

THE EU-EGYPT-ISRAEL GAS MEMORANDUM:

PILLAGE AND DENIAL OF PALESTINIAN SELF-DETERMINATION



BADIL's Position Paper: The EU-Egypt-Israel Gas Memorandum: Pillage and Denial of Palestinian Self-Determination, September 2022

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The EU-Egypt-Israel Gas Memorandum: Pillage and Denial of Palestinian Self-Determination

In a bid to end its reliance on Russian energy following the invasion of Ukraine, the European Union (EU) signed a memorandum of understanding (MOU) in June 2022 with Egypt and Israel to facilitate the import of natural gas from the Middle East to Europe. The MOU sets parameters for an international treaty, to be finalized at a later time, under which Israel will pipe gas to liquefaction plants in Egypt; from there it will be subsequently exported to Europe.¹ In striking such a deal with Israel, the EU stands to incriminate itself in Israeli international law violations and serious breaches: both generally through its complicity in and demonstrable support for the Israeli colonial-apartheid regime, and specifically through its involvement and tacit approval of the illegal use of Palestinian natural resources in the occupied territory, amounting to pillage. The MOU is a statement of the EU's hypocritical and contradictory stance with regards to Israel, representing active involvement in the Israeli colonial-apartheid regime's theft of resources. The purchase of gas stolen from occupied territory would trigger legal responsibility for Egypt, the EU, and its member states under binding principles and norms of international and EU law.

A. INTERNATIONAL HUMANITARIAN LAW: PROHIBITION ON THE UNLAWFUL EXPLOITATION OF NATURAL RESOURCES

The international community, including the EU, has regarded Israel as an occupying power in the occupied Palestinian territory (oPt) since 1967, when Israel placed that territory under its effective control.² As such, it has

1 Hagar Hosny, 'Egypt Looks for Boost from Gas Deal with Israel,' (Al-Monitor, June 2022) available at: <https://www.al-monitor.com/originals/2022/06/egypt-looks-boost-gas-deal-israel-eu> [accessed 14 July 2022]; Directorate-General for Energy, 'EU Egypt Israel Memorandum of Understanding,' (17 June 2022) available at: https://energy.ec.europa.eu/eu-egypt-israel-memorandum-understanding_en [accessed 21 July 2022].

2 "Territory is considered occupied when it is actually placed under the authority of the hostile army." The 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, 18 October 1907, art. 42. [hereinafter the Hague Regulations 1907].

specific binding legal obligations in the territory which are derived from the Fourth Geneva Convention, the Hague Regulations, and customary international law.³

An occupying power's use of the natural resources of an occupied territory is governed by the principle of usufruct, pursuant to Article 55 of the 1907 Hague Regulations. This article makes clear that "[t]he occupying state shall be regarded only as an administrator and usufructuary of public buildings, real estate, forests, agricultural estates belonging to the hostile state and situation in occupied territory. It must safeguard the capital of these properties and administer them in accordance with the rules of usufruct." The wording of the provision reflects a central principle of the law of occupation: that an occupying power is a temporary custodian of the occupied territory and does not acquire sovereign powers. Specifically, usufruct rights permit the occupying power to derive benefit and profit from the resources of the occupied territory but prevents any usage that alters the substance of these resources.⁴

Although international humanitarian law (IHL) allows occupying powers to use the natural resources of the occupied territory, it also asserts that this use should not be greater than that which the territory can reasonably be expected to bear.⁵ If natural resources are used beyond the degree necessary to serve the needs of the occupying army and the occupied population, then that usage is excessive and will qualify as pillage under Article 47 of the Hague Regulations.⁶ Pillage is defined as "extensive destruction and appropriation

3 Whilst Israel has not signed or ratified the Hague Regulations, they are recognised as customary in nature and therefore binding on all states.

4 Aeyal Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge University Press, 2017) 199; Iain Scobbie, *Natural Resources and Belligerent Occupation: Mutation Through Permanent Sovereignty* (Brill Nijhoff, 1997) 238.

