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The Palestinian Stop the Wall Campaign



The European Coordination of
Committees and Associations for
Palestine (ECCP)

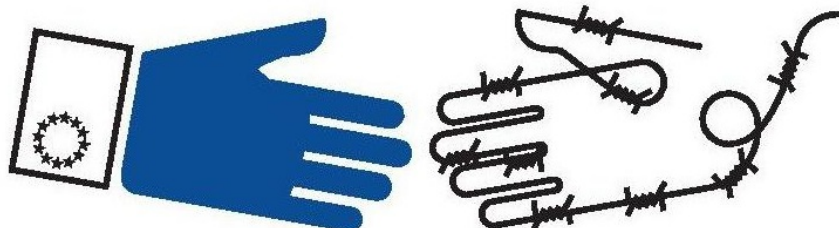


The Belgian Stop Law Train Coalition

The LAW TRAIN project: concerns go unaddressed

*Recommendations for the ITRE Committee
regarding the participation of entities of the
Israeli military, police and homeland security
sector in Horizon2020*

STOP EU FUNDING TO ISRAELI MILITARY COMPANIES



1. Summary and recommendations

Considering the current situation in Palestine and of global diplomacy, it is ever more urgent for the EU to ensure the basics: **Respect for international law and human rights** and **fulfilment of the international duty not to aid and assist in grave breaches of international law**.

Palestinian and European civil society, including the European Coordination of Committees for Palestine (ECCP), the Portuguese Coalition against the Horizon2020 project LAW TRAIN, the Belgium Coalition against LAW TRAIN¹, and MEPs have raised since years questions regarding the **implications of the participation of the Israeli military, police and homeland security sector in EU funding programs (FP7, Horizon2020)**:

- Such EU funding, which provides know-how and technology for Israeli military, police and homeland security and the implementation of related policies and actions, **inherently provides aid and assistance to Israeli occupation and military aggression** and with this war crimes and grave violations of human rights and international law by Israel.
- Funding for these actors, directly involved in grave violations of international law and human rights, **legitimises Israeli military aggression, repression and related human rights violations**.

In particular, the **Horizon2020 project LAW TRAIN**, that develops technology to unify methodology for police questioning, has encountered opposition. It is coordinated from Israel and includes as partners the Israeli Ministry of Public Security/Israeli National Police, the Federal Public Service of Justice of Belgium and the Ministry of Interior of Spain/Guardia Civil. **The Ministry of Justice of Portugal/Judiciary Police has already withdrawn from the project after pressure from civil society**.

Research by civil society has shown that current and past EU funded projects:

- Have supported the development of Israeli drones technology²
- Have supported the further development of technology used to build/maintain the illegal Wall, enforce the siege on Gaza, during Israeli military aggressions including war crimes and possibly crimes against humanity.³
- Dual use is inevitable: As Isaac Ben-Israel, Chairman of the Israel Space Agency, puts it: *"because we are a small country, if you build a small-satellite production line, say at IAI, it will be used for military and for commercial."*⁴

This **contradicts the EU policies** against Israel's illegal settlement project, the Wall, the siege on Gaza and concerns over Israeli military aggressions.

Excluding Israeli entities from the military, police and homeland security sector from funding is a necessity:

- To **comply with the international duty** (1) to take effective measures to halt grave breaches of international law (2) not to aid and assist grave breaches of international law nor maintain the situation created by them.⁵
- Such funding violates the growing call for a military embargo on Israel.
- Considering that **the EU has no means to stop Israeli companies from misusing** the technology and know-how developed through their R&D funding, this is the only way to comply with EU Horizon2020 ethics regulations:
 - **Not to fund research funding for dual use**
 - **To avoid the risk of misuse or malevolent use of research results for unethical purposes**
 - **To avoid Mission/Function Creep** of technology/information/data beyond the project harmful for fundamental ethical values or civil rights.

An analysis of the responses received so far from the European Commission (EC) to civil society and MEPs shows that:

- The **EC shields the projects from scrutiny** to the point of offering information that is prone to mislead MEPs.
- The EC's position that there is no regulatory framework to exclude Israeli entities from the military, police and homeland security sector is valid only as long as it (1) undermines the clause against dual use projects (2) disregards its guidelines on misuse/malevolent use (3) ignores the impossibility of control of entities from third states, especially when they are systematically violating international law and human rights.
- The **EC does not verify reasonable concerns** of non-compliance with EU regulations and lacks impartiality in its approach to review processes.

