

Israeli settlements in East Jerusalem

3 French companies involved in light-rail construction



The Jerusalem Light-rail System and How French Companies Contribute to the Settlement of Occupied Palestinian Territory

Executive Summary

Israeli settlement of Occupied Palestinian Territory began immediately after the end of the war in June 1967 with the occupation of the West Bank including the Palestinian portion of Jerusalem. Israeli settlement of Palestinian land remains the major impediment to the advancement of a peaceful resolution to the Israeli-Palestinian Conflict.

Israeli settlement of Palestinian land is illegal according to international law enshrined in a series of instruments, starting with the Geneva Conventions of 1949, which forbid any occupying state from transferring its population to the occupied state, down to the latest UN Security Council resolution, No. 2334 of 23 December 2016, which, after recalling the illegality of the settlements, enjoins Member States: "to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967".

Settlement takes on a particular significance in East Jerusalem, where the proclaiming of a "united Jerusalem" as set out in the Jerusalem Law¹ of 1980 has given rise to a series of successive plans and master plans, which have led to the establishment of 15 settlements comprised of approximately 215,000 settlers, located in the middle of Palestinian territory and of Palestinians.

The decision made by the United States in December 2017, to recognize Jerusalem as the capital of Israel and to transfer its embassy there, is in violation of UN Security Council resolution 478 (1980) on the status of Jerusalem.² The US decision also encourages the Israeli government to increase its efforts to introduce legislative changes (voting of a new basic law) and to build new housing and infrastructure.

Among the infrastructure projects planned by successive Israeli governments to further their East Jerusalem annexation policy is **a light-rail system which has been under construction for several years. The aim is to connect West Jerusalem to Israeli settlements located on occupied Palestinian territory in East Jerusalem and, in doing so, do away with the Green Line, the border between the Israeli and Palestinian parts of the city, and encourage the expansion of illegal Israeli settlements.**

French companies contribute to the "settlement enterprise" described above, which is a breach of international law, contrary to the declared policy of France, and to the companies' own human rights commitments.

Human Rights obligations specific to businesses are not conditioned on the capacity or the willingness of a State to fulfil said obligations. According to the UN Guiding Principles on Business and Human Rights and to OECD Guidelines for Multinational Enterprises, businesses are required to

¹ The Jerusalem Law, available at <http://knesset.gov.il/laws/special/eng/BasicLawJerusalem.pdf>

² The resolution reads: "Determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, [...] are null and void and must be rescinded forthwith [...]"

respect human rights regardless of where they operate. This applies to all internationally recognized human rights.

Businesses operating in conflict zones and occupied territories must act with reasonable greater diligence with respect to human rights and avoid contributing to human rights violations, including those committed by their suppliers or business relations.³

The current report, drafted by several civil society organisations, sheds light on and denounces the participation of the companies SYSTRA and Egis Rail in the construction of three new light-rail lines which connect the Israeli part of Jerusalem to the illegal Israeli settlements located in the Palestinian part of the city. SYSTRA belongs to the French state-owned groups SNCF and RATP, and Egis Rail belongs to French state-owned Caisse des Dépôts et Consignations. SYSTRA and Egis Rail have signed contracts with the Jerusalem Municipality and the State of Israel for the design and construction the light-rail lines.

The current report also calls into question the activities of Alstom, a company that has played a major role in the execution of the first phase of the light-rail system, continues to work on the existing network, and responds to calls for tender for new projects.

The drafters of the current report have asked these companies to comply with the norms of international law mentioned above by ceasing any activity that contributes to Israeli settlements. Also, the drafting organisations have repeatedly asked the French Ministries of Foreign Affairs and of the Economy and Finance to intervene by encouraging the companies to withdraw from these contracts. To date, despite blatant human rights violations, the requests made by the drafting organisations to the companies and to the French State have had no effect.

Many European and American institutions and businesses, however, have refused to enter into contracts⁴ or have put an end to their financial commitments,⁵ and when doing so have clearly declared that the reason for their withdrawal was their refusal to contribute to Israeli settlement of Palestinian Territory. In March 2015, the relevant French ministries intervened and Safège, the

³ Guiding Principle 7 addresses the particular challenges that arise in in?? conflict zones, see UN Guidelines available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, see also, Mandate of the Working Group on the issue of human rights and transnational corporations and other business enterprises Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory 6 June 2014 , available at <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>

⁴ Royal Haskoning, a Dutch engineering firm, for the design of a water treatment plant in East Jerusalem and in the Israeli part of the City of Jerusalem (in 2013); Vitens, the largest water supply company in the Netherlands, a state-owned business, for a joint project with Mekorot, an Israeli company that operates on the Israeli market and has a virtual monopoly on water management on the West Bank; and Deutsche Bahn in 2011 for the construction of the Tel Aviv-Jerusalem line that crosses Palestinian Territory, see T. Buck, "Deutsche Bahn Pulls Out of Israel Project", Financial Times, 9 May 2011, available at <https://www.ft.com/content/4b6b59fc-7a4b-11e0-bc74-00144feabdc0>.

⁵ The Dutch pension fund PGGM/PFZW, FDC, the Luxembourg pension fund, The Norwegian state pension fund, Danske Bank, and the pension fund for the American Methodist Church.

engineering subsidiary of the Suez Group, immediately pulled out of a feasibility study contract for the construction of an urban cable car line in Jerusalem.

Moreover, the UN Human Rights Council, pursuant to its resolution of March 2016, is working to establish a database of companies that violate international law by actively participating in the Israeli settlement of occupied Palestinian territories.⁶

The Government of France is responsible for these violations because:

- it has failed to comply with its international obligations - to protect, respect and fulfil human rights, to not to recognize as lawful a situation created by a serious violation of international law, to not provide any aid or assistance in maintaining such a situation, and to cooperate in efforts to end it;⁷
- it has failed to protect against third-party human rights violations, in this case the companies concerned;⁸ and
- because of the particular connection the French State has with the companies concerned – the State is the custodian of public sector establishments such as the SNCF and the RATP, both of which own most of the shares in, and of the Caisse des Dépôts et Consignations, a public sector financial institution of which EGIS is a subsidiary.

The drafters of the current report call on all three companies, SYSTRA and its shareholders SNCF and RATP, Egis Rail its parent company the CDC, and Alstom:

- to terminate any contracts entered into with Israeli authorities for the construction of the Jerusalem light-rail system; and
- to publicly commit to excluding from their operations any project that would contribute directly or indirectly to Israeli settlement of the Occupied Palestinian Territory.

The drafters of the current report call on the French State:

⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/021/93/PDF/G1802193.pdf?OpenElement>

⁷ For reading see the report "Trading Away Peace: How Europe Helps Sustain Illegal Israeli Settlements, available at <https://www.fidh.org/IMG/pdf/trading.pdf>

⁸ UN Guiding Principles address the issue of the particular links that exist between states and companies that are either wholly owned or in which they own a controlling interest: "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies [...], including, where appropriate, by requiring human rights due diligence [...]" and "[...] the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights". In their report, the UN Working Group also reminds States of their obligations to take additional measures to protect against human rights violations committed by state-owned or state-controlled businesses.

- to take all necessary measures to ensure that all three public operators, SNCF, RATP and CDC, terminate contracts signed for work related to the construction of the Jerusalem light-rail system by the companies they own or control, SYSTRA and Egis Rail; and
- to take all necessary measures to prevent any action or investment by French companies that could contribute to Israeli settlement and, for these purposes, to reinforce the recommendations already provided to companies in June 2014 by the French Ministry of Foreign Affairs.⁹

And more generally, the drafters of the current report call on the French State:

- to comply with its international obligations, and specifically those related to the breach of peremptory norms under international law by Israel, and the obligation to protect, respect and fulfil human rights;
- to apply the United Nations Guiding Principles on Business and Human Rights and ensure that companies under its jurisdiction, and in particular state-owned companies, do not undermine the full exercise of fundamental rights in France or abroad;
- to enforce the law on the duty of care of parent companies and principle contractors; and
- to support, at the United Nations, the creation of an international treaty on human rights and transnational corporations and other business enterprises.

Chapter I – JERUSALEM

1.1 Historical overview

On 29 November 1947, the UN General Assembly approved resolution 181, which recommended a partition of historical Palestine, which at the time was under the British Mandate, and the creation of two states, one Jewish and the other Arab. The city of Jerusalem, the spiritual capital of the three main monotheistic religions, was to be separate (*corpus separatum*) and placed under international control.

As of the creation of the State of Israel on May 14, 1948, war broke out between Israel and the neighbouring Arab countries. Subsequently, the 1949 Armistice demarcation line (the Green Line) divided the city of Jerusalem into a western part conquered by Israel, which was emptied of its Palestinian inhabitants (approximately 80,000 people) many of whom had taken refuge in the eastern part of the city. Israeli annexation of the western portion of Jerusalem was a violation of the UN resolution. The homes and land of expelled Palestinians were confiscated and distributed to Israelis.

In 1950 Israel made West Jerusalem its capital, while East Jerusalem, including the Old City, was annexed by Jordan. The Jewish inhabitants of East Jerusalem, approximately 2,500 persons, were

⁹ Avis du Ministère de Affaires étrangères, available at <http://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays/israel-territoires-palestiniens/>

expelled; their lands and houses, administered by Jordan, were rented to Palestinians, many of whom had been expelled from the western part of the city.

In June 1967, during the Six-Day War, Israel conquered the entire West Bank, including East Jerusalem, which it occupies to this day.

At the end of the war, the Israeli government started expanding the Jerusalem city limits by incorporating the eastern part of the city and 28 Palestinian villages located in the recently occupied territories,¹⁰ thus increasing the surface area of East Jerusalem from 6 sq. km to 70 sq. km,¹¹ and subsequently to 75 sq. km, through confiscations.