5 See The Flick Trial, In United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, Vol. IX, 22; 14 AD 226, available at: https://tile.loc.gov/storage-services/service/l1/lmlp/Law-Reports_Vol-9/Law-Reports_Vol-9.pdf [accessed 9 August 2022].

6 Pillage is often understood as appropriation of private property only by private persons for personal use, but this definition contradicts a wealth of international criminal jurisprudence and runs contrary to modern understandings of the offence. In practice, individuals acting pursuant to state policy, as well as corporations, have been prosecuted for pillage of natural resources. For more, see *Democratic Republic of the Congo v. Uganda* (n 6) para 246; James Stewart, 'Corporate War Crimes: Prosecuting Pillage of Natural Resources' [2010] All Faculty Publications, 20-22, available at: https://commons.allard.ubc.ca/fac_pubs/339 [accessed 9 August 2022]; Carsten Stahn, *A Critical Introduction to International Criminal Law* (Cambridge University Press, 2018) 86.

of property” in the Fourth Geneva Convention.⁷ In contrast to the act of pillaging, Article 43 of the Hague Regulations also maintains that the property of the occupied population, be it private or public (immovable public property including natural resources), must be protected by the occupying power.

These provisions mean that Israel may hypothetically make use of Palestinian natural resources only as required to meet the needs of its forces or the needs of the occupied population. It cannot use these resources to enrich itself, to increase its domination, or to benefit the occupying population.⁸ Israel, however, has long exploited Palestinian natural resources in the West Bank to the point of pillaging, with prominent examples including the diversion of Palestinian spring water to Israeli colonies and the quarrying of stone.⁹

In relation to natural gas, Israel extracts this resource from a number of sites, including the ‘Meged’ field which lies on the ‘Green Line’ between 1948 Palestine and the 1967 territory. Subterranean oil and gas reserves at Meged extend deep into the occupied Palestinian West Bank, notably around the village of Rantis.¹⁰ Through actions such as those stipulated in EU-Israel MOU, Israel would be committing acts that amount to pillaging given that the extent of the extraction far exceeds the amount which could be considered legitimate under the rubric of military necessity. These resources are extracted for the benefit of the Israeli economy and colonial population, whether they are consumed domestically or exported. No gas, nor profit therefrom, flows to the Palestinians as a result of this extraction and use of Palestinian resources, implying that Israel is not using the natural resource to benefit the occupied

7 Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 UNTS 287, art. 147, available at: <http://www.refworld.org/docid/3ae6b36d2.html> [accessed 3 August 2022] [hereinafter Fourth Geneva Convention].

8 *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, (Request for the Indication of Provisional Measures) General List no. 116 [2000] ICJ.

9 BADIL, *Forced Population Transfer: The Case of Palestine - Denial of Access to Natural Resources and Services* (2017). 39-52, available at: <https://www.badil.org/phocadownloadpap/badil-new/publications/research/working-papers/wp20-DANRS.pdf> [accessed 9 August 2022].

10 Mahmoud Elkhafif, ‘Palestine’s Forgotten Oil and Gas Resources,’ (Al-Jazeera, 6 June 2021) available at: <https://www.aljazeera.com/opinions/2021/6/21/palestines-forgotten-oil-and-gas-resources> [accessed 14 July 2022]; Amiram Barkat, ‘Givot Can Meet 10% of Israel’s Oil Consumption,’ (Globes, 19 March 2012) available at: <https://en.globes.co.il/en/article-1000734556> [accessed 14 July 2022]; BBC News, ‘Does Israel Walk a Thin Line with West Bank Oil Drill?’ (BBC News, 10 July 2012) available at: <https://www.bbc.com/news/world-middle-east-18690346> [accessed 14 July 2022].

population either. Israeli exploitation of Palestinian natural gas for the benefit of Israel, private companies, or the Israeli population thus breaches Israeli IHL obligations.