1 For an overview of the civil society campaigning actions, see: <http://stopthewall.org/2016/12/21/2016-round-pressure-rises-against-eu-funding-israels-military-and-security-complex>, <http://stopthewall.org/2016/09/29/belgium-students-against-law-train-professors-don-t-wipe-your-feet-palestinian-human-right>, <http://www.bacbi.be/bacbi-lawtrain.htm>, <http://www.eccpalestine.org/eccp-holds-cross-party-public-hearing-held-in-the-european-parliament-israels-participation-in-horizon-2020-aiding-and-assisting-israeli-violations-of-international-law/>

2 For example: Israeli Aerospace Industries (IAI) participation in: Open Architecture for UAV-based Surveillance System, FP7: FP7-Security, Completed: 31/5/13 See: <http://www.eccpalestine.org/wp-content/uploads/2016/05/Projectsunderscrutiny-3-1.pdf>

3 For example: FP7 and Horizon2020 projects with the participation of Elbit Systems and IAI detailed here: <http://www.eccpalestine.org/wp-content/uploads/2016/05/Projectsunderscrutiny-3-1.pdf>

4 <http://spacenews.com/qa-with-isaac-ben-israel-chairman-of-the-israel-space-agency/#sthash.7E5fRwmj.dpuf>

5 See, for example, the decision of the International Court of Justice on the legal consequences of Israel's construction of the Wall. <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&case=131&p3=4>

Considering the above, we urge the European Union, and in particular the **ITRE Committee during the 2017 Review Process of Horizon 2020 to, at a minimum, ensure strict application of existing EU regulations and positions as regards to the participation of Israel and non-member states in the EU funding cycles, especially given the lack of oversight** beyond the project:

1. The EU double use, misuse and malevolent use regulations:

- While the Horizon 2020 framework in Article 19, point 2 on ethical principles, clearly states that “*research and innovation activities carried out under Horizon 2020 shall have an exclusive focus on civil applications*”, already in 2014 the EC has published a guide on how to access, among others, Horizon2020 with double use projects⁶. The guide states the many opportunities for funding double use projects under Horizon2020 and offers “*a snapshot of the Horizon 2020 strands that provide the most promising funding opportunities for the development of dual-use technologies, products and services, or for defence stakeholders to develop civilian applications of their knowledge*”. At the same time the EC is working together with European Defense Agency on ensuring synergy.
- While it is problematic that a political position against dual use projects is in such a way undermined, it has to be absolutely ensured that **non-EU member states participating in EU research funding, especially when they have a long track record of human rights violations, cannot participate in any research that produces knowledge or technology that maybe used for non-civilian purposes, misused or produce mission or function creep.**
- **Clear, transparent and effective mechanisms to implement EU rules on dual-use, misuse and malevolent use⁷ and function/mission creep⁸**, especially in cases of third state participation, **need to be ensured.**

2. Considering the lack of oversight on the actors, their compliance with international law and human rights and the possible use of such technology in violations after the end of the project period, **military companies of third states, especially when with a long track record of human rights violations, are to be excluded.**

3. The **current contradiction between EU policy and EU funding has to be solved**: The EU should not continue to fund the actors based in third states that implement or are responsible for actions the EU considers grave violations of international law and human rights.

- In such cases, there is no oversight possible as to whether the actors will use knowledge or technology for malevolent use or misuse them.
- It seems absurd that the EU funds projects against torture in Israel⁹ and, simultaneously, funds those responsible for the torture.

4. The **2013 guidelines need to be reviewed to exclude Israeli national institutions headquartered in the OPT.**

5. The **audits and review processes of the EC show serious flaws** that need to be rectified:

- There needs to be clarity as to which documents are public and which documents aren't. This cannot be an ad hoc decision to shield projects from public scrutiny.
- The reviews need to be independent, impartial, respond to concerns raised and have to allow at least the participation of the ITRE committee members.
- 'Independent' experts cannot be selected and appointed by the project partners or the European Commission but should be appointed by impartial actors.