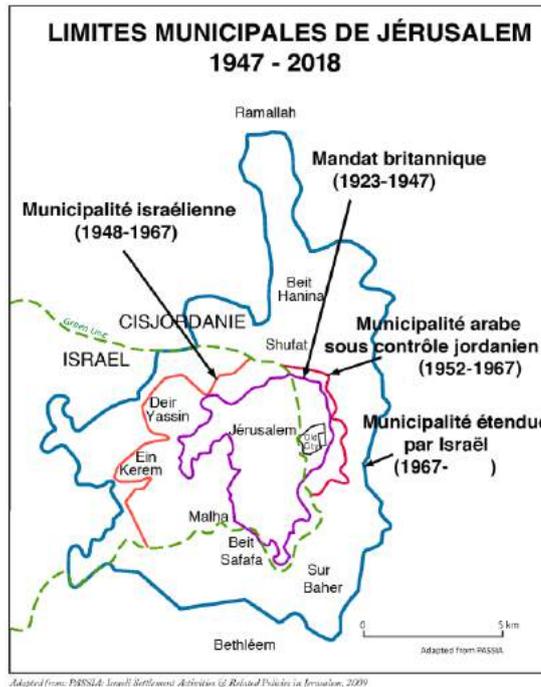


Fig. 1 – Map: Changes to the Jerusalem Municipality boundaries

On 27 June 1967, the Knesset extended the application of Israeli law to this new entity, in violation of international law, which prohibits the annexation of territories by force.¹² The Knesset declared Jerusalem "reunited" and "the eternal and indivisible" capital of Israel. The international community refused to recognise the annexation, which is regularly declared invalid by the United Nations (see box on page xx). On 30 July 1980, the Knesset voted this decision into the system of basic laws which serve as the constitution for the State of Israel by approving the bill "Basic Law: Jerusalem, Capital of Israel". The reaction to this new law gave rise to UN Resolution 478 (1980) and its application to the transfer of foreign embassies from Jerusalem to Tel Aviv.

¹⁰ The villages in question have large land reserves suited for settlement. Land belonging to the Cities of Bethlehem, Beit Jala, Beit Iksa and El Bireh were added to what is referred to as the Jerusalem Municipality.

¹¹ B'Tselem, A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem, 1995, p.10, available at https://www.btselem.org/publications/summaries/199505_policy_of_discrimination.

¹² Charter of the United Nations Art. II.4, <http://www.un.org/fr/charter-united-nations/>; see also UN Security Council resolution 242, available at [http://www.un.org/fr/documents/view_doc.asp?symbol=S/RES/242\(1967\)&Lang=E&style=B](http://www.un.org/fr/documents/view_doc.asp?symbol=S/RES/242(1967)&Lang=E&style=B)

The 1967 census provides the following breakdown for the population of Jerusalem: 195,700 Jews (74.4%), 55,000 Arabs / Muslims (20.8%), and 12,500 Christians or other (4, 8%).¹³ The "reunification" of Jerusalem meant that the "Arab" segment of the population, which authorities constantly strive to curb, had to be taken into account.

Since 1967, the percentage of Palestinians in Jerusalem has increased steadily. In 2016 the population of Jerusalem was over 872,400 inhabitants: 532,700 Jews (60.9%) and 328,000 Palestinians (37.5%).¹⁴

1.2 The expansion of the settlements in East Jerusalem

The primary objective of Israeli authorities became to maintain, at all costs, a very large Jewish-Israeli majority in the city, which could guarantee their control over East Jerusalem as well as the sustainability over time of "reunification". This objective became official with the adoption in 1973 of the Gafni Committee¹⁵ recommendations which continue to serve as guidance for all decisions concerning East Jerusalem.¹⁶

Urban development plans for East Jerusalem, at all administrative levels, have been primarily based on the expansion of settlements and explicitly based on a quantified demographic objective.¹⁷

The intensive construction of settlements has required massive expropriation of Palestinian private land^{18 19} which was made possible by the Land Decree ("Acquisition for Public Utility"). The decree allows the State to expropriate land for large-scale projects that are "in the public interest". The successive waves of expropriations which took place in 1968 and the 1990s increased the surface area of expropriated land to 26.3 sq. km, which include approximately 35% of East Jerusalem.

Once expropriated the land becomes "State land", Israeli authorities take charge of every phase housing development (zoning and land use, infrastructure, building permits, and contracting for the construction of entire neighbourhoods). In the span of just a few years, this system, coupled with considerable state financial support, facilitated the development of settlements with vast public areas and extensive services. Between 1967 and 1995, 38,500 housing units were built in the

¹³ Jewish Virtual Library, Demographics, available at <http://www.jewishvirtuallibrary.org/population-of-jerusalem-1844-2009>

¹⁴ https://fr.wikipedia.org/wiki/D%C3%A9mographie_de_J%C3%A9rusalem, figure taken from a Statistical Report published by the Central bureau of statistics of Israel, 2017, available at http://www.cbs.gov.il/reader/shnaton/templ_shnaton_e.html?num_tab=st02_20x&CYear=2017

¹⁵ The Gafni Committee, is the name given to the inter-ministerial committee tasked in 1972 with examining the growth rate of Jerusalem and which introduced the concept of "demographic threat". The committee established an official quantified objective for the proportion of Jews to Arabs, to be met through political control of planning. The objective was never reached and was regularly modified to lower the proportion of Jews: from 73.5% to 26.5% in 1973 to 60% to 40% in the 2000 Jerusalem Master Plan.

¹⁶ A. El-Arrash, Right to Develop. Planning Palestinian communities in East Jerusalem, ONU Habitat, p.18, [https://reliefweb.int/sites/reliefweb.int/files/resources/Right To Develop.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/Right%20To%20Develop.pdf)

¹⁷ E. Cohen Barr, Trapped by Planning, Israeli Policy, Planning and Development in the Palestinian Neighbourhoods of East Jerusalem, Binkom, 2014, p.8-9, <http://bimkom.org/eng/trapped-by-planning/>

¹⁸ Cohre & Badil, Ruling Palestine. A History of the Legally Sanctioned Jewish-Israeli Seizure of Land and Housing in Palestine, 2005, pp. 131-143 http://www.badil.org/phocadownloadpap/Badil_docs/publications/Ruling%20Palestine.pdf

¹⁹ See footnote 17, E. Cohen Barr, p.27.

settlements by the State, compared with 8,890 in Palestinian neighbourhoods²⁰ built through private initiative. In recent years construction has accelerated in the settlements, in 2015 the number of housing units had risen to 55,000.²¹

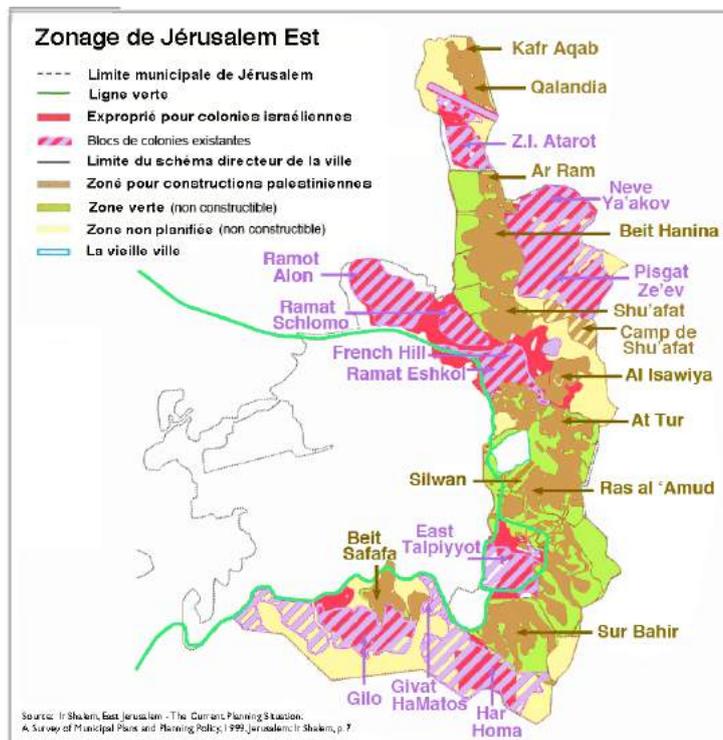


Figure 2.- Zoning Map of East Jerusalem drawn by the municipality in 1970. Zones reserved for settlements are shown in red (35%); green areas and land that has been “set aside”, which cannot be developed are shown in green and yellow (22% and 30% respectively); zones reserved for Palestinian development appear in brown (13%,) are in fact already developed. Current settlement areas are represented by purple stripes. The Shu'afat refugee camp is represented by brown stripes.

The population for the settlements in East Jerusalem, at the end of 2017, was estimated to be 215,000²² settlers living in 15 settlements.²³

²⁰ See footnote 18, Cohre & Badil, p.125.

²¹ C. Hole, *Palestinians Face Housing Crisis as Jerusalem Settlements Thrive*, *Middle East Eye*, 2015, available at <http://www.middleeasteye.net/columns/jerusalem-tale-two-cities-273466386>

²² Report of the European Union Heads of Missions in Jerusalem and Ramallah dated 2017, art. 69. French translation is available at <http://www.paxchristi.ccf.fr/v2/23329-2/>. An English language version of the report is available at <https://rightsforum.org/2.0/wp-content/uploads/2018/02/EU-HOMS-report-Jerusalem-2017.pdf>

²³ Main settlements and their population in 2014: Ramot (44,090), Pisgat Ze'ev (40,650), Gilo (30,320), Neve Ya'akov (21,260), Har Homa (18,940), Ramat Shlomo (15,070), Talpiot-Est (14,010), French Hill (Giv'at Shapira) (7,940), Ramat Eshkol (6,960), Ma'alot Dafna (3,080), and the Jewish Quarter in the Old City (2,900), Giv'at Hamivtar, Giv'at Hamatos, Atarot, See B'Tselem, *Settlements Population*, 2017b, available at <https://www.btselem.org/settlements/statistics>

Measures are taken to make the settlements attractive: a broad range of financial incentives has been developed (loans with very favourable conditions, tax reductions, free schooling and free school transportation, subsidized water and electricity supply, subsidies for businesses, etc.); infrastructure for use by settlers is also made widely available (schools, day-care centres, centres for social and medical services, etc.); and industrial zones that offer many job opportunities are created (Atarot, Mishor Adumim).

