]

(May 28, 2013), *available at* https://zoek.officielebekendmakingen.nl/kst-23432-344.html (translation from the original Dutch by Jody Sieradzski).

108 *Id.*

109 DUTCH LINKS, *supra* note 93, at 6.

110 Gvirtzman, *supra* note 106, at 4; *see, e.g.*, Yochanan Visser & Sharon Shaked, *The Devastating Truth About Water and Palestinian Statehood*, JERUSALEM POST (Aug. 28, 2011), http://www.jpost.com/Opinion/Columnists/The-devastating-truth-about-water-and-Palestinian-statehood.

111 *See* Gvirtzman, *supra* note 106, at 4; *Factsheet*, *supra* note 106.

112 *See Factsheet*, *supra* note 106.

113 Press Release, Palestinian Central Bureau of Statistics, The Quantity of Water Purchased From the Israeli Water Company (Mar. 22, 2009), http://www.pcbs.gov.ps/Portals/_pcbs/PressRelease/water_dayE.pdf.

114 *Factsheet*, *supra* note 106.

115 The Water Issue between Israel and the Palestinians, ISRAELI WATER AUTHORITY (Feb. 2012), at 19, http://www.water.gov.il/Hebrew/professionalinfoanddata/2012/19-water-issues-between-israel-and-Palestinians-main-facts.pdf; William Booth, *Israel Knows Water Technology and It Wants to Cash In*, WASH. POST, Oct. 25, 2013, *available at* http://www.washingtonpost.com/world/middle_east/israel-knows-water-technology-and-it-wants-to-cash-in/2013/10/25/7bb1dd36-3cc5-11e3-b0e7-716179a2c2c7_story.html.

116 Visser & Shaked, *supra* note 110, at 2.

117 Gvirtzman, *supra* note 106, at 22.

118 Ori Tal-Spiro, *Israeli-Palestinian Cooperation on Water Issues*, Feb. 6, 2011, at 5, *available at* http://www.knesset.gov.il/mmm/data/pdf/me02767.pdf.

119 *Factsheet*, *supra* note 106, at 5.

120 Lauro Burkart, The Politicization of the Oslo Water Agreement (2012), at 68, (unpublished Masters dissertation, Graduate Institute of International and Development Studies Switzerland) (*available at* http://missingpeace.eu/en/wp-content/uploads-pmpeace1/2013/01/MT_Lauro-Burkart.pdf).

The PWA has not executed many of these permits, however. Of sixty-six wells approved for Areas A and B, twenty-four have not been built.

Moreover, according to researchers who reviewed protocols from Joint Water Committee meetings, since 2000, the PWA submitted seventy-six permit requests to the Civil Administration for projects in Area C; seventy-three were approved.[121] Only three requests were denied due to insufficient master plans.[122] The JWC also approved forty-four projects relating to wastewater treatment, the majority of which are to be executed in Areas A and B, but have yet to be implemented.[123] Israel wrote to the PWA, in both 2001 and 2009, to inquire as to why the projects had not been executed.[124] In one instance, in 2008, the German government withdrew from a plan to build a wastewater plant in Tulkarem after it was determined the PWA was unable to handle the project.[125] In 2009, Israel offered to finance water projects after the PWA complained about a shortage of funding, yet there was no response by the Palestinians to the offer.[126]

When the second intifada began, Palestinians began to "present[] sovereignty-based objections against the wastewater technology."[127] The JWC documentation also showed, that due to anti-normalization, and despite the obligations of Oslo requiring cooperation on water and sewage issues, the Palestinians limited wastewater initiatives with Israel, even when the technology to be used was desired by local municipalities.[128]

In addition to the many factual distortions by the AIV and the NGOs on water and sewage issues, the most significant omission by these groups is ignoring the many problems emanating from within Palestinian society. For instance, the publications solely blame Israel for the PA's economic difficulties. Yet, they do not address the impact of considerable corruption and nepotism in the PA. A report by the EU leaked to the press in October 2013 noted that nearly two billion euros in EU aid was "squandered" by the Palestinians due to corruption and mismanagement.[129] Similarly, reports have noted how the sons of PA President Mahmud Abbas have acquired significant wealth, raising questions about the source of the money and charges of nepotism.[130] The AIV and NGOs have also failed to discuss the rift between the PA and Hamas, the latter of which fully rejects any reconciliation with Israel. The PA is extremely weak and does not want to be seen as "collaborating" with Israel.

The AIV and the NGOs also fail to discuss the internal water politics of the PA. Problems impacting Palestinian water policy include resistance by Palestinians to state authority, a lack of a clear water strategy developed by the PWA, and the inability of the entity to nationalize due to the desire of local municipalities to retain control over water networks. There is intense competition between the PA and the NGO sector, as well as between the PWA and the Palestinian Agricultural Ministry that seeks to press for the maximal demands of water allocation for agricultural industry.[131]

These publications also do not address the intense lobbying and influence on the PA by anti-normalization NGOs such as the Palestinian Agricultural Relief Committees (PARC).[132] PARC officials have characterized the PWA as being "obedient to Israel," and they "conduct an active policy against the Oslo agreement." Although Oslo focuses on water for domestic use, PARC has tried to channel as much fresh water as possible to the agricultural sector, rather than implementing recycled wastewater technology.[133]

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121 Visser & Shaked, *supra* note 110, at 1–2.
122 *Id.*
123 *Id.*
124 *Id.*
125 *Id.*
126 *Id.*
127 Burkart, *supra* note 120, at 68.
128 *Id.*

129 Elhanan Miller, *EU Accuses Palestinians of Wasting €2 Billion in Aid*, TIMES OF ISRAEL (Oct. 13, 2013), http://www.timesofisrael.com/eu-accuses-palestinians-of-wasting-e2-billion-in-aid/.

130 Jonathan Schanzer, *The Brothers Abbas*, FOREIGN POLICY (June 5, 2012), http://www.foreignpolicy.com/articles/2012/06/05/the_brothers_abbas. Yasser Abbas filed a libel suit in D.C. federal court for publication of the story in Foreign Policy. The suit was dismissed on September 27, 2013. Abbas v. Foreign Policy Grp., LLC, CV 12-1565 (EGS), 2013 WL 5410410 at *1 (D.D.C. Sept. 27, 2013).

