International Journal of Social Science Research and Review

http://ijssrr.com
editor@ijssrr.com
Volume 7, Issue 3
March, 2024
Pages: 83-95

The Inconsistency of EU Policy Towards Situations of Occupation/Annexation: The Case of Trade Relations Involving Products from Israeli Settlements and Occupied Western Sahara

Hamza Hadj Cherif

PhD in International Law, Bordeaux University, France

E-mail: hamzahadjcherif@ymail.com

http://dx.doi.org/10.47814/ijssrr.v7i3.1868

Abstract

This article aims to examine the practice and policy of the European Union regarding trade relations concerning products from occupied territories (Western Sahara and Israeli settlements) in the light of the principles of international law and the norms of Community law.

Keywords: *Western Sahara; Palestinian Territory; Israeli Settlements; International Humanitarian Law; Peremptory Norms*

Introduction

Although the context of the production of goods from the occupied Western Sahara and the settlements established in the occupied Palestinian territory is marked by a serious violation of a series of peremptory norms of international law (non-use of force, right to self-determination, permanent sovereignty over natural resources as well as norms of international humanitarian law prohibiting plundering and settlement)[i], their trade in European Union (EU) countries has not been banned to date, which engages the responsibility of the European Union as well as that of its member states.

This is in spite of the fact that Article 21 of the Treaty on European Union states that "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law".

This article aims to examine, in particular, the practice and policy of the European Union regarding trade relations concerning products from occupied territories (Western Sahara and Israeli settlements) in the light of the principles of international law and the norms of Community law.

Trade with Israeli Settlements between Exclusion from the Preferential Regime and Labelling Problems

Trade between the EU and Israel is particularly important. Israeli exports reached €13.577 billion in 2017, 13.056 in 2019 and 12.608 in 2021[ii]. They include a significant proportion of products from the settlements, although the precise volume is difficult to determine, given the 'made in Israel' labelling of many goods manufactured in whole or in part in the settlements[iii].

The independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, commissioned by the United Nations Human Rights Council, stated in its report dated 7 February 2013 that "Israel labels all its export products as originating from 'Israel', including those wholly or partially produced in settlements. Some companies operating in settlements have been accused of hiding the original place of production of their products. This situation poses an issue of traceability of products for other States wishing to align themselves with their international and regional obligations. It also poses an issue with regard to consumers´right to information"[iv].

By accepting the import of goods produced wholly or partly in settlements, the European Union is not complying with the obligation not to recognise a situation caused by the violation of certain peremptory norms of international law (including non-use of force, permanent sovereignty over natural resources, plunder, settlement). Such trade is also considered as aid and assistance in maintaining the situation caused by the violation of the peremptory norms in question.

In its above-mentioned report on the effects of Israeli settlements, the independent international fact-finding mission stated that "It is with the full knowledge of the current situation and the related liability risks that business enterprises unfold their activities in the settlements and contribute to their maintenance, development and consolidation"[v].

Noting that the issue of products from the settlements has been raised for many years, Professor Dubuisson stressed that the fact that EU States allow them to enter European markets reflects a choice, an informed decision and a conscious policy, involving some form of assistance in maintaining the settlement situation[vi].

It should be noted that trade in goods between the EU and Israel is regulated by the Association Agreement which was concluded on 20 November 1995 and entered into force in June 2000. In a notice to importers published on 23 November 2001 in the Official Journal of the European Communities, operators were informed that "arising from the results of the verification procedures carried out, it is now confirmed that Israel issues proofs of origin for products coming from places brought under Israeli administration since 1967, which, according to the Community, are not entitled to benefit from preferential treatment under the Agreements".[vii]

However, since the Israeli customs authorities assimilate the settlements in the occupied territories to their own territory, goods produced partly or wholly in these settlements benefit in practice from preferential customs treatment, unless the customs authorities of the importing country question the origin of the products concerned[viii].