Successive development plans highlight the need to build roads and public transport infrastructure to securely establish and integrate outlying settlements in West Jerusalem and to make settlements more attractive, by providing fast connections to the city centre and public spaces and access to Israel. Local authorities expropriated the land needed to build a vast road and motorway network which has since become inadequate, hence the need for the light-rail network currently under development (see Chapter II).

1.3 The political, economic and social exclusion of the Palestinians living in East Jerusalem

Israeli authorities have created a system of discriminatory legal restrictions aimed at “encouraging” Palestinians to leave East Jerusalem²⁴ thereby reshaping the demographics of the city. This phenomenon has been examined in detail by many NGOs. In 2018, the Heads of the European Union Mission²⁵ published a report on the matter. These discriminatory measures are discussed in the section below.

The fragmentation of Palestinian neighbourhoods. Neighbourhoods are divided by settlements or areas that cannot be developed or by roads reserved for settlers. Since 2002, the "Separation Barrier" separates persons living in densely populated areas from the services they depend upon (administrative agencies, hospitals, schools, jobs, and businesses).

*The restrictive conditions for residency status imposed on Palestinians.*²⁶ Being a resident allows Palestinians to travel to and from work in Jerusalem and Israel, or to the West Bank, it also entitles residents to public aid, education, and health services. Residency, however, can be revoked, including for punitive purposes²⁷ and is not automatically transmitted by marriage, or to children when only one parent is a resident.

*The planned housing crisis.*²⁸ The lack of housing in Palestinian areas is egregious. Building permits are issued in accordance with a local urban plan. Israel deliberately refrains from establishing urban

²⁴ M. Margalit, *Demolishing Peace - House Demolitions in East Jerusalem*, International Peace and Cooperation Center, 2014, p.14

²⁵ See footnote 22, Report of EU Heads of Missions.

²⁶ CCDPRJ, *Israeli Laws and Policies Denying Palestinians the Right to Freely Enter and Establish Residence in Occupied East Jerusalem*, 2013, pp. 4-7, available at http://www.civiccoalition-jerusalem.org/uploads/9/3/6/8/93682182/israeli_laws_and_policies_denying_palestinians_the_right_to_freely_enter.pdf; Passia, *Legal Status and Treatment of Palestinians in Jerusalem*, 2016, pp.3-6, available at <http://passia.org/publications/108>; see also footnote 11 B'Tselem, p.19; see footnote 23 , B'Tselem, 2017a.

²⁷ Over 14,500 Palestinians have lost resident status since 1967. according to Passia (2016).

²⁸ See footnote 24 M. Margalit, pp. 69-100; see footnote 26, Passia (2016), pp.7,8; footnote 18, Cohre & Badil, p. 127; see footnote 23, B'Tselem 2017; see footnote 17, E. Cohen Barr, p.68.

plans for Palestinian areas (“non-planning policy”), so that building permits cannot be obtained, leaving many Palestinians with no choice but to build without a permit.²⁹

The demolition of houses. There are over 15,000 demolition orders for homes built without permits, “illegal constructions”, that are pending execution.³⁰ Approximately 25% of Palestinian families in East Jerusalem live in constant fear of losing their homes.

*The lack of amenities and public services.*³¹ Palestinians account for 37.5% of the population and contribute 33% of the municipal budget, but only benefit from approximately 10% of city services. Moreover, amenities are deliberately excluded from the rare urban plans that exist.

The “de-Palestinisation” of East Jerusalem. Since the signing of the Oslo Accords in 1993, Israel has closed the Palestinian institutions that organized the Palestinian community and coordinated its activities and has also banned all Palestinian cultural events.

*The arrival of extremist settlers in Palestinian neighbourhoods.*³² Approximately 2,800 ultra-religious settlers have infiltrated neighbourhoods where they severely disrupt daily life. Having ultra-religious groups move into Palestinian neighbourhoods is part of the settlement strategy for Palestinian neighbourhoods.

*Violence, controls, and police repression.*³³ Palestinian neighbourhoods - with their neglected and run-down neighbourhoods, checkpoints, travel restrictions, and other daily sources of provocation - are the scene of regularly occurring clashes with Israeli security forces which can end in deaths, injuries and arrests.

The enforcement of this particular policy has forced tens of thousands of Palestinians to leave Jerusalem, thus reducing their numbers in demographic ratios.

It is important to bear in mind that Palestinians in the rest of the West Bank cannot enter Jerusalem.

²⁹ See footnote 21, C. Hole; see footnote 24, M. Margalit., p.39,43; see footnote 26, Passia (2016), p.7. The number of housing units needed for Palestinians in East Jerusalem is at least 30,000, whereas the number of structures built without a permit is between 20,000 and 3, 000, compared with a total of approximately 60,000 existing housing units.

³⁰ See footnote 24, M. Margalit, p.34.

³¹ See footnote 22, Report of Heads of EU Mission, articles 37 and 51; see also footnote 23, B’Tselem (2017); and footnote 16, A. El-Arrash, pp.8 and 16.

³² A New Chapter in the Israeli Colonial Project Jerusalem District Master-plan ‘08, Poica, 2009, par.7, available at <http://poica.org/2009/03/a-new-chapter-in-the-israeli-colonial-project-jerusalem-district-master-plan-08/>; Passia, Jerusalem: Israeli Settlement Activities & Related Policies 2009, pp.2-11, available at <http://passia.org/publications/137>; see footnote 23, B’Tselem (2017); see footnote 22, Head of EU Missions, art. 63, and 74-79.

³³ See footnote 26, Passia (2016), pp. 9-12.

The Main UN Security Council Resolutions on Jerusalem

Resolution 252 of 21 May 1968

“*Considers* that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status”.

Resolution 267 of 3 July 1969

“*Censures* in the strongest terms all measures taken to change the status of the City of Jerusalem”.

Resolution 298 of 25 September 1971 incorporates resolution 252 and 267 cited above.

Resolution 446 of 22 March 1979

“*Calls once more upon* Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories”.

Resolution 476 of 30 June 1980

“*Reiterates* that all such measures which have altered the geographic, demographic and historical character and status of the Holy City of Jerusalem are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council”.

Resolution 478 of 20 August 1980

“*Decides* not to recognize the "basic law" and such other actions by Israel that, as a result of this law, *seek* to alter the character and status of Jerusalem and calls upon:

- (a) All Member States to accept this decision;
- (b) Those States that have established diplomatic missions at Jerusalem to withdraw such missions from the Holy City; [...]

Resolution 2334 of 23 December 2016

Reiterates its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard;

The draft resolution tabled on 18 December 2017: “Affirms that any decisions and actions which purport to have altered, the character, status or demographic composition of the Holy City of Jerusalem have no legal effect, are null and void and must be rescinded in compliance with relevant resolutions of the Security Council, [...]”.

Additionally, the draft resolution would have called on all States to refrain from the establishment of diplomatic missions in the Holy City of Jerusalem, pursuant to resolution 478 (1980) of the Security Council and would have demanded that all States comply with Security Council resolutions regarding the Holy City of Jerusalem, and not to recognize any actions or measures contrary to those resolutions.

The draft resolution received 14 votes in favour and 1 against. The vote against was the veto cast by the United States which led to its rejection.

Chapter II THE INVOLVEMENT OF THREE FRENCH COMPANIES IN THE COLONISATION OF JERUSALEM

Urban development plans for Jerusalem, underpinned by two underlying political intentions, which are to unify of the city under Israeli sovereignty and to reach Jewish demographic supremacy, explain the need for a public transport system that connects the settlements in East Jerusalem to the city centre in West Jerusalem.

The approved light-rail network includes:

- a line which has been in service since 2011 and was built under the supervision of two French companies, VEOLIA and ALSTOM TRANSPORT; and

- the building of an extension of the first line and of two new lines, which are currently in the design and execution phases and on which two other French companies, EGIS-Rail and SYSTRA, collaborate. ALSTOM TRANSPORT is a candidate for the supply of rolling stock and could participate in the putting into service of both lines.

II.1 The Jerusalem light-rail project and its illegality

As early as 1999,³⁴ the Israeli authorities for Jerusalem created a body, the Jerusalem Transportation Master Plan Team (JTMT) to study, in collaboration with the Israeli Ministry of Transport, the feasibility of a public transport system. A light-rail network was chosen. The project, approved by the government in 1999, was presented as an ecological and economic solution to traffic congestion in Jerusalem that would serve all of the inhabitants of Jerusalem. There is no doubt, however, that the primary purposes of the project were to connect East Jerusalem settlements to the West Jerusalem city centre and to economic hubs.³⁵ These objectives are mentioned in the recommendations included in the Jerusalem Master Plan 2000.³⁶ Furthermore, the paths for the eight projected lines leave no doubt concerning the objectives. The planned lines are to serve all settlement groups in East Jerusalem, whereas nothing is planned for overcrowded and underserved Palestinian neighbourhoods³⁷ (Figure 3).

³⁴ JTMT (Jerusalem Transportation Master Plan Team) Jerusalem Light-Rail Mass transit System, https://web.archive.org/web/20061102015045/www.rakevetkala-jerusalem.org.il/images/Eng_brochure.pdf

³⁵ See footnote 33, Passia, (2009), p.20.

³⁶ Local Outline Plan Jerusalem 2000, Report No. 4, available at <http://www.alhaq.org/en/wp-content/uploads/2018/03/LocalOutlinePlanJerusalem2000.pdf>

³⁷ At the signing of the concession agreement for the first light-rail line, in the Office of the French Ambassador, Ariel Sharon declared: "I believe that this should be done, and in any event, anything that can be done to strengthen Jerusalem, construct it, expand it and sustain it for eternity as the capital of the Jewish people and the united capital of the State of Israel, should be done. And I pledge to that I will support any such effort, in order to advance it." available at <http://www.pmo.gov.il/English/MediaCenter/Events/Pages/event170705.aspx>

of stations to 38,³⁸ but none of the new stations will serve Palestinian areas.

