



## Policy Memorandum: Making Effective US Opposition to Israeli Settlements

### 1. Background

In June 1967, Israel commenced a belligerent military occupation of the Palestinian West Bank, including East Jerusalem, and the Gaza Strip, along with the Egyptian Sinai Peninsula and the Syrian Golan Heights. Later that year, as Israel began to consider colonizing these territories, the Israeli Foreign Ministry's legal counsel acknowledged that doing so was illegal under international law. "Civilian settlement" in occupied military territory "contravenes the explicit provisions of the Fourth Geneva Convention,"<sup>1</sup> Article 49 of which states: "The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies."<sup>2</sup> This prohibition is, the Israeli Foreign Ministry argued, "categorical and is not conditioned on the motives or purposes of the transfer, and is aimed at preventing colonization of conquered territory by citizens of the conquering state."<sup>3</sup>

Despite this frank acknowledgement of the illegality of colonizing occupied territory, Israel proceeded to do so nonetheless. All of Israel's illegal settlements in the Egyptian Sinai Peninsula were dismantled by 1982 as part of the Egyptian-Israeli peace treaty. Israel dismantled its illegal settlements in the Gaza Strip when it unilaterally withdrew its forces from inside the territory in 2005 (Israel nevertheless remains the Occupying Power of the Gaza Strip by virtue of its "effective control" of the territory<sup>4</sup>). As of 2015, there were more than 650,000 Israeli settlers in the West Bank, including East Jerusalem.<sup>5</sup> An estimated 20,000 Israeli settlers live in more than 30 settlements in the Golan Heights.<sup>6</sup>

Every US administration since the Johnson administration has opposed Israel's colonization of occupied territory, and since the Carter administration, official US policy has deemed Israeli settlements illegal. In April 1978, the Department of State's legal advisor wrote a letter to Members of Congress on the illegality of Israeli settlements, concluding that "the establishment of the civilian settlements in those territories [occupied by Israel in 1967] is inconsistent with international law."<sup>7</sup> In March 1979, the United States abstained on UN Security Council Resolution 446, which determined that "the policy and practices of Israel in establishing settlements in

<sup>1</sup> Gershom Gorenberg, *The Accidental Empire: Israel and the Birth of the Settlements, 1967-1977*, Times Books, New York, 2006, p. 99.

<sup>2</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949, available at: <https://ihl-databases.icrc.org/ihl/WebART/380-600056>

<sup>3</sup> Gorenberg, p. 101.

<sup>4</sup> "The Gaza Strip - Israel's obligations under international law," B'Tselem, January 1, 2016, available at: [http://www.btselem.org/gaza\\_strip/israels\\_obligations](http://www.btselem.org/gaza_strip/israels_obligations)

<sup>5</sup> Jodi Rudoren and Jeremy Askhenas, "Netanyahu and the Settlements," *New York Times*, March 12, 2015, available at: [http://www.nytimes.com/interactive/2015/03/12/world/middleeast/netanyahu-west-bank-settlements-israel-election.html?\\_r=0](http://www.nytimes.com/interactive/2015/03/12/world/middleeast/netanyahu-west-bank-settlements-israel-election.html?_r=0)

<sup>6</sup> "Golan Heights profile," *BBC*, November 27, 2015, available at: <http://www.bbc.com/news/world-middle-east-14724842>

<sup>7</sup> Cited in United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Forty-sixth session, Item 8 of the provision agenda, E/CN.4/Sub.2/1994/18, 30 June 1994, available at: <https://unispal.un.org/DPA/DPR/unispal.nsf/0/2DFED17DC7DFAE2A852563A9004C4055>



In addition to recognizing the illegality of Israeli settlements under international law, US policy also has long regarded the expansion of Israel's settlements as an obstacle to a negotiated two-state resolution of the Israeli-Palestinian conflict, an official policy position of the United States since the Clinton administration. The Obama administration has been even more candid in its assessment. Most recently, in a September 2016 meeting with donor nations to the Palestinian Authority, Secretary of State John Kerry asked "How does increasing the number of settlers indicate an attempt to create a Palestinian state?" He warned: "Either we reverse course and take serious steps on the path to a two-state solution, or the momentum of existing actions will carry us further toward an intractable one-state reality."<sup>10</sup>

## 2. Policy Recommendations

- **Label Israeli settlement products.** In April 1995, the US Customs Service issued a notice of policy in the Federal Register requiring that goods "produced in the territorial areas known as the West Bank or Gaza Strip shall be marked as 'West Bank,' 'Gaza,' or 'Gaza Strip,'" and "shall not contain the words 'Israel,' 'Made in Israel,' 'Occupied Territories-Israel,' or words of similar meaning."<sup>11</sup> Customs further noted that a failure to conspicuously label the country of origin correctly in accordance with these requirements would lead to a 10 percent ad valorem duty levied on the product.