Under Article 147 of the Fourth Geneva Convention, pillage constitutes a grave breach of IHL, meaning that it belongs to the most serious category of war crimes.¹¹ As such its commission triggers additional responsibilities on third party states to address the breach if the offending state, here Israel, has failed to remedy the breach themselves.¹² The commission of grave breaches places a binding obligation on states to respond to the act by providing appropriate penal measures. **In its cooperation with Israel under the MOU's provisions, the EU, which recognizes the oPt as occupied territory, would not only fail to uphold its obligation to address the breach, but it would also aid an unlawful act. In fact, it would further encourage Israel to continue its extensive exploitation of Palestinian natural resources in the occupied territory wherein Israel is acting as a *de facto* sovereign power.**

Unsurprisingly, the Israeli High Court of Justice (HCJ) – which acts as an essential contributor to deepening the Israeli colonial-apartheid regime – has claimed that the prolonged nature of the occupation justifies depleting the capital of finite resources. Experts agreed that this view was wholly inconsistent with the overriding principles of the law of occupation, designed as it is to protect the rights and property of the occupied population.¹³ If non-renewable resources are depleted, they cannot be fully returned to public ownership at the termination of the occupation. Critically, though, the fact that the Israeli HCJ has sanctioned the pillage of Palestinian resources clears the way for such acts to be brought within the jurisdiction of the International Criminal Court's (ICC) ongoing investigation in the oPt.¹⁴

11 Marko Divac Öberg, 'The Absorption of Grave Breaches into War Crimes Law' (2009) 91 *International Review of the Red Cross* 163, 164-165

12 ICRC, 'Grave Breaches,' (ICRC Glossary, 2022) available at: <https://casebook.icrc.org/glossary/grave-breaches> [accessed 10 August 2022].

13 Yuval Shany, Guy Harpaz, Yael Ronen et al, 'Expert Opinion submitted to the Israeli HCJ: *Yesh Din – Volunteers for Human Rights v Commander of IDF Forces in West Bank et al*' (December 26, 2011) HCJ 2164/09 available at: <https://bit.ly/3sV8uwB> [accessed 15 July 2022].

14 The principle of complementarity dictates that the ICC cannot investigate acts that the relevant state has properly investigated and, if necessary, prosecuted. As the Israel HCJ, the highest court in Israel, has already ruled that the act is legal, the breach can be prosecuted at the international level. For more on the principle of complementarity, see the Rome Statute of the International Criminal Court, arts. 17 & 20, available at: <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> [accessed 9 August 2022]

B. INTERNATIONAL HUMAN RIGHTS LAW: NATURAL RESOURCES AND SELF-DETERMINATION

Israeli theft of Palestinian natural resources should also be understood as a breach of the Palestinian people's right to self-determination, a peremptory norm of international law reflected in Common Article 1 of the Human Rights Conventions.¹⁵ Article 1(2) ICCPR and ICESCR makes reference to the right of peoples to freely dispose of their natural resources. State parties to these conventions have third party obligations to respect, protect, and fulfil the rights laid down therein. Furthermore, Article 1(3) explicitly outlines the duty of state parties to promote the realization of self-determination. The Natural Resources Declaration (NRD) of 1962 which is accepted as customary international law,¹⁶ additionally establishes permanent sovereignty rights to peoples and nations alike over their natural resources.¹⁷

In 2019, the Committee on Economic, Social and Cultural Rights concluded that Israeli policies regarding the exploitation of Palestinian oil and gas were inconsistent with Israel's treaty obligations.¹⁸ **By depleting Palestinian hydrocarbon reserves, Israel is illegally altering the conditions under which Palestinian self-determination should be realized in the future by all Palestinians, including the refugees, within the borders of Mandatory Palestine.** Israeli pillaging ensures that when Palestinians are in a position to exercise self-determination, their natural resources "will no longer be available in the same form for the people to determine how [they] should be used."¹⁹ The

15 The right to self-determination has been recognised as peremptory in nature by the ICJ in *East Timor (Portugal v Australia)*, General List no. 84 [30 June 1995], ICJ, available at: https://www.refworld.org/cases/ICJ_40239bff4.html [accessed 8 August 2022]

16 Schrijver, Nico, 'Natural Resources, Permanent Sovereignty Over' (June 2008) in Rudiger Wolfrum (ed.), *Max Planck Encyclopaedia of International Law* (online edn.), para. 19, available at: <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1442?prd=MPIL> [accessed 13 July 2022].

