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## The exploitation of natural resources in Area C of the West Bank as indicator of annexation

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pp. 27-47

According to the international community, the Occupied Palestinian Territory (OPT) refers to the territories occupied by Israel as of 1967, i.e. the West Bank (including East Jerusalem) and the Gaza Strip, two non-contiguous areas but considered as one territorial unit under Israeli occupation (see Ilustração 01) (Power, 2015: 8).



Ilustração 01 – Occupied Palestinian Territory.  
Source: OCHA, 2022.

The Oslo Accords concluded between Israel and the Palestine Liberation Organization between 1993 and 1995 divided the West Bank into Areas A, B, and C, shown on the map below (Ilustração 02). The first area refers to the parts under Palestinian civil and security

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control, where Palestinian authorities uphold *the powers and responsibilities for internal security and public order*, and are also in charge of civilian matters, like health, education, policing, and other city services. In Area B, Palestinian authorities are in charge of civil control, while security control is shared between Israeli and Palestinian authorities. Area C, on the other hand, is under complete Israeli rule (Power, 2015: 8).

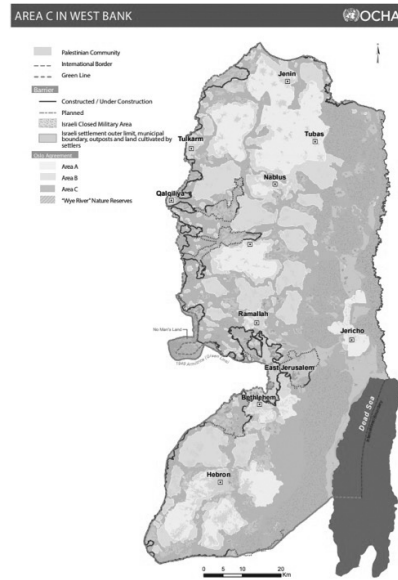


Ilustração 02 – Map of Area C in the West Bank. Source: OCHA, 2022.

Based on the Accords, intended as an interim arrangement, Israel continues to maintain authority over matters like land registration, planning, building, and land use designation in Area C. Exercising its civil and military authority in this area, which encloses more than 61 percent of the West Bank and contains the most significant source of natural resources in Palestine (Power, 2015: 8), Israel has exploited these resources, as will be explained hereunder. This paper examines how Israel's exploitation of natural resources in Area C -intended to be part of the nascent Palestinian State- serves as an indicator that the occupation has crossed the line into *de facto* annexation of this area.

### Natural resources and their exploitation in Area C of the West Bank

#### a. Water

The United Nations acknowledges access to water as both a fundamental human right in itself and an integral component for the enjoyment of all other human rights (UNGA, 2010, Res 64/292). Access to this resource must be *equitable and non-discriminatory, both within societies and among States* (UNGA, 2019, Res 40/73; General Comment N.º 15: The Right to Water, 2003).

The OPT's water resources (Ilustração 03) include: **a)** the Jordan River Basin, consisting of surface-water which also runs through Jordan, Syria and Lebanon, with the Golan Heights as the basin that sheds the river and principal source of water for Lake Tiberius, along with being the single largest source for Israel's National Water Carrier; **b)** the Mountain Aquifer, which extends under both sides of the Green Line -also called the 1949 Armistice Line, internationally accepted boundary between Israel and the OPT-, and is divided in Western Aquifer Basin (WAB), North-Eastern Aquifer Basin (NEAB) and Eastern Aquifer Basin (EAB); and **c)** the Coastal Aquifer, beneath Gaza and Israel's coastal plain (UNGA, 2019, Res 40/73). The first two sources will be examined in more detail, as they form part of Area C.

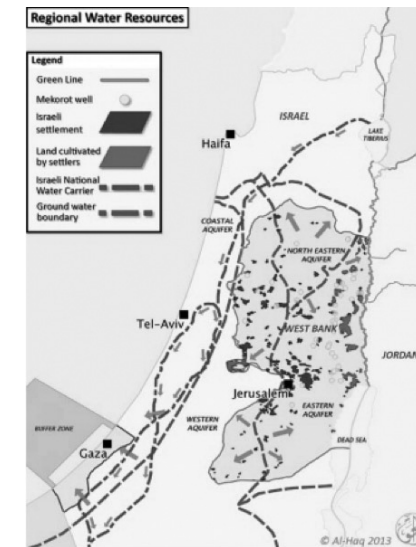


Ilustração 03 – Water sources in the region. Source: Al-Haq, 2013.

Since the occupation in 1967, all water resources are controlled by the Israeli military, and Palestinians need its permission to construct new water infrastructure or maintain the existing ones, according to military orders N.º 92 and N.º 158, both of 1967. In 1982, the water supply system in the West Bank was integrated into the Israeli system, and the Israeli government transferred its ownership to Mekorot, the Israeli national water company. Through it, Israel maintains control of how much water is sold to Palestinians (Amnesty International, 2009: 15).

