



Contacto:
Email: global@stopthewall.org
Web: www.stopthewall.org
Tel: +55-11- 967944907



Bilateral Cooperation in Research and Industrial Development: **Cooperation with Israeli violations of international law and human rights?**

Brazil's state institutions promote and entertain extensive economic and research cooperation with Israel on all levels – federal, state level, municipalities and state institutions.

This type of cooperation not only directly or indirectly legitimises current Israeli policies but contribute to the sustainability of Israeli occupation, colonization and apartheid. In fact, this cooperation includes or risks including Israeli entities and activities in the OPT or activities (research, production, commerce) which benefits the illegal activities of Israel in the OPT, including the construction of the Wall and the settlement enterprise.

This stands in clear contradiction with Brazil's commitment to the creation of a Palestinian state with the 1967 borders and Palestinian right to self-determination. It further undermines the support Brazil has given to the Human Rights Council resolution on the Independent Fact-Finding Mission on the legal consequences of the Israeli settlement enterprise and risks to violate Brazil's constitutional obligation to give prevalence to human rights in international relations. Finally, it may bring Brazil in breach with its international obligations not to recognize or give aid and assistance to Israeli breaches of peremptory norms and the maintenance of the situation created by them.

Example: the Bilateral Cooperation in Research and Industrial Development

Most likely the most outstanding activity, which beyond legitimizing and sustaining Israeli policies, risks to recognize and/or directly aid and assist the construction of the Wall and the settlement enterprise and the maintenance of the situation created by them as well as other Israeli violations of peremptory norms is the Bilateral Cooperation in Research and Industrial Development in the private sector.

We recommend the Brazilian government, as a technical measure, suspends the current funding cycle until a solution is found to prevent the financing of:

- **Israeli entities located in the OPT or with illegal operations in the OPT**
- **projects partially or fully implemented in the OPT or whose the implementation or results aid, assist or recognize the illegal Israeli operations in the OPT and its sustainability.**

Background information:

The program is jointly run by the Secretariat of Innovation in the Ministry of Development, Industry and Foreign Trade of Brazil and MATIMOP, the Israeli Industry Center for Research and Development (R&D), on behalf of the Office of the Chief Scientist in the Ministry of Industry Trade and Labor of Israel¹.

Currently new projects are being evaluated to the amount of 70 million Reais and are risking to benefit companies and projects that are illegally operating in the OPT or are benefiting or contributing to the sustainability of the Wall, the settlement enterprise and other violations of Palestinian rights.

A short analysis of the 22 Israeli companies so far registered has shown that over 40 percent should pose serious questions of eligibility:

- at least one company seems to have its core office in occupied East Jerusalem²
- at least one company seems to have a project benefiting settlement operations in the occupied Syrian Golan Heights (and there is doubt it entertains one in the occupied Palestinian territory)³
- at least one company is directly financed to provide equipment to an Israeli state enterprise for its provision of services to the settlements⁴
- at least one company is partially owned by an Israeli state enterprise operating in the settlements and providing services to the military occupation⁵
- at least one company is providing services to settlement companies⁶

1 <http://www.brasilisrael.mdic.gov.br/index>

2 CTI-Creative Technologies Israel Ltd is located in Jerusalem, Dagan Street, Gilo settlement (see map in annex 2)

3 Mapal Green Energy, which has a project in Mishmar Hayarden, which is partially in the occupied Golan Heights and maybe in the settlement Ofra in the OPT. See: <http://www.jpost.com/Diplomacy-and-Politics/NGO-petitions-court-against-sewage-plant-near-Ofra-315232>. Whether the Jerusalem Post article is an incorrect attribution to Mapal Green Energy is to be verified.

4 Metrycom, which got its core funding from the Israeli Electric Corporation in order to develop and produce equipment for IEC: <http://www.businesswire.com/news/home/20110404005821/en/Israel-Electric-Corporation-IEC-Invests-Million-NIS>, <http://israelnewtech.com/2012/03/karat-%E2%80%93-innovation-to-realization/>. IEC is the sole electric utility in Israel, where it is 99% state-owned and responsible for the production and distribution of electricity. Its contribution to the settlement enterprise in the Occupied Palestinian Territory is fundamental as without its assistance and electricity provision, the entire settlement enterprise would be impossible. IEC is operating in the OPT illegally by:

- Prior to the 2005 Israeli evacuation of Jewish settlements from the Gaza Strip, the IEC was providing and maintaining electrical power for the settlements of Gush Katif as well as the Kfar Darom.
- The IEC is and has historically been the sole provider of electricity to the illegal West Bank settlements.
- The IEC actively assists in the expansion of and creation of new settlements, connecting so-called "outposts" to the power grid. Providing utilities to these nascent settlements solidifies their position on Palestinian land and facilitates the expansion of their populations. (For more see: <http://www.stopthewall.org/downloads/pdf/NPFBrief2009.pdf>)

5 PCT (Protective Coating Technology) is partially owned by Delek Group, one of Israel's main fuel distributors. In July 2013 the company has won a tender for providing refueling services to the Israeli Ministry of Defense and the Israeli army over the course of the next three years. The company owns and operates a chain of Delek gas stations and Menta convenience stores in West Bank settlements of Alfei Menashe, Ariel and Givat Ze'ev and in the settlement neighborhoods in East Jerusalem: Neve Ya'akov, and the French Hill. Additionally, the company supplied fuel for construction projects in the settlement of Carmel. (<http://www.whoprofits.org/company/delek-israel-fuel>)

6 Akol Anat Keshev works for Golan Heights Wineries, which are a settlement enterprise in the occupied Syrian Golan Heights (<http://www.akol4u.com/projects.asp>)

- at least two companies are directly involved in providing the services and equipment for repression of human rights defenders and the actions of the Israeli military, which have been repeatedly accused of war crimes and possibly crimes against humanity⁷.
- at least two companies are based in the US. This latter is evidently not relevant in terms of violations of international law and human rights but raises questions of good faith⁸.

Regarding the other companies, there is no sufficient information available online, however, considering their operations in the agro-business, construction and other sectors it is likely that they are carrying out operations in the OPT. This short overview does not exclude but rather indicate that these companies might as well be involved in illegal operations in the OPT.

We would like to underline that criteria for research funding should not only take into consideration the location of the actual research and the headquarters of the involved company but as well the question of fungibility⁹. Research is by definition fungible and will inevitably be used by any company with illegal operations in the OPT as well in this sector of its operations. Once research is produced Brazil will not have any instruments to limit its application by the partner company.

We would further like to highlight that several states have already in place funding guidelines:

1) the European Union has just released detailed guidelines for funding and financial support to Israeli entities. (More more see below.)

2) Israel signed a similar clause already in 1972 in the framework of the eligibility rules of the United States-Israel Binational Science Foundation¹⁰. The clause states that:

"According to the agreement between the U.S. and Israeli governments, projects sponsored by the Foundation may not be conducted in geographic areas which came under the administration of the Government of Israel after June 5, 1967 and may not relate to subjects primarily pertinent to such areas."

3) Germany has signed a similar territorial clause for the funding of the German-Israeli Foundation for Scientific Research and Development (GIF) stating that:

"GIF can support only projects conducted within the geographic areas under the

7 BAT Beit-Alfa Technologies Ltd. is a producer of Riot Control vehicles and are regularly used to repress Palestinian human rights defenders. Operational with IDF and Israel National police since 2008 is SKUNK, which has become a key instrument of Israeli repression of freedom of expression and assembly. Additionally, ODZ Consulting and Marketing, which for unclear reasons is in the MDIC website registered to represent MyWall, the only independent laboratory in Israel to perform ballistic testing in Israel. It works for the IDF-Israeli Ministry of Defense, Israeli Interior Ministry, Israel Police and Special Forces and has developed and produced a protective armor station for ELBIT.

8 "TransAlgae is a biotech company incorporated in the USA with a research center located at the Science Park in Rehovot, Israel." (<http://www.transalgae.com/>); "New York-based Watchitoo provides an embeddable video collaboration platform to deliver live content in a highly engaging way" (<http://www.watchitoo.com/blog/>)

9 Europe has been obliged by its own EU legislation to adopt this concept for financial institutions in its recent guidelines on the eligibility of Israeli entities for EU financial support, excluding loans of EU financial institutions to all Israeli entities with operations in the OPT. Fungibility, however, refers as well to stocks, products and know-how and logically should have been applied as well to these fields.

10 <http://www.bsf.org.il/bsfpublic/DefaultPage1.aspx?PageId=21&innerTextID=21>

*jurisdiction of the State of Israel prior to June 5, 1967.*¹¹

Even though none of the above guidelines addresses the problem in its complexity, they are a positive step in the right direction and expression of existing awareness regarding the issue.