In a recent Congressional Research Service report on this subject, the executive branch reaffirmed that "if a good is produced in the West Bank or Gaza, it remains a product of such no matter who produced it and no matter from where it is shipped ... goods produced in the West Bank or Gaza should be labeled as such (and not as 'Made in Israel')." <sup>12</sup> As recently as January 2016, Customs and Border Protection issued a reminder that Israeli settlement goods "erroneously marked as products of Israel will be subject to an enforcement action."<sup>13</sup>

Despite these reiterations, however, it appears that many Israeli settlement products fraudulently enter the US market falsely labeled as being made in Israel. *The Forward* reviewed Israeli settlement products on the shelves of US stores and concluded that the regulation "appears to be barely enforced, if at all." Products incorrectly labeled as being made in Israel included wine from Shiloh Winery (made in the central West Bank), Psagot Winery (made in the Benjamin region east of Jerusalem), and Ugav Wines (manufactured by Jerusalem Wineries in the Atarot industrial zone in East Jerusalem). In addition, Ahava Dead Sea Cosmetics, which illegally extracts natural resources from the Israeli-occupied portion of the Dead Sea and processes them in a factory in a West Bank settlement, were also found to be labeled falsely as being made in Israel.<sup>14</sup>

**ASK:** Write a letter to Customs and Border Enforcement asking it to ensure that Israeli settlement products are labelled accurately and that those marked inaccurately face the required enforcement action. Write a letter to Customs and Border Enforcement asking it to issue a notice of policy requiring that Israeli

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<sup>10</sup> "Kerry said to rail at Israel, decry looming binational state," *Times of Israel*, September 25, 2016, available at: <http://www.timesofisrael.com/kerry-said-to-rail-at-israel-decry-looming-binational-state/>

<sup>11</sup> "Country of Origin Marking of Products from the West Bank and Gaza," T.D. 95-25, *Federal Register*, Volume 60, Number 66, Thursday, April 6, 1995, pages 17607-17609, available at: <https://www.gpo.gov/fdsys/pkg/FR-1995-04-06/html/95-8454.htm>

<sup>12</sup> Jim Zanotti, Martin Weiss, Kathleen Ann Ruane, "Israel and the Boycott, Divestment and Sanctions (BDS) Movement," Congressional Research Service, November 24, 2015, page 5, available at: <http://endtheoccupation.org/downloads/CRSReportIsraelBDS.pdf>

<sup>13</sup> "West Bank Country of Origin Marking Requirements," CSMS #16-000047, January 23, 2016, US Customs and Border Protection, available at: [http://apps.cbp.gov/csms/viewmssg.asp?Recid=21420&page=1&srch\\_argv=&srctype=&btype=abi&sortby=&sby#att](http://apps.cbp.gov/csms/viewmssg.asp?Recid=21420&page=1&srch_argv=&srctype=&btype=abi&sortby=&sby#att)

<sup>14</sup> Naomi Zeveloff and Nathan Guttman, "U.S. Labeling Rules Already Bar 'Made in Israel' Tag for West Bank," *The Forward*, January 28, 2016, available at: <http://forward.com/news/332192/us-labeling-rules-already-bar-made-in-israel-tag-for-west-bank/>

settlement products be affirmatively labeled as such so that US consumers can more accurately know the origin of these products.

- **Oppose Israeli settler violence.** Israeli settlers often kill and injure Palestinians, and damage or destroy their property, homes, and places of worship in acts of terrorism designed to intimidate Palestinians into leaving their land to make way for the expansion of Jewish-only settlements. Since 2010, the Department of State has included these acts of terrorism in its Country Reports on Terrorism. In the latest 2015 terrorism report, the Department of State notes that “violent extremist Israelis, including settlers, continued to conduct acts of violence as well as ‘price tag’ attacks (property crimes and violent acts by extremist Jewish individuals and groups in retaliation for activity they deemed to be anti-settlement) in the West Bank and Jerusalem.”<sup>15</sup>

In 2015, such acts included the firebombing of the Dawabshe family’s home in the West Bank village of Duma, which killed two adults and one infant, and critically injured another child who was orphaned in the attack. The report also noted arson attacks against a church and a mosque as a few of the 224 attacks by violent extremist Israeli settlers that resulted in Palestinian injuries or property damage, according to data from the UN Office of the Coordinator for Humanitarian Affairs.