17 'Permanent Sovereignty over Natural Resources,' UNGA Res. 1803 (XVII) (14 December 1962), UN Doc. A/RES/1803 (XVII), available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/general-assembly-resolution-1803-xvii-14-december-1962-permanent> [accessed 14 July 2022].

18 CESCR, 'Concluding Observations on the Fourth Periodic Report of Israel' (12th Nov 2019) UN Doc. E/C.12/ISR/CO/4, paras 14-15, available at: <https://bit.ly/3zLOdwj> [accessed 02 August 2022].

19 Matthew Saul, 'The Right to Self-Determination and Prolonged Occupation' in G Zyberi (ed), *Protecting Community Interests Through International Law* (Intersentia Uitgevers NV 2021) 240

UN General Assembly has repeatedly affirmed the sovereignty of the Palestinian people over their own natural resources.²⁰ Most recently in 2015, the UN called on all states and international organizations “to ensure respect for their obligations under international law with regard to all illegal Israeli practices and measures in the Occupied Palestinian Territory, including East Jerusalem, particularly Israeli settlement activities and the exploitation of natural resources.”²¹

As a settler-colonial regime, Israel has no right to seize or exploit natural resources across Mandatory Palestine: those resources which are extracted from lands appropriated and colonized since 1948 are the property of the Palestinian refugees and internally displaced persons (IDPs) who were forcibly transferred from that land during the Nakba (1947-1949), as well as their descendants, who today number over 9.1 million people.²² The UN has asserted the right of Palestinian refugees and IDPs to their property and the income generated from it from the time of their forcible transfer.²³

C. OBLIGATIONS OF THIRD PARTY STATES AND THE LEGAL RESPONSIBILITIES OF THE EU AND ITS MEMBER STATES

Violations of peremptory norms of international human rights law trigger obligations on third states. The Israeli regime flagrantly violates both the peremptory prohibition on colonialism²⁴ and acts contrary to the inalienable

20 UNGA Res. 3336, ‘Permanent Sovereignty over National Resources in the Occupied Arab Territories.’ (17 December 1974) UN Doc. A/RES/3336, available at: <https://digitallibrary.un.org/record/190163> accessed 14 July 2022.

21 UNGA Res. 70/225, ‘Permanent Sovereignty of the Palestinian People in the Occupied Palestinian Territory, Including East Jerusalem, and of the Arab Population in the Occupied Syrian Golan over Their Natural Resources’ (22 December 2015) UN Doc. A/RES/70/225, available at: <https://digitallibrary.un.org/record/821599> [accessed 14 July 2022].

22 BADIL, ‘Nakba Statement: 74 Years of the Ongoing Nakba, 74 Years of Ongoing Resistance’ (BADIL, 14 May 2022), available at: <https://www.badil.org/press-releases/13095.html> [accessed 4 August 2022].