The Court of Justice of the European Union had the opportunity to examine this issue in the case of *Firma Brita GmbH / Hauptzollamt Hamburg-Hafen.* The applicant in the main proceedings, Firma

Brita GmbH, based in Germany, imported carbonated water coolers, accessories and syrups manufactured by an Israeli supplier, Soda-Club Ltd, whose production site was in Mishor Adumin in the West Bank[ix]. The European Court ruled that " the customs authorities of the importing Member State may refuse to grant the preferential treatment provided for under the EC-Israel Association Agreement where the goods concerned originate in the West Bank"[x].

This decision was criticised by Professor Dubuisson, insofar as the question of preferential treatment for the products of the settlements was considered in European law only in the light of the formal rules of the Association Agreement, without taking into account the illegal nature of the settlements under international law[xi].

Indeed, the Court of Justice made no reference to the illegality of the context of manufacture of settlement products to justify the exclusion of these products from preferential treatment. It based its decision only on a territorial criterion, according to which the Israeli customs authorities do not have territorial competence to issue certificates of origin for products made in the West Bank, which are covered by the Association Agreement with the Palestine Liberation Organization[xii].

The Court's reasoning does not meet the requirements defined by the obligations of non-recognition, non-assistance and enforcement of peremptory norms violated in the context of the production of goods made in settlements. Moreover, the position of the Court and the European authorities is limited to excluding, at least in theory, settlement products from preferential treatment, but in no way to prohibit them from being marketed in the EU, even though they would be duly identified as being manufactured in settlements[xiii].

In reality, the European Union does not prohibit the import of products originating from the settlements but only applies to them the common law customs tariff conditions.

In the same vein, the Commission, by virtue of its Implementing Regulation No 594/2013 of 21 June 2013 on marketing standards in the fruit and vegetable sector, stressed that "Israel is a third country of which the conformity checks have been approved under Article 15 of Implementing Regulation (EU) No 543/2011. Israel may therefore issue conformity certificates. For the sake of market transparency and in accordance with public international law, it should be clarified that the territorial coverage of the certificates is limited to the territory of the State of Israel excluding the territories under Israeli administration since June 1967, namely the Golan Heights, the Gaza Strip, East Jerusalem and the rest of the West Bank"[xiv].

Similarly, on 11 November 2015, the EU Commission adopted an Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967, a measure following which Israel decided on 29 November 2015 to suspend its contacts with the European Union regarding the peace process[xv].

The Commission highlighted that the Interpretative Notice aims to respond to requests for clarification from consumers, economic operators and national authorities regarding EU legislation governing information on the origin of products from the territories in question. It also seeks to ensure "the respect of Union positions and commitments in conformity with international law on the non-recognition by the Union of Israel's sovereignty over the territories occupied by Israel since June 1967". The Commission stated that the Notice also aims "at maintaining open and smooth trade, is not hindering trade flows and should not be construed to do so"[xvi].

Based on the principle that the indication of the origin of the product must be correct and must not mislead the consumer[xvii], the Commission stated that "For products from the West Bank or the Golan Heights that originate from settlements, an indication limited to 'product from the Golan Heights' or

'product from the West Bank' would not be acceptable", while specifying that "In such cases the expression 'Israeli settlement' or equivalent needs to be added, in brackets, for example. Therefore, expressions such as 'product from the Golan Heights (Israeli settlement)' or 'product from the West Bank (Israeli settlement)' could be used"[xviii].

Although the Commission based this labelling measure on the obligation of non-recognition, the continued trade with Israeli settlements proves that the European Union is far from fulfilling its obligation to uphold the many peremptory norms violated in the context of the production of these goods and to comply with the obligations not to recognise or render aid and assistance to the situation caused by the violation of these norms.

Professor Dubuisson stated before the formalization of this measure that the requirement of correct labelling of products coming from Israeli settlements reflects the will of the EU and its Member States to authorize their importation and marketing on their market, with full knowledge of the facts. The question raised by the origin of these products would ultimately be reduced to a question of consumer information, and it would be up to the consumer to decide, in complete freedom, whether or not to buy them[xix]. Indeed, the labelling of the precise origin of settlement products cannot be considered a sufficient measure to enable the EU to comply with its obligations under international law[xx].

