

November 2014



REPORT ON THE INVOLVEMENT OF THE EUROPEAN UNION IN ILLEGAL BUILDING



European Unilateralism – The Facts on the Ground - Regavim

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Regavim is a research backed legal advocacy organization focused on land ownership issues whose mission is to ensure responsible, legal & accountable use of Israel's state lands and the return of the rule of law to all areas and aspects of the land and its preservation

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Map data: Regavim GIS and extractions from OCHA (publicly available).



Introduction

Over many years, the Palestinian Authority (PA) has benefitted from the virtually unqualified support of the European Union. Unqualified in its automatic siding with the PA and against Israel on diplomatic issues, and unqualified in its financial support and regular donations amounting to hundreds of millions of Euros annually.

In recent years, European support has moved from passive diplomatic and financial assistance to a situation of active cooperation in illegal building which the Palestinian Authority has been advancing unilaterally since 2009, as part of its strategic plan to create a Palestinian state de facto, while avoiding the need for negotiations with Israel.

One of the central goals of this plan is the development of building initiatives specifically in Area C, (which is defined by the Oslo Accords as under full Israeli control) with the intent of chipping away at this area bit by bit, and thus creating a strip of territory between the area of Hebron, Samaria, and Jericho. This strip would endanger the security of the State of Israel and its ability to defend itself within defensible borders.

The document in your hands is the product of meticulous research, documentation and mapping of hundreds of residential structures which the European Union has built in a series of outposts in the Adumim area—the eastern corridor leading to Jerusalem from the Jordan Valley. In addition, it demonstrates clearly the purposeful change in the conduct of the European Union, as appears in their official documents, and analyses the significance of these illegal initiatives in the area. Between the lines, the hypocrisy of the European Union is exposed, blaming Israel for taking unilateral steps, whilst simultaneously being directly, deeply and heavily involved in illegal and unilateral activity to the benefit of the Palestinian Authority.

Background: The Fayyad Plan and the “Creeping Annexation”

The intense involvement of the European Union (EU) and European states in the Israeli-Arab conflict, as well as their almost automatic siding with the Palestinian-Arab position, is nothing new or unfamiliar. However, in recent years, a real revolution has been taking place beneath the surface. From expressing political views and legitimate activity within the diplomatic sphere, the countries of the European Union have crossed the rubicon, in the direction of taking a position on the practical level and supporting unilateral moves by the Palestinian Authority, including gross violations of international law and violations of the Oslo Accords.

As part of the Interim Agreements under the Oslo Accords, the Judea and Samaria region was divided into three categories: Area A, under full (security and civil) control of the Palestinian Authority, Area B under joint Palestinian and Israeli responsibility, and Area C, under the full control of the State of Israel.

In 2009, the then Prime Minister of the Palestinian Authority, Salam Fayyad, conceived a systematic plan to unilaterally promote the establishment of a Palestinian state, and thereby to eliminate the need to negotiate with Israel.

This is not a theoretical plan ‘on paper’, but rather an assemblage of physical infrastructure projects, with a clear rationale and organizing logic, that was meant to form the physical basis for the Palestinian state. The plan includes 3 major pillars – 1. Structural reform of the central and local government administration. 2. Restoring and re-establishing the security system (Palestinian Police, courts, prisons, etc.). 3. Building the economic and physical infrastructure in all areas, (banks, public and educational facilities, electricity, water, sewage and roads etc.) whilst focusing on Area C. The goal of the Fayyad Plan is, therefore, to establish facts on the ground unilaterally, without the involvement or even the consent of Israel. The various projects are being funded by generous donations from the Gulf States, Europe and the USA.

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Quite clearly and openly, the Authority has been working to set up this infrastructure specifically in Area C, which is under full Israeli control. The intention of the Palestinian Authority is to slowly “annex” these areas and bring them under its control, using them to create corridors and contiguous territory, while having the opposite effect on Israel, establishing irrevocable facts on the ground,

The creeping annexation approach is being carried out, in parallel, along two tracks: the first is actually in coordination with the Israeli authorities, through requests by the Palestinian Authority to the Israeli authorities to approve the establishment of projects with special significance (generally, these would be projects whose international funding is dependent on formal Israeli approval). The second, more widespread track, is being implemented by establishing facts on the ground – through extensive illegal construction and development activity, without coordination or approval from the Israeli authorities as required by the Oslo Accords which afforded the establishment of the PA itself. In this second track, one can clearly see a systematic, guiding hand, which includes attempts to create contiguous stretches of territory whose goal is the isolation of contiguous Israeli areas.