131 Burkart, *supra* note 119, at 50–51, 63–64.

132 *Id.* at 51.

133 *Id.* Palestinian Agricultural Relief Committees, *PARC Renounces the Utilization of Its' Name by the Israeli Company–Agrexco* (Jan. 30, 2011), *available at* http://www.bdsmovement.net/files/PARC-renounces-utilization-of-its-name-by-Agrexco.pdf. It should be noted that the Dutch government gave PARC an 8 million euro grant to improve Gaza's export economy. As part of the grant it was supposed to work with the Israeli agricultural firm, Agrexco. Yet, PARC has conducted a boycott campaign against this firm, cutting against its own interests and the purpose of the grant. *See* NGO MONITOR, *supra* note 94.

These internal factors have led to repeated rejections by the Palestinians to invest in their water infrastructure and have also caused them to disregard pragmatic solutions such as Israeli desalination technology and offers by Israel to build a desalination plant in the Israeli city of Hadera for sole Palestinian use. As noted by one hydrologist, who in 2004 drafted a comprehensive plan to transfer desalinated seawater to Palestinians and to create wastewater treatment plants in the West Bank, "the Palestinians are not really ready to finish the conflict . . . keeping their people miserable is a way to cope with public opinion to blame Israel for the 'occupation.'"[134]

All of the above factors are missing from the AIV and NGO reports and reflect a reality that is far more complex than the simplistic account offered in their publications. It must be noted that there is an inherent conflict of interest for the NGOs. On the one hand, promoting a hyperbolic, simplistic narrative allows the NGOs to drum up public outrage and ultimately, financial support.[135] Without this support, these groups are unable to continue operating. If there are no problems, then there is no need for NGO involvement. Engaging in pragmatic approaches that could affect positive change and solve problems is inherently contradictory, then, to the organizations' continued existence.

LEGAL ANALYSIS

The stated reason for opposition to Royal HaskoningDHV's involvement in the Kidron Valley wastewater plant was that by locating the plant within East Jerusalem, it would be aiding and abetting Israeli settlement activity, deemed by the Dutch actors to be illegal pursuant to Article 49 of the Geneva Conventions. This rationale was promoted by the AIV and the Dutch NGOs and subsequently adopted by the Dutch government and communicated to Royal HaskoningDHV. This section of the paper will examine the proffered legal argument and examine whether the building of the plant was indeed a violation of international law. Not only is it clear that the plant's construction would not violate international law, it appears that by interfering with the project, the Dutch government itself may have been aiding and abetting violations of humanitarian and human rights law, and international agreements. The actions of the Dutch also contradict several EU policy directives relating to water.

134 Burkart, *supra* note 119, at 45–46.

135 DAVID RIEFF, A BED FOR THE NIGHT: HUMANITARIANISM IN CRISIS 109-10 (2002).

At the outset, it should be noted that for purposes of this paper, the analysis will be based on the legal paradigm presented by the AIV, the Dutch NGOs, and the Dutch government. Specifically, the assumption that international humanitarian and human rights law is applicable to this case and that the Palestinians are under military occupation. Whether this paradigm is appropriate is a matter of contention by many legal scholars and the Israeli government.[136]

Occupation Law

The AIV, the Dutch NGOs, and the Dutch government assert that East Jerusalem and the West Bank are occupied by Israel; that the law of occupation, as laid out in the 1907 Hague Conventions, the 1949 Geneva Conventions, and the Additional Protocols apply to the territory; and Israel as the "Occupying Power" is bound by the legal duties contained therein.[137] They also believe that the East Jerusalem treatment plant is a form of "settlement activity" that they consider to be prohibited by the Geneva Conventions. In particular, they point to Article 49(6) of the Fourth Geneva Convention, stating that "[t]he Oc-

136 *See, e.g.*, Robbie Sabel, Op-Ed., *The Problematic Fourth Geneva Convention: Rethinking the International Law of Occupation*, JURIST (July 16, 2003), http://jurist.law.pitt.edu/forum/forumnew120.php; Avi Bell, *The Levy Report: Reinvigorating the Discussion of Israel's Rights in the West Bank*, 176 PERSPECTIVE PAPERS, July 31, 2012, *available at* http://besacenter.org/perspectives-papers/the-levy-report-reinvigorating-the-discussion-of-israels-rights-in-the-west-bank/; Avinoam Sharon, *Why Is Israel's Presence in the Territories Still Called "Occupation"?*, JERUSALEM CTR. PUB. AFFAIRS (2009), *available at* http://jcpa.org/text/Occupation-Sharon.pdf; Meron Benivisti, *Applying the Geneva Convention*, HAARETZ (Aug. 26, 2004), http://www.haaretz.com/print-edition/opinion/applying-the-geneva-convention-1.132727.

137 *Israel is not a party to the Additional Protocols of the Geneva Conventions, but the NGOs and organizations like the International Committee for the Red Cross (ICRC) claim that most of the provisions in these treaties have reached the status of customary law. Again this is a highly disputed position in international law.* See, e.g., *Letter from John Bellinger III, Legal Adviser, U.S. Dept. of State, and William J. Haynes, General Counsel, U.S. Dept. of Defense, to Dr. Jakob Kellenberger, President, Intl. Comm. of the Red Cross, Regarding Customary International Law Study, 46 I.L.M. 514 (2007).*

cupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."[138]

This legal argument is based on their broad interpretation of Article 49(6) and not on the plain meaning of the provision. Article 49 was a source of controversy when the Conventions were drafted, and the influential Pictet commentary notes that the article was "adopted after some hesitation."[139] Although Article 49(6) refers specifically to "transfers or deportations" by the occupying power, the AIV, the NGOs, and the Dutch government consider *any* presence[140] or construction that was not initiated by the PA, whether done by private companies, individuals, or the Israeli government, *for whatever purpose*, to be a form of settlement activity that is illegal under Article 49(6).[141] Yet, as noted by Dinstein, the leading expert on occupation law, this approach is "monochromatic" and "non-discriminating."[142] Moreover, this reasoning runs contrary to the explicit meaning in the treaties relied upon by the Dutch actors. As Dinstein quotes from the *I.G. Farben* judgment at the Nuremberg Tribunals, "We look in vain for any provision in the Hague Regulations which would justify the broad assertion that private citizens of the nation of the military occupant may not enter into agreements respecting property in occupied territories when consent of the owner is in fact, freely given."[143]

The sole legal objection by the Dutch to Royal HaskoningDHV's involvement in the wastewater treatment plant was that the plant itself

[138] It is beyond the scope of this paper to analyze whether Israeli settlements are prohibited by Article 49(6). For discussion on this issue, see YORAM DINSTEIN, THE INTERNATIONAL LAW OF BELLIGERENT OCCUPATION 240-47 (2009).