Illegal Application of EU-Moroccan Agreements to Products from Occupied Western Sahara

European imports of goods from occupied Western Sahara are mainly agricultural and fisheries products. In 2021, 65,700 tonnes of agricultural products and 147,000 tonnes of fisheries products would have been exported from occupied Western Sahara to the European Union [xxi].

The European Union applied *de facto* to products originating in occupied Western Sahara the preferential tariffs stipulated in the Association Agreement signed with Morocco in 1996, including the two protocols relating, respectively, to the arrangements applicable to imports into the Community of agricultural products originating in Morocco and to the arrangements applicable to imports into the Community of fisheries products originating in Morocco. These protocols were replaced, in November 2012, by a new agreement in the form of an exchange of letters.

In this regard, on 19 November 2012, the Polisario Front brought an action for annulment before the Court of Justice of the European Union against Decision 2012/497/EU of the Council of the European Union of 8 March 2012 concerning the conclusion of the Agreement in the form of an Exchange of Letters.

In its judgment of 21 December 2016, the CJEU noted that "In view of the separate and distinct status accorded to the territory of Western Sahara by virtue of the principle of self-determination, in relation to that of any State, including the Kingdom of Morocco, the words 'territory of the Kingdom of Morocco' set out in Article 94 of the Association Agreement cannot […] be interpreted in such a way that Western Sahara is included within the territorial scope of that agreement".[xxii]

In October 2018, the European Union and Morocco concluded a new agreement in the form of an exchange of letters which expressly extends the application of the trade preferences provided for in the Association Agreement to products originating in occupied Western Sahara[xxiii].

In its judgment of 29 September 2021, the General Court of the European Union annulled the Council Decision (EU) 2019/217 of 28 January 2019, approving the new agreement that includes the territory of occupied Western Sahara[xxiv], on the grounds that "the granting of tariff preferences to products originating in Western Sahara on importation into the European Union on the basis of certificates issued by the customs authorities of the Kingdom of Morocco requires the consent of the people of that

territory"[xxv]. However, the General Court decided to maintain the effects of the agreement until the Court of Justice has delivered its judgment on the appeal[xxvi].

In summary, the European Union has always applied the preferential tariffs, provided for in the agreements with Morocco, to products imported from Western Sahara, and has not developed any practice of non-recognition on the trade aspect with regard to this illegal occupation situation.

Although deemed insufficient, the labelling measure, which has been applied to products imported from Israeli settlements in order to exclude them from preferential treatment, has not been put into effect by the EU in the case of occupied Western Sahara.

But, in all circumstances, the obligations of non-recognition and non-assistance imposed by the situations of occupation in Palestine and Western Sahara require an outright ban on the part of the European Union and its member states on the import and marketing of products originating from these territories. Already in 1971, the International Court of Justice stated in its advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)* that the obligation of non-recognition gives rise to a subsidiary obligation not to maintain economic relations with the illegal authority[xxvii], an obligation which arguably takes precedence over the principle of free trade enshrined in European and international law.

Non-applicability of the Free Trade Principle to Situations of Occupation

In his study on the international obligations of the European Union and its Member States regarding economic relations with Israeli settlements, Professor François Dubuisson stated that the adoption of a prohibition measure did not raise difficulties under international trade rules[xxviii].

Indeed, trade in products originating in the Israeli settlements and occupied Western Sahara is not covered by the free trade obligation enshrined in the agreements between the EU on the one hand and Israel or Morocco on the other, as these agreements are not applicable to occupied territories.

Similarly, the provisions of the General Agreement on Tariffs and Trade (GATT), which enshrine the principle of free trade between WTO members, are also not applicable, as the ban on prohibitions or restrictions only applies to products originating in the territory of a contracting party, whereas neither the Israeli settlements nor occupied Western Sahara are part of such territory.

Council Regulation (EC) No 260/2009 of 26 February 2009 on common rules for imports also establishes the principle of free trade[xxix]. However, Article 24.1 states that " this Regulation shall not preclude the adoption or application by Member States: a) of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security.."

