

## The EU and Israel

A meeting of the Council of the European Union on 8 December 2009 endorsed a set of conclusions on the Middle East [1], which forms the basis of EU policy today. These conclusions were rightly regarded as a firming up of EU policy towards Israel.

Needless to say, they begin by reasserting the objective of “a two-state solution with the State of Israel and an independent, democratic, contiguous and viable State of Palestine, living side by side in peace and security” (Paragraph 1). This objective was declared to be “a fundamental interest” of not only the parties in the region, but also of the EU itself.

On the territorial extent of the Palestinian state, the EU conclusions made it clear that the starting point for negotiations should be the 1967 borders:

“The European Union will not recognise any changes to the pre-1967 borders including with regard to Jerusalem, other than those agreed by the parties.” (Paragraph 2)

In other words, as far as the EU is concerned, Israel is not be allowed to hold on to any of the territory it acquired by force in 1967, except the consent with Palestinians.

The conclusions also emphasised that the EU “has never recognised the annexation of East Jerusalem” (Paragraph 8) and that the State of Palestine must have its capital in Jerusalem, saying “a way must be found through negotiations to resolve the status of Jerusalem as the future capital of two states” (ibid).

On Jewish settlements in Occupied Palestinian territory, yet again the conclusions are firm:

“The Council reiterates that settlements, the separation barrier where built on occupied land, demolition of homes and evictions are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible. The Council urges the government of Israel to immediately end all settlement activities, in East Jerusalem and the rest of the West Bank and including natural growth, and to dismantle all outposts erected since March 2001.” (Paragraph 6)

On Gaza, the conclusions were equally firm, saying:

“... the continued policy of closure is unacceptable and politically counterproductive. It has devastated the private sector economy and damaged the natural environment, notably water and other natural resources. The EU again reiterates its calls for an immediate, sustained and unconditional opening of crossings for the flow of humanitarian aid, commercial goods and persons to and from Gaza. In this context, the Council calls for the full implementation of the Agreement on Movement and Access.” (Paragraph 9)

### **Agreement on Movement and Access**

The Agreement on Movement and Access, which Israel signed up to in November 2005, set out the arrangements that were supposed to operate to maintain and develop the economic life of Gaza, in the wake of the Israeli “disengagement” in August 2005 (see Sadaka briefing [\[2\]](#)).

The Agreement was drawn up by the US and formally sponsored by the Quartet. The EU is therefore a party to the Agreement, which was launched by Condoleezza Rice (US Secretary of State) and Javier Solana (EU High Representative for the Common Foreign and Security Policy) at a press conference in Jerusalem on 15 November 2005.

The arrangements set out in the Agreement included:

- (1) a crossing between Gaza and Egypt at Rafah for the export of goods and the transit of people
- (2) continuous operation of crossings between Israel and Gaza for the import and export of goods and the transit of people
- (3) reduction of obstacles to movement within the West Bank
- (4) bus and truck convoys between the West Bank and Gaza
- (5) the building of a seaport in Gaza
- (6) re-opening of the airport in Gaza

Had Israel fulfilled its obligations under the Agreement, the economy of Gaza would not be on its knees as it is today. In reality, Israel has almost completely failed to fulfil these obligations. It has taken no action at all in respect of (4), (5) and (6). As regards (3), there are far more obstacles to movement in the West Bank than when the Agreement was signed.

On (2), even before Hamas took control of Gaza in June 2007, the crossings between Israel and Gaza were not in continuous operation. After that, Israel placed severe restrictions on the import of goods – even humanitarian supplies – into Gaza and imposed an almost total ban on exports. After its military assault on Gaza in December 2008-January 2009, Israel imposed more restrictions on imports, in particular, on materials for reconstruction.

A year later, the EU is no nearer achieving the objectives set out on 8 December 2009. This is hardly a surprise, since Israel never responds to polite verbal requests. If the EU is to achieve any of these objectives, it will have to wield a big stick.