By the time the Oslo Accords were signed, Israel was already in control of more than 60 percent of the West Bank's total land, including its water resources (UNCTAD, 2019: 8), keeping in force the abovementioned military orders for Palestinians (not Israeli settlers, who are governed by Israeli law) (Amnesty International, 2009: 15). Additionally, the Accords established an Israeli-Palestinian Joint Water Committee, consisting of water officials from Israel and the Palestinian Authority (PA), to regulate water and sanitation in the West Bank, with a mandate to grant permits, drill wells and extract water, for instance. As

the Committee's decisions were taken by consensus, this resulted in Israel effectively vetoing any proposal made by the PA. In contrast, Palestinians have not enjoyed similar veto power on Israel's side of the Green Line, even if it relates to joint water resources (Koek, 2013: 40-41). The procedure was modified in 2017 and Palestinians can lay water pipes and network without the Committee's approval, but Israel can also develop its separate water system for settlements without PA approval, resulting in widening inequalities as Israel controls the water supplies. As water expert Jan Selby has put it, *though Palestinians will now have autonomy to lay pipelines, what they won't have is any additional water to go in them -except with Israeli consent* (UNGA, 2019, Res 40/73).

Regarding the Jordan River, considered the eastern border of the West Bank, Israel has diverted its waters through its National Water Carrier, to supply water for its coastal and desert regions. This has resulted in Israel exploiting 50 percent of this shared resource -even though only 37 percent of the surface catchment area of the Jordan River Basin is located in its territory-, supplying for one-third of Israel's total water needs, while Palestinians are deprived of their 'equitable and reasonable share' and the ecosystem is being seriously altered (Koek, 2013: 24-5). Moreover, Israel has prohibited the Palestinians from drawing water from the Jordan River, on the one hand, by the declaration of its riverbanks as a closed military zone and, on the other hand, by the destruction of Palestinian pumps and irrigation ditches (Koek, 2013: 34).

For its part, the Mountain Aquifer constitutes the primary water source in the region and delivers groundwater of high quality. The WAB, which constitutes the largest aquifer, is mostly located in Israel, as can be seen on Ilustração 04, but refills in approximately 80 percent from water coming from the West Bank. On the other hand, the NEAB and the EAB are located almost entirely in the West Bank. As the recharge areas of the Mountain Aquifer are inside the West Bank, Israel has been keen to maintain control over these areas, diverting the water flows into Israel, and its resources are currently under almost exclusive use of Israeli wells and Jordan Valley settler wells (Koek, 2013: 25, 27).

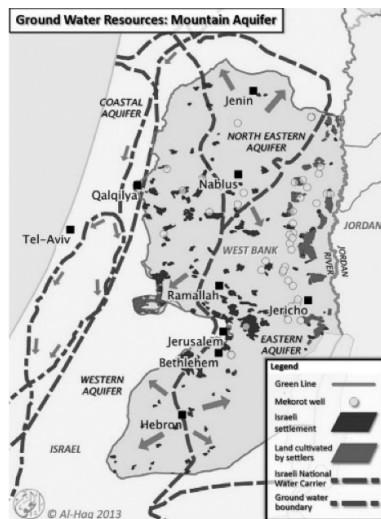


Ilustração 04 – Mountain Aquifer. Source: Al-Haq, 2013.

Israeli settlements have been strategically located over key water sources to control them, as in the cases of the settlements of Ariel and Emmanuel, which the Israeli government has expressed its intention to annex, and are located over the Western Aquifer. Likewise, the construction of the Wall in the West Bank has contributed to annexing water resources, as the 'seam zone' between the Wall and the Green Line, shown on Ilustração 05, constitutes a critical recharge area for the Western Mountain Aquifer (HSRC, 2009: 145-146). Meanwhile, some Palestinian communities are still not connected to water networks (How dispossession happens, OCHA, 2012).

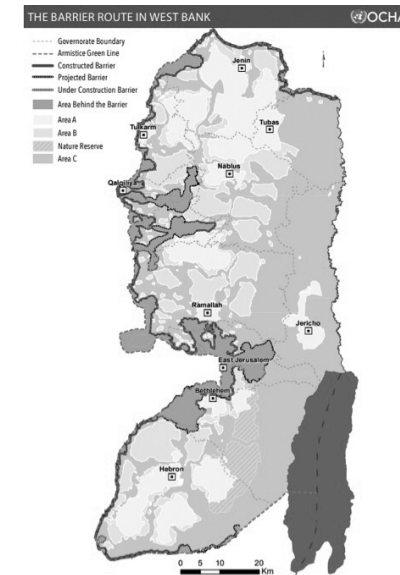


Ilustração 05 – 'Seam zone', area between the Barrier and the Armistice Green Line. Source: OCHA, 2022.

Besides the appropriation of Palestinian water sources, Palestinian water infrastructure has been deliberately damaged by Israeli military, with approximately 137 communities in Palestine suffering damage to their water networks and sources between 2000 and 2004, according to the Palestinian Hydrology Group, in addition to damage inflicted by settlers, as occurred with Palestinian springs near Yanun and Madama (Zeitoun, 2007: 109).

Moreover, water is hardly reused in agriculture, given that building or repairing any type of water infrastructure is extremely difficult as Israel refuses permits to Palestinians and demolishes facilities built without them (Agha, 2019: 5).

All of this has resulted in increasing inequality in access to water between Israelis and Palestinians, and Palestinians having to purchase their water from Israel, as Israel extracts significantly more than its population share. While Israel enjoys a share of 80 percent of the total aquifer according to the Oslo Accords, Palestinians are only able to extract about 75 percent of their established share, added to the fact that the Palestinian population has almost doubled in the West Bank since 1995 (UNGA, 2019, Res 40/73, B'Tselem, 2017).

Consequently, Israelis (including Israeli settlers) consume approximately three times more water per person per day than West Bank Palestinians (250 versus 84 litres respectively) (Lazarou, 2016), while Palestinians in the OPT have the lowest access to freshwater resources by regional standards (World Bank, 2009: 13).