According to Professor Dubuisson, public morality and order are concepts that can address the illegality of producing goods in Israeli settlements[xxx]. This reasoning is similarly applicable to occupied Western Sahara as the peremptory norms involved in both situations are almost identical.

In general, the free trade rule enshrined in EU law must be interpreted in the light of the international obligations of the EU and its Member States, in particular the obligations of non-assistance and non-recognition[xxxi]. **The compliance with the regime applicable to the peremptory norms in question in the context of the production of goods originating in the Israeli settlements and Western Sahara takes precedence over compliance with any other ordinary norm.**

EU Practice on Prohibition of Commercial Relations

According to Article 207 of the Treaty on the Functioning of the European Union, external trade policy falls within the exclusive competence of the EU. Furthermore, it must be conducted within the framework of the principles and objectives of the EU's external action. Finally, the framework within which it is implemented must be defined by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure.

However, the interruption or reduction of economic relations with one or more third countries, in the context of the common foreign and security policy, shall be adopted, in accordance with Article 215(1) of the Treaty on the Functioning of the EU, by the Council, acting by a qualified majority, on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

One of the measures taken by the European Union in recent years to interrupt economic relations in the framework of the Common Foreign and Security Policy is the case of Crimea and the city of Sevastopol, whose annexation by Russia in March 2014 was deemed illegal by the EU.

Indeed, the Council of the European Union stressed in its decision taken on 23 June 2014 that the import into the European Union of goods originating in Crimea or Sevastopol should be prohibited, with the exception of goods originating in Crimea and Sevastopol for which the Ukrainian government has issued a certificate of origin[xxxii]. On the same day, the Council adopted a Regulation on restrictions on imports of products originating in Crimea and Sevastopol[xxxiii], under which the European Union, in response to the annexation of the Crimea considered illegal, has put in place an import ban regime, accompanied by sanction mechanisms to be determined by the Member States to ensure compliance.

The European Union's practice of prohibiting trade relations also includes more general texts prohibiting the marketing on European territory of products because of illegalities in their production conditions.

In September 2008, the Council of the European Union adopted Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing[xxxiv].This Regulation prohibits the importation into the Community of products from illegal, unreported and unregulated (IUU) fishing[xxxv]. The Regulation contains provisions against fishing vessels engaged in IUU fishing[xxxvi], inspections of third country fishing vessels in Member States' ports[xxxvii], a traceability system for imports and exports through catch certification[xxxviii], and a system of sanctions[xxxix].

This regulation is theoretically applicable to fishing activities carried out illegally in occupied or non-self-governing territories. The regime enshrined in this Regulation is also transposable to all products resulting from the illegal exploitation of natural resources in these territories.

The second case concerns Regulation (EU) No 995/2010 of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market[xl]. This regulation provides that "The placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited"[xli]. Prohibited timber is that "harvested in contravention of the applicable legislation in the country of harvest"[xlii].

The Regulation establishes traceability obligations[xliii], a system of measures and procedures[xliv] to minimise the risk of illegal products being placed on the internal market[xlv], authorities and control mechanisms to ensure the correct application of the Regulation[xlvi] and a system of sanctions[xlvii].

According to Professor Dubuisson, the EU regime on illegal timber is perfectly transposable to the case of products from settlements, where the conditions of 'harvesting' or manufacturing can also be said to be in violation of applicable legal norms, namely international humanitarian law, human rights, permanent sovereignty over natural resources and the right to self-determination.[xlviii]

In fact, the "*European Union Guidelines on promoting compliance with international humanitarian law (IHL)*" list among the means of action available to the EU, "Restrictive measures/sanctions", the use of which "may be an effective means of promoting compliance with IHL" and " should therefore be considered against State and non-State parties to a conflict, as well as individuals, when they are appropriate and in accordance with international law"[xlix].