6 “EU funding for Dual Use - A practical guide to accessing EU funds for European Regional Authorities and SMEs”, by The European Commission Enterprise and Industry, October 2014, Ref.Ares(2015)3866477 - 18/09/2015

7 Misuse/Malevolent use concerns research involving or generating materials, methods or knowledge that could be misused for unethical purposes. The EC states: “*Although anything could ultimately be used for malevolent purposes, research in this category is that which provides terrorists or criminals with information or technologies that would have substantial direct impacts on the security of individuals, groups or states.*” http://ec.europa.eu/research/participants/data/ref/h2020/other/hi/guide_research-misuse_en.pdf

8 Mission or Function Creep defines, in the security context, a type of misuse concern, where an experiment, a technology or information/data is used beyond the approved initial plan and thereby could harm fundamental ethical values or civil rights. http://ec.europa.eu/rea/pdf/5_ethics_in_h2020.pdf

9 See for example: <https://www.adalah.org/en/content/view/8510>

Annex: Concerns regarding LAW TRAIN and Israeli participation in Horizon2020

The case of LAW TRAIN

In the particular case of LAW TRAIN, the main concerns that have been consistently raised by Palestinian and European civil society as well as MEPs since March 2016 are:

- Cooperation with the Israeli Ministry for Public Security, responsible for the police (incl. the infamous 'border police') and prison staff and, in particular, the Israeli National Police is politically and ethically unacceptable and legally problematic. Both institutions are deeply involved in Israeli practices of torture, ill-treatment and other human rights violations. I.e.:
 - On 13 May 2016, the UN Committee Against Torture issued its extensive concluding observations on Israel, recommending over 50 measures for Israel to end its use of torture.
 - Israeli newspaper Haaretz has recently reported Israeli interrogators giving details of torture¹⁰, after having concluded in a 2014 study the rise of torture against Palestinian detainees.¹¹
 - Such cooperation legitimises Israel's most cruel policies – the daily repression of the Palestinian people (incl. physical and psychological torture, ill-treatment, arbitrary detention, threats, racial discrimination, etc.).
 - Recognizes as legal the Israeli system of control and military repression, which includes illegal methodologies for 'interrogation', and assists in its maintenance.
 - Considering the fungibility of know-how, such cooperation facilitates the overall operations of the partners involved, including the illegal interrogation practices of the Israeli police.

With LAW TRAIN, the EU and member states violate their obligations under international law and **contradict EU policy on torture** which states that *'To work towards the prevention and the eradication of all forms of torture and ill-treatment within the EU and world-wide is a strongly held policy view of all EU member states.'*¹²

- The **headquarters of the Israeli National Police is in Palestinian occupied territory in Jerusalem Est. Activities are most likely held there.** In the public deliverables of the project, 'web conferences' and 'online exchanges' are considered part of the activities. It is as well one of the tasks of the 'end users' (the police forces) to contribute with their experience and to test the technology. Most likely these 'activities' are happening in the OPT.
 - VP Mogherini has recently reiterated the EU position on Jerusalem, in reaction to US plans to move its embassy.¹³
 - Mr Moedas has stressed that according to the 2013 guidelines on the eligibility of Israeli entities even in the case of Israeli public entities operating at national level *'may not carry out research activities in the Occupied Territories'*.

Our concerns regarding the response of the European Commission

The DG Research & Innovation of the European Commission and the VP Federica Mogherini have received reports, letters, visits and questions by civil society and MEPs.

Answers of the EC to questions by 30 MEPs from all political factions¹⁴ on the participation of the Israeli military, police and homeland security sector in Horizon2020 and the LAW TRAIN project in particular didn't address their legal and ethical concerns nor the EU's related responsibilities but:

- hide behind the existence of the EU guidelines on the eligibility of Israeli entities for EU funds
- declare that the EU doesn't take into account military activities that entities carry out outside the scope of the project, ignoring the EU guidelines on misuse, dual-use and mission/function creep.
- refer to the various political dialogue and the Horizon2020 monitoring mechanisms but fails to (1) explain how these mechanisms monitor and address the specific concerns (2) address the problem of lack of transparency and accountability of these mechanisms.
- Mr Moedas states that *'The LAW-TRAIN project has recently undergone a technical review and all necessary measures have been taken to address the Honourable Member's [MEP Bart Staes] concerns and ensure that all relevant ethical and legal requirements have been observed during the implementation of the project'*. He underlines that even in the case of Israeli public entities operating at national level *'may not carry out research activities in the Occupied Territories'*.
- The concrete questions of MEP Ana Gomes still await answer: *'Has any evaluation been done as to whether the project breaches the EU Charter on Fundamental Rights or any other EU Treaty rights or EU values and commitments? If so, what outcomes and mechanisms have been put in place to ensure that the technology is not tested or used in conditions that*

10 <http://www.haaretz.com/israel-news/.premium-1.767095>

11 <http://www.haaretz.com/israel-news/.premium-1.645587>

12 'Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment', <http://www.consilium.europa.eu/uedocs/cmsUpload/TortureGuidelines.pdf>

13 "The EU will continue to respect the international consensus contained in (UN Security Council) Resolution 478 from 1980", Mogherini said. http://www.ansamed.info/ansamed/en/news/sections/politics/2017/01/16/eu-concerned-over-us-jerusalem-embassy-idea-mogherini-says_6ce6a85f-7d42-4df9-9c9e-a1f365522319.html

14 See: <http://www.stophthewall.org/documentation-eu-funding-elbit-systems>

violate human rights? Has there been any consideration given to the fact that the experience of the 'end users' in the interrogation process in the case of the Israeli national police has been obtained in the context of Israeli interrogation practices that include grave violations of human rights? If so, what conclusions have been reached? Has the Commission conducted a recent internal review of the Law-Train project? If so, where can the results be found?