**b. Agricultural land and products**

Agriculture is deeply rooted in the Palestinian identity, and more than half of Palestinians in the West Bank live in 500 rural villages. Agriculture represents 11.5 percent of employment and 21 percent of exports, covering around 85 percent of the land in the West Bank. Olives and their derivatives (food, soap, fuel and crafts) are essential in Palestinian homes, in addition to the olive sector being responsible for 15 percent of the agricultural income (Agha, 2019: 6).

As most of the West Bank’s natural resources, the best agricultural land is located in the Jordan Valley (see Ilustração 06). While Israel has built settlements and cultivated the land in strategic locations of the valley, under its control as part of Area C, Palestinian access to these lands has been hindered by more than 400 checkpoints or roadblocks, combined with a complicated permit system and a dividing Wall (Agha, 2019: 6). Human Rights Watch has pointed out that *the Israeli military requires many Palestinians to obtain military “coordination” in order to access their olive groves and other agricultural lands where those lands are located near settlements* (Human Rights Watch, 2010: 5). This ‘prior coordination’ regime created for Palestinians to access their land was expanded by the Israeli High Court in 2006 with the *Rashad Murad* case, which has resulted in the restricted access of Palestinian farmers to any land close to the 55 existing Israeli settlements, jeopardising the livelihoods of farmers from around 90 Palestinian communities, as at 2012 (Movement and access report OCHA, 2012: 27; Algasis and Al Azza, 2013: 74).

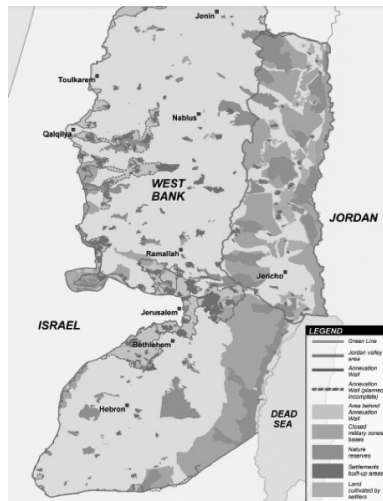


Ilustração 06 – Jordan Valley area. Source: Al-Haq, 2018.

In this context, Israel has also designed a ‘special security area,’ which entailed Israel surrounding 12 colonies east of the Wall with perimeters of land closed to Palestinian entry. For Palestinians to access these lands, they must meet a number of requirements, such as recognition of ownership and date to entry granted by the Civil Administration, besides the consent of the settlers (Algasis and Al Azza, 2013: 69).

To legitimise Israel’s policies of confiscation of land and other resources, the Israeli High Court has also extended the concept of ‘security needs’ through its rulings. In the *Beth El* case, the Court held a broad interpretation of ‘security needs’, concluding that the military commander can order the requisition of immovable property to ensure public order and safety. Therefore, the establishment of a settlement in a strategic position can be considered within the definition of military need and justify the requisition of land for the defence of the area (Kretzmer, 2012: 217).

Besides claiming security needs, Israel has appropriated land in the OPT by classifying the lands as ‘closed military areas’ or ‘natural reserves’, expropriating it for public purposes, or considering it as abandoned property (Nicoletti, 2012: 14). As at 2013, Israel had declared 114 areas as ‘natural reserves’ or ‘national parks’ inside the OPT (Algasis and Al Azza, 2013: 70).

Furthermore, after the *Elon Moreh* case of 1979, where the Israeli High Court concluded that the Israeli government was not allowed to seize private Palestinian land alleging military needs to establish settlements, Israeli authorities started declaring Palestinian land as ‘State land’ before establishing settlements. This has been the main tactic pursued by Israel to appropriate land in the Dead Sea area (part of Area C) (Nicoletti, 2012: 15).

According to the United Nations, as at 2016, Israel had already taken around 70 percent of Area C for its exclusive use (UNEP, 2020: 46-7). Along the same lines, the World Bank noted that *agricultural labor productivity in the West Bank is in significant decline* due to the restrictions for Palestinian to access and invest in their land and water resources, especially in Area C, constraining Palestinian development (World Bank, 2014: 18-20). The potential of this land is reflected on the fact that the settlements provide Europe and the Russian Federation of several agricultural products, such as pomegranates, almonds and olives, among others (World Bank, 2014: 21), contrasting with the OPT’s low overall yield (less than half of neighbouring Jordan) (Agha, 2019: 6).

In addition to land confiscation and access restrictions, key Palestinian products have been politicised, such as za’atar, sometimes confiscated at checkpoints, allegedly to preserve their ecological health, and thyme, which is no longer allowed for Palestinian collection in the wild, after Israel declared it a protected plant. Milk has also been a victim of politics, after Israeli Forces apprehended cows in the town of Beit Sahour during the First Intifada -1987-, making the West Bank reliant on Israeli milk (Abdelnour *et al.*, 2012: 2).

Furthermore, in the middle of the olive harvest, Israeli settlers (under the watch of Israeli soldiers) have burnt or damaged olive trees and stolen the produce, besides assaulting Palestinian farmers and damaging their equipment and work tools (B’Tselem, 2020; OCHA, 2020).

**c. Quarries**

The West Bank is a rich source of high-quality stone, contained in 222 to 255 quarries, most of them around Hebron and Bethlehem. These resources make the OPT the 12<sup>th</sup> biggest stone producer globally, accounting for 4 percent of the world production, and resulting in an annual revenue of around \$450 million dollars, coming from exports to Israel (65 percent) and international markets (6 percent) as at 2005 (ARIJ, 2007: 8).