The cases of Crimea, IUU fishing and illegal timber clearly demonstrate that it is perfectly possible under European law to adopt measures restricting the import and marketing of goods, despite the normally applicable principle of free trade, when these products have an illicit production background.[l]

In this respect, it can be affirmed that there is no particular institutional obstacle to a European decision banning the marketing in Europe of products originating from Israeli settlements and occupied Western Sahara. Such a decision would, in reality, only be the implementation of international obligations imposed on the EU and its Member States.[li]

Possible EU Restrictions on Products from the Occupied Territories

The possible introduction by the EU of restrictions on products from Israeli settlements and occupied Western Sahara can be considered in two ways:

- The adoption by the Council of a decision and regulation, within the framework of the common foreign and security policy, along the lines of the measures taken following the annexation of Crimea ;
- The adoption by Parliament and the Council of a regulation prohibiting the import and marketing of the products in question, as part of the implementation of the common commercial policy, which is supposed to be conducted within the framework of the principles and objectives of the Union's external action, including respect for the principles of the United Nations Charter and international law

Under the first option, the role of the European Parliament would be largely limited. It would only be informed of measures taken by the Council, acting by qualified majority, on a joint proposal by the High Representative of the Union for Foreign Affairs and Security Policy and the Commission[lii].

Comparing the speed with which the EU has taken restrictive measures regarding Crimea with its passivity towards the marketing of products from Israeli settlements and the occupied Western Sahara, it would be legitimate to ask whether the EU action in this area is really based on legal criteria or whether it is rather motivated by other political considerations.

Indeed, the European Union introduced restrictive measures against products originating from Crimea on 23 June 2014, three months after the annexation of this territory. However, despite the fact that the Palestinian and Sahrawi territories have been occupied since 1967 and 1975 respectively, and that the context of the exploitation of their natural resources is marked by a serious violation of a number of peremptory norms, no measures have been taken to date by the European Union to ban the import and marketing of products from Israeli settlements and the occupied Western Sahara.

In a study entitled "*Occupation/Annexation of a Territory: Respect for International Humanitarian Law and Human Rights and Consistent EU Policy*", carried out in June 2015 at the request

of the European Parliament's Subcommittee on Human Rights, Professor Pål Wrange examined EU policy towards the situations of occupation/annexation in Western Sahara, Palestine and Crimea[liii].

He pointed out that, although **"each situation has its own characteristics, the international law that governing them is the same. For keeping the European union's credibility, it is crucial, and therefore necessary, to treat like cases alike"**[liv].

However, Professor Wrange demonstrated the EU's inconsistency on this issue by stating that : "While there is no clear European policy on non-recognition with regard to Western Sahara, such a policy has developed over time regarding the [Occupied Palestinian Territories] and is quite clear and consequential in the case of Crimea" [lv]

In his view, compliance with Article 21 of the Treaty on European Union, which states that "the EU shall ensure consistency between the different areas of its external action and between these and its other policies", "depends of course ultimately on political will and the exigencies of the various situations"[lvi]. He referred to the opinion of many observers who, after comparing the Union's policy towards Crimea, the Occupied Palestinian Territories, the Turkish Republic of Northern Cyprus and Western Sahara, have pointed out that this inconsistent approach "represents a major blow for the EU's international credibility.[lvii]

Furthermore, the European Parliament could give its opinion if a ban on products originating from Israeli settlements and occupied Western Sahara were envisaged in the context of the implementation of the common commercial policy, in application of Article 207 of the TFEU, which stipulates that the latter must be conducted within the framework of the principles and objectives of the Union's external action.

Indeed, the European Parliament has on several occasions opposed certain positions of the Member States and the Council, especially when standards of European and international law were on the agenda. In 2011, for example, it rejected the fisheries protocol with Morocco, citing, among other elements, the Saharawi people's right to their natural resources. In 2012, it rejected the controversial Anti-Counterfeiting Trade Agreement (ACTA) on the grounds that it could infringe several fundamental rights, including freedom of expression and the right to privacy[lviii].

Although the European Commission has a virtual monopoly on initiating Community acts, "the European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties"[lix].