[139] *See Commentary - Art. 49. Part III : Status and treatment of protected persons #Section III : Occupied territories*, INT'L COMM. OF THE RED CROSS, http://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComents=LookUpCOMART&articleUNID=77068F12B8857C4DC12563CD0051BDB0; The Geneva Conventions of 1949, art. 49(6), Int'l Comm. of the Red Cross, http://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf. It is beyond the scope of this paper to analyze whether Israeli settlements are prohibited by Article 49(6). For discussion on this issue, see DINSTEIN, *supra* note 138, at 240–47.

[140] DINSTEIN, *supra* note 138, at 240–47. The Dutch actors have never clarified whether they would object to such activity by Arab Israelis or if their objection is strictly limited to Jewish activity. If this is indeed the case, it would raise several issues of anti-Jewish racial and religious discrimination, and indicate a potential violation of Dutch domestic law and the European Convention on Human Rights by the Dutch government, the AIV, and the NGOs.

[141] These actors have never fully explained why they consider such activity to meet the definition of prohibited deportation or transfer under Article 49(6).

[142] Dinstein, *supra* note 137, at 240.

[143] *Id.* at 241.

constituted illegal "settlement activity" due to its location and that by participating in the project, the company would be aiding and abetting a violation of Article 49(6). In addition to the strained interpretation of Article 49(6), a major legal flaw in the Dutch reasoning is that the AIV, the NGOs, and the government base their entire legal analysis on that one provision, reducing the entire body of occupation law to that sole article.

The framework of occupation law, however, is simply not limited to whether there is state compliance with Article 49(6). Instead, the law aims to "regulate the relationship between a State's military forces and the population and property in enemy territory, which as a result of an international armed conflict, have come under the control of those forces."[144] Under this paradigm the occupier is required to "restore and maintain public order, and provide for the needs of the population."[145]

Article 43 of the 1907 Hague Convention sets out this obligation:

> The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his 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.[146]

It is important to mention that the 1907 Hague Convention was originally published in French and the French text is the authoritative version.[147] The widely disseminated English translation changed the meaning of the French text. Notably, the French text refers to "*l'ordre*

[144] GEOFFREY S. CORN ET AL., THE LAW OF ARMED CONFLICT: AN OPERATIONAL APPROACH 356 (Vicki Been et al. eds., 2012).

[145] *Id.* at 371.

[146] *Hague Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land*, art. 43, Oct. 18, 1907, 187 CTS 227, *available at* http://www.icrc.org/ihl.nsf/385ec082b509e76c41256739003e636d/1d1726425f6955aec125641e0038bfd6?OpenDocument [hereinafter Hague Convention].

[147] *See* Yoram Dinstein, *Legislation Under Article 43 of the Hague Regulations: Belligerent Occupation and Peacebuilding*, HPCR OCCASIONAL PAPER SERIES 2 (2004), http://www.hpcrresearch.org/sites/default/files/publications/OccasionalPaper1.pdf [hereinafter HPCR PAPER]. The original French text reads: L'autorité du pouvoir légal ayant passé de fait entre les mains de l'occupant, celui-ci prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publics en respectant, sauf empêchement absolu, les lois en vigueur dans le pays.

et la vie publics" (i.e., public order and life), which is considerably broader than the English phrase "public order and safety."[148]

Dinstein explains that under Article 43, the Occupying Power must "restore and ensure, as far as possible, public order and life in the occupied territory" and "respect the laws in force in the occupied territory unless an '*empêchement absolu*' exists."[149] The provision also makes clear that "[w]hen a necessity arises, the Occupying Power is allowed to enact new legislation, repealing, suspending, or modifying the preexisting legal system."[150] Thirdly, Article 43 recognizes the need to ensure the "orderly government" of the occupied territory. Orderly government laws can encompass security, the environment, public health, and sanitation. There is no doubt that Israel, under the paradigm of occupation, could, therefore, also pass legislation relating to sewage treatment or other provisions relating to protection of the environment. To conclude otherwise could lead to "grievous social woes."[151]

Dinstein lays out a test as to whether an act taken under Article 43 is promoting a legitimate versus a suspect concern for the welfare of the civilian population.[152] He says one should look to see if the "Occupying Power shows similar concern for the welfare of its own population."[153] In other words, does a parallel law exist in the Occupying power's territory, and "[i]f the answer is negative, the ostensible concern for the welfare of the civilian population deserves being disbelieved."[154] There is no doubt that Israel has extensive laws and regulations pertaining to sewage and wastewater treatment, protecting the environment, and guarding against disease outbreaks. The building of a wastewater treatment plant in East Jerusalem aimed at alleviating these problems would clearly pass this test, even if sewage emanating from "settlements" were also treated or "settlers" were able to purchase treated water.

A March 2013 French appellate court decision elaborates on the scope of Article 43 and points to the legality of the wastewater treatment plant. The decision dismissed a lawsuit brought by the Palestine Liberation Organization (PLO) and the Palestinian activist group Association France-Palestine Solidarité (AFPS) against three French companies: Alstom, Alstom Transport, and Veolia Transport.[155] Similar to the Royal HaskoningDHV incident, the PLO and the AFPS accused the French companies of aiding and abetting a violation of Article 49(6) by participating in contracts to build the Jerusalem light rail, a portion of which travels through North Jerusalem, deemed by these organizations to be occupied territory.[156]

148 *Id.*
149 *Id.* at 3.
150 *Id.* at 4.
151 Dinstein, *supra* note 137, at 120.
152 HPCR PAPER, *supra* note 146, at 9.
153 *Id.*
154 *Id.*

The PLO and AFPS claimed that Israel was occupying "Palestinian territory illegally" and that the rail was illegal because "of the access that its route provides for Israeli settlers."[157] They argued that the companies' participation in the contracts was, therefore, "illegal on account of the violation by the State of Israel of its obligations under international occupation law."[158]

Among other demands, the claimants sought an order annulling the contracts, thereby prohibiting continued performance, and barring the companies from entering into any subsequent agreements. Ultimately, the PLO and the AFPS were seeking a judicial declaration that the Jerusalem light rail itself was illegal and that Israel was violating international law by building it.