However, very few quarries are still operating in Area C under Palestinian control, and even fewer operate legally and without interruptions, i.e. with Israeli permit and with no restrictions imposed (World Bank, 2013: 13, 38). Conversely, Israel has granted mining concessions to 10 Israeli companies to operate quarries in Area C of the West Bank, with an increasing volume of activity in recent years, resulting in the production of 17 million tons in 2015 (Kanonich, 2017: 7). The quarries controlled by Israel make a profit for Israeli and multinational corporations while supporting the Israeli construction market (World Bank, 2013: 14-15). Around 94 percent of the production of stone, gravel and gypsum is sent to Israel for construction, while the rest is destined for what Israel considers the 'local market', this is, its settlements and government in the West Bank and the Palestinian construction sector (Kanonich, 2017: 7).

These operations in the West Bank cover between 20 and 30 percent of the annual quarrying requirements of Israel, with the respective royalties paid to Israel, which results in a significant dependency on production from Israeli owned quarries in the West Bank, particularly in the Judea and Samaria area and in central and southern Israel, according to the committee appointed by the Israel Land Commission on 2015, to review land policies affecting quarrying. Additionally, the Commission stated that the delivery of these goods is

*extremely significant for regular and sufficient supply capable of meeting the demands of the construction and infrastructure industries, and that if it were not for quarrying activity in the Judea and Samaria area, the sector would have entered a supply crisis years ago, which would have serious effects that go beyond rising costs (Kanonich, 2017: 8).*

This explains why only few Palestinian companies operate in Area C and why Israel does not grant them or renew their permits to operate (Who Profits, 2016).

An example of Israel's exploitation in Area C is Nahal Raba quarry (see Ilustração 07). This land was confiscated from Palestinians and is now exploited by Israeli and multinational corporations, such as HeidelbergCement and its subsidiary Hanson Israel, operating under Israeli law. While Palestinians have been restricted from accessing this area, the stone extracted from this quarry has contributed to the construction of illegal Israeli settlements, in addition to Palestinians having to buy from these operators (Abdallah and De Leeuw, 2020: 9-10).

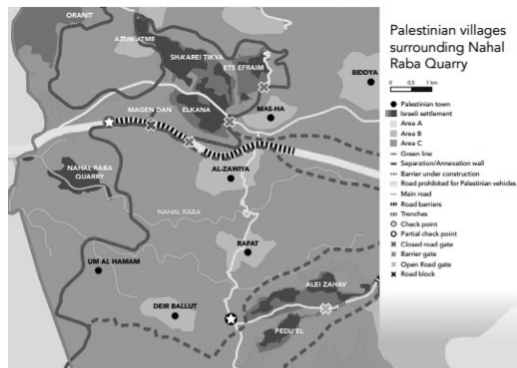


Ilustração 07 – Nahal Raba Quarry area, in proximity to Al-Zawiya and Rafat villages and surrounding Israeli settlements. Source: Al-Haq, 2020.

The legality of quarrying activities conducted by Israel in the OPT was challenged in 2011 before the Israeli High Court by Yesh Din, an Israeli non-governmental organisation. In this case -hereinafter *Quarries* case-, the petitioner disputed the legality of military authorities granting licenses to Israeli companies to open and operate stone quarries in the West Bank, arguing that this was beyond Israel's power to manage public property in usufruct, and the product of these operations were to benefit Israel and not the local population, as required by Article 55 of the Hague Regulations.

In this case, the Court considered usufruct as the

*right to use and enjoy the fruits of another's property for a period without damaging or diminishing it, although the property might naturally deteriorate over time, and consequently the occupier shall not be entitled to sell the asset or to use it in a way that shall result in its depletion or exhaustion (Quarries case [7]).*

However, it also considered that the 'usufruct rule' remains disputed among scholars (*Quarries* case [7]), and examined, firstly, the scope of the quarrying allow - if the occupying power can open new mines -, and secondly, the use of the product such operations allow - if the interests of the local population are being cared for (Azarova, 2019: 4).

In relation to the extent of the exploitation, the Court only considered the occupying power's obligation to reassure that the natural resources are not exhausted, concluding that new quarries can be established by the occupying power (*Quarries* case [8, 13]), disregarding statements from the Israeli military government which indicated that, at the current mining rate, all quarries in Area C would be depleted in 38 years (Yesh Din (2164/09, 2011; Azarova, 2019: 5).

Regarding the use of the product of exploitation, the Court considered that occupation law requires adjustment, given the prolonged duration of the occupation, to ensure the development and growth of the area in numerous and various fields, including the fields of economic infrastructure and its development (*Quarries* case [10]). The Court affirms that the potential closure of the quarries might cause harm to existing infrastructures and a shut-down of the industry, which might consequently harm, of all things, the wellbeing of the local population (*Quarries* case [13]). Moreover, following its previous jurisprudence, the Court included the Israeli settler population in the concept of 'local population', and concluded that, as the quarries' products will be marketed for Palestinians and Israeli settlers (although in a different rate), the quarrying would benefit the local population (*Quarries* case [12]; Azarova, 2019: 7).