An overview and details of the construction activity being carried out by the Palestinian Authority in Area C, using the “Salami method,” can be found in the report, *The Quiet Annexation*, issued by Regavim.¹

¹ *The Quiet Annexation*, published by the Regavim organization, December 2013:
<http://www.regavim.org.il/wp-content/uploads/2014/04/Salamimethod.pdf>

From Diplomatic Support to Breaking the Law

Over the years support from the EU for the various projects promoted unilaterally by the Palestinian Authority in Area C, has grown. This support is reflected in extensive economic aid and in the EU's pressuring of Israel in this regard.

Every year, the European Union transfers millions of Euro to the Palestinian Authority – both indirectly, through the various United Nations institutions, and via direct, earmarked contributions for specific purposes.²

In September 2012, the European Union announced the allocation of **100 million euros** toward the advancement of projects for the Arab population across Area C, which is under full Israeli control (--- in addition to the 100 million euros transferred in 2011).

The first paragraph in the document detailing the allocation of the funds³ indicates an earmarked transfer of **7 million euros** (in 2012 alone) for “**development of land and basic infrastructures in Area C**,” with emphasis on the fact that “this activity is intended to support the Palestinian presence there and to promote the social and economic development of Area C, which is an essential condition for the ‘Two-State Solution.’”

In the October 2012 evaluations document by the European Union,⁴ following “implementation of a humanitarian program in the occupied Palestinian territories,” these expressions of support are even more explicit:

“In the National Development Plan, 2011-2013, the Palestinian Authority is focusing on construction of the state’s institutions. It recognizes, however, the importance of aid (including humanitarian aid), particularly in areas in which it does not have authority or influence, that is, the Gaza Strip and Area C, including the seam areas and East Jerusalem.”

² European Union aid to the Palestinian Authority, 2007-2013:
http://ec.europa.eu/europeaid/countries/palestine_en?language=en

³ http://europa.eu/rapid/press-release_IP-12-964_en.htm

⁴ <http://ec.europa.eu/echo/files/funding/decisions/2013/HIPs/oPt.pdf>

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“The Palestinian Authority is actively promoting planning and construction in Area C, **which, if successful, will pave the way for development and expansion of the Palestinian Authority’s control over Area C.** This planning and construction is supposed to assist in protecting buildings in existing towns.”

An up to date edition of the evaluation document⁵ (September 2014) indicates, in black on white, that the position of the European Union has shifted from mere support to active involvement in the takeover by the Palestinian Authority of Area C:

“The Palestinian Authority is to be encouraged to further significantly expand the provision of aid to its people in Area C, and in parallel continue its undertakings to do so.”

“The European Union and Palestinian Authority are actively promoting planning and construction in Area C, which, if successful, will pave the way for development and expansion of the Palestinian Authority’s control over Area C. This planning and construction is supposed to assist in protecting buildings in existing towns.”

The September 2014 document indicates an additional – earmarked – funding allocation (apart from the regular annual aid), in the sum of 11 million euros, intended for establishing outposts (“shepherds’ communities”) in Area C.

What is hiding behind this bland diplomatic formulation is the active involvement by the European Union in illegal building projects. This conduct is also in clear contravention of the Oslo Accords (which was fully supported and continues to be supported by the EU), which clearly specified that Area C would be under the full responsibility of the State of Israel.

⁵ http://ec.europa.eu/echo/files/funding/decisions/2014/HIPs/palestine_en.pdf

A Macro View of Illegal Activities of Foreign Entities in Judea and Samaria

The involvement of the EU in Judea and Samaria is accomplished not only directly, but also indirectly, by means of many international organizations which are supported by the EU and European states.