Lack of transparency and impartiality of the European Commission – the case of LAW TRAIN

'Secretive' nature of the review process:

- The European Coordination of Committees for Palestine (ECCP) has asked for the documentation of the technical review but has been refused access to the information based on it being an 'internal process'. As other Horizon2020 project publish the documentation of the technical reviews their project undergoes, this seems to be an **ad hoc decision in the case of LAW TRAIN** not to publish the document.
- As the document has surfaced, it is clear that none of the contained information carries details on the nature of the research that would be confidential or 'sensitive'.
- The **technical review seems to have been essentially an effort to shield the project from public criticism:**
 - On the contrary to the claims in the response to MEP Bart Staes, the EC has not demanded any concrete responses to the specific concerns raised by civil society and the MEPs¹⁵. Highlighting the existing legal framework and ethics guidelines of Horizon2020 fails to address the questions and concerns and is far from actually monitoring or establishing accountability.
 - A single information point has been established to ensure centralised, controlled information. This **contradicts a spirit of transparency**.
 - The establishment of an 'advisory board' has been prioritised explicitly to '*give the project wider European perspective and subsequent acceptance*'. Considering that the project at the time was about to lose the participation of Portugal after a sustained civil society campaign, this sees the EC not taking into consideration apparent concerns but trying to **fortify a project against concerns of member states**.
 - The 'external experts' instead of raising ethical concerns recommended replace the word 'interrogation' by 'investigative interviewing' as this is 'more acceptable'. This underlines that beyond a technical review, the effort was **a review of propaganda and defense of the project**, not an objective scrutiny.
 - Instead of demanding verifiable control mechanisms and answers to the concrete concerns, the technical review suggests more language on ethics scrutinies in the documentation and '*an independent (sic!) ethical advisor to be appointed by the project to support the current ethical reviewer*' and a further 'ethics review'.
 - The appointment of 'independent expert' and an 'ethics review' in such circumstances provide further shielding from impartial scrutiny:
 - The 'independent' ethics advisor selected and appointed by the project itself cannot be 'independent' by definition.
 - Considering the nature and the outcomes of the technical review, there is little hope the ethics review will bring any more impartial scrutiny nor that it will address the issues raised to the EC regarding the project and the participation of the Israeli military, police and homeland security sector. Nor is there hope the review will be transparent and accountable.
- **The technical review has not addressed any of the concerns:**
 - our primary concern that an EU funded project works with institutions that systematically use and are responsible for the use of torture, hence legitimising this practice.
 - whether there is a mechanism to control no parts of the activities are done in the OPT. In fact, the technical review minutes indicate that there is no such mechanism.
 - the fact that legitimisation of such cooperation opens doors so that such practices can spread to European Law Enforcement Authorities.¹⁶
- **The EC has therefore given answers prone to mislead the MEPs as to the true state of oversight and impartiality of the EC.** This is in particular the case of the answer to MEP Bart Staes by Mr Moedas.

15 The concerns raised by MEP Bart Staes in its question have clearly not been addressed: '*Did the evaluation of the LAW-TRAIN project consider the fact that the Israeli Ministry of Public Security and the Israeli National Police are directly involved in grave violations of human rights, including torture, ill treatment and inhumane and degrading treatment? Considering that part of the project activities are Skype calls organised by Bar Ilan University in Ramat Gan, Israel, one of the project participants, and that the headquarters of the Israeli National Police are part of the Israeli illegal settlement policy in East Jerusalem, has any consideration been given to the fact that, with this part of the project, activities may be carried out in occupied East Jerusalem? If so, what conclusions have been drawn?*'

16 For a case of negative impact of cooperation, see the CIA's acknowledgement of the "Israeli example" as an inspiration and justification for its practices demonstrates the danger of Israel's influence in undermining international legal principles. - <https://972mag.com/u-s-torture-report-shows-the-danger-of-israels-legal-loopholes/100024/>