The French appellate court rejected these demands, basing a significant part of its decision on the failure to allege a cause of action. In particular, the court considered whether an unlawful act had even been claimed. Relying on Article 43 of the Hague Convention, the court noted that building the Jerusalem light rail was not illegal because occupation law allows for the governance of occupied territory which includes the building of transportation infrastructure.[159] Citing a decision of the 1947 Control Commission Court of Criminal Appeal, the French court said that on the basis of Article 43 "the occupying power

155 Cour d'appel [CA] [regional court of appeal] Versailles, 3 ch., March 22, 2013, 11/05331 (Fr.), *available at* http://fr.slideshare.net/yohanntaieb3/decision-de-lacourdappel [hereinafter Cour d'appel], *translated at* http://blog.eur.nl/iss/hr/files/2012/02/Decision-Versailles-Appeal-Court-22-March-2013.pdf).
156 *Id.* The three companies were not signatories on the contract but had formed an Israeli company that subsequently won the government tender to build the light rail. The companies were also involved in its construction and maintenance. *Id.* at 2.
157 Cour d'appel, *supra* note 154.
158 *Id.*
159 *See id.* at 20; *see also* Raphael Ahern, *French Court's Light Rail Ruling Breaks No Legal Ground, Scholars Say*, THE TIMES OF ISRAEL (Apr. 29, 2013), http://www.timesofisrael.com/french-ruling-on-jerusalems-light-rail-adds-nothing-new-scholars-say.

could and in fact should restore normal public activity in the occupied country and accepted that administrative measures could address all activities generally carried out by the state authorities (social, economic and commercial activities)."[160]

More importantly, the court discounted the claims that the light rail was illegal because settlers would have access to it. It emphasized that the determination of the purpose of a contract and its legality cannot hinge on "the individual assessment of a social or political situation by a third party."[161] In other words, just because the Palestinians said the rail was designed solely to entrench the settlements, does not mean that this indeed was the purpose of the contract. Moreover, the court found that the alleged "political motive attributed to the State of Israel by the appellant as the purpose underlying its commitment cannot be applied by 'contamination' to the purpose of the contracts."[162]

Under the law of occupation, the occupying power is not only required to maintain public order and life, but has a specific duty regarding health. Article 56 of the Fourth Geneva Convention states:

> To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining . . . public health and hygiene in the occupied territory, with particular reference to the adoption and application of the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics.[163]

The Pictet commentary notes that under this provision, "the occupying power is entitled to order work which is necessary 'for the public utility services' and 'for the . . . health of the population of the occupied country.'"[164]

Raw sewage poses a considerable health hazard to everyone in the area, regardless of whether it is from the Palestinian or settler populations. Left untreated, it can lead to outbreaks of cholera, hepatitis, giardiasis, salmonella, and typhoid.[165] Building a treatment plant is a

160 Cour d'appel, *supra* note 154, at 15.
161 *Id.* at 21.
162 *Id.* at 15.
163 *Convention Relative to the Protection of Civilian Persons in Time of War*, Aug. 12, 1949, art. 2, 6 U.S.T. 3516, 75 U.N.T.S. 287, *available at* http://www.icrc.org/ihl/INTRO/380 [hereinafter Geneva IV].
164 *Commentary*, *supra* note 138, at 313.
165 *Top 10 Worst Pollution Problems 2008: Untreated Sewage*, WORSTPOLLUTED.ORG, http://www.worstpolluted.org/projects_reports/display/63.

clear way in which Israel was taking a "prophylactic and preventative" measure in order to prevent the spread of disease. One would assume the PA would also wish that measures would be taken to prevent environmental contamination and health problems in territory over which it may exercise sovereignty in the future.

Environmental preservation is also a part of occupation law. Article 55 of Protocol I states "care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage." According to the ICRC commentary, the concept of the "natural environment should be understood in the widest sense to cover the biological environment in which a population is living" including "fauna, flora and other biological or climatic elements."[166] Similarly, Article 55 of the Hague Convention notes that the "Occupying State" is to be regarded as an "administrator" of "real estate, forests, and agricultural estates" and must "safeguard" them.[167]

These principles as applied to the Royal HaskoningDHV case mean that Israel's decision to build a treatment plant to safeguard the Kidron basin from environmental damage is well within the framework of occupation law. These articles are not inoperable simply because of the presence of settlements in other parts of the West Bank. Nor are the articles cancelled if those living in settlements also benefit from the environmental preservation afforded by the plant.

It is clear that the law of occupation allows for "changes aimed at getting the basic infrastructure of the occupied society to work in accordance with the relevant norms."[168] Moreover, the "conservationist principle" of occupation law does not mean that "the situation in occupied territory should be completely frozen for the duration of the occupation."[169] Compliance with the Article 43 obligation to restore and maintain public order and civil life could, in fact, "require certain transformations or changes and oblige the occupant to engage in important reforms."[170] Legal scholars have also noted that during protracted occupations, occupation law must be interpreted flexibly and "that a freeze on the natural development of an occupied territory

166 CLAUDE PILLOUD ET AL., COMMENTARY ON THE ADDITIONAL PROTOCOLS: OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 662 (1987).
167 The Hague Convention, *supra* note 145, at art. 55.
168 INT'L COMM. OF THE RED CROSS, EXPERT MEETING: OCCUPATION AND OTHER FORMS OF ADMINISTRATION OF FOREIGN TERRITORY 68 (Tristan Ferraro ed., 2012), *available at* http://www.icrc.org/spa/assets/files/publications/icrc-002-4094.pdf [hereinafter ICRC].
169 *Id.*
170 *Id.*

would inevitably result in stagnation, which would ultimately be detrimental to the population of that territory."[171]

In contrast, the legal argument proffered by the NGOs and adopted by the Dutch government appears to advance a rigid claim that, on account of Article 49(6), Israel cannot make any changes within the occupied territory nor make any improvements.