Over recent years, hundreds of international organizations have been operating across Judea and Samaria. These organizations may be divided into different groups, among them relief agencies connected with organizations such as the Red Cross (ICRC) and the various arms of the United Nations (UN) such as OCHAOPT, entities associated with foreign diplomatic missions, recognized non-government organizations (NGOs), and non-recognized organizations. Too name a few: UAWC, B'Tselem, NRC, MDC, ACRI, MDM France, OHCHR, UNFPA, TKKF, CARE International, IRC, ACTED, UNRWA, HaMoked, ADWAR, ACF, SEAPPI/NEAPPI, Sawa, SC , BADIL, ACT/Diakonia, Sweden, PU-AMI, Yesh Din, UNICEF

In general, Israel has chosen to avoid conflict with foreign entities - even when these harm the State of Israel, either directly or indirectly. A document produced by the International Organizations Branch of the Civil Administration in 2012, surveying the activities of foreign entities operating in Judea and Samaria, indicates that the Israeli attitude toward the activities of these foreign groups ranges from apathy to suspicion:

"In many instances, the activities of the international organizations "save" the State of Israel a great deal of resources, through their ongoing activities which, in effect, carry out our obligations toward the Palestinian population... Should these international organizations leave the region, the State of Israel will be forced to undertake full responsibility, and fill the gap that would be created, something that would entail the allocation of significant resources and manpower... This reality, which allows the orderly operation of the international organizations, is of vital interest to the State of Israel. Any friction between the international organizations and the IDF creates problems in terms of Israel's image, and imposes difficulties on its PR and information efforts. In addition, such incidents bring the Palestinian issue back onto the world stage. Hence, it is of great

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importance to allow the activities of the various international organizations, in full coordination with us, and without interference.”⁶

At first glance, the activity of these foreign entities may be perceived as a positive and harmless element, filling a humanitarian role and even fitting in with the interests of the State of Israel, by assisting it in meeting its international obligations toward the Palestinian population in Judea and Samaria.

However, a more in-depth examination of the phenomenon shows that foreign agencies, among them the EU, in identifying fully with the plans of the Palestinian Authority, cynically exploit their diplomatic immunity and the State of Israel’s unwillingness to clash diplomatically with the European states, to conduct themselves as they see fit, while clearly damaging Israeli interests and trampling on the law.

It is also necessary to mention the conclusions of the Levy Committee report, which analyzed the legal status of Judea and Samara, and concluded that according to international law, Judea and Samaria cannot be defined as “occupied territory,” since they were not previously under the sovereignty of any state and thus the State of Israel holds them lawfully and as of right and must be obeyed as it is sovereign in the area.

Even according to the European Union’s approach, that views Judea and Samaria as “occupied territory,” International Law clearly states that the occupying power has lawful administrative authority within the occupied areas, while preserving, as far as possible, the laws in force in those areas.

“The authority of the legitimate power having actually passed into the hands of the occupant, the latter shall take all steps in his power to re-establish and insure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”⁷

According to international law, all entities in the area are obligated to obey the laws in force there. Violation of that law is clearly a violation of international law. Thus, violation of the planning and construction laws in Judea and Samaria by the European Union is a gross violation of international law.

⁶ *The International Organizations Operating in Judea and Samaria*, October 2012 edition, published by the Civil Administration, International Organizations and Projects Branch.

⁷ Hague Convention, 1907, and its Regulations, Article 43.

Illegal Construction in the Adumim District

The flagship joint venture of the Palestinian Authority and European Union is, without a doubt, the establishment of a network of outposts in the Adumim district. It is also not by chance. This region is of essential strategic importance to the State of Israel. First and most significantly, this area will determine whether the PA is given the opportunity to cut off Jerusalem from the East toward Maaleh Adumim and from there eastward to the Jordan Valley (Israel's eastern border).

The Tel Aviv-Jerusalem-Dead Sea road (Highway 1), which passes through this district, is one of the State of Israel's key transverse arteries. In an emergency, this highway is a vital artery for the passage of vehicles and equipment to the State of Israel's eastern border.

Allowing the PA to take over this area, with the help of the EU, gives them control over a very wide north/south territory – this district connects the Ramallah and Samaria regions with the Jericho district, Bethlehem and the Hebron Hills. PA control of the area would create a real disconnect between the center of the State of Israel and the Jordan Valley, which for Israel constitutes a natural and effective security barrier for threats from the East.

The PA has not been accidentally applying massive international pressure against Israeli construction in the region. From Prime Minister Rabin till today each head of State understood the importance of the area. However, due to this international pressure, over the past twenty years, the various plans for the development of Maaleh Adumim and Mevasseret Adumin (E1) have been delayed, time and time again.