### **European Former Leaders Group**

In December 2009, a self-styled European Former Leaders Group (EFLG) emerged made up of 26 former European politicians, co-chaired by Chris Patten, former vice-President of the European Commission, and by Hubert Védrine, former French Foreign Minister, and including former German Chancellor, Helmut Schmidt, former French Prime Minister, Lionel Jospin, former Spanish

Prime Minister, Felipe Gonzales, former Dutch Prime Minister, Andreas van Agt, and former Irish President, Mary Robinson.

In a letter to EU President, Herman van Rompuy, and foreign minister, Baroness Ashton [3], the 26 argued for the EU to be more vigorous in seeking to achieve the objectives set out in the December 2009 conclusions, though they don't go so far as to suggest that the EU apply sanctions to Israel in order to do so. However, they do propose that the EU should make it absolutely clear to Israel that it will not upgrade relations of any kind with Israel unless settlement activity is frozen.

Here's a flavour of what they say:

"It is now one year on and we appear to be no closer to a resolution of this conflict. To the contrary, developments on the ground, primarily Israel's continuation of settlement activity in the Occupied Palestinian Territory (OPT) including in East Jerusalem, pose an existential threat to the prospects of establishing a sovereign, contiguous and viable Palestinian state also embracing Gaza, and therefore pose a commensurate threat to a two-state solution to the conflict. ... Europe cannot afford that the application of these policy principles be neglected and delayed yet again. Time to secure a sustainable peace is fast running out." (p1)

The letter recognises that Palestinians are powerless to achieve a state on their own and that outside help is required:

"Because the Palestinian Authority exists and operates under Israeli military occupation, the Palestinians cannot be expected to establish their state without further international assistance, political as well as economic.

"It is therefore our strong belief that the EU needs to act more pro-actively in its relations with the US, Israel and others to promote the fulfilment of this objective." (p3)

On EU relations with Israel, the group says:

"We therefore strongly believe that the EU must make absolutely clear that enhancement or upgrading of the EU-Israel Association Agreement and other bilateral agreements and programs will not occur unless settlements are frozen. ...

"The EU has stated unequivocally for decades that the settlements in the OPT are illegal, but Israel continues to build them. Like any other state, Israel should be held accountable for its actions. It is the credibility of the EU that is at stake." (p4)

On East Jerusalem, the letter says:

"The situation in East Jerusalem has continued to deteriorate during the past year with, for example, forced evictions of Palestinian families from their homes, and today represents the most critical flashpoint and greatest threat to a resolution of the Israeli-Palestinian conflict.

"We therefore believe that a high-level EU delegation led by the High Representative for Foreign and Security Policy and including EU foreign ministers should visit East Jerusalem as a matter of urgency to draw attention to the erosion of the Palestinian presence there, and

report back to the EU with an agenda of proposals to arrest and reverse the deterioration of the situation on the ground.” (p5)

All this is welcome, and the EU should act on the group's advice. Unfortunately, the Council meeting on 13 December 2010 did not do so [4].

### **EU Heads of Mission on Jerusalem**

Another welcome development from EU sources is a report by the Heads of Mission from EU states in Jerusalem and Ramallah on Israel's policy of ethnic cleansing Palestinians from East Jerusalem by bureaucratic means. This report has not been officially released, but it has been leaked [5]. It is well worth reading. It summarises the situation in East Jerusalem as follows:

“Israel is, by legal and practical means, actively pursuing [East Jerusalem's] annexation by systematically undermining the Palestinian presence in the city. ... the past year has again seen a further deterioration of the overall situation in East Jerusalem. If current trends are not stopped as a matter of urgency, the prospect of East Jerusalem as the future capital of a Palestinian state becomes increasingly unlikely and unworkable. This, in turn, seriously endangers the chances of a sustainable peace on the basis of two states, with Jerusalem as their future capital.