Based on these various arguments, the Court dismissed the petition, without distinguishing the interests of the protected population under occupation and the limitations on economic exploitation by the occupying power, but only focusing on the fact that the Hague Regulations contemplate economic development and normal life in the situation of occupation (UNGA, 2019, Res 40/73). The Court adjusts the law of occupation to the duration of the occupation and the reality on the ground, in order to ensure the continuity of normal life in the Area and to the sustainability of economic relations between the two authorities -the occupier and the occupied (*Quarries* case [10]), even though changing the scope of Article 55 due the fact that to the duration of the occupation is not allowed

under to international law (Koutroulis, 2012: 184). The Court’s interpretation should have considered the main principles of the law of occupation, especially the limits imposed to the exploitation of natural resources in occupied territory, which indicate that the effects must not be permanent and must not harm the local population (Azarova, 2019: 4).

**d. Dead Sea minerals**

The Dead Sea is a significant source of natural and mineral wealth, used to make a variety of cosmetic and other products which, besides being marketed, are of essential importance for the multiple health resorts located on the western shore of the Dead Sea, area under Israeli control (ARIJ, 2007: 7). In spite of the temporary character of the Oslo Accords, the Dead Sea and its surroundings are still under Israeli military and administrative control, as part of Area C. Israel has appropriated large extensions of land around the Dead Sea and declared them ‘closed military zones’, however allowing the establishment of various settlements, such as Vered Yeriho, Beit Ha’arava, Almog, Kalia, Ovnat and Mitzpe Shalem, shown on Ilustração 08 (Nicoletti, 2012: 13).

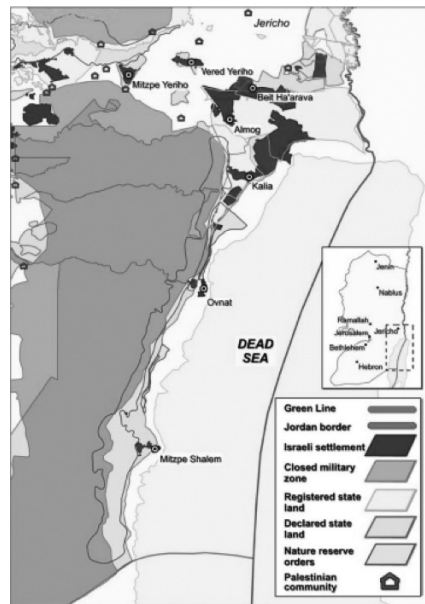


Ilustração 08 – The occupied Dead Sea area. Source: Al-Haq, 2012.

Around 50 cosmetic factories operate in the western shore of the Dead Sea area, extracting mud and other materials to create products for domestic and external markets. Among these companies is Ahava Dead Sea Laboratories Ltd. This company, with an annual revenue of 142 million USD in 2007, is located in the settlement of Mitzpe Shalem (see Ilustração 08). Its revenue comes primarily from exports to Europe and the United States (60 percent) and from Israeli market and tourism industry in the Dead Sea (40

percent). Additionally, the company benefits from Israeli tax benefits, as it is located on a settlement (Nicoletti, 2012: 21-22). Meanwhile, Palestinians are not allowed to develop this area or profit from its natural resources. To build any kind of structure, they need authorisation from the Israeli Civil Administration (Nicoletti, 2012: 18), and sometimes they are even denied access to the area (Nicoletti, 2012: 13).

**e. Oil and gas**

The OPT contains essential oil and gas resources, which would make Palestine self-sustainable and not dependant on international aid if developed. In Area C, oil deposits have been found near the Armistice Line between the West Bank and Israel, along with prospects of natural gas and oil reserves around the Dead Sea (Power, 2015: 12-15). In 2003, Israel appropriated the Palestinian village of Rantis, first assigning it for military training zones and subsequently for the construction of the Wall. Besides trapping 2,688 villagers between the main and secondary depth walls and seriously restricting their freedom of movement, the Wall prevented Palestinian access to the oil field on the Palestinian side of the Green Line (Power, 2015: 83-84).

Under Israel’s Petroleum Law 5712-1952, Israel transferred exploitation rights to Givot Olam to exploit the Meged-5 well, to be commercially exploited with revenues for the State of Israel, at the expense of Palestinians (Power, 2015: 80, 84; UNCTAD, 2019: 25). Israel extended the exploitation rights, initially conferred for the Israeli territory of Rosh Haayin, to the area of Rantis without the agreement of the PA, as required by the Oslo Accords (Power, 2015: 13-14).

Palestinian oil and gas dependency from Israel results in great benefit for the latter, as Palestinians import around 70 percent of its goods and services from Israel, including energy sources. In 2007, the cost of these energy supplies averaged 385 million euros for Palestine, as it imported 100 percent of its petroleum and 92 percent of electricity from Israel (Power, 2015: 18).

**Concept of occupation and *de facto* annexation**

By ‘occupied territories’, we understand that *a territory is considered occupied when it is actually placed under the authority of the hostile army, and that the occupation extends only to the territory where such authority has been established and can be exercised, in accordance to Article 42 of the Hague Regulations of 1907, a legal instrument recognised as constituting customary international law (ICJ Reports 2005), [case 172].*

Articles 42 to 56 of the Hague Regulations and Articles 27-34 and 47 to 78 of the 1949 Fourth Geneva Convention (GCIV), in addition to the applicable norms of customary law, constitute the so-called ‘law of occupation’ (ICRC, 2004).

The basic rule regarding the occupant’s governmental authority is articulated in Article 43 of the Hague Regulations, under which it *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.* Based on this rule, in the context of law of occupation, we can identify distinctive characteristics of the concept of occupation.