The Dutch viewpoint not only contradicts the framework of occupation law, but suggests in the Kidron Valley case, that Israel is required under international law to keep the West Bank and East Jerusalem frozen in time and unable to remedy the terrible health and economic conditions that prevailed under the Ottoman, British, and Jordanian control of the area. The Dutch are arguing, based on a supposed rationale provided by Article 49(6), that Israel can take no steps to prevent the flow of raw sewage, that it must not engage in the remediation of polluted water, and that it should allow continued damage to the natural environment. This is simply an absurd interpretation of law. The former Deputy Mayor of Jerusalem, Naomi Tsur, stated:

> As a general premise, it is extremely problematic for the City of Jerusalem and indeed, the government of Israel to address infrastructure improvement for East Jerusalem, which is so much needed, if every time an attempt is made, whether it is transport or sewage, we are constantly under threat of international reprimand about doing the things those same people are angry at us for not doing. This enigma is one that the EU needs to have a serious discussion about. We are in limbo -- we don't know right now where Israel ends and Palestine begins and the only way it will be bearable is if the infrastructure can function together. Otherwise, it is a recipe for human suffering.[172]

Oslo Accords

Another serious legal problem with the Dutch actors' single-focused analysis was a disregard for the Oslo Accords, a binding treaty mutually agreed to by Israel and the Palestinians.[173] The provisions in the accord specifically govern relations between Israel and the PA, and as the *lex specialis*, trump more general obligations delineated in other

171 *Id.* at 72.
172 Interview with Naomi Tsur, *supra* note 9.
173 *Oslo I*, *supra* note 14, at Preamble.

legal documents. Article 40.1 of the agreement recognizes Palestinian water rights in the West Bank, noting the precise contours are to be "negotiated in the permanent status negotiations," along with the borders of Israel and the future Palestinian state, the status of Jerusalem, refugees, and settlements.[174]

It must be stressed that nothing in the Oslo agreement, again, mutually agreed to by the Israelis and the Palestinians, restricted Israel's exercise of sovereignty over any part of Jerusalem, including East Jerusalem. Second, the agreement did not proscribe settlement activity and, in fact, assigns the "responsibility for overall security of Israelis for the purpose of safeguarding their internal security and public order . . . and will have all the powers to take the steps necessary to meet this responsibility."[175] Again, like the status of Jerusalem and the setting of the boundary of the future Palestinian state, the issue of settlements is to be determined in a final status agreement.

In the interim, Article 40.3 of the Oslo framework calls for both sides to "agree to coordinate the management of water and sewage resources and systems."[176] This cooperation includes "maintaining existing quantities of utilization from the resources, taking into consideration the quantities of additional water for the Palestinians"; "preventing the deterioration of water quality"; sustainable use of water resources; adjusting use based on environmental conditions; "taking all necessary measures to prevent any harm to water resources, including those utilized by the other side"; "[t]reating, reusing or properly disposing of all domestic, urban, industrial, and agricultural sewage"; operating, maintaining, and developing existing water and sewage systems in a coordinated manner; taking "all necessary measures to prevent any harm to the water and sewage systems in their respective areas"; and ensuring these provisions were to also apply to privately owned or operated resources and systems.[177]

The agreement transfers authority relating to water and sewage in Areas A and B to the PA.[178] Importantly, though, the Oslo Accords provide that "the issue of ownership of water and sewage related infrastructure in the West Bank will be addressed in the permanent status negotiations."[179] The agreement states that both sides will make 28.6

174 Interim Agreement, *supra* note 6, at art. 40.1.
175 *Oslo I*, *supra* note 14, at XVII(1)a XXXI5, XII1.
176 Interim Agreement, *supra* note 6, at art. 40.3.
177 *Id.* at 40.3(a)-(i).
178 *Id.* at 40.4
179 *Id.* at 40.5.

mcm/year fresh water available for Palestinian use and will take into account that future needs would be between seventy and eighty mcm/year, which Israel has done and exceeded.[180] The water provisions are in line with most of the principles stated in the internationally developed Helsinki Rules and the Seoul Rules for water rights.[181]

In order to facilitate these provisions, Oslo established a Joint Water Committee (JWC) to deal with all sewage and water issues in the West Bank.[182] This coordination includes management and protection of water and sewage, sharing of information, joint supervision and enforcement, and monitoring systems.[183] The JWC includes an equal number of Israelis and Palestinians and all decisions must be unanimous. Schedule 8 of the agreement lays out these duties in greater detail.[184] After approval by the JWC, projects intended for Areas A and B require approval of the PA and projects intended for Area C require Israeli Civil Administration approval. Pursuant to Oslo, and because the status of Jerusalem is to be a final status issue, JWC approval is not required for projects in East Jerusalem. Instead, Oslo requires authorization from the Israeli government and the Jerusalem municipality.

A common refrain of the NGOs is that the Oslo Accords were supposed to be a temporary framework, and therefore, can be discounted. The Accords, however, are still in place and still govern the relationship between Israel and the PA. Neither side has repudiated these agreements. The NGOs do not like Oslo because they claim Israel was the stronger party in the negotiations and the agreements include provisions that contradict their desired political outcome. Unequal bargaining power, to the extent that is even true, does not invalidate an international agreement. And the NGOs and the Dutch government, as a member of the European Union that witnessed and guaranteed the agreement, cannot disregard the applicable law established by Oslo simply because they do not like it.[185]

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180 *Id.* at 40.640.7.

181 *See* Gvirtzman, *supra* note 106; Burkart, *supra* note 119, at 37.

182 Interim Agreement, *supra* note 6, at art. 40.11-40.12

183 *Id.* at art. 40.12.

184 *Id. See also The Israeli-Palestinian Interim Agreement – Annex III*,App. 1, art. 40, schedule 8, ISRAELI MINISTRY OF FOREIGN AFFAIRS (Sept. 28, 1995), http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide /pages/the%20israeli-palestinian%20interim%20agreement%20-%20annex%20iii.aspx#sched8.