If the Commission were to submit a legislative proposal in the future, at the suggestion of the Parliament, concerning the prohibition of the import and marketing of products originating from Israeli settlements and occupied Western Sahara, Member States voting against this proposal in the Council would incur further responsibility for the violation of the relevant standards in the production context of the goods in question.

According to Professor Wrange, the EU should also, in situations of occupation/annexation of territory such as Western Sahara and Israeli settlements, discourage EU companies from engaging in trade and investment with settlements by issuing an formal advice or a prohibition.[lx]

This position is shared by Professor Dubuisson, who considers that EU states have an obligation to adopt measures with regard to companies to ensure that they do not carry out economic activities that contribute to the continuation of settlement in the Occupied Palestinian Territories[lxi].

EU measures to prohibit European companies from carrying out economic activities in occupied territories such as Israeli settlements and Western Sahara, or from having any trade and economic relations there, can be made under the Common Foreign and Security Policy along the lines of the measures taken following the annexation of Crimea.

Indeed, the Council of the European Union extended on 30 July 2014, by virtue of its Decision 2014/507/CFSP[lxii] and its Regulation No 825/2014, the restrictions initially imposed on imports of goods originating from Crimea, also to investments related to infrastructure in the transport, telecommunications, energy and natural resources exploitation sectors in this territory[lxiii].

This regulation prohibits, in the transport, telecommunications, energy or oil, gas and mining sectors in Crimea, the following activities: the granting of any loan or credit specifically related to the creation, acquisition or development of infrastructure in these sectors; the acquisition in part or in full of shares in companies established in Crimea in these sectors; the creation of any joint venture related to the creation, acquisition or development of infrastructure in these sectors[lxiv]. The Regulation also prohibits: providing, directly or indirectly, technical assistance or brokering services related to the above-mentioned investment activities; selling, supplying, transferring, financing or exporting, directly or indirectly, certain equipment and technology to any natural or legal person, entity or body in, or for use in, Crimea[lxv].

No similar measures have been taken so far by the EU in relation to Western Sahara and the settlements in the Occupied Palestinian Territories, with the exception of 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[lxvi]. **This reinforces the presumption that the Common Foreign and Security Policy is guided much more by political motivations than by legal considerations.**

Members of the European Parliament cannot play any role in this matter as the Common Foreign and Security Policy is dominated by the Council, which decides on the basis of a joint and exclusive proposal from the Commission and the High Representative for Foreign Affairs and Security Policy.

However, the European Parliament can contribute to the adoption of measures prohibiting European companies from carrying out economic activities in Western Sahara and the Occupied Palestinian Territories, in certain areas to which the ordinary legislative procedure applies:

- Under Chapter 4 of the TFEU, on capital and payments, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt, pursuant to Article 64(2), measures on the movement of capital to or from Morocco and Israel (direct investment, establishment, provision of financial services or admission of securities to capital markets), in order to ensure that such capital does not contribute to the pursuit of economic activities in Western Sahara or the Occupied Palestinian Territories.

- In the field of transport, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may take measures under Article 100 TFEU on maritime and air transport to ensure that European ships and aircraft do not carry products originating in a territory under occupation such as Western Sahara or Israeli settlements.

- The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure under Article 207 TFEU, may also take measures in the context of the implementation of the common commercial policy to prohibit direct investment in territories such as Western Sahara or Israeli settlements.

- In the framework of the implementation of the Common Agricultural and Fisheries Policy, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure under Article 43 TFEU, may take measures to prohibit European vessels from engaging in illegal fishing activities in the maritime areas of the Occupied Palestinian Territories and Western Sahara.

On the same level, it can be recalled that in September 2008 the European Union adopted Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing[lxvii].

This Regulation, which was adopted by the Council in accordance with Article 37 of the Treaty establishing the European Community, prohibits European vessels from engaging in fishing activities in maritime waters under the jurisdiction of a State, in violation of that State's national laws or international obligations[lxviii]. Natural persons having the nationality of a European country are also prohibited from engaging in or facilitating IUU fishing [lxix].