- *the green line* will connect the Hebrew University campus on Mount Scopus in East Jerusalem to the Gilo settlement in the south. Two branches would connect the economic hub in Malha to the Givat Shaul industrial zone in the west. The green line received final approval in January 2017. The first round of calls for tenders for construction, operation and maintenance was launched in September 2017 and the final selection phase took place in April 2018.³⁹ The green line will be 18.3 kilometres long and have 33 stations, but none in Palestinian areas. Subsequent branches will add 3.4 km and 8 stations.⁴⁰

- *the blue line* will connect the Ramot settlement in northern East Jerusalem to the Malha business district in West Jerusalem and to the Gilo settlement in the south.⁴¹ One branch will serve the Talpiot settlement in the east. The blue line will be 20.3 km long and would have 40 stations. The line was approved by a Jerusalem Municipality ad hoc committee⁴² and is up for approval by the District of Jerusalem, after which the State would launch a call for tender for its construction.

Later phases are planned and would include the addition of two other lines: a yellow line and a purple line. The yellow line has been under study for several years and is to connect the Hebrew University campus at Givat Ram to the Jaffa Gate in the Old City in East Jerusalem. The purple line would connect the Hadassah Hospital in West Jerusalem to East Talpiot settlement in the east.⁴³

³⁸ J-Net, Project Description – Annex 1, pp. 1-3, available at <http://jlrt.org.il/wp-content/uploads/2016/08/Project-Description-Annex-1.pdf>

³⁹ Globes, Tender issued for 2nd Jerusalem light rail line infrastructure, 27 Aug. 2017, available at <http://www.globes.co.il/en/article-tender-issued-for-second-jerusalem-light-rail-line-infrastructure-1001202683>.
International Railway Journal (IRJ), Jerusalem light rail Green Line tender launched, 4 April 2018, available at <http://www.railjournal.com/index.php/light-rail/jerusalem-light-rail-green-line-tender-launched.html>
J-Net The tender for the J-NET of the Jerusalem light-rail system advances to the Pre- Qualification (PQ) stage, available at <https://jlrt.org.il/#theTender>

⁴⁰ See footnote 39, J-Net, pp.3-4.

⁴¹ Jerusalem submits plans for Blue Line light rail, Railway Pro, 13 December 2016, available at <http://www.railwaypro.com/wp/jerusalem-submits-plans-for-blue-line-light-rail/>

See also footnote 39, J-Net, p. 4.

⁴² IRJ (International Railway Journal), Jerusalem approves light rail Blue Line, 01 feb.2016(2016a), available at <http://www.railjournal.com/index.php/light-rail/jerusalem-approves-light-rail-blue-line.html?channel=000>.

⁴³ J-Net, The green line presentation, p.11, available at <http://jlrt.org.il/wp-content/uploads/2016/08/innotrans-presentation.pdf>.

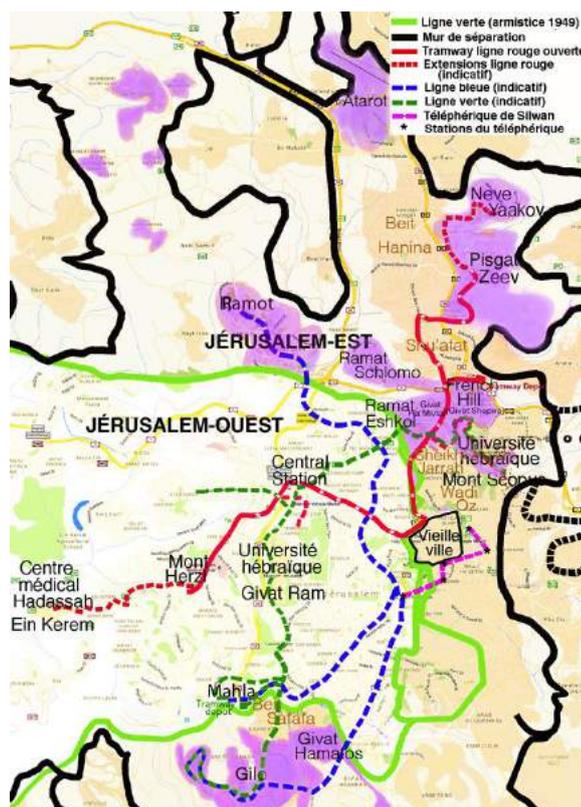


Figure 4. Map – The light-rail network for Jerusalem; indicated are the lines (red, green and blue) that are operational (solid lines) and under construction (dotted lines). The pink line represents the planned cable car line.

II.1.2 The illegality of settlements and of the light-rail network

As described in the previous section, a significant part of the light-rail network runs through Palestinian territory, with end stations in large Israeli settlements in East Jerusalem.

Under international law the establishment of settlements in occupied,⁴⁴ land is illegal. This is repeated in UN Security Council resolution 2334 of 23 December 2016; and with respect to Jerusalem specifically, in UN Security Council resolutions 252, 476 and 478 (see box on page xx chapter I). Israel cannot act as a sovereign state in Palestinian territory.

International humanitarian law and international human rights law were intended to apply to the occupation of Palestinian Territory, outside the 1967 borders, by the State of Israel. The rules concerning occupation are contained, for the most part, in the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)⁴⁵ (hereinafter "the Convention") and the Regulations on the Laws and Customs of War on Land annexed to the Fourth Hague Convention of 18 August 1907.

⁴⁴ See page 1 of the current report for relevant international instruments.

⁴⁵ Geneva Conventions of 1949 and their Additional Protocols, ICRC, available at <https://www.icrc.org/eng/assets/files/publications/icrc-002-0173.pdf>

The International Court of Justice has explicitly recognized the applicability of these conventions to Israeli occupation of Palestinian territory.⁴⁶ Israeli settlements violate numerous international humanitarian norms. The destruction and confiscation of civilian property, either public or private, is prohibited under article 53 of the Convention. The forcible deportation of a population from the occupied territory and the transfer of civilians to the territory occupied by the occupying Power is also prohibited under article 49.⁴⁷ Any failure to apply the provisions of Articles 49 and 53 constitutes a grave breach [of the Convention] as defined in Article 147 of the Convention.⁴⁸ Article 146 of the Convention stipulates that the High Contracting Parties and the Parties to the conflict must provide effective legal sanctions for grave breaches [to the Convention] and take the necessary measures to put an end to all other violations of the Convention.⁴⁹

In addition, the grave breaches defined in Article 147 of the Convention can also be characterized as war crimes, as defined in Article 8 of the Statute of the International Criminal Court (ICC). War crimes fall within the jurisdiction of the ICC, which operates with domestic courts under a complementarity mechanism, namely, in accordance with Article 17 of the Rome Statute; the ICC intervenes in the absence of the capacity or willingness of domestic courts to effectively investigate and prosecute, in accordance with article 17 of the Rome Statute.⁵⁰

Since 16 January 2015, the Office of the Prosecutor of the ICC has been conducting a preliminary examination of the situation in Palestine and the settlement policy.⁵¹

Furthermore, the physical and administrative restrictions that are placed on Palestinian populations that deprive them of access to essential services, constitute violations of international human rights

⁴⁶ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004, p. 136, available at <http://www.icj-cij.org/docket/files/131/1671.pdf>.

⁴⁷ Fact Sheet, Area C of the West Bank: Key Humanitarian Concerns”, Update, August 2014, UN Office for the Coordination of Humanitarian Affairs occupied Palestinian territory available at https://www.ochaopt.org/sites/default/files/ocha_opt_area_c_factsheet_August_2014_english.pdf
www.ochaopt.org/documents/ocha_opt_area_c_factsheet_august_2014_english.pdf

⁴⁸ Grave breaches specified in the 1949 Geneva Conventions and in additional Protocol I of 1977, ICRC, 31 January 1998, available at <https://www.icrc.org/eng/resources/documents/misc/57jp2a.htm>

⁴⁹ See Art. 146 of the 4th Geneva Convention, *see also* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, available at https://www.icrc.org/eng/assets/files/other/icrc_002_0321.pdf.

⁵⁰ By ratifying the Rome Statute of the International Criminal Court on 2 January 2015 and accompanying it with an ad hoc declaration recognizing its jurisdiction (under Article 12.3 of the Statute), Palestine has recognized the competence of the ICC for international crimes, including war crimes, committed on its territory, including in East Jerusalem, or by its nationals since 13 June 2014; *see also* Palestinian Accession to the ICC Statute: Hope for Justice and Peace, 2 January 2015, FIDH, available at <https://www.fidh.org/International-Federation-for-Human-Rights/north-africa-middle-east/israel-occupied-palestinian-territories/palestinian-authority/16724-palestinian-accession-to-the-icc-statute-hope-for-justice-and-peace>

⁵¹ Further information on the preliminary examination being conducted by the Office of the Prosecutor of the ICC on the situation in Palestine is available on the ICC website at <https://www.icc-cpi.int/palestine>

law enshrined in the International Covenant on Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights.⁵²

Israel's settlement policy, for East Jerusalem and for the rest of the West Bank, is clearly in breach of all of the international norms described above. These are grave breaches of international legal norms, which carry special obligations for third-party States. The International Court of Justice has expressly recognized the *erga omnes* nature of international humanitarian law obligations and of the Palestinian people's right to self-determination.⁵³ This implies, according to the Court, that third-party States are under an obligation not to recognize the illegal situation created by a grave breach of international law [and] not to render aid or assistance in maintaining such a situation and, and must cooperate to put an end to any grave breaches.⁵⁴ Consequently, States should cease all economic and financial relations with entities that perpetuate situation characterised as illegal under international law⁵⁵ as reflected in UN Security Council Resolution 2334 of 23 December 2016: "Calls upon all States, [...] to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967."

Since 2010, the United Nations Human Rights Council has consistently expressed in its resolutions its concern over the construction and operation by Israel of a light-rail line that connects West Jerusalem to the settlements, in violation of international law, and explicitly called for its closure in 2017⁵⁶ and again in 2018.

II.2- Three French companies directly involved in the construction of the light-rail project: Egis Rail (Caisse des Dépôts et Consignations), SYSTRA (SNCF and RATP groups), and ALSTOM

Two French companies took part in the construction of the first light-rail line, ALSTOM TRANSPORT and VEOLIA. Alstom continues to be involved in its operation.