Annex 1:

Analysis of the EU funding guidelines

*The European Union guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards*¹²:

- aim to ensure that the EU institutions respect the obligation to not recognize Israeli sovereignty in the occupied Palestinian and Syrian territory since 1967, i.e. the Palestinian West Bank, East Jerusalem and Gaza Strip (OPT), and the Syrian Golan Heights.
- will prevent EU loans, loan guarantees and other financial investments in Israeli ministries and all public entities operating at the national level (because these operate in these occupied territories), as well as in other public and private Israeli entities which are located and/or operate in occupied territory.
- will also stop the EU from awarding grants for activities/projects to Israeli entities that are headquartered within occupied territory. Neither will it grant funds for activities/projects that take fully or partially place in occupied territory, even if the applying entities are headquartered inside Israel's pre-1967 borders. Israeli ministries and other national entities will have to excorporate any activities in the OPT from project lines supported by the EU.
- will be implemented through declarations by the applying entities that they are eligible according to the guidelines, reference to the applicability of the guidelines in Memorandums of Understanding and other cooperation agreements will be sought. Any incorrect information may be considered as a case of misrepresentation or a serious irregularity and may lead to the relevant sanction.

These guidelines do not establish any new legal or political principles. However, for the EU, these guidelines are an important step for EU institutions to implement the requirements of international and existing EU law incorporating international law standards in the case of financial or economic transactions with Israel.

It is important to underline that the move is not a political but a technical operation applying existing legal obligations. Israel's efforts to present this as a political, voluntary act is aimed at weakening the guidelines and questioning their legitimacy.

¹¹ <http://www.gif.org.il/pages/applicants/eligibility-of-institutions.aspx>

¹² <http://www.eccpalestine.org/wp-content/uploads/2013/07/COM-Notice-guidelines-on-IL-and-EU-funding-instruments-compact.pdf>

The main potential impact lies in having developed a powerful, practical tool to counter Israeli breaches of international law in the OPT. At a practical level, the most likely the limitations on the EU financial instruments (loans, loan guarantees, etc.) will have the biggest impact.

These guidelines are different from the plans for an advise to public and private entities in their dealings with Israel, which may be postponed until 2014. Discussions between the EU and Israel on their implementation will take part in September 2012.

Legal comments:

- EU has recognized with these guidelines its obligation to not recognize/aid/assist in the commission and maintenance of the unlawful situation in the OPT created by Israel's serious violations of international law, such as the annexation of and Israeli settlement in the OPT. This obligation under customary international law on state responsibility for internationally wrongful acts is part of EU law, and the EU eligibility guidelines are one step to ensure that EU institutions implement EU law effectively in their financial cooperation with Israel.
- The concept of fungibility of underlies the particular prohibition of any loans and financial support to entities with operations in the OPT. In EU law, fungibility has already been introduced in the regulations regarding the financial sector, however, it is still missing in other parts of EU law. Therefore, even though fungibility refers as well to stocks, products and know-how and logically should have been applied as well to these fields, the EU has reproduced incoherence of its own legal system in the guidelines.
- A series of human rights guidelines have not been rendered operational by the EU. This is particularly problematic in the case of the UN Business and Human Rights guidelines, whose implementation in the case of Palestine and the Israeli settlement enterprise has been required in the Human Rights Council Resolution A/HRC/22/L.45. It remains to be seen whether separate and additional EU guidelines/advice for public and private business engagement with Israeli entities will reflect these UN guidelines.

Political comments:

We appreciate the positioning of the EU in an understanding in particular due to the fact that within the EU certain governments are not even recognizing Palestinian sovereignty over the 67 territories and that prevalence of human rights, though enshrined in a series of statements in the EU mechanisms, has historically been flouted in favour of colonial interests.

More important than the intrinsic inconsistencies within the existing guidelines, we believe is the impact that the actual fact of building guidelines such as these have – and can have – on Israel and internationally. The guidelines are:

- expression of an understanding that the Israeli annexation and settlement activity has been aided and abetted by EU institutions
- Underlining the fact that recognition of Palestinian statehood and sovereignty over the OPT, if to be politically relevant, need to be rendered operational and show concrete effects.
- a sign to Israel – and complicit corporations and governments - that the Palestinian call

for accountability is gaining ground internationally and there may come a time where those aiding and abetting Israeli breaches of international law or recognizing the situation resulting from this may be held accountable.

As the guidelines are a question of implementation of internal EU law, political pressure from Israel is facing the hurdle of illegitimate interference in internal affairs.

Annex 2: Dagan street in East Jerusalem

