



Upcoming UK-Israel Free Trade Agreement complicit in West Bank Annexation

Proposal for an explicit territorial clause

AUTHORS:

Andrea Wong
Laura Bramall
Dina Gitlin-Leigh

With acknowledgments to:

Helena Van Roosbroeck, Hugh Lovatt, Charles Shamas and John McHugo

June 2023

THE UK IS AT RISK OF VIOLATING INTERNATIONAL LAW IN THE UPCOMING UK-ISRAEL FTA



The upcoming UK-Israel Free Trade Agreement (FTA) will confirm a preferential trading relationship between Israel and the UK. [The UK Government's approach to the FTA](#) clearly specifies that the Agreement will apply to all four nations of the UK and its Overseas Territories. Yet there is no clause defining Israel's territory for the purposes of the FTA.

This is not an oversight on Israel's part. Israel has stated that, unless otherwise agreed, it will include its settlements in the Occupied Palestinian Territory (OPT) as part of Israel when interpreting international trade agreements. These settlements are illegal under international law.

This is a watershed moment in UK politics. Prompt action is necessary to ensure that the FTA includes a clear **territorial applicability clause** before it comes before Parliament for approval.

HOW ISRAEL IS VIOLATING INTERNATIONAL LAW

The international legal obligations of occupying powers are outlined in the Hague Regulations of 1907 and the 1949 Fourth Geneva Convention. These require occupying forces to protect the well-being of the occupied population, prohibit the occupying power from transferring its own civilians into the occupied territory, and to hold the resources of the occupied territory on trust for the benefit of the indigenous population of the occupied territory.

Since 1967, Israel has sanctioned settlements which violate these obligations on more than two million dunams* of Palestinian land in the West Bank. The UN Security Council has established that the settlements have 'no legal validity'.

* 1 dunam = 0.25 acres

THE UK'S INTERNATIONAL LAW COMMITMENTS

The UK Government has confirmed the illegality of Israeli settlements under international law, stating that the settlements are illegal under international law, that they constitute an obstacle to peace and that they threaten a two-state solution to the Israeli-Palestinian conflict. [The UK's duty to distinguish the settlements from Israel's pre-1967 borders \(under UNSC Resolution 2334\) extends to acts that could merely imply recognition.](#)

If the FTA does not contain a clause that explicitly defines Israel's territory by the pre-1967 border, the UK is implicitly consenting to the inclusion of the settlements as part of Israel for the purposes of the FTA. The UK would therefore be in breach of its duty not to recognise the settlements as part of Israel.

ISSUES UNDER THE EU-ISRAEL ASSOCIATION AGREEMENT

Before exiting the EU, the UK's trading relationship with Israel was through the EU-Israel Association Agreement. The absence of a clear territorial clause in this agreement has allowed Israel to include the settlements in its own definition of Israeli territory. Although the EU has not recognised Israel's sovereignty over the territories, Israel is able to export settlement products under the Agreement.

To prevent settlement products benefitting from the Agreement, the EU aims to make it easier to detect and refuse preferences to products based on postal codes provided on products' proofs of origin. But it is prohibitively expensive for customs authorities to conduct checks on more than a 'spot check' basis. Israel is able to continue exporting settlement products as if they originate in Israel, shifting the burdens of detection and enforcement onto EU and Member States' customs authorities and importers. No other trading partner has ever been permitted to do this.

When signing the agreement in 1995, the EU did not foresee that its ambiguous drafting would leave the EU with no legal remedy in response to Israel's insistence on its alleged right to apply the agreement to the settlements. Today the UK is under no such illusions: Israel affirmed its position by issuing an official notification in 1998 that it would, unless there are provisions to the contrary, include the settlements as part of 'Israel' for the purposes of international agreements.

In 2012, the UK, as part of the EU Council, resolved to require all future agreements with Israel to 'unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967'.

This is a crucial opportunity. Having left the EU, the UK can now rectify this mistake, and uphold its international legal obligations, by including a clear territorial clause in the upcoming FTA.

PROPOSAL FOR AN EXPLICIT TERRITORIAL APPLICABILITY CLAUSE - A REALISTIC OBJECTIVE

A territorial applicability clause would clarify and limit the geographical scope of the FTA's application to Israel. The clause would confirm Israel's unequivocal agreement not to apply the new FTA to the territories. If Israel then breached this

term, it could be held accountable under the dispute settlement procedures. See the Annex for the precise wording of two such territorial applicability clauses that can be replicated in the FTA. The wording of the Horizon Agreement is an example of phrasing which the Balfour Project endorses, and we explicitly urge the Government to use the Horizon Agreement phraseology as a precedent in the upcoming FTA agreement

The inclusion of a territorial applicability clause is a realistic objective. Israel has recently concluded bilateral agreements that contain clauses that explicitly exclude the OPT. See the Annex for the precise wording of two such territorial applicability clauses that can be replicated in the FTA.

Failing to include a territorial applicability clause would have three major implications for the UK:

- > **The UK would breach its international legal obligations** by acquiescing in Israel's unlawful imposition of its sovereign treaty-making, political and legislative powers onto the OPT and the Palestinian people, effectively recognising it as lawful and cooperating with it. By compromising the Palestinian people's right to self-determination, the UK undermines its long-held commitment to peace in the region to be achieved through a two-state solution. The inclusion of an unambiguous territorial applicability clause in the FTA is consistent with the UK's policy on Israel-Palestine, and is an opportunity for the UK to strengthen its reputation as a guardian of international law.
- > **The UK would be bound to accept, and be denied any recourse against, Israel's application of the new FTA to the OPT.** By acquiescing in Israel's application of the FTA to the OPT, the UK would forfeit its right to suspend the treaty when resulting harms arise. These would include the UK's inability to adequately comply with, and implement, its own trade, customs and consumer protection legislation.
- > **The FTA would exempt Israel from any liability for declaring settlement goods as Israeli produce.** The responsibility to ensure that goods from the OPT are not imported under the FTA would shift onto the UK. The extra administrative burdens of implementing UK legislation in a manner compliant with international law will continue to fall on the UK's customs authorities and businesses (i.e. continuation of the onerous 'Technical Arrangement').

The inclusion of an explicit territorial applicability clause in the UK-Israel FTA would confirm the UK's commitment to its duty of non-recognition of Israel sovereignty over the territories. Including a clear territorial applicability clause would also show that the UK still aims to uphold international law. Either of the examples given in the Annex could easily be adapted for Israel's FTA with the UK.

ANNEX

EU-ISRAEL HORIZON AGREEMENT: TERRITORIAL CLAUSE (MARCH 2022)

Article 9(8)

In accordance with EU policy, **this agreement shall not apply to the geographic areas that came under the administration of the State of Israel after 5 June 1967**. This position should not be construed as prejudicing Israel's principled position on this matter. Accordingly, the Parties agree that the application of this agreement is without prejudice to the status of those areas.

GERMANY-ISRAEL AGREEMENT ON THE ESTABLISHMENT OF A FOUNDATION FOR A SCIENTIFIC RESEARCH AND DEVELOPMENT: TERRITORIAL CLAUSE

Article 2

The objective of the Foundation shall be to promote and fund civil research and development projects of interest to both countries in basic and applied research. Particular attention shall be paid to topics specific to the geographic location of Israel, such as work in biomedical, plant and water research. The projects shall be carried out by Germany and Israeli partners. Projects sponsored by the Foundation in Israel **shall be conducted only within the geographic areas under the jurisdiction of the State of Israel prior to June 5, 1967**.

URGENT ACTION NEEDED NOW