23 UNGA Res. 36/146C (16 December 1981), UN Doc. A/RES/36/146C, available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/407/72/IMG/NR040772.pdf?OpenElement> [accessed 9 August 2022]

24 UNGA Res 1514 (XV), ‘Declaration on the Granting of Independence to Colonial Countries and Peoples’ (14 December 1960), UN Doc. A/RES/1514 (XV), available at: <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/152/88/PDF/NR015288.pdf?OpenElement> [accessed 1 November 2021].

right of the Palestinian people to self-determination.²⁵ These norms are *erga omnes*, meaning that all states have a duty to uphold them. This encompasses a positive duty to pursue the cessation of the violations, and a negative duty to not assist or help to maintain the situation in which the violations are taking place.²⁶ Additionally, as a matter of both customary and treaty law, states are obligated to ensure respect for international humanitarian law.²⁷ Yet the abovementioned violations perpetuated by Israel with regards to both IHRL and IHL have not prevented the EU and Egypt from striking a deal which stands to contradict these legal responsibilities. In so doing, they stand to breach their own third party obligations, and to implicate themselves directly in Israeli international crimes.

The EU's internal legal regime dictates that its relations with non-member states should be informed by "the universality and indivisibility of human rights."²⁸ Yet, through its routine failure to stop Israel's international law violations, it clearly has fallen short of this guiding principle. The MOU, which stands to see the EU directly benefit from Israel's illegal exploitation of Palestinian resources, is patently inconsistent with the EU's stated values. **While the MOU outlines at section 7 that its implementation shall not contradict any of the parties' international legal obligations,²⁹ for reasons highlighted above, its implementation would necessitate a host of international legal violations, encompassing both the EU's own legal responsibilities and those of its 27 member states.**

EU-Israel relations are also governed by the 2000 EU-Israel Association Agreement, Article 2 of which stipulates that dealings between the parties

25 BADIL, *Creeping Annexation: a Pillar of the Zionist-Israeli Colonization of Mandatory Palestine*, (2020) available at: https://www.badil.org/cached_uploads/view/2021/04/19/wp25-creepingannexation-1618823962.pdf [accessed 02 August 2022]; BADIL, *Palestinian Self-Determination: Land, People and Practicality* (2021) available at: https://www.badil.org/cached_uploads/view/2021/11/15/wp-28-self-determination-1636973309.pdf [accessed 03 August 2022].

26 International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts (2001) arts. 40-41, available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf [accessed 9 August 2022] [hereinafter ARSIWA].

27 Fourth Geneva Convention *supra* note 8, art. 1; ICRC, Customary IHL Database, 'Rule 139. Respect for International Humanitarian Law,' available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule139 [accessed 22 July 2022].

28 European Union, Consolidated version of the Treaty on the Functioning of the European Union, 13 December 2007, 2008/C 115/01, Article 21, available at: <https://www.refworld.org/docid/4b17a07e2.html> [accessed 8 August 2022].

29 'EU Egypt Israel Memorandum of Understanding' *supra* note 1.

should be grounded in respect for human rights.³⁰ The EU is patently failing to meet even the standards which it has set for itself. Despite official policy professing a commitment of the EU to a ‘two state solution’ based on ending the occupation of the 1967 territory, in practice “the EU has incentivised Israel’s continued commitment to prolonged occupation”³¹ by ignoring Israeli crimes in the interests of maintaining economic relations with Israel. Importing natural resources which have been illegally extracted by Israel would at the very least be consistent with the EU’s longstanding failure to prevent the import and sale of goods produced in colonies located in the West Bank.³² It demonstrates that the EU’s official anti-occupation stance is nothing but empty posturing.

The expropriation and illegal exploitation of Palestinian natural resources by the Israeli colonial-apartheid regime should be understood as a violation that serves to degrade and deny the Palestinian people’s inalienable right to self-determination. The EU and its member states have a responsibility not to render aid or assistance in the maintenance of Israeli breaches of international law.³³ Yet the MOU represents precisely these things, with the EU willingly assisting Israeli efforts to derive financial gain from its international crimes. **In implicating itself in the denial of the inalienable right to self-determination of the Palestinian people, the EU may incur direct responsibility on itself: systematic failure to uphold obligations arising under peremptory norms will engage international responsibility for international organizations.**³⁴ Non-assistance in violations of international law was recognised as a rule of

30 ‘Euro-Mediterranean Agreement (EU-Israel Association Agreement)’ (2000) *Official Journal of the European Communities* L 147/3, available at: https://eeas.europa.eu/archives/delegations/israel/documents/eu_israel/asso_agree_en.pdf [accessed 10 August 2022].