⁵²Right to access natural resources (art.1), right to privacy (Article 17), right to freedom of movement (Article 12), access to natural resources (Article 1), right to protection and assistance for family and children and adolescents (section 10); the right to an adequate standard of living, including food, clothing and shelter, and the right "to be free from hunger" (article 11); the right to health (article 12) and the right to education (articles 13 and 14).

⁵³International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion [9 July 2004], I. C. J. Reports 2004, p. 136, available at <http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>.

⁵⁴ *Ibid.*

⁵⁵ FIDH, "Trading Away Peace: How Europe helps sustain illegal Israeli settlements" available at <https://www.fidh.org/IMG/pdf/trading.pdf>

⁵⁶ See all resolutions on the colonization of the Human Rights Council since 2010; on the call to stop the operation of the tram, see resolutions A / HRC / 34 / L.41 of 22 March 2017 available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/4130476E4C2172CF852580EC00510FA> and A/HRC/37/L.48 of 20 March 2018 available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/4130476E4C2172CF852580EC00510FA> <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G18/072/99/PDF/G1807299.pdf?OpenElement>

Three major French companies are currently involved in the second phase of the project (the construction of an extension of the first line and of two new lines). Two of the companies belong to state-owned groups: SNCF and RATP own controlling shares in SYSTRA and the Caisse des Dépôts et Consignations is the parent-company of Egis Rail.

Egis Rail (Caisse des Dépôts et Consignations)

Egis Rail is part of the EGIS Group of companies; it employs 13,600 employees, 8,200 of whom work in engineering. The company reported 1.05 billion euros in managed services revenue in 2017.⁵⁷ Egis Rail is a subsidiary of the Caisse des Dépôts et Consignations, which owns 75% of its share capital, the remaining 25% is owned by executives in the company and employees. Egis Rail's businesses are urban and rail transport systems: metros, light-rail systems, cable transport, high-speed rail lines, and conventional lines. On its website, Egis is rather discreet when it comes to its participation in the Jerusalem light-rail network.⁵⁸

Egis-Rail has played a central, vital and pivotal role in the development of the Jerusalem light-rail network project for almost twenty years.

Egis Rail participated, with the Jerusalem Municipal Team (JTMP), in the finalization of the Mass Transit System for Metropolitan Jerusalem Project⁵⁹ that was approved in 1999. Egis Rail signed a contract in 2008 with Israel⁶⁰, for a comprehensive feasibility study for the extension of the first line, which was built by Veolia and Alstom and opened in 2011, and for the other two lines, which are under construction. Egis Rail, acting on behalf of the Jerusalem Municipality, has coordinated studies, at all levels, conducted by many other companies.

When a project was proposed for the building of a cable car line around the Old City in Jerusalem, on the occupied territory, Egis Rail supervised studies for connections between the cable car line and the light-rail lines.

SYSTRA (SNCF and RATP)

SYSTRA is a public limited company specialized in the design of transport infrastructures and was created by the merging of engineering subsidiaries that were part of the state-owned French rail and public transport companies SNCF and RATP. It has 6,100 employees, and in 2016 reported 612 million euros in revenues. Its main shareholders are SNCF (42%) and RATP (42%), the remaining shares are owned by two French banks, Crédit Agricole and BNP-Paribas (15%), and by employees (1%). The

⁵⁷ Egis corporate website, About Egis section, https://www.egis-group.com/group/about-egis?_ga=2.96928221.374060507.1527787245-2017750029.1527787245

⁵⁸ Egis corporate website, Egis In Action section, https://www.egis-group.com/?_ga=2.98886236.374060507.1527787245-2017750029.1527787245//www.egis.fr/action/imaginer-un-futur-durable/egis-innov

⁵⁹ See footnote 35, JTMT.

⁶⁰ News brief, Tramway EGIS RAIL (69 Villeurbanne), Le Moniteur, 28 March 2008, published at <http://www.lemoniteur.fr/articles/villeurbanne-57721>

members of Supervisory Board are from SNCF, RATP, Crédit Agricole, BNP-Paribas, Société Générale, and Natixis.

On its website SYSTRA communicates on the company's accomplishments in France and abroad, but is rather discreet when it comes to its participation in the Jerusalem light-rail project.⁶¹ SYSTRA's involvement has been spotlighted, however, by the Israeli NGO Who Profits,⁶² on the official website of the Jerusalem LRT Project, on the websites of SYSTRA's partners in the project, as well as those of the specialized press.⁶³

In 2011, SYSTRA, the DEL Group⁶⁴ (the engineering branch of Development and Engineering Ltd) and MATI, jointly won the tender for the feasibility study on the projected blue line for the Jerusalem Light-Rail Network.⁶⁵ SYSTRA oversees project management, quality control, bid documents, and the engineering first draft which includes urban network integration, a map of intermediate stops, and guidance on service schedules. The contract also includes an option for future detailed studies in the event of a call for tender for the construction of the line.

SYSTRA may also be involved in the Tel Aviv-Jerusalem high-speed train project referred to as the A1, which is also illegal (see box on page xx). "The cooperation agreement" signed between SNCF and ISR (Israel Railways) on the occasion of the French president's November 2016 state visit, stipulates in paragraph 2.4: *Dans le cadre de l'électrification de la ligne A1 Jérusalem – Tel Aviv, une demande d'ISR a été faite à pour obtenir une suggestion de programme de travail ainsi qu'une proposition tarifaire. Cette mission inclura le passage en revue des lignes à haute tension aériennes ainsi que l'alimentation électrique.*⁶⁶

ALSTOM

Alstom is a public limited company specialized in the transport sector, mainly rail. It employs 31,000 people and reported 7.3 billion euros in turnover for 2016-2017. In 2014, its energy branch was taken over by General Electric and the remaining rail transport business is to merge with Siemens

⁶¹ There is only one instance where the words "Israel" and "light-rail" are used together, see (<https://www.systra.com/fr/groupe-systra/regions/article/afrique-europe-du-sud>), however, "Jerusalem light rail", does not appear among the 32 tramway/light-rail projects mentioned. A web page dating from 2013 that provided detailed information on SYSTRA's involvement in the blue line project was removed from the SYSTRA website, apparently following the release of a report by the Israeli NGO Who Profits in July 2017, see footnote 63, <https://nuage.france-palestine.org/index.php/s/gvnemgaptv2gob1>.

⁶² Who Profits, Tracking Annexation: The Jerusalem Light Rail and the Israeli Occupation, Flash Report 2017 p.11 available at https://www.whoprofits.org/sites/default/files/tracking_annexation_-_the_jerusalem_light_rail_and_the_israeli_occupation.pdf

⁶³ J-net, Red, Green and now Blue! <https://jlrt.org.il/article/red-green-and-now-blue/> D.E.L. group, Jerusalem Light-Rail Project, <http://www.del.co.il/english/projects/project.asp?id=99&catid=2&subcatid=8>; International Rail Journal (IRJ) Revolutionizing transport in the Holy City, 20 May 2016 (2016b), <http://www.railjournal.com/index.php/light-rail/revolutionising-transport-in-the-holy-city.html?channel=000>; see also footnote 43, IRJ (2016a).

⁶⁴ <http://www.del.co.il/english/template/default.asp?catId=1>

⁶⁵ See footnote 63, p.11.

⁶⁶ Cooperation agreement between SNCF and Israel Railways (ISR) . The English translation says "In connection with the electrification of the A1 Jerusalem - Tel Aviv line, ISR has requested that SYSTRA provide a possible work program and rates proposal. The assignment includes the inspection of overhead high-voltage lines and power supply"]

(Memorandum of Understanding signed in September 2017) to form a new company to be called Siemens-Alstom. The French State no longer directly owns shares in Alstom; it sold its shares to Bouygues in 2006, but maintained voting rights until October 2017, 20% through shares "loaned" by Bouygues, and was represented by two administrators on the board of directors.⁶⁷

Alstom's communication, on its website, about its participation in the Jerusalem light-rail project is extremely low-key. The last article on the topic dates to 2013; moreover, among the "country fact sheets" posted on the site, none could be found for Israel.⁶⁸

Alstom and Veolia were involved in the creation of the CityPass Consortium that obtained the concession for the first light-rail line in Jerusalem which went into service 2011.⁶⁹ In 2013, Alstom sold its stake in CityPass (20%) but kept 100% of its shares in Citadis Israel, which is the company that is to provide equipment maintenance for the next 23 years. Alstom also kept an 80% stake in the EPC (Engineering, Procurement and Construction) part of concession it manages with CityPass.⁷⁰

From 2016 to 2017, Alstom was in negotiations with the Israeli Ministry of Finance to oversee the second phase of the light-rail network; CityPass had become a concessionaire without going through a tender process. The value of Alstom's share of the contract, 350 million euros, appeared in various press articles in June 2016.⁷¹ The breakdown of negotiations in June 2017⁷² compelled the city to relaunch calls for tender, to which Alstom could respond.⁷³ Alstom submitted a bid to supply rolling stock⁷⁴ for the green line. Alstom's involvement has been documented in reports published by the Israeli NGO Who Profits.⁷⁵

Alstom has also been involved in the A1 project for the Tel Aviv-Jerusalem high-speed line that runs through the Occupied Palestinian Territory (see box). In 2016, it responded to a call for tenders from Israel Railways for the supply of 330 electric cars, which included cars for the A1 high-speed train.