However, whereas Israel is prevented from exercising its sovereignty in the area, the PA with the help of the EU are establishing facts on the ground, through the systematic construction of hundreds of illegal buildings, with the clear intention of blocking Jerusalem's eastern corridor, thus interfering directly with Israeli security on the ground.

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The traditional population of the area was made up of wandering nomads who grazed sheep in accordance with the season, living in tents set up for short periods and then moving on to more hospitable areas when the grazing season ended. Over the last decade, due to the PA's sponsorship of water all year round, the temporary tents have now been replaced by pre-fabricated structures recently funded by the EU. Additional pre-fabricated structures have been built illegally within the jurisdiction of the Israeli communities in the area and on state land adjacent to the Jerusalem-Dead Sea – despite a clear ban on building near major highways.

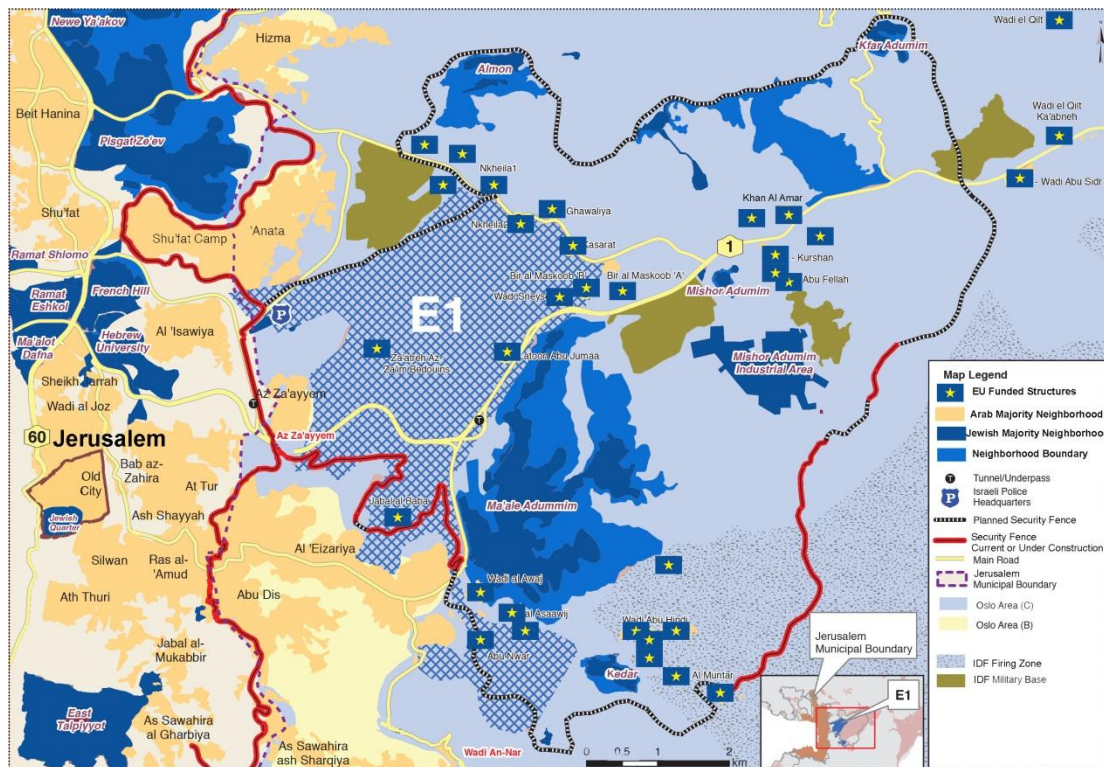


Figure 1: Areas of Illegal construction funded by the EU⁸

⁸ The basis of this map was publicly available on the website of the EU-funded anti-Israel UN Office for the Coordination of Humanitarian Affairs (OCHA-opt). We have removed items not relevant to this paper and added those that were. The original can be found here: http://www.ochaopt.org/documents/ocha_opt_map_of_threat_of_displacement_jerusalem_periphery_october_2011_english.pdf

Reacting to this illegal behavior, the Civil Administration issued demolition orders against this construction. These orders were rarely enforced. In recent years, several petitions⁹ were filed by Regavim to the High Court requesting the Court order the law enforcement agencies to fulfill the demolition orders.

Defending the illegal takeover of state land on the other hand, were organizations assisting the offenders¹⁰ free of charge - generously funded by the EU¹¹, demanding that the court prohibit the implementation of the demolition orders.