Firstly, an occupation is of temporary nature, i.e. it does not establish a permanent situation. As some scholars have pointed out, this principle is challenged by the absence

of time limit for this occupation (Ben-Naftali *et al.*, 2018: 17). Based on the challenges of applying the law of occupation to long-term situations, some have distinguished short-term occupation from prolonged occupation. Nevertheless, in the end they all agree that the law of occupation applies regardless of the duration of the occupation (ICRC, 2012: 13, 69-70, 72).

Secondly, the occupying power acts as *de facto* administrator of the occupied territory until conditions allow for the return of the territory to the sovereign (UNGA, 2017, Res 72/556). This limitation to the occupying power aims to safeguard the people of the occupied territory, in addition to its institutions and laws. The latter's transformation may worsen the position of the inhabitants, which is why changes are only allowed if they are necessary or constitute an improvement to the people under occupation (Pictet, 1958: 273-4).

Lastly, in view of the above, the occupying power has a duty of conservation, i.e. to preserve the *status quo* as much as possible. Under occupation law, the sovereign title relating to the occupied territory does not pass to the occupant, and therefore, it is not allowed to introduce long-term changes in the occupied territories. Under the so-called 'conservationist principle', the occupying power must respect, as far as possible, the existing laws and institutions of the occupied territory. It is however authorised to make changes where necessary to ensure its own security and to uphold its duties under occupation law, particularly the obligation to restore and maintain public order and safety and the obligation to ensure orderly government in the areas concerned (ICRC, 2012: 7).

Different from occupation, annexation entails that a territory integrates into another state, which considers it part of it (Wrange, 2015: 7). It can be defined as the unilateral act of a State through which it proclaims its sovereignty over the territory of another State. It usually involves the threat or use of force, as the annexing State usually occupies the territory in question in order to assert its sovereignty over it (ICRC Glossary).

We need to distinguish between *de jure* and *de facto* annexation. *De jure* annexation presupposes an official declaration from the occupying power expressly crystallising the intention to annex (or else integrate, merge or incorporate) the occupied territory (Abdallah and De Leeuw, 2020: 12). In this sense, annexation is the forcible seizure followed by unilateral assertion of title (Judge Lauterpacht, 1993). This was the case after Iraq invaded Kuwait, and declared that the latter was part of Iraq and that it would be returned to the whole and to the Iraq of its origins in a comprehensive and eternal merger (Greenwood, 1992: 155; Los Angeles Times, 1990). On the other hand, *de facto* annexation (also called 'creeping annexation') refers to the actions of a State in the process of consolidating -often through oblique and incremental measures- the legislative, political, institutional and demographic facts to establish a future claim of sovereignty over territory acquired through force of war, but without the formal declaration of annexation (UNGA, 2018, Res 73/447).

To assess whether a State engaging in occupation has crossed the line into annexation, one can identify two essential elements: *corpus* and *animus*, meaning the physical occupation and the intention to appropriate it permanently, respectively (Abdallah and De Leeuw, 2020: 11). This last element distinguishes annexation from occupation. Other assessments distinguish four elements: **a)** effective control of the territory that it acquired from another State by force; **b)** exercise of sovereignty, exerted through active measures which indicate the intention to retain all or part of the territory, or by imposing changes to local legislation, such as the application of its laws to the territory, demographic

changes or population transfer, the perpetuation of the occupation and the endowment of citizenship; **c)** expression of intent -as statements by political leaders or State institutions-; and **d)** refusal to apply international law or guidelines of the international community regarding the territorial situation (UNGA, 2018, Res 73/447). In this sense, an occupation regime can become unlawful and constitute annexation if it refuses to conduct negotiations to reach a peaceful solution of the conflict, and the occupant's conditions for a solution are not motivated by 'reasonable security interests', but actually intend to alter the *status quo* of the occupied area (Benvenisti, 2012: 245-6).

Annexation is not currently recognised by the international community, based on the prohibition of any threat or use of force against the territorial integrity or political independence of any state established by Article 2, paragraph 4, of the Charter of the United Nations and other international instruments, including the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. Prominent scholars sustain this prohibition as a binding principle, regardless of the grounds for annexation (whether self-defence or war of aggression) (UNGA, 2017, Res 72/556).

The prohibition on annexation of territory coheres with core principles of international law, such as the principles of sovereign equality, self-determination, and non-intervention (Ben-Naftali *et al.*, 2018: 13). Consequently, the situation of occupation does not end with annexation (Pictet, 1958: 276), and the annexed territories are regarded as occupied under international law. Hence, the international law regime for occupation continues to apply to these territories (Wrange, 2015: 7).

In this context, the exploitation of natural resources by the occupier in the occupied territory will be examined next, to determine when the occupying power is acting as a sovereign while exploiting these resources.

### Exploitation of natural resources as indicator of annexation

First of all, the exploitation of natural resources must be analysed in light of the principle of Permanent Sovereignty of Natural Resources (PSNR). This principle, introduced to endow the people from developing countries seeking independence the control over their natural resources (Subedi, 2018: 723; Schrijver, 1997: 260; Bungenberg and Hobe, 2015: 3-5), can be defined as the right of a State or a (colonial) people to dispose freely of its natural resources and wealth within the limits of national jurisdiction (Schrijver, 1997: 260).