⁶⁷ Alstom, Document de Référence, Rapport financier annuel 2015/2016, Alstom, p.278, http://www.alstom.com/Global/Group/Resources/Documents/Investors%20document/ALSTOM%20DDR2015-16_FR_BAT.PDF

⁶⁸ Alstom, Information sheet ???, <http://www.alstom.com/fr/fiches-dinformation/>

⁶⁹ Metro Report International, "Alstom wins Jerusalem LRT", 01 Dec. 2002, available at <http://www.metro-report.com/news/single-view/view/alstom-wins-jerusalem-lrt.html>

⁷⁰ See footnote 63, Who Profits, p. 7

⁷¹ Globes, "Jerusalem Light Rail to double capacity", 2 June 2016, <http://www.globes.co.il/en/article-jerusalem-light-rail-to-double-capacity-1001129270> ; UITP, Jerusalem Light Rail Extension Sealed, 20 June 2016, <http://www.ceec.uitp.org/jerusalem-light-rail-extension-sealed>

⁷² Globes, Jerusalem Light Rail Talks with CityPass Breakdown, 15 June 2017, <http://www.globes.co.il/en/article-talks-with-citypass-on-red-line-extensions-break-down-1001192860>

⁷³ *Ibid.*

⁷⁴ See footnote 40, IRJ, (2018).

⁷⁵ See footnote 63, Who Profits.

Alstom was short-listed in September 2017,⁷⁶ but Siemens was chosen instead.⁷⁷ The Siemens-Alstom merger has raised fears that Alstom will return to the project.

Other French companies may also be involved in these projects as subcontractors, but we have no information on the matter.

Legal proceedings against ALSTOM, VEOLIA and the French State (2007-2015)

The first light-rail line was built by the CityPass consortium, initially composed of two Israeli companies, Polar Investments and Ashtram Construction and Infrastructures (jointly they owned 75% of shares) and of two French companies, Alstom Transport (20%), and Veolia (Connex at the time) (5%).

Civil actions cases against companies

In 2007, the AFPS [Association France-Palestine Solidarité] and the PLO, brought civil action against the companies Veolia Transport and Alstom. The plaintiffs asked the court to have the contract entered into by these companies with the Israeli government to be recognised as illegal and to stop the defendants from continuing to execute the contract. The companies were summoned to appear before the Nanterre Tribunal de Grande Instance.

After numerous procedural phases, the court recognized that the: "[...] wrongful nature of the occupation of East Jerusalem (was) unanimously recognized by the international community", but rejected the claims on the grounds that "the provisions invoked in Articles 49 (6) and 53 of the Fourth Geneva Convention of 1949, in the Hague Regulations of 1907, Article 4 of the 1954 Hague Convention and in Article 53 of Additional Protocol No. 1 to the Geneva Conventions of 1949 did not create direct obligations for private enterprises."

Subsequent appeals, through to 2015, have failed to result in the overturning of the decision handed down by the court of first instance on the merits.

Legal actions brought before administrative courts against the State of France

French authorities have played an active role in the signing of the contract between Israel and Alstom and Veolia Transport. In 2010, the AFPS brought the matter of the liability of the French State before the administrative court "owing to the support [of the State] in the participation of two French companies in the construction and operation of the tramway."

The court refused to hear the case on the grounds that the State's possible lack of knowledge of its obligations arising from the Geneva Conventions: "does not have any direct effect on the domestic legal order; ... and that reparation for a possible breach of this obligation [...] cannot be sought before the administrative court."

The negative outcomes of these cases demonstrated that a judicial solution was no longer viable to

⁷⁶ J. Goldberg, "Alstom and Siemens Vie for Israeli EMU Order", IRJ, 15 Sept. 2017, available at <http://m.railjournal.com/index.php/middle-east/alstom-and-siemens-vie-for-israeli-emu-order.html>

⁷⁷ O. Dori, "Siemens Wins \$1 Billion Contract for Israel Railway's New Self-Propelling Train Cars", Haaretz, 27 Sept. 2017, available at <https://www.haaretz.com/israel-news/business/1.814465>

address the companies' breaches of international law.

It should be noted, however, that after the dismissal of the case and after the grassroots campaign, Transdev, a subsidiary of Veolia Environnement and Caisse des Dépôts et Consignations, sold all of its shares in the Jerusalem light-rail project to Israeli investors: its 5% stake in the consortium that owns the equipment and the rolling stock and its 100% stake in Connex Jerusalem, the light-rail operator.

The Jerusalem Cable Car Project and the Tel Aviv-Jerusalem High-Speed Rail Project

In addition to the light-rail network, there are two other projects which are either in the planning or execution phases and which are also in breach of international law.

One is for the building of an urban cable car line that would connect the old Ottoman station in West Jerusalem to the Mount of Olives in East Jerusalem. It comprises several intermediate stations, including one at the entrance to Silwan, a Palestinian neighbourhood. The cable car line would serve several settlement enclaves located near the Old City, in the heart of Palestinian neighbourhoods. The arguments given for its construction were the supposed benefits to the environment and to tourism. The project has been under consideration for some years. It has been the subject of a number of studies⁷⁸ and was recently approved, because it was deemed a national priority that contributes to the "unification of the city under Israeli sovereignty".⁷⁹ The project has been widely condemned in international fora, including UNESCO.⁸⁰

The other is for the Tel Aviv-Jerusalem high-speed line, the A1, which is scheduled to open within a few months. It crosses the Green Line twice and crosses Occupied Palestinian Territory at the Latrun settlement enclave and at Cedar Valley, near the Palestinian villages of Beit Surik and Beit Iksa.⁸¹ These violations of Palestinian Territory are in addition to those that would arise from the

⁷⁸ Among them a feasibility study started in 2013 and conducted by the French company SAFÈGE, a subsidiary of SUEZ INGENEERING; SAFEGE pulled out of the contract in March 2015 (see infra page x).

⁷⁹ Emek Shaveh, "A cable car in Jerusalem will cause irreversible damage to the unique character of the Historic Basin with detrimental consequences for its residents, p.8, available at http://alt-arch.org/en/wp-content/uploads/2018/01/Cable-Car.pdf?utm_source=Emek+Shaveh+newsletter&utm_campaign=e6359f03b8-EMAIL_CAMPAIGN_2018_03_18&utm_medium=email&utm_term=0_6299da37ed-e6359f03b8-28059525

⁸⁰ UNESCO, World Heritage Committee, Convention Concerning the Protection of the World Cultural and Natural Heritage, Decisions adopted by the World Heritage Committee at its 39th session Bonn, Germany, 28 June - 8 July 2015, available at https://whc.unesco.org/download.cfm?id_document=137710&type=doc

⁸¹ Who Profits, Crossing the Line: The Tel Aviv-Jerusalem Fast Train, Oct. 2010, <https://whoprofits.org/sites/default/files/Train%20A1.pdf>

construction of the planned extension of the line to the Old City in East Jerusalem and from the opening of an end station near the Western (Wailing) Wall.⁸²

The agreement signed between SNCF and Israel Railways in November 2013 contains an article that assigns power supply for the A1 line to the SNCF. The presentation of ISR (Israel Railways) contained in the agreement, reads "To note that ISR is not present on disputed territories" [sic]. This a falsehood, and it is shocking that the SNCF accepted the inclusion of the phrase.⁸³

In 2016, Alstom bid for the supply of 330 cars to Israel Railways, some of these were for the A1 high-speed train. Siemens won the tender over the finalist, Alstom.⁸⁴ Notwithstanding, a memorandum of understanding was signed between Alstom and Siemens in September 2017.

Chapter III

CORPORATE LIABILITY AND STATE OBLIGATIONS AND REPEATED VIOLATIONS OF INTERNATIONAL LAW

While states are the main subjects of international law, individuals and companies have also been assigned obligations and responsibilities.

3.1 Corporate liability under international law

International humanitarian law (IHL) is the public international law contained in treaties and international customary law and as such is first of all binding on States, the subjects of public international law. However, the Geneva Conventions of 1949 also require states to enforce these rules, to have natural persons abide by them by setting adequate criminal penalties for grave breaches of their provisions, by prosecuting perpetrators, and by taking the necessary measures to stop all acts that are contrary to these rules.

For example, the International Committee of the Red Cross (ICRC) has published a document — a non-binding interpretation of companies' obligations under international humanitarian law — that recalls that "international humanitarian law obliges states and all actors connected to a situation of armed conflict. Consequently, whereas states and organized armed groups have primary responsibility for the application of international humanitarian law, an enterprise that pursues activities closely related to an armed conflict must also respect international humanitarian norms."⁸⁵

⁸² Le Temps, "Les Palestiniens dénoncent une 'provocation' supplémentaire d'Israël", 7 décembre. 2017, available at https://www.letemps.ch/monde/palestiniens-denoncent-une-provocation-supplementaire-disrael?utm_medium=twitter&utm_source=divr.it

⁸³ Cooperation Agreement signed between SNCF and Israel Railways (ISR).

⁸⁴ See footnote 77, IRJ, 2017; see also footnote 78, O. Dori.

⁸⁵ ICRC, *Business and International Humanitarian Law - An Introduction to The Rights and Obligations of Business Enterprises Under International Humanitarian*, available at https://www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf

According to ICRC guidance, the company, and/or its executives, could be brought before national criminal and civil courts, where domestic law permits, for the commission of or complicity in war crimes. The notion of corporate complicity in human rights has been defined by the UN as “[...] the indirect involvement of companies in human rights abuses. In essence, complicity means that a company knowingly contributed to another’s abuse of human rights”.⁸⁶

There are countries, such as Belgium,⁸⁷ France,⁸⁸ Portugal,⁸⁹ Luxembourg⁹⁰ and Spain,⁹¹ that have that transposed international humanitarian law into domestic legislation and have made it easier to take legal action against companies and their executives. The fact that a company executive acts on behalf of a company does not provide him or her with any form of immunity from prosecution for international crimes before the domestic courts, or, subsidiarily, before the International Criminal Court.

Persons providing aid and assistance in the commission of war crimes can be held liable before international jurisdictions;⁹² the same is true for an act or an omission that has a substantial, direct or appreciable impact on said crimes.⁹³

⁸⁶ UN Human Rights Council, *Clarifying the concepts of "sphere of influence" and "complicity": report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, para. 30, 15 May 2008, A/HRC/8/16, available at: <http://www.refworld.org/docid/484d1fe12.html> [accessed 1 June 2018]

⁸⁷ A. Misonne, “La responsabilité pénale des personnes morales en Belgique – Un régime complexe, une mise en œuvre peu aisée” in “ La responsabilité pénale des personnes morales en Europe”, S. Adam, N. Colette-Basiecz and M. Nihoul, (eds.), La Charte, Bruxelles, 2008, p. 67.