An example of EU money available for this “service” can be found on the Norwegian Refugee Council (NRC) website which shows ~\$8.3m (56m NOK) for counseling and legal assistance, with the major donor being the EU.¹²

These petitions were rejected by the High Court after the state made clear in its response to the various petitions that it is in the process of creating a development plan for the population in the area. This plan has recently been published and calls for the establishment of a new town called Nueima north of Jericho. In the State’s development plan Israel will allocate state land for the development of the town, provide plots, infrastructure and financing free of charge.



NRC website, donor info.

"The respondents acted based on the decision of the Minister of Defense to find an alternative site for the school which was the subject of the petition, now there exists the possibility of deploying the school complex to two alternative sites in the area near Jericho, where there is state land in Area C - Nueima, north of Jericho, or Oronot Hachasmonaim west of the city. "¹³

⁹ 7264/09 Kfar Adumim and others against Minister of Defence (MOD) ; and 5665/11 Kfar Adumim and others against MOD & Civil administration officials.

¹⁰ 6288/09 Appeal against the Head of the Civil Administration (CA): Later 8615/11 Appeal against the CA .

¹¹ <http://www.unocha.org/cap/appeals/strategic-response-plan-occupied-palestinian-territory-2014>

¹² <http://www.nrc.no/?aid=9147817>

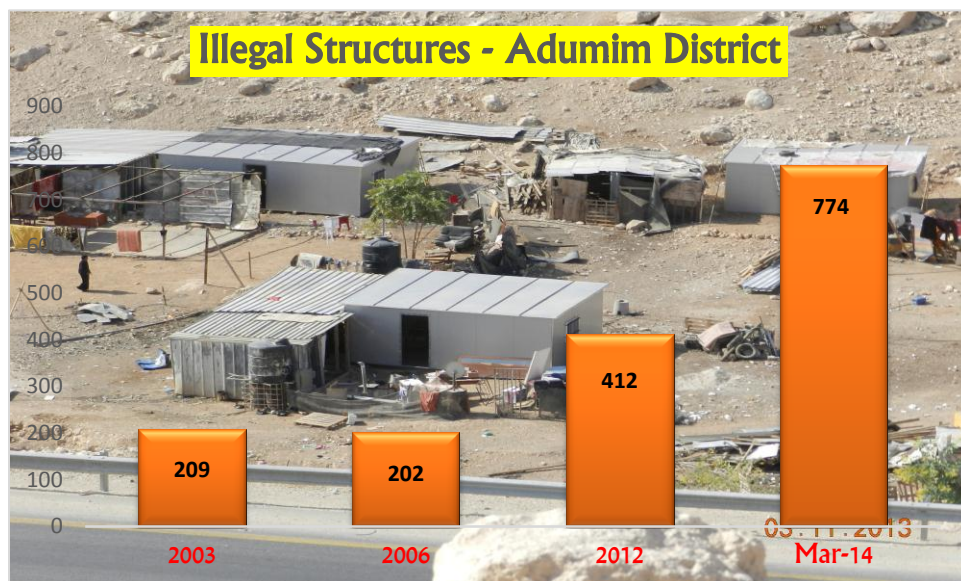
¹³ States response to lawsuit 5665/11 Regavim/Kfar Adumim vs. MOD. In April 2014 in response to a 3rd lawsuit 7969/13 the State announced that the development plan of Nueima Heights was ready to be put in place.

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As soon as it was made clear that the Israeli plan seeks to find a systemic and generous solution for the local population, the Palestinian Authority - with the generous assistance of the European Union – initiated a race to build permanent illegal housing in the area, establishing additional facts on the ground whose goal was to frustrate at any price , the Nueima development plan.

Ongoing monitoring carried out by Regavim and the Committee for the Protection of the Adumim Bloc Lands, points to a sharp rise in illegal construction in the Adumim district in recent years.

This increase is shown in the following diagram:



From 2003 to 2006, the building situation remained static, showing even a slight fall, due to enforcement activities by the Civil Administration. However, between 2006 and 2012, the number of illegal structures in the district doubled! In a series of aerial photos taken in 2012 by the Committee, 412 illegal structures in the district could be counted.

During 2014, further photographic missions were carried out, in which 774 illegal residential structures were now visible! In other words: within a period of only two years, the number of structures has again doubled – and 2014 is not yet over.