185 Some NGOs involved in the case have gone so far to argue that in situations of occupation, you can never have agreements such as Oslo. But that is an absurd argument that propagates a situation of perpetual conflict. To adopt this reasoning would mean that a state of belligerent occupation could never end or that parties could never enter into a peace accord to solve their differences.

The Palestinians' main objection regarding the Jerusalem wastewater treatment plant is that the PA does not have sovereignty over it. Oslo specifically leaves issues of sovereignty and ownership of water infrastructure for final status negotiations.[186] That Israel or an international group may own and operate the plant at the current time in no way precludes future Palestinian sovereignty or ownership over the plant.

Human Rights Law

In addition to the framework of occupation law, the Dutch government, the AIV, and the NGOs believe that international human rights law, particularly as stated in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), creates binding human rights obligations on Israel in the West Bank and East Jerusalem.[187]

Yet, despite this belief, human rights law is another aspect that was surprisingly not part of the Dutch government's policy formation *vis à vis* its directive to Royal HaskoningDHV, which again was solely focused on whether the plant was a form of "illegal settlement activity."

Article 12 of the ICESCR states that the parties to the convention "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[188] In order "to achieve the full realization of this right" they should, among other duties, "take steps" to improve "all aspects of environmental and industrial hygiene" (12(b)), and engage in the "prevention, treatment and control of epidemic, endemic, occupational and other diseases" (12(c)). According to the ICRC's Expert Study on Occupation, some experts argued that in order to carry out its duty under Article 12, an occupying power "would have to devise a public health strategy and plan of action."[189] Sewage treatment clearly falls under the category of public health.

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186 Interim Agreement, *supra* note 6, at art. 40.5.

187 The Israeli government disputes applicability of human rights law in the West Bank. Again, it is beyond the scope of this paper to analyze whether this interpretation is correct.

188 International Covenant on Economic, Social and Cultural Rights, art. 12, Dec. 16, 1966, 993 U.N.T.S. 3, *available at* http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

189 ICRC, *supra* note 167, at 67.

Moreover, while Article 12 of the ICESCR does not specifically refer to the right to water, the building of a wastewater treatment plant would fall within the stated duties of environmental improvement and control of disease. In addition, General Comment 15 by the ESCR Committee, the body charged with overseeing state compliance with the treaty, interprets Article 12 to encompass a right to water that includes adequate sanitation, "which is the primary cause of water contamination and diseases linked to water"[190] and "the hygienic use of water, protection of water sources and methods to minimize water wastage."[191] Notably, the comment states that:

> To comply with their international obligations in relation to the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realize the right to water for persons in its jurisdiction.[192]

Not only is Israel a party to the ICESCR, but the Netherlands is as well. Yet, by interfering in the Jerusalem project and causing Royal HaskoningDHV to pull out, severely delaying completion of the project, the Dutch government violated these obligations.

In addition, the United Nations Committee on Economic, Social, and Cultural Rights notes, "States parties should refrain at all times from imposing embargoes or similar measures, that prevent the supply of water, as well as goods and services essential for securing the right to water. Water should never be used as an instrument of political and economic pressure."[193] Again, by encouraging Royal HaskoningDHV to boycott the project and entangling itself into the political boycott campaign advocated by AIV and the Dutch NGOs, the Dutch government was in violation of this obligation.

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190 United Nations, Econ. & Soc. Council, Comm. on Economic, Social, and Cultural Rights, General Comment 15, Nov. 11-29, 2002, U.N. Doc. E/C.12/2002/11, 1 (2002), *available at* http://www.unhchr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94.

191 *Id.* at 10.

192 *Id.* at 11.

193 *Id.* at 11–12.

EU Water Directives

What is most strange about the Dutch decision to boycott is that water conservation and management is a high priority for the European Union. It is bizarre that at the same time the EU is implementing extensive water management plans, the Dutch government would try to interfere and prevent such measures from occurring in the Middle East where water issues are of even greater importance due to the relative scarcity of the resource.

The European Commission has placed a high priority on water protection and enacted a European Water Policy that "will get polluted waters clean again, and ensure clean waters are kept clean."[194] In 2000, the EU adopted a Water Framework Directive aimed at instituting new water management by 2015.[195] As part of the policy, the EU has remarked that "the best model for a single system of water management is management by river basin - the natural geographical and hydrological unit - instead of according to administrative or political boundaries."[196] Moreover, the EU has issued an Urban Wastewater Directive aimed at preventing "the environment from being adversely affected by the disposal of insufficiently-treated urban waste water" focusing on "a general need for secondary treatment of urban waste water."[197]

Realizing that the goals of the Water Directive would not be achieved by 2015, the European Commission issued a *Blueprint for to Safeguard Europe's Water Resources*. The *Blueprint* framework seeks to "make water use sustainable" by "ensuring good quality water for human needs, economic activities and the environment."[198] The European Commission prioritizes access to safe drinking water and basic sanitation services, which was declared a human right by the United

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194 *Introduction to the new EU Water Framework Directive*, EUROPEAN COMMISSION (Jan. 15, 2014), http://ec.europa.eu/environment/water/water-framework/info/intro_en.htm [hereinafter *EU Water Framework Directive*].

195 Press Release, European Commission, A Blueprint to Safeguard Europe's Water Resources – Questions and Answers, (Nov. 15, 2012), *available at* http://europa.eu/rapid/press-release_MEMO-12-866_en.htm [hereinafter Questions and Answers]

196 *EU Water Framework Directive*, *supra* note 192.

197 Council Directive 91/271, Preamble, 1991, O.J. (L. 135) 40 (E.C), *available at* http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1991L0271:20081211:EN:PDF [hereinafter Council Directive].