Although the Department of State does list Kahane Chai, a terrorist organization “overwhelmingly composed of Israeli citizens that [*sic*] live mostly in West Bank settlements,” in its list of Foreign Terrorist Organizations (FTO),<sup>16</sup> other Israeli groups which either engage in or provide material support for settler terrorism may also merit inclusion on this list.

To be included on the list of FTO’s, an organization must engage in “terrorist activity” as defined by the Immigration and Nationality Act, which defines terrorism, in part, as the use of any “explosive, firearm, or other weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property,” or “a threat, attempt, or conspiracy” to do so.<sup>17</sup> Or, an organization can be added to the list of FTO’s if it engages in terrorism, as defined by the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, which defines terrorism as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents.”<sup>18</sup>

The Department of State should apply these legal criteria for inclusion on the list of FTO’s to organizations regardless of their religious identity or national origin. Israeli organizations responsible for committing acts of violence noted in the Department of State’s annual terrorism report should be added to the list of FTO’s.

**ASK:** Write the Department of State and ask it to launch investigations into additional Israeli organizations and add them on its list of FTO’s which are responsible for engaging in and materially supporting acts of terrorism included in the Department of State’s annual terrorism report.

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<sup>15</sup> “Country Reports on Terrorism 2015, Chapter 2. Country Reports: Middle East and North Africa Overview,” available at: <http://www.state.gov/j/ct/rls/crt/2015/257517.htm>

<sup>16</sup> “Country Reports on Terrorism 2015, Chapter 6. Foreign Terrorist Organizations,” available at: <http://www.state.gov/j/ct/rls/crt/2015/257523.htm>

<sup>17</sup> 8 U.S.C. § 1182(a)(3)(B)(iii), available at: <https://www.gpo.gov/fdsys/pkg/USCODE-2011-title8/html/USCODE-2011-title8-chap12-subchapII-partII-sec1182.htm>

<sup>18</sup> 22 U.S.C. § 2656f(d)(2), available at: <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title22/html/USCODE-2010-title22-chap38-sec2656f.htm>

- **Review tax status of organizations supporting Israeli settlements.** According to an investigation by the Israeli newspaper *Haaretz*, “U.S. donors are massively funding Israeli settlements by using a network of tax-exempt nonprofits,” which fund everything from the purchase of air conditioners to financially supporting Israelis convicted of terrorism against Palestinians and their families. From 2009 to 2013, some 50 US-based 501(c)(3) non-profit organizations funneled more than \$220 million to illegal Israeli settlements.<sup>19</sup> In some cases, nonprofits even purchased military equipment for Israeli settlements, including sniper equipment, night-vision binoculars, bulletproof vehicles and guard dogs.<sup>20</sup>

The Internal Revenue Service (IRS) states that exempt purposes for a charitable organization “may generally be equated with the public good, and violations of law are the antithesis of the public good. Therefore, the conduct of such activities may be a bar to exemption.” By aiding and abetting the expansion of Israel’s colonization of occupied Palestinian land, these 501(c)(3) organizations are contributing to violations of international law and should therefore not receive tax exemption. In addition, the IRS states that “all charitable trusts (and by implication all charitable organizations, regardless of their form) are subject to the requirement that their purpose may not be illegal or contrary to public policy.” Nonprofit organizations which funnel money to Israeli settlements are both furthering an illegal activity and engaging in acts which are contrary to longstanding, bipartisan policy opposing Israel’s colonization of Palestinian land. The IRS further notes that “not only is the actual conduct of illegal activities inconsistent with exemption, but the planning and sponsoring of such activities are also incompatible with charity and social welfare.”<sup>21</sup> Therefore, even if these nonprofits are not directly engaging in Israel’s illegal colonization of Palestinian land, their coordination with and sponsorship of those who are expanding Israeli settlements should render them ineligible for tax-exempt status.

Furthermore, it is unclear that providing material support to Israel’s illegal colonization of Palestinian land meets any IRS criteria for charitable, exempt purposes, which include “relief of the poor, the distressed, or the underprivileged,” “lessening neighborhood tensions,” “eliminating prejudice and discrimination,” and “defending human and civil rights secured by law.”<sup>22</sup> Indeed, the funneling of money to Israeli settlements produces the exact opposite of what the IRS considers to be exempt purposes. For example, Israel’s expropriation of Palestinian agricultural land for its illegal settlements deprives Palestinian farmers of their livelihoods and impoverishes them. Rather than lessening tensions, the implantation of Israeli settlements on expropriated Palestinian land greatly increases tensions between the populations. Palestinians are not allowed to live in Jewish-only Israeli settlements and many settlements are connected to Israel by roads on which Palestinians are not permitted to drive, thereby increasing, rather than eliminating, discrimination. And Israeli settlements and the military occupation which protects these settlements deprive Palestinians of their human rights, rather than guard them.