This number does not include the approximately two hundred additional buildings constructed illegally on State lands in the E1 region, or on lands located within Maaleh Adumim's municipal boundaries.

A survey carried out by Regavim indicates that, between 2012 and 2014, in the Adumim district alone, the European Union directly funded the construction of 168 illegal residential structures and an additional 222 service structures (separate from residences). As such, most of the structures set up in this period, in contravention of the law, are the result of the European Union's activities.



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The Adumim district is only one example of the involvement of the EU in the unilateral and illegal steps of the PA. This strategy is used in throughout Area C in Judea, Samaria and the Jordan Valley to establish new facts on the ground and the EU plays a major part.

Examples of such activities include the paving of illegal roads and assistance in illegally occupying and carrying out illegal construction at historic sites like Khan al-Lubban¹⁴.



¹⁴Khan al-Lubban, a Caravansarai on the Damascus-Jerusalem Road, Levant 33, (2001), pp. 7-20. Dr Mahmoud K. Hawari

The Mask of European Hypocrisy – Acting unilaterally and threatening Israel

While unilateral measures of the PA are encouraged, promoted and funded by the European Union against Israeli law, the Oslo accords etc., its leaders criticize the State of Israel, accusing it of taking unilateral steps. On October 22nd 2014 the "Ha'aretz" newspaper published a document of the European Union, where the EU threatens sanctions against Israel, should Israel promote programs that constitute "measures to prevent the two-state solution and the establishment of a Palestinian state with territorial contiguity".

The document suggests five 'red lines' that EU states Israel should not cross, including construction in Givat Hamatos and Har Homa in Jerusalem, building in the E1 area between Ma'ale Adumim and Jerusalem, changes to the status quo on the Temple Mount, and a EU imposed requirement to cancel the Israeli plan to establish the city of Nueima close to Jericho, which is supposed to absorb 12,500 Bedouins currently scattered in dozens of clusters of illegal structures in the entire corridor east of Jerusalem.

"The EU is extremely concerned about the plans recently approved by the Israeli government aimed at relocate up to 12,500 Bedouin without their consent in a new city in the Jordan Valley, expelling them from lands in the West Bank, including the E1 area. The EU strongly urges Israel to put these plans on hold and search for other solutions together with the concerned populations and the Palestinian Authority"¹⁵

Coupled with the above is the fact that the EU shamelessly declares for - humanitarian purposes – that "The European Union and the PA are now actively participating in the planning and zoning of Area C which, if successful, could pave the way for development and more authority of the PA over Area C."¹⁶

The EU itself is involved in brazen and defiant illegal activities whose entire purpose is to create facts on the ground, unilaterally, in favor of the Palestinian Authority. On the other hand, in a show of unprecedented hypocrisy, the EU warns Israel against what it calls unilateral steps in and around Israel's Capital.

¹⁵ EU seeks talks with Israel over 'red lines' in West Bank. Haaretz Newspaper 22nd October 2014

¹⁶ EU Humanitarian Implementation Plan (HIP) Palestine - 15/09/2014 Version 4

Summary and Recommendations

The activities of the European Union in Judea and Samaria have long since crossed the line that distinguishes between humanitarian aid and subversive, illegal activity.

There is no escaping the need for a drastic change in Israel's approach toward the illegitimate activities being carried out by the European Union – beginning with a change in perception and internalizing a realization of the enormous damage being caused as a result, continuing with increased supervision and monitoring of such activities and up to the implementation of a series of steps in the political, diplomatic, legal and public relation/informational spheres.

This Israeli activity needs to parallel an effective educational campaign with Friends of Israel in Europe to ensure they are aware of the illegal actions taking place using EU funding.

Among the steps that the State of Israel could take:

- Further documenting the illegal construction activity being funded and supported by the EU and the collection of incriminating evidence against it.
- Action on the diplomatic level, vis-a-vis the European Union, with the demand for an immediate cessation of this harmful, illegitimate activity.
- Firm action towards the equal implementation of the law including the demolition of any structures that are illegal and/or not coordinated with Israel, so as to send a clear message absolutely rejecting this pattern of unlawful, unilateral behavior.
- The issuance of warnings or the implementation of enforcement moves against those involved, directly or indirectly, in illegal activity.
- Should the EU attempt or threaten to apply sanctions on Israel, Israel should stop all coordination and ban all EU activity in Area C.



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