

Testimony given to the European Parliament hearing on human rights and trade in the context of non-self-governing and occupied territories

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Introductory Remarks

Honourable Members,

Today we are meeting against the tragic backdrop of Russia's illegal war of aggression against Ukraine. The conflict has once again highlighted the importance, and fragility, of today's rules-based order.

The steps taken by the EU against the self-declared republics of Donetsk and Luhansk – both of which are under de facto Russian control – serve as important examples of what can, and must, be done in opposition to such illegal situations.

EU measures in relation to these territories include banning the import of products, restricting trade and investments, and prohibiting the supply of tourism services. The EU took similar measures in response to Russia's illegal annexation of Crimea in 2014.

In defending the territorial integrity, sovereignty and independence of Ukraine, the EU is drawing on a modern legal order that has outlawed wars of aggression and done away with the old-world order -- where might was once right.

At the heart of this modern legal order is the prohibition on the forcible acquisition of territory through armed conquest and the duty to not recognise another state's sovereignty over a foreign territory to which it does not hold valid claim.

This duty of non-recognition has played an important role in reducing the frequency of inter-state conflict. It has also made states, especially smaller states, more secure in their borders.

Just as crucially, these laws – which have been developed over a hundred years – prevent a conqueror from integrating an occupied territory into its trade relations – and provide safeguards to ensure the inalienable rights of the occupied population to their territory.

These international laws are an integral part of the EU's own legal order and trade rules. They are threatened today by Russia's actions. But defending the international legal order must not stop in Ukraine.

There are about a dozen occupied and annexed territories over which the EU does not recognise foreign claims of sovereignty. The EU's trade relations have reflected this duty of non-recognition in many cases, such as with regards to Transnistria, northern Cyprus, Crimea, Donetsk and Luhansk – as previously mentioned – as well as the Syrian Golan Heights, Palestine, and Western Sahara.

However, enforcement of this legal duty has varied.

The EU regulates the trade of blood diamonds from conflict zones. It bans the import of seal skins, as well as those goods produced using modern forms of slavery and child labour. But it has so far shied

away from an over-arching trade policy relating to occupied territories. The result is an ad-hoc and confusing approach that is often held hostage to political considerations.

In the case of Ukraine, the EU is threatening to sanction just about everything except Putin's kitchen sink. In the case of Palestine, the EU has slowly adopted a policy of differentiation to exclude Israeli settlements from the totality of its bilateral agreements, although much work remains to be done, including in areas such as data protection. In the case of Western Sahara, the European Commission is deliberately steering a course at odds with international legal positions.

The cases of Palestine and Western Sahara are particularly worthy of today's discussion – given the extent to which these territories -- and the foreign states that control them -- are deeply integrated in the EU's trading relations; and given the extent to which these relations fail to comply with EU rules and international law.

This lack of policy coherence has not only compromised the EU's own legal order and the integrity of its internal market. It also undermines the EU's international credibility, exposing it to accusations of double standards, and making it vulnerable to external arm twisting. This undermines the EU's ability to be taken seriously -- and secure its core interests -- in an increasingly geopolitical world. EU policymakers must appreciate the legal and political good that comes with a more coherent and rigorous trade policy towards occupied territories – which is applied equally to foes, friends, and the EU itself.

I would like to finish by highlighting three areas which the European Parliament could further explore:

1. Regulating trade with occupied territories. This should include banning products and financial services that are implicated in structural violations of human rights and international law, and which benefit from the unlawful extension of a foreign state's domestic legal order -- in essence de facto or de jure annexation.

To be clear, as the European Commission has itself confirmed, this is not a sanction but a trade measure.

In this regard, I would urge honourable members to support the European Citizens' Initiative calling on the Commission to propose legislation to ban trade with illegal settlements in all occupied territories. Stopsettlements.org

2. Publishing EU level business advisories on the legal, financial and reputational risks associated with business activities in occupied or annexed territories. This would build on the precedent set by some 15 member states which have published national level advisories on the risks of doing business with Israel's illegal settlements.
3. Standing up for EU businesses that choose not to operate in occupied territories or implicate themselves in international law violations. And -- as part of the EU's new anti-coercion instrument -- legislating to protect these EU businesses from restrictive trade practices and boycotts fostered or imposed against them by foreign countries.