⁸⁸ Article 121-2 du Code Pénal : “Les personnes morales, à l'exclusion de l'État, sont responsables pénalement, selon les distinctions des articles 121-4 à 121-7, des infractions commises, pour leur compte, par leurs organes ou représentants”. Voir aussi Décision de la Cour de Cassation, 28 Janvier 1954.” (D., 1954, p. 217).

[Article 121-2 of the Pénal Code: “. Legal persons, to the exclusion of the State, are criminally liable, according to the definitions provided in Articles 121-4 to 121-7, for offenses committed on their behalf by their bodies or representatives.”, See also the Decision of the Court of Cassation, of 28 January 1954, available at <https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000006953231>.

⁸⁹ The Criminal Code (*Code Pénal*) adopted in 1982 was amended by Law 59/2007, which modified and extended the scope of Article 11.

⁹⁰ The Law of 3 March 2010 1. Introducing the criminal liability of legal persons in the Criminal Code and in Code of Criminal Procedure 2. amending the Criminal Code, the Code of Criminal Investigation, available at <http://legilux.public.lu/eli/etat/leg/loi/2010/03/03/n1/jo>

⁹¹ Article 31bis of the Criminal Code (*Code Pénal*), 9 June 2010, this article was recently modified by *Loi Organique 1/2015* of 30 March 2015.

⁹² Article 25 of the Rome Statute, bearing in mind that the International Criminal Court sees its jurisdiction limited to the liability of natural persons, the content of this article allows us to ascertain the substantive conditions for the establishment of criminal liability that are generally recognized by states, as well as the modalities for the establishment of criminal liability in international law.

Liability arises from acts or omissions that fall within the scope of a company's operations and are committed on its behalf and make possible, aggravate or facilitate grave breaches of international humanitarian law. To determine whether the company should have known, the judges in domestic courts will consider if, based on the available information, a company acting with all due diligence could have known of the risks it incurred.⁹⁴

As far as soft law is concerned, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises provide important clarifications on the scope of obligations and on the means of fulfilling them. Soft law principles are intended for both states and companies. These principles reaffirm the responsibility of companies to respect human rights and provide guidelines to help them fulfil this obligation. In addition, the OECD Guidelines for Multinational Enterprises provide for an extra-judicial enforcement mechanism: National Contact Points who act as mediators or conciliators between companies and members of civil society. Members of civil society are able to submit cases of non-compliance with the guidelines on the part of a company.⁹⁵

The companies are legally liable regardless of the capacity or willingness of states to fulfil their human rights obligations.

According to UN Guiding Principles, companies are required to respect human rights wherever they operate and international humanitarian law in situations of conflict or occupation,⁹⁶ and this applies to all internationally recognized human rights.⁹⁷

Under UN Guiding Principles, companies must exercise due diligence and use their influence to identify, prevent and mitigate negative human rights impacts. They must also report on how they remedy adverse impacts on human rights.⁹⁸ "Adverse impacts" on human rights include both real or

⁹³This notion arises from the jurisprudence of international tribunals: Simić (ICTY Appeals Chamber), 28 November 2006, para. 85; Blagojevic and Jokic (ICTY Appeals Chamber), 9 May 2007, para. 127; Blaskic (ICTY Appeals Chamber), 29 July 2005, paras. 45-46; Vasiljevic (ICTY Appeals Chamber), 25 February 2004, para. 102; and Ntagerura (ICTR Appeals Chamber), 7 July 2006, para. 370. *See also*: Yearbook of the International Law Commission, 1996, vol. II, Part Two, document A / 51/10, p. 22, para. (11), available at http://legal.un.org/ilc/documentation/english/reports/a_51_10.pdf

⁹⁴See FIDH, Guide for Victims and NGOs on Accountability and Redress mechanisms available at <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/updated-version-corporate-accountability-for-human-rights-abuses-a>

⁹⁵ *Ibid.*

⁹⁶ For further reading see the report "Orange's dangerous liaisons in the Occupied Palestinian Territory" available at https://www.fidh.org/IMG/pdf/rapport_orange-eng.pdf

⁹⁷ Or at least those included in the International Bill of Human Rights (which consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and in the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization. (UN Guiding Principles 11 and 12; OECD Guidelines for Multinational Enterprises Chapter II, paragraph 2 and Chapter IV and the Commentary).

⁹⁸ According to UN Guiding Principles "Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm", Principle 19.

potential impacts to which companies may contribute, or which are directly related to their operations, products or services by their business or trade relations. Human rights due diligence must be exercised on an ongoing basis and must be based on the risks to individual rights that arise from economic activities.⁹⁹

When a company cannot prevent or mitigate adverse impacts directly related to its services by its business relations with another entity, it must terminate the relationship.¹⁰⁰ The UN Guiding Principles consider that: "Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm"; and the OECD Guidelines for Multinational Enterprises consider that there is influence "when a company has the ability to change the harmful practices of the entity responsible for the damage".¹⁰¹

In June 2014, the UN Working Group on Human Rights Issues and Transnational Corporations and Other Businesses issued a notice recalling that business activities or relations associated with Israeli settlements necessarily involve the risk of negative impacts on human rights. It also recalls that companies operating in conflict-affected areas must demonstrate increased human rights due diligence and avoid contributing to human rights violations, including those committed by their suppliers or business relations.¹⁰²

A 2016 Human Rights Watch report notes that no degree of due diligence would be sufficient to protect an enterprise that enters into contracts with Israeli settlements or to prevent it from contributing to human rights violations.¹⁰³

In March 2014, EU Member States, this includes France, on the UN Human Rights Council supported the adoption of a resolution urging all states: "To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to encourage businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, to refrain from committing or contributing to gross human rights abuses of Palestinians, in accordance with the expected standard of conduct in

⁹⁹ UN Guiding Principles, Principle 17; and OECD (2011), OECD Guidelines for Multinational Enterprises, OECD Publishing, Chapter II, paragraphs 11 and 12 and the Commentary, available at <http://dx.doi.org/10.1787/9789264115415-en>

¹⁰⁰ OECD Guidelines for Multinational Enterprises describes in paragraph 14, "contributing to" an adverse impact" as that which "facilitates or incentivises another entity to cause an adverse impact" In order to avoid contributing to negative human rights impacts, including business relationship impacts, companies must use their influence and intervene with the responsible entity to prevent and mitigate these negative impacts.

¹⁰¹ See Commentary for Principle 19 of the Principle UN Guiding Principles; For further reading see the report "Orange's dangerous liaisons in the Occupied Palestinian Territory" available at https://www.fidh.org/IMG/pdf/rapport_orange-eng.pdf

¹⁰² Ibid

¹⁰³ See Human Rights Watch, "Occupation, Inc.-How Settlement Businesses Contribute to Israel's Violations of Palestinian Rights", January 19, 2016, available at <https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian> .

the Guiding Principles and relevant international laws and standards".¹⁰⁴ In March 2015, the United Nations Human Rights Council passed a resolution calling on multinational corporations to take steps to avoid contributing to the establishment or maintenance of Israeli settlements or to the use by Israeli settlements of natural resources in Occupied Palestinian Territory, including East Jerusalem.¹⁰⁵ More recently, in March 2016, the United Nations Human Rights Council went further by adopting a resolution to establish a public list of companies involved in settlement (see box).¹⁰⁶

The resolution of 20 March 2018 also calls on States "To implement the Guiding Principles on Business and Human Rights in relation to the Occupied Palestinian Territory, including East Jerusalem, and to take appropriate measures to help to ensure that businesses domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, refrain from committing, contributing to, enabling or benefiting from the human rights abuses of Palestinians [...]".¹⁰⁷

The United Nations database of companies involved in settlements.

In March 2016, the United Nations Human Rights Council adopted a resolution to establish a public database of companies involved with settlements.¹⁰⁸ The resolution was a follow-up to the report of the international fact-finding mission that highlighted how the activities of the companies that help maintain and develop the settlements constitute human rights violations.¹⁰⁹

¹⁰⁴ UN Human Rights Council, Twenty-eighth session Agenda item 7, Human rights situation in Palestine and other occupied Arab territories, para 11 (b), A/HRC/25/L.37, 25 March 2014 available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/E65D1FD3D58E30BC85257FCE006B7A0B>

¹⁰⁵ UN Human Rights Council, Twenty-eighth session, Agenda item 7, Human rights situation in Palestine and other occupied Arab territories, A/HRC/28/L.32, 25 March 2015 available at <https://unispal.un.org/DPA/DPR/unispal.nsf/0/1B1F2A1D6113DB5585257E1A0055F2B1>

¹⁰⁶ UN Human Rights Council Thirty-first session, Agenda item 7 Human rights situation in Palestine and other occupied Arab territories, 22 March 2016, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/31/L.39

¹⁰⁷ Human Rights Council Thirty-seventh session 26 February–23 March 2018 Agenda item 7 Human rights situation in Palestine and other occupied Arab territories, 20 March 2018, A/HRC/37/L.48, available at <http://undocs.org/A/HRC/37/L.48>

¹⁰⁸ Human Rights Council Thirty-seventh session 26 February–23 March 2018 Agenda item 7 Human rights situation in Palestine and other occupied Arab territories, 20 March 2018, A/HRC/37/L.48, available at <http://undocs.org/A/HRC/37/L.48> THE ENTIRE CITATION SHOULD BE REPLACED WITH "Ibid.3"

¹⁰⁹ UN Human Rights Council, *Report of the independent international factfinding 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, including East Jerusalem*, 7 February 2013, A/HRC/22/63, available at: <http://www.refworld.org/docid/511cc52c2.html> [accessed 1 June 2018] also available at <http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC-22-63_en.pdf>.

In his report of 1 February 2018,¹¹⁰ the United Nations High Commissioner for Human Rights takes stock of the work done for the establishment of this database, detailing the methodology of work, the criteria used to decide to register a company in the database, and the progress of the work underway.

At the end of the first phase of data collection, which included an invitation to Member States to contribute, 307 companies had been listed in the database.