The General Assembly enshrined the principle of PSNR under Resolution 1803 (XVII) from 1962, asserting that

*the exploration, development and disposition of such resources (...) should be in conformity with the rules and conditions which the peoples and nations freely consider to be necessary with regard to the authorisation, restriction or prohibition of such activities, and nationalization, expropriation or requisitioning shall be based on grounds or reasons of public utility, security or the national interest which are recognised as overriding purely individual or private interests, both domestic and foreign.*

This resolution was accepted by the international community with little opposition (Subedi, 2018: 725). This way, the PSNR entails the right to prospect, explore, develop, and

market natural resources; the right to use them to promote national development; to conserve and manage them according to domestic environmental policies; to regulate foreign investment; and to an equitable share in transboundary resources (Schrijver, 1997: 264-278).

After 1962, the PSNR principle was referenced in the two Human Rights Covenants of 1966 -the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights-, and has also been recognised in international commodity agreements and the 1982 United Nations Convention on the Law of the Sea. This principle now constitutes customary international law, reflected in international arbitral and judicial decisions, such as the *Texaco v. Libya* arbitration case of 1977 and the judgment of the International Court of Justice (ICJ) in the ICJ Reports case of 2005 (Bungenberg and Hobe, 2015: 24-25).

Regarding the exploitation of natural resources in territories under occupation, the occupier must consider the PSNR principle and the law of occupation, under which it shall act as *de facto* administrator of these resources, while preserving the *status quo ante*, given that it does not gain sovereignty over the occupied territory.

Even though there might be privately owned natural resources, these are generally considered public property, consistently with the PSNR (Scobbie, 2011: 233). As public and immovable property, natural resources are regulated in Article 55 of the Hague Regulations, which reads:

*The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct.*

Therefore, the first limitation for the occupying power regarding the natural resources of the occupied territory is to use them 'in accordance with the rules of usufruct'. Usufruct refers to *the right to enjoy and take the fruits of another's property, but not to destroy it or fundamentally alter its character* (Scobbie, 2011: 233). Under this rule, the occupier can reap the fruits of the occupied territory's assets but must not deplete their 'capital' by *harming the assets themselves* (Gross, 2017: 199). In consequence, the occupying power may *lease or use State buildings, sell or consume the crops grown on public land, fell and sell the timber of State forests*, but not exploit in a manner that amounts to the destruction of the property (Scobbie, 2011: 233). Regarding non-renewable resources, such as minerals and hydrocarbons, most scholars have interpreted that they cannot be considered as fruits of property, but should be considered as capital of immovable property, hence must not be *depleted, damaged or destroyed* by the occupier (Nicoletti, 2012: 28; Kretzmer, 2012: 222).

The second limiting principle concerns the purpose of the use. The occupant may use the natural resources in the occupied territory only to the extent needed to meet its security needs, administer the territory, and meet the population's essential needs (Institut de droit international, 2003: 4; Benvenisti, 2012: 82). Even though Article 55 of the Hague Regulations does not explicitly require it, it is generally accepted that the exploitation of natural resources is governed by the principle of trust underpinning occupation law and the beneficiaries of this trust are the 'protected persons' from the GCIV (Ben-Naftali *et al.*, 2018: 418-9). Therefore, *the occupant may not use them for its own domestic purposes* (Benvenisti, 2012: 82).

In the abovementioned *Armed Activities* case, the ICJ found that Uganda's officers and soldiers *were involved in the looting, plundering and exploiting* of natural resources of the Democratic Republic of Congo (DRC) while occupying part of its territory, and that *the military authorities did not take any measures to put an end to these acts*, for which the Court concluded that Uganda was responsible, according to the PSNR and Article 43 of the Hague Regulations (ICJ Reports, 2005 [242, 244, 250]). However, the Court did not find evidence of a *governmental policy of Uganda directed at the exploitation of natural resources of the DRC or that Uganda's military intervention was carried out in order to obtain access to Congolese resources* (ICJ Reports, 2005 [242]).

For its part, the International Law Commission has prescribed that the occupying power must *respect and protect the environment of the occupied territory, and administer and use the natural resources in an occupied territory, for the benefit of the population of the occupied territory and for other lawful purposes under the law of armed conflict*, ensuring their sustainable use and minimising environmental harm (ILC, 2019 [19, 20]).

On another note, Article 49, paragraph 6, of the GCIV prohibits the occupying power from transferring its civilian population into the occupied territory, while Article 53 bans the destruction of property in the occupied territory, unless absolutely necessary for military operations. These provisions are relevant for the administration of natural resources, as civilians are sometimes transferred to the occupied territory and strategically located to illegally exploit these resources on behalf of the occupier, and the arbitrary destruction of natural resources and their infrastructure is forbidden (Agha, 2019: 3).

Therefore, the occupier does not have the right to freely dispose of the natural resources of the occupied territory, according to the PSNR principle and the law of occupation. As usufructuary of these resources, the occupier may enjoy the fruits of public property, without completely depleting it or alienating it, ensuring their sustainable use and minimising environmental harm, in benefit of the local population.

As observed in the *Armed Activities* case, the mere exploitation of these resources is not enough to constitute annexation, but it can be an indicator that the occupying power is attempting to permanently incorporate the occupied territory, if it demonstrates *an animus of 'owing' and using the sovereign resources of the occupied territory as its own* (Adballah and De Leeuw, 2020: 66). As it may be a sign that the occupation may be turning into annexation, it is necessary to examine the intent of the occupier to determine if annexation has occurred.