198 Questions and Answers, *supra* note 194.

Nations in 2010 and reaffirmed in the Rio + 20 Declaration in 2012 as a way of carrying out the sustainability policy.[199]

EU documentation explicitly acknowledges that water issues transcend boundaries, stating, "Sixty per cent of the EU's territory lies in transboundary river basins. The hydrological cycles are so interconnected that land use in one country can affect precipitation beyond its borders." [200] A November 2012 report by the European Commission, *Comparative Study of Pressures and Measures in the Major River Basin Management Plans*, emphasizes that "communication and coordination across levels is particularly important" including between EU member states and third countries.[201]

The EU recognizes also that "adequate governance and sustainable water management at regional and transboundary levels also contribute to ensure peace and political stability via the water and security nexus."[202] It further notes that "developing efficient water management goes hand in hand with fostering innovation and knowledge," as well as "promoting a more resource efficient, greener and more competitive economy."[203] Moreover, "efficient water management . . . contributes to decreasing health impacts and preserving ecosystem services, hence saving tremendous costs for private and public entities."[204] Given these principles, objectives, and benefits, it is hard to

[199] United Nations Conference on Sustainable Development, Rio de Janiero, Braz., June 20-22, 2012, *Report of the United Nations Conference Sustainable Development*, ¶ 109-12, 119-24, U.N. Doc. A/CONF.216/16, *available at*http://www.uncsd2012.org/content/documents/814UNCSD%20REPORT%20final%20revs.pdf. In particular, the Rio Declaration calls for "the need to adopt measures to significantly reduce water pollution and increase water quality, significantly improve wastewater treatment and water efficiency and reduce water losses. In order to achieve this, we stress the need for international assistance and cooperation." *Id.* at ¶124.

[200] *A Blueprint to Safeguard Europe's Water Resources*, COM (2012) 0673 final (2012), *available at* http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0673:FIN:EN:HTML [hereinafter Blueprint].

[201] Directorate-General for the Environment of the European Commission, *Comparative Study of Pressures and Measures in the Major River Basin Management Plans – Task 1 Governance, Final Report*, at 11 (Nov. 28, 2012), *available at* http://ec.europa.eu/environment/water/waterframework/implrep2007/pdf/Governance-Pressures%20and%20measures.pdf.

[202] Blueprint, *supra* note 199, at 2.6.

[203] Questions and Answers, *supra* note 194.

[204] *Id.*

understand why the Dutch government would openly interfere in attempts to remediate at least some of the Kidron Valley pollution.[205]

Corporate Liability for Violations of International Law

Another strange aspect of the Royal HaskoningDHV case is the claim by the Dutch government that by participating in the building of the East Jerusalem wastewater treatment plant, the company would be participating in the violation of international law. Yet, the Dutch government has publicly stated that it does not believe there is an international law holding corporations liable for violations of human rights or humanitarian law.

In 2012, the Dutch government joined with the United Kingdom in filing an amicus brief at the United States Supreme Court in *Kiobel v. Royal Dutch Petroleum.*[206] One of the issues in the case was whether international law imposes liability for violations of human rights and humanitarian law.[207] The brief argued that "there is no evidence that customary international law has developed to recognize the direct liability of a corporation" and that "sector-specific treaties do not suddenly create some *general direct duty* of corporations to obey the rules of international law imposed on States."[208] The brief further noted that corporations were deliberately excluded from the jurisdiction of the International Criminal Court and that the Geneva Conventions clearly consider liability to be ascribed to individuals and not corporations.[209] Moreover, international human rights law only imposes obligations on states.[210]

In conclusion, they asked the Supreme Court to uphold dismissal of the case because it would be "both inappropriate and undesirable" for the court to make a "unilateral ruling" identifying a rule of corporate liability under international law.[211] It would be all the more "un-

[205] This interference with water and health rights also raises the possibility of liability and legal action against the Netherlands, particularly if there is an outbreak of disease.

[206] Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659 (2013).

[207] *Id.* at 4–5.

[208] Brief of the Governments of the United Kingdom of Great Britain et al. as Amici Curiae Supporting Respondents, at 15, Kiobel v. Royal Dutch Petroleum Co., 133 S.Ct. 1659 (2013) (No. 10-1491), *available at* http://sblog.s3.amazonaws.com/wp-content/uploads/2012/02/4587212_1_UK-Netherlands-amicus-brief-ISO-respondents-filed-2-3-12-2.pdf.

[209] *Id.* at 17, 19–20.

[210] *Id.* at 20.

[211] *Id.* at 27.

fortunate if done now, when the question of how best to reduce the negative impacts of corporate activity on peoples' human rights, while ensuring the primary role of States for corporate regulation in their territory is maintained, is subject to ongoing multilateral deliberation."[212] It is strange that the Dutch did not afford the same deference in the Royal HaskoningDHV case, particularly in the context of ongoing peace negotiations between Israelis and Palestinians.

Settlement Policy

It also appears that the EU (and the Dutch government, as a member state of the EU) has taken an inconsistent approach to settlement activity in other parts of the world. While the Dutch government claimed that Israeli settlement activity is a violation of international law, as part of the EU it has not taken the same approach towards settlements in Turkish-occupied Northern Cyprus, Moroccan-occupied Western Sahara, and Russian-occupied territories. According to a policy paper issued by the Kohelet Policy Forum, Kontorovich and Bell note that contrary to discouraging business activities in occupied territories, the EU provides funds to the Turkish government and Turkish settlers in the occupied territory, "grants to small and medium-sized businesses for the purpose of developing and diversifying the private sector; various kinds of infrastructure improvements (iterate and telecom improvements, traffic safety, waste disposal, technical assistance to farmers) . . . ."[213] In addition to financial support for settlement activity elsewhere, it does not appear that the Dutch government has issued directives or advised companies to refrain from business dealings with other occupying powers in other situations of occupation.