31 Hugh Lovatt, ‘Occupation and Sovereignty: Renewing EU Policy in Israel- Palestine’ (European Council on Foreign Relations, 21 December 2017), 2, available at: https://ecfr.eu/publication/occupation_and_sovereignty_renewing_eu_policy_in_israel_palestine/ [accessed 14 July 2022].

32 BADIL, *EU-Israel Trade: Promoting International Law Violations* (December 2017), available at: https://www.badil.org/cached_uploads/view/2021/04/20/eu-israel-trade-1618907751.pdf [accessed 04 August 2022].

33 ARSIWA, *supra* note 27, arts. 40-41; Human Rights Council, ‘Ensuring accountability and justice for all violations of international law in the Occupied Palestinian Territory, including East Jerusalem,’ (24 February- 20 March 2020) UN Doc. A/HRC/43/L.36, available at: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G20/086/11/PDF/G2008611.pdf?OpenElement> [accessed 10 August 2022].

34 International Law Commission, *Draft articles on the Responsibility of International Organizations* (2011), art. 41, available at: https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_11_2011.pdf [accessed 9 August 2022].

customary international law by the International Court of Justice (ICJ) in the *Bosnian Genocide case*.³⁵

While the EU as an entity distinct from its individual member states is not itself a signatory to the primary IHL treaties, it is still bound to abide by the rules of IHL when involved in conflict, or a third party to a conflict. Its member states are all signatories to the four Geneva Conventions, and the EU itself has repeatedly emphasized its commitment to personally comply with IHL and promote its compliance among third parties.³⁶ It is additionally bound by the customary rules of IHL³⁷ including those rules relating to usufruct, public property, and natural resources.³⁸ It is also bound by the customary rule of ensuring respect for IHL³⁹ as reflected at Common Article 1 of the Geneva Conventions. The responsibilities derived from this article are compulsory and cannot be derogated from. It is noteworthy that when Crimea was annexed by Russia in 2014, the EU was quick to impose sanctions and to ban EU businesses from dealing with Russian authorities, whom they considered to be bound by the laws of occupation.⁴⁰ In that scenario, the EU was keen to avoid complicity in Russian material breaches of, among other legal regimes, the law

35 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* [2007] ICJ Rep 43, 217, para. 420.

36 'Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL),' (2009) *Official Journal of the European Union* C 303/12; 'A Global Strategy for the European Union's Foreign and Security Policy' (European Union External Action, 2016), available at: https://www.eeas.europa.eu/eeas/global-strategy-european-unions-foreign-and-security-policy_en [accessed 2 August 2022].

37 Frederik Naert, 'Observance of International Humanitarian Law by Forces under the Command of the European Union' (2013) 95 *International Review of the Red Cross* 637. 641; Rutger Fransen and Cedric Ryngaert, 'EU Trade Relations with Occupied Territories: Third Party Obligations Flowing from the Application of Occupation Law in Relation to Natural Resources Exploitation', *The Legality of Economic Activities in Occupied Territories* (Routledge, 2020) 54-55.

38 ICRC, Customary IHL Database, 'Rule 51. Public and Private Property in Occupied Territory,' available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rule51#Fn_D70A41D7_00008 [accessed 22 July 2022].

39 ICRC, Customary IHL Database, *supra* note 28.

40 Council of the European Union, Council Decision 2014/145/CFSP of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L 78/16, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014D0145&rid=1> [accessed 10 August 2022]; Council Regulation 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine [2014] OJ L 78/6, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014R0269> [accessed 10 August 2022].

of occupation. The failure to implement similar policies in relation to Israeli violations including the illegal extraction of natural resources from occupied territory is evidence of an extremely biased approach to the application of international law. The International Committee of the Red Cross (ICRC) has highlighted that it is a matter of customary law that states should not encourage violations of IHL;⁴¹ the silence of EU member states over a gas deal with Israel which actively rewards IHL violations would clearly breach this rule.