This regulation appears to apply to fishing activities in the maritime space of occupied and non-self-governing territories, conducted in violation of the wishes and interests of their peoples. **However, it must be noted that the EU has not taken any action to ban fishing in Western Sahara. On the contrary, it concludes agreements with Morocco to allow European vessels to fish in Western Saharan waters.**

Conclusion

The examination of trade relations involving products from occupied territories (Western Sahara and Israeli settlements) shows a blatant inconsistency in the EU's policy towards situations of occupation/annexation.

Indeed, the EU has not imposed any measures to ban the import and marketing of goods originating from Israeli settlements and occupied Western Sahara as required by the obligations of non-recognition, non-assistance and enforcement of the relevant peremptory norms in connection with the production of these goods.

While the EU has implemented a comprehensive regime of banning trade relations with Crimea since its annexation in 2014, the EU institutions have only introduced a simple labelling measure with regard to products originating from Israeli settlements in order to exclude them from the benefit of preferential tariffs.

The passivity of the European Union is even more evident with regard to products from occupied Western Sahara, as the import of these products is encouraged by the *de facto* application of tariff preferences under agreements signed with the occupying power.

The practice of the European Union with regard to situations of occupation/annexation clearly shows that the plenary or restricted bodies on which member states of international organisations sit, such as the EU Council, are not systematically based on legal criteria, and their acts often lack consistency as legally similar situations are not treated in an identical manner.

The primacy of political considerations over legal parameters results in a lack of willingness and passivity to take binding decisions aimed at the outright prohibition of the import and marketing of products originating from the occupied territories.

Reference

[i] See HADJ CHERIF Hamza, *Le droit de souveraineté permanente sur les ressources naturelles dans les territoires occupés et les territoires non autonomes*, TOURNEPICHE Anne-Marie (dir.), thèse de doctorat, droit public, Université de Bordeaux, Novembre 2018.
[ii] European Union, *Trade in goods with Israel*, European Commission, Directorate-General for Trade, 02-08-2022, p. 3.
[iii] DUBUISSON François, *Les obligations internationales de l'Union Européenne et de ses États membres concernant les relations économiques avec les colonies israéliennes*, Centre de droit international de l'Université libre de Bruxelles, Février 2014, version révisée et mise à jour – juillet 2014, p. 47.
[iv] UN document A/HRC/22/63 on 7 February 2013, § 99, p. 21.
[v] *Ibid.*, § 97, p. 20.
[vi] DUBUISSON François, *op.cit.*, p. 50.
[vii] Notice to importers — Imports from Israel into the Community (2001/C 328/04), Official Journal C 328, 23/11/2001 P. 0006 – 0006.
[viii] DUBUISSON François, *op.cit.*, p. 59.
[ix] CJEC, Case C-386/08, Firma Brita GmbH / Hauptzollamt Hamburg-Hafen, Judgment of the Court (Fourth Chamber) of 25 February 2010, § 30.
[x] *Ibid.*, § 58.
[xi] DUBUISSON François, *op.cit.*, p. 64.
[xii] *Ibid.*
[xiii] *Ibid.*
[xiv] COMMISSION IMPLEMENTING REGULATION (EU) No 594/2013 of 21 June 2013 amending Implementing Regulation (EU) No 543/2011 as regards marketing standards in the fruit and vegetables sector and correcting that Implementing Regulation, Official Journal of the European Union L/170/43, 22.6.2013, § 7, p. 1.
[xv] « Israël suspend le rôle de l'UE dans le processus de paix », *Le Monde*, 29.11.2015.
[xvi] Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967, Official Journal of the European Union C 375, 12.11.2015, § 2.
[xvii] *Ibid.*, § 5 et 6.
[xviii] *Ibid.*, § 10.
[xix] DUBUISSON François, *op.cit.*, p. 68.
[xx] *Ibid.*
[xxi] COMMISSION STAFF WORKING DOCUMENT, SWD(2022) 448, 20/03/2023.
[xxii] CJEU, Council of the European Union v Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario), Case C-104/16 P, Judgment of the Court (Grand Chamber) of 21 December 2016, § 92.
[xxiii] COUNCIL DECISION (EU) 2019/217 of 28 January 2019 on the conclusion of the agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco on the amendment of Protocols 1 and 4 to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part.
[xxiv] CJEU, Front Polisario / Council of the European Union, Case T-279/19, Judgment of the General Court (Ninth Chamber, Extended Composition) of 29 September 2021.
[xxv] Ibid., § 196.
[xxvi] Ibid., § 396.
[xxvii] ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa), A*dvisory opinion, 1971, § 124.