**ASK:** Write a letter to the IRS requesting it to investigate whether 501(c)(3) organizations that provide funding and other forms of material support to Israeli settlements are violating tax-exempt purposes.

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<sup>19</sup> Uri Blau, “Haaretz Investigation: U.S. Donors Gave Settlements More Than \$220 Million in Tax-exempt Funds Over Five Years,” *Haaretz*, December 7, 2015, available at: <http://www.haaretz.com/settlementdollars/1.689683>

<sup>20</sup> Jim Rutenberg, Mike McIntire and Ethan Bronner, “Tax-Exempt Funds Aid Settlements in West Bank,” *New York Times*, July 5, 2010, available at: [http://www.nytimes.com/2010/07/06/world/middleeast/06settle.html?\\_r=0](http://www.nytimes.com/2010/07/06/world/middleeast/06settle.html?_r=0)

<sup>21</sup> “Activities That Are Illegal or Contrary to Public Policy,” Internal Revenue Service, 1985 EO CPE Text, available at: <https://www.irs.gov/pub/irs-tege/eotopicj85.pdf>

<sup>22</sup> “Exempt Purposes - Internal Revenue Code Section 501(c)(3),” Internal Revenue Service, available at: <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501-c-3>

- **Deduct US military aid for funds spent on Israeli settlements.** In September 2016, the United States and Israel signed a memorandum of understanding to provide Israel \$38 billion of US taxpayer-financed weapons from FY2019-FY2028. Rather than continue to provide these weapons to Israel without any strings attached, the United States should deduct from the amount of military aid available the sum that Israel spends on its illegal settlements, as recommended by Human Rights Watch (HRW). In its report, *Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights*, HRW called on third-party states to “avoid offsetting the costs of Israeli government expenditures on settlements by withholding funding given to the Israeli government in an amount equivalent to its expenditures on settlements and related infrastructure in the West Bank.”<sup>23</sup>

Precedent exists in US law for deducting the funds available to Israel in proportion to the amount of money Israel spends on its illegal settlements. In the Emergency Wartime Supplemental Appropriations Act, 2003, Congress established a \$9 billion loan guarantee program for Israel. Congress stipulated that these loan guarantees could be used “only to support activities in the geographic areas which were subject to the administration of the Government of Israel before June 5, 1967,” thereby prohibiting their use to support Israeli settlements on Palestinian land. In addition, Congress mandated that the “amount of guarantees that may be issued shall be reduced by an amount equal to the amount extended or estimated to have been extended by the Government of Israel...for activities which the President determines are inconsistent with the objectives and understandings reached between the United States and the Government of Israel regarding the implementation of the loan guarantee program.”<sup>24</sup> Between FY2003-FY2005, the Bush administration deducted more than \$1 billion of the funds available in the loan guarantee program in response to Israel’s expenditures on settlements.<sup>25</sup>

Congress should replicate this precedent by inserting similar language each year into the Department of State, Foreign Operations, and Related Programs Appropriations Acts to ensure that US military aid is not offsetting Israel’s expenditures on its illegal settlements.

**ASK:** Introduce amendment language into the budget process to deduct US military aid to Israel for its expenditures on illegal settlements.

### 3. Conclusion

On October 5, the Department of State warned that Israel’s most recent announcement of settlement expansion “is another step towards cementing a one-state reality of perpetual occupation that is fundamentally inconsistent with Israel’s future as a Jewish and democratic state.”<sup>26</sup> No matter how strongly worded, however, denunciations of Israel’s settlements alone are not sufficient. Congress must take urgent action to make rhetorical opposition to Israel’s settlements effective. Israel is likely only to end its illegal colonization of Palestinian land if there are tangible and significant consequences for its ongoing refusal to do so.

<sup>23</sup> *Occupation, Inc.: How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights*, Human Rights Watch, January 19, 2016, available at: <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian>

<sup>24</sup> P.L. 108-11, available at: <https://www.gpo.gov/fdsys/pkg/PLAW-108pub11/html/PLAW-108pub11.htm>

<sup>25</sup> Jeremy Sharp, Specialist in Middle East Affairs, “U.S. Foreign Aid to Israel,” Congressional Research Service RL33222, June 10, 2015, p. 21, available at: <https://fas.org/sgp/crs/mideast/RL33222.pdf>

<sup>26</sup> “Approval of New West Bank Settlement,” Press Statement, Mark C. Toner, Deputy Department Spokesperson, Washington, DC October 5, 2016, Department of State, available at: <http://www.state.gov/r/pa/prs/ps/2016/10/262795.htm>