At the end of the second phase, the number of companies on the list was reduced to 192 due to the lack or insufficiency of factual information. Additional research led to the registration of another 14 companies. There are currently 206 companies on the list, four of which are French.

Further exchanges were then conducted from July 2017 by the Office of the High Commissioner for Human Rights with the 21 Member States in which pre-selected companies are domiciled. The Office of the High Commissioner subsequently contacted the companies concerned to inform them that they had been placed on the list and to give them the opportunity to respond.

At the time of the report's publication, 64 of the 206 companies had been contacted.

3.2 Corporate liability and French law

On 27 March 2017 France became the first country to adopt a legislative framework establishing a due diligence obligation for parent companies and contractors to protect against serious breaches of rights.¹¹¹ The law applies to "any company that employs, at the end of two consecutive fiscal years, at least five thousand employees and whose directly or indirectly held subsidiaries have head offices in France, and to any company with at least ten thousand employees whose directly or indirectly held subsidiaries have head offices in France or abroad "(Article 1). Companies with the obligation to perform due diligence must draft and implement plans to identify risks early on; especially risks of human rights violations. Companies must also include in their plan, risk prevention and reduction measures. The obligation applies to the entire group, including subsidiaries; and to subcontractors and suppliers with whom the company has business relations. In cases of non-compliance, interested parties can petition the courts to order the company to comply with the law. The due vigilance law

¹¹⁰ Human Rights Council Thirty-seventh session 26 February – 23 March 2018 Agenda items 2 and 7, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General, Human rights situation in Palestine and other occupied Arab territories, Advance Edited Version, Distr. 26 January 2018, A/HRC/37/39, "[...] a database of all business enterprises involved in the activities detailed in paragraph 96 of the report of 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, including East Jerusalem [...]" .

¹¹¹ LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre [Law on the due diligence obligation of parent companies and of companies acting as principle contractors] available at <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>

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will enable persons whose human rights have been violated or any interested party to report to French courts a company's failure to adopt a plan or to act in accordance with its plan.

The law applies to Egis Rail, SYSTRA and Alstom.

Human Rights Commitments of Companies

Five of the six companies and institutions have joined the **UN Global Compact**. The first two of the Compact's 10 principles are:

Principle 1: Businesses are encouraged to promote and respect the protection of international human rights law.

Principle 2: Businesses are encouraged to ensure that they are not complicit in human rights abuses.

ALSTOM

<http://www.alstom.com/fr/decouvrez-nous/repondre-aux-besoins-du-present-sans-compromettre-le-futur/nos-partenaires-et-parties-prenantes/relations-avec-les-principaux-organismes-/>

EGIS

<http://www.egis.fr/action/rse/egis-renouvelle-son-adhesion-au-pacte-mondial-de-lonu> et

http://www.caissedesdepots.fr/sites/default/files/medias/institutionnel/radd2016_supplement_vdef.pdf (page 53)

RATP

http://rapportannuel2016.ratp.fr/ratp-content/uploads/2017/03/RATP_1702178_FINANCIER_FR.MEL-2.pdf (page 14)

SNCF

http://medias.sncf.com/sncfcom/rse/bilanrse/Rapport_RSE.pdf (page 106)

and the Ethics Charter.

http://medias.sncf.com/sncfcom/pdf/ethique/Charte_Ethique_SNCF.pdf (pages 26, 71...)

Caisse de Dépôts et consignations

http://www.caissedesdepots.fr/fileadmin/sites/ra2016/assets/file/CDC-RADD2016-FR_02.pdf

It does not appear that the company has adhered to the UN Global Compact as such, but it does mention the "promotion of human rights" in the list of its fundamental ethical commitments.

"We believe that a company cannot grow sustainably without feeling responsible for its impact on society, on the planet; without placing the respect of people and ethical practices at the heart of its activity. "

Pierre Verzat, CEO of SYSTRA

<https://www..com/fr/groupe-/responsabilite/article/responsabilite>

3.3 The obligations of the French State

Under international humanitarian law, States have the obligation not to recognize as lawful a situation created by a serious breach of international law, nor to provide aid or assistance to the maintenance of this situation, and must cooperate to put an end to any grave breaches. In addition, according to UN Guiding Principles, states also have the obligation to take all measures needed to ensure respect for human rights by any entity under their jurisdiction. This obligation also has consequences for violations committed beyond national boundaries. Appropriate measures must be taken to prevent said breaches, to investigate them when they occur, to punish perpetrators, and to provide for reparation through specific policies and judicial proceedings.

The United Nations Guiding Principles on Business and Human Rights, which recall states' obligations, explain that the host States of multinational enterprises play an important role especially when the host State is an occupying Power.¹¹² This was confirmed by UN Working Group on Business and Human Rights. In their opinion of 6 June 2014, the Working Group explains the important role of the host States of multinational enterprises operating in an occupation situation where the occupying State might be incapable or reluctant to protect human rights effectively.¹¹³

The specific responsibilities of the state in the case of state-owned enterprises

The UN Guiding Principles, and in particular Principle 4, also address the issue of the relation between states and enterprises owned or controlled by them. According to these principles, "States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies [...] including, where appropriate, by requiring human rights due diligence", and **"the closer a business enterprise is to the State, or the more it relies on statutory authority or taxpayer support, the stronger the State's policy rationale becomes for ensuring that the enterprise respects human rights."**

In its report to the Human Rights Council during its thirty-second session in 2016, the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises stated that it was essential that "States take additional measures regarding public enterprises "to set an example".¹¹⁴

In the case of companies involved with Israeli settlements in the Occupied Palestinian Territories, the report of the High Commissioner for Human Rights of 1 February 2018, on the database of

¹¹² United Nations Guiding Principles on Business and Human Rights, Principle 7, p. 10, reads that: "[...] Because the risk of gross human rights abuses is heightened in conflict affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses [...], including by providing assistance to business enterprises to identify, prevent, assess and address the risks."

¹¹³ UN Human Rights Council, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises*, 4 May 2016, A/HRC/32/45, available at: <http://www.refworld.org/docid/576154e14.html> .

¹¹⁴ [https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/72/PDF/G1609172.pdf](https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/72/PDF/G1609172.pdf?OpenElement) THIS LINK DOES NOT WORK

companies involved with settlements,¹¹⁵ explicitly mentions that: States may be held responsible for abuse by business enterprises where the conduct can be attributed to them (for example, in the case of a State-owned enterprise) or where States fail to take appropriate steps to prevent, investigate, punish and redress abuse.¹¹⁶

In its National Action Plan for the Implementation of the United Nations Guiding Principles on Human Rights and Business, France asserts: "the commitment of the State and of local authorities to promote and respect the UNPD in all of their activities as legislator, employer and producer", and "the State's commitment to compel the companies in which it has a stake to respect human rights and environmental rights".¹¹⁷

IV – Conclusions and recommendations

Through their participation in the construction of the West Jerusalem light-rail network that connects West Jerusalem to Israeli settlements in East Jerusalem, the companies that are the subject of the current report and their shareholders contribute directly to the perpetuation and expansion of Israeli settlement policy, despite international law, despite the illegality of the settlements, despite European Commission guidelines, despite the warnings of the French Government concerning activities in the settlements, and despite the resolutions of the United Nations Human Rights Council calling for the implementation of the United Nations Guiding Principles on Business and Human Rights.

These companies and their state-owned shareholders, SNCF, RATP and CDC, are in violation of the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights, and are an obstacle to the two-state solution, which has been unanimously recognized by international bodies and supported by the French Government.

The French State also bears particularly heavy responsibility in the continuation of this situation because of the three companies it is the owner or major shareholder of all but one. The inaction of the French State is all the more unacceptable because the business conducted by the companies, in the settlements, is in total contradiction with the international commitments and the diplomatic efforts made by the French government towards a two-State solution and the establishment of comprehensive, fair and lasting peace.

The drafters of the current report call upon:

¹¹⁵ Human Rights Council Thirty-seventh session 26 February – 23 March 2018 Agenda items 2 and 7 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Human rights situation in Palestine and other occupied Arab territories, A/HRC/37/39 Advance Edited Version, 26 January 2018, available at http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Documents/A_HRC_37_39_EN.pdf

¹¹⁶ *Ibid.*

¹¹⁷ Plan National de mise en œuvre des Principes directeurs des Nations Unies pour les droits de l'Homme et les entreprises, available at http://www.ohchr.org/Documents/Issues/Business/NationalPlans/NAP_Actions_France_FR.pdf

the three companies-

Egis Rail and its parent-company, Caisse des Dépôts et Consignations;
SYSTRA and its shareholders, SNCF and RATP; and
Alstom and its shareholders:

- to terminate their contracts with the Israeli authorities for the construction of the Jerusalem light-rail line, and
- To make a public commitment to exclude from their operations any project that would contribute to facilitating, directly or indirectly, Israeli settlement of Occupied Palestinian Territory.

To the French State:

- to take all the measures needed to ensure that the three public operators, SNCF, RATP and CDC, terminate the contracts signed in the context of the implementation of the Jerusalem tramway, by the companies they control, SYSTRA and Egis; and
- to take all the measure needed to prevent any participation or investment by French companies that would contribute to Israeli settlement, and to this end strengthen the "recommendations" already made to companies in the June 2014 opinion.¹¹⁸

And more generally, to the French State:

- to respect its international obligations, including those resulting from the breach of peremptory norms of international law by Israel and those relative to the protection, respect and fulfilment of human rights;
- to Implement the United Nations Guiding Principles on Business and Human Rights and ensure that companies under its jurisdiction, and in particular state-owned enterprises, do not undermine the fulfilment of fundamental rights in France and abroad;
- to enforce the law relative to the due diligence of parent-companies and contractors; and
- to support, within the United Nations, the process for the drafting of an international treaty on human rights and transnational corporations and other enterprises.

¹¹⁸ Avis du Ministère de Affaires étrangères <http://www.diplomatie.gouv.fr/fr/conseils-aux-voyageurs/conseils-par-pays/israel-territoires-palestiniens/>