The intense focus on Israeli settlements to the exclusion of all other issues in the Arab-Israeli conflict, such that it would lead to interference in the building of a sewage treatment plant, must be addressed. This focus includes unsupported assertions made by the AIV, the Dutch NGOs and the Dutch government, that "a two-state solution" is being rendered impossible by "continued building of new settlements in the West Bank and East Jerusalem, in particular, and the associated changes in the infrastructure of the occupied territories." Additionally

212 *Id.*

213 Avi Bell and Eugene Kontorovich, *EU's Israel Grants Guidelines: A Legal and Policy Analysis*, KOHELET POLICY FORUM, Oct. 2013, at 13, *available at* http://kohelet.org.il/uploads/file/EUs%20Israel%20Grants%20Guidelines%20A%20Legal%20and%20Policy%20Analysis%20-%20Kohelet%20Policy%20Forum%20-%20Final(1).pdf.

they assert "[i]f these plans go ahead, the Arab residents of East Jerusalem will be entirely enclosed by Jewish residential developments, and the West Bank will effectively be split in two."[214]

However, these assertions are not supported by data or facts and because they erase the complexity of the situation, they simply make a negotiated solution to the conflict harder to achieve. Israel has repeatedly dismantled settlements in order to achieve a negotiated peace (e.g. Sinai in 1982, Gaza and parts of the West Bank in 2005).[215] The vast majority of settlements are on the outskirts of Jerusalem and the Israeli town of Modi'in and fall within a couple kilometers of the 1949 armistice lines. Many are built within the 1949 demilitarized zone. Both sides have agreed to Israeli retention of sovereignty over the large settlement blocs, and Israel has offered land swaps of Israeli territory to compensate.[216]

CONCLUSIONS

The pollution that contaminates watercourses and the public health problems resulting from it are not constrained by sovereignty claims or political boundaries. The solutions to these issues should not be either. In their publications and myopic approach to the Arab-Israeli conflict, the AIV and the Dutch NGOs advance Palestinian anti-normalization. They do so through the use of international law and

214 AIV Report, *supra* note 46, at 26; *see also Trading Away Peace*, *supra* note 75.

215 Sarit Catz, *Talking about Peace Talks*, COMMITTEE FOR ACCURACY IN MIDDLE EAST REPORTING IN AMERICA (Jul. 17, 2013), http://www.camera.org/index.asp?x_article=2506&x_context=7&x_issue=4.

216 *Clinton Proposal on Israel-Palestinian Peace*, GLOBAL CAMPAIGN FOR MIDDLE EAST PEACE (Dec. 23, 2000), http://www.middleeastpeacecampaign.org/?page_id=96. Another potential solution would be to have settlements fall under Palestinian jurisdiction (despite the fact that Palestinian officials have repeatedly said they would not allow Jews to live in the territory of a future Palestinian state). With regards to East Jerusalem, there is no reason why the future capital of a Palestinian state could not be located in Ramallah, the current de facto capital, particularly given that Palestinians at no point in history have ever exercised sovereignty over East Jerusalem. Moreover, polls show that a significant percentage of East Jerusalem Palestinians would prefer to live under Israeli sovereignty rather than under the rule of a future Palestinian state. To that effect, increasing numbers of East Jerusalem Palestinians are seeking Israeli citizenship and moving to the Western parts of the city. Khaled Abu Toameh, *Why Palestinians Want Israeli Citizenship*, GATESTONE INSTITUTE: INTERNATIONAL POLICY COUNCIL (Oct. 23, 2012), http://www.gatestoneinstitute.org/3407/palestinians-israeli-citizenship.

human rights rhetoric to overtly politicize the conflict, and in particular, the issue of water. According to Burkart, "the current predominant Israeli discourse favours [sic] cooperation and joint management of the shared aquifers . . . . This insight is not shared by the confrontational Palestinian discourse and is the reason why the water negotiations came to a standstill in the last years." [217] The Dutch government's adoption of this anti-cooperation stance reflects a flawed policy approach that will only lead to more conflict.

The reliance on politicized international legal rhetoric, informed by a narrow set of actors that woefully distorts the existing law, not only threatens the integrity of the law but also leads to completely counterproductive and even harmful policy decisions – as is evidenced by the Dutch government's actions towards Royal HaskoningDHV regarding the East Jerusalem wastewater treatment plant. Contrary to the claims of the AIV, the Dutch NGOs, and, unfortunately, the Dutch government, the plant is legal under international law and promotes human rights and environmental protections. Remedying the extensive pollution in the Kidron Valley clearly will have many benefits for both Palestinians and Israelis alike, regardless of which side will ultimately have sovereignty over the area. Moreover, the project is an important means to foster the peace process by promoting cooperation and dialogue, improving the environment and public health, creating economic opportunities, and increasing the amount of available water to both Palestinians and Israelis.[218]

Ultimately, the sewage flowing into the Kidron Valley River Basin must be stopped and the environmental pollution reversed. Another company will likely take Royal HaskoningDHV's place and build the plant that is so badly needed for everyone living in the area. The damage done to international law, human rights, and human relationships in the region because of the Dutch government's unsound policy approach to the sewage plant, however, will not be so easily treated.

217 Burkart, *supra* note 119, at 49.
218 Wheelwright, *supra* note 11.

HUMAN TRAFFICKING AND VICTIMS OF THE SEX TRADE INDUSTRY IN CALIFORNIA AND THE IMPLICATIONS FOR KOREA

Kenneth Chinn[†]

In December 2013, Handong International Law School and the local Prosecutor's Office gathered together for their annual conference, sponsored by the Pohang City Prosecutor's Office. Special guests at this year's conference included representatives of organizations in Pohang, Republic of Korea that provide services to crime victims. The author was invited to address the gathering on the topic of services offered to victims of sexual assaults. The author, aware of a concern about the presence of the sex industry in Pohang (along with every other major cities in Korea), shared with Korean prosecutors some insights gathered from his service as a prosecutor in California and with the efforts in California to combat the sex trafficking industry. Below, with minor alterations, is a copy of the paper he prepared for the occasion which was provided to the attendees.

I. INTRODUCTION

Like Asia, the United States has long struggled with the problem of prostitution and its impact on women in our society. In recent years, the world has come to recognize the significant role of prostitution in the human trafficking industry of the twenty-first century. As a retired California prosecutor, the author spent a portion of his career working closely with law enforcement agencies in Orange County California in the prosecution of pimping and pandering[1] rings. Experiences gained

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1 A "pimp" is someone who controls and derives income from a prostitute. A "panderer" is someone who encourages another to become a prostitute and/or procures customers. *California's "Pimping and Pandering" Laws Penal Code 266h & 266i PC*, SHOUSE CAL. LAW GROUP, http://www.shouselaw.com/pimping-pandering.html (citing CAL. PENAL CODE §§ 266h, 266i (West 2011)).