[xxviii] DUBUISSON François, *op. cit.*, p. 68.
[xxix] Council Regulation (EC) No 260/2009 of 26 February 2009 on the common rules for imports, OJ L 84, 31.3.2009, p. 1, Art. 1 § 1.
[xxx] DUBUISSON François, *op. cit.*, p. 63.
[xxxi] *Ibid.*, p. 71.
[xxxii] COUNCIL DECISION 2014/386/CFSP of 23 June 2014 concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol, Official Journal of the European Union, L 183/70, 24.06.2014.
[xxxiii] COUNCIL REGULATION (EU) No 692/2014 of 23 June 2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol, Official Journal of the European Union, L 183/9, 24.06.2014.
[xxxiv] COUNCIL REGULATION (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, Official Journal of the European Union, L 286, 29.10.2008, p. 1.
[xxxv] *Ibid.*, article 12.1.
[xxxvi] *Ibid.*, article 3.
[xxxvii] *Ibid.*, chapitre II.
[xxxviii] *Ibid.*, chapitre III.
[xxxix] *Ibid.*, article 11.4, article 28 and article 40.
[xl] REGULATION (EU) No 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market, Official Journal of the European Union, L 295/23.
[xli] *Ibid.*, article 4 § 1.
[xlii] *Ibid.*, article 2 g).
[xliii] *Ibid.*, article 5.
[xliv] *Ibid.*, article 6.
[xlv] *Ibid.*, recital 16.
[xlvi] *Ibid.*, articles 7-11.
[xlvii] *Ibid.*, article 19.
[xlviii] DUBUISSON François, *op. cit.*, p. 73.
[xlix] Updated European Union Guidelines on promoting compliance with international humanitarian law (IHL) (2009/C 303/06), Official Journal of the European Union, C 303/12, 15.12.2009, § 16 d).
[l] DUBUISSON François, *op. cit.*, p. 73.
[li] *Ibid.*, p. 71.
[lii] Article 215 of the Treaty on the Functioning of the European Union.
[liii] WRANGE Pål, Occupation/Annexation of a Territory: Respect for International Humanitarian Law and Human Rights and Consistent EU Policy, Directorate-General for External Policies, European Parliament, June 2015.
[liv] *Ibid.*, p. 13.
[lv] *Ibid.*, p. 46.
[lvi] *Ibid.*, p. 51.
[lvii] *Ibid.*
[lviii] European Parliament, 'European Parliament rejects ACTA', Press release, 4 July 2012.
[lix] Article 225 of the Treaty on the Functioning of the European Union.
[lx] WRANGE Pål, *op. cit.*, p. 53.
[lxi] DUBUISSON François, *op. cit.*, p. 73.

[lxii] Council Decision 2014/507/CFSP of 30 July 2014 amending Decision 2014/386/CFSP concerning restrictions on goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol, Official Journal of the European Union, L 226/20, 30.7.2014.

[lxiii] Council Regulation (EU) No 825/2014 of 30 July 2014 amending Regulation (EU) No 692/2014 concerning restrictions on the import into the Union of goods originating in Crimea or Sevastopol, in response to the illegal annexation of Crimea and Sevastopol, Official Journal of the European Union, L 226/2, 30.7.2014.
[lxiv] *Ibid.*, article 1.
[lxv] *Ibid.*
[lxvi] 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, Official Journal of the European Union, C 205/9, 19.7.2013.
[lxvii] COUNCIL REGULATION (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, *op. cit.*
[lxviii] *Ibid.*, article 2.2.
[lxix] *Ibid.*, article 39.1.