### Israel's intent

Although Israel has not officially declared the annexation of Area C of the West Bank (and *no de jure* annexation has occurred), the intent to annex can be inferred from Israel's policies and statements made by Israeli officials. In 1977, the Ministry of Agriculture, together with the World Zionist Organization, drew up a settlement project designed *to achieve the incorporation (of the West Bank) into the (Israeli) national system* (Gross, 2017: 154). Since 2017 annexation policies have become even stronger, being discussed by Israel's government and Parliament, establishing the basis for formal annexation (UNGA, 2018, Res. 73/447). Between 31 March 2015 and 28 April 2019, sixty laws related to annexation were proposed in the Knesset (Israeli Parliament), and eight of these bills progressed (Yesh Din, 2019; Jaber, 2021: 6).



Israel's intention to annex became further clear in 2020 with the Peace to Prosperity Plan, or 'Deal of the Century', drafted by Israel and the United States, with no participation of Palestine, which enabled it to annex as much as 50 percent of Area C of the West Bank, including the fertile Jordan Valley and the northern Dead Sea area, rich in natural resources (ARDD, 2020: 1-2). However, Israel's plans for *de jure* annexation of the West Bank set for July 2020 were put on hold (UN press, 2020).

Israel's intent to annex has been noticed by the international community. Already in 2004, the ICJ warned against creeping annexation of the West Bank in its Advisory Opinion, expressing that *the construction of the wall and its associated regime create a 'fait accompli' on the ground that could well become permanent, in which case, and notwithstanding the formal characterisation of the wall by Israel, it would be tantamount to de facto annexation*, constituting a violation of customary international law (ICJ, 2004 [121, 86]).

Additionally, the General Assembly has called upon Israel to comply with international obligations and cease all measures in the OPT *aimed at altering the character, status and demographic composition of the Territory, including the confiscation and de facto annexation of land* (UNGA, 2016, Res 71/23).

Furthermore, the Human Rights Council has recognised that Israel

*exercises its military administrative powers in a sovereign-like fashion, with vastly discriminatory consequences for the 5 million Palestinians living under occupation, concerning the degradation and alienation of their water supply, the exploitation of their natural resources and the defacing of their environment and that, in this context, the Israeli occupation, with its appetite for territory and settlement implantation and its sequestration of natural resources, has become virtually indistinguishable from annexation* (UNGA, 2019, Res 40/73).

This was also recognised by the General Assembly through the Report of the Special Rapporteur on the situation of human rights in the OPT (UNGA, 2019, Res 73/447).

Scholars have also acknowledged that Israel's regime -including the *de facto* incorporation of the West Bank- has transgressed the boundaries of occupation (Ben-Naftali *et al.*, 2018: 2), and speak now of creeping annexation (ARDD, 2020: 2). On a similar note, in 2021, Ireland was the first country to use the phrase *de facto* annexation of Palestinian land and publicly condemn this situation (The Guardian, 2021).

## Conclusions

Firstly, this paper analysed Israel's exploitation of natural resources in Area C of the West Bank, including various examples such as: the water system of the West Bank, which remains under Israel's control, and imposes an intricate scheme for Palestinians to access water resources; the building of the Wall, which annexed water resources and agricultural land between the Wall and the Green Line; the declaration of territory in Area C as Israeli 'State land', later on used for agriculture and extraction of Dead Sea minerals; need of permits for Palestinians to access their agricultural land; granting of mining concessions to

Israeli companies for the exploitation of quarries in Area C; and Israeli cosmetic factories operating in the Dead Sea, among others. From these examples, one can observe how Israel's systematic policies attempt to create facts on the ground to justify the continuance of these policies, supported by the judiciary branch through its so-called 'dynamic' interpretations of the law, adjusting the law of occupation to the duration of the occupation and the 'reality on the ground' (*Quarries case* [10]).

This has not only prevented Palestinians from using their natural resources, violating the principle of PSNR, recognised as customary international law, but has also made them dependent on Israel, having to buy water, crops, stone and energy supplies from Israel, after the latter has taken them from the OPT, and makes profit out of them. In addition, Israel has strategically placed Jewish settlements to grab land rich in natural resources, and thus preventing Palestinians from their free use, even allowing or participating in the destruction of infrastructure built by Palestinians to exploit their resources, violating also the GCIV which prohibits the transfer of population and the destruction of property in the occupied territory.

As discussed above, occupation is meant to be a temporary situation, where the occupant should work towards the return of the territory to the sovereign as soon as reasonably possible, preserving the *status quo* and the rights of the people during this period, in contrast to annexation. Although forbidden by international law, annexation can be carried out through a declaration or by creating conditions on the ground without an express declaration, which is called *de facto* or creeping annexation. To assess whether annexation has occurred, one must identify if there is effective control over a territory and the intent to annex. Some have also distinguished the exercise of sovereignty and the refusal to apply international law or guidelines to the situation.

The exploitation of natural resources in Area C of the West Bank demonstrates that Israel does not consider the principle of PSNR or the limitations imposed by Article 55 of the Hague Regulations and the guiding principles of the law of occupation, as it does not administer the natural resources of the OPT according to the rules of usufruct, nor preserves the *status quo* or benefit the local population. This exploitation is coupled with the intent to annex, made manifest through Israel's policies, practices and official declarations.

In this sense, all the requirements for annexation are fulfilled: Israel has effective control of the territory, exploiting its natural resources as sovereign, along with expressions of intent from Israeli authorities, who refuse to apply the laws of occupation to the territory and the guidelines of the international community regarding the territorial situation.

In light of the above, one can conclude that Israel exploits the natural resources in Area C of the West Bank not as occupier, but as a sovereign power, with a clear intention to annex the territory, and consequently, Israel's exploitation of natural resources in Area C of the West Bank serves as an indicator to prove that the occupation has crossed the line into *de facto* annexation.

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