41 ICRC, Customary IHL Database, 'Rule 144. Ensuring Respect for International Humanitarian Law Erga Omnes,' available at: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule144 [accessed 3 August 2022].

D. CONCLUDING REMARKS

It is profoundly ironic that the EU's desire to wean itself off Russian gas on account of Russia's war against Ukraine has led it to forge new ties with Israel, given its deplorable human rights record, including the commission of international crimes. **The MOU is an indication from the EU to Israel that its ongoing oppression of the Palestinian people and disregard for international human rights and humanitarian law will not prejudice EU-Israel relations.** The EU's highly partial approach to adhering to its international legal obligations speaks to a demotion of the Palestinian cause, contrary to the internationally recognized rights of the Palestinian people, including the inalienable right to self-determination⁴² in their land, and the refugees' right to return to their homes pursuant to the full implementation of UN General Assembly Resolution 194. The announcement of the MOU closely coincided with an announcement that the EU will be unfreezing hundreds of millions of Euros in funds which had been withheld from the Palestinian Authority (PA) since 2020,⁴³ a fact which does not justify the silence of the PA with regards to the major violations against Palestinians that would ensue from any upcoming EU-Israel gas treaty. While the leaders of the PA are treated internationally as the representatives of the Palestinian people, this does not entitle them to implicitly or explicitly "consent to actions that will pre-empt [the people's] right to self-determination."⁴⁴ In essence, the Palestinian Liberation Organization (PLO) and PA may have acquiesced to the deal for their own reasons, but this does not mean that the Palestinian people's right to control their own natural resources has been derogated from. A gas treaty between the EU and Israel would plainly violate Palestinian self-determination, with or without the acquiescence of the PLO or PA. Acts which ensue from such a treaty would plainly be illegal, and should be responded to as such.

42 UNGA Res. 3236 (XXIX) (22 November 1974), UN Doc. A/RES/3236 (XXIX), available at: <https://web.archive.org/web/20110925214133/http://domino.un.org:80/UNISPAL.NSF/0/025974039acfb171852560de00548bbe> [accessed 10 August 2022].

43 David Gritten, 'European Union to Unfreeze Aid for Palestinians' (BBC News, 14 June 2022), available at: <https://www.bbc.com/news/world-middle-east-61801864> [accessed 22 July 2022].

44 Matthew Saul, *supra* note 20, 234

E. RECOMMENDATIONS

In view of the above, BADIL calls on:

- The EU to cancel its MOU with Israel and Egypt, and warns that failure to do so will see it incur direct and indirect international legal responsibility for sanctioning IHL grave breaches, and for tacitly approving Israel's denial of Palestinian self-determination through exploitation of Palestinian natural resources.
- European civil society groups to mobilize in opposition to this deal, and to reassert the internationally recognized right of the Palestinian people to their own natural resources.
- European civil society to pressure the EU, either directly or through the conduit of their member state's governments, to highlight the hypocrisy of economically rewarding Israel, a major violator of international humanitarian law, as an alternative to trading with Russia.
- European civil society to seek to challenge the legality of this MOU, and any ensuing treaty, before the European Court of Justice.
- The Palestinian Authority to strongly oppose the MOU and any treaty that may arise in due course which will facilitate the illegal extraction and exporting of Palestinian natural resources.

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In a bid to end its reliance on Russian energy following the invasion of Ukraine, the European Union (EU) signed a memorandum of understanding (MOU) in June 2022 with Egypt and Israel to facilitate the import of natural gas from the Middle East to Europe. The MOU is an indication from the EU to Israel that its ongoing oppression of the Palestinian people and disregard for international human rights and humanitarian law will not prejudice EU-Israel relations.

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