“The continued expansion of settlements, restrictive zoning and planning, ongoing demolitions and evictions, an inequitable education policy, difficult access to health care, the inadequate provision of resources and investment and the precarious residency issue have not only serious humanitarian consequences, they undermine the Palestinian presence in East Jerusalem.” (Paragraphs 1/2)

The report goes on to detail how Palestinians are being squeezed out of East Jerusalem by a plethora of bureaucratic measures. These have got nothing to do with Israel's security, which is the usual excuse for imposing restrictions on the lives of Palestinians. For example, on “planning, demolitions and evictions”, the report states:

“23. The planning regime of the Jerusalem municipality remains a source of concern as it places severe restrictions on the building of Palestinian housing in East Jerusalem. Many Palestinians live under the threat of having their house demolished and being evicted, adding to the existing tensions. These restrictions result in a housing shortage in East Jerusalem and regular demolitions of Palestinian-owned structures.

“24. According to the planning regime, 13 percent of the land in East Jerusalem is currently zoned for Palestinian construction (compared to 35 percent which is allocated for Israeli settlements). Only within this 13 percent, which is already densely built upon, Palestinians have the possibility of obtaining an Israeli-issued permit to build, repair or maintain their homes and livelihood-related structures. Administrative requirements, however, make it extremely difficult for Palestinian residents in East Jerusalem to obtain such permits. In addition, the procedures take several years and usually entail a prohibitive cost.

“25. Over the past years Palestinians have received fewer than 200 building permits per year. Based on the population growth, permits for 1 500 housing units annually would be necessary to cover the housing needs.

“26. As a consequence of the restrictive planning regime, there is an acute housing shortage in East Jerusalem. In addition, Palestinian houses are overcrowded and in a bad condition. The planning regime poses a difficult dilemma for Palestinian families: they have the choice between migrating outside the municipal area of Jerusalem (and losing their residency status) or building without the necessary building permit. According to UN OCHA, at least 32% of Palestinian structures in East Jerusalem lack such a permit, putting approximately 88 000 Palestinians at risk.

“27. Buildings constructed without a permit are considered illegal by the Israeli authorities who issue demolition orders against them. Unofficial sources estimate that up to 1,500 ‘illegally’ built residential buildings in East Jerusalem currently have demolition orders against them. In the course of this year, UN OCHA recorded the demolition of 50 Palestinian-owned structures in East Jerusalem, thereby affecting over 250 people (half of whom are children). Families are not only fined for having constructed their houses without a permit, they can also be charged for the costs of the demolition. As a means to avoid such fines, some Palestinian families are carrying out so-called self-demolitions (estimated at 6 this year).”

The envoys recommend that the EU treat East Jerusalem as the future capital of a Palestinian state and seek the reopening of Palestinian institutions in East Jerusalem, which Israel agreed to in the Road Map in 2003. Other specific proposals for actions include:

- Ensure EU presence when there is a risk of demolitions or evictions of Palestinian families.
- Ensure EU presence at Israeli courts cases on house demolitions or evictions of Palestinian families.
- Ensure EU intervention when Palestinians are arrested or intimidated by Israeli authorities for peaceful cultural, social or political activities in East Jerusalem.

These measures are puny, given the enormity of what Israel is doing in East Jerusalem, but they're better than nothing. Anything that draws the world's attention to Israel's ethnic cleansing of Palestinians from East Jerusalem is to be commended.

### **EU must suspend the Euro-Med Agreement**

But, if the EU is serious about achieving any of its objectives in Israel/Palestine, it will have to wield a much bigger stick. It has such a stick to hand and ample justification for using it, as we will see.

Israel has had privileged access to the EU since 2000, as a result of an Association Agreement with the EU under the Euro-Mediterranean Partnership [6]. This is commonly known as the Euro-Med Agreement [7]. It is very important to Israel, since around a third of its exports are to the EU. It could, and should, be suspended;

Article 2 of the Agreement imposes human rights obligations on Israel. It says:

“Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement.”

That states plainly that human rights compliance by Israel is an essential element of the Agreement – not an optional element, nor a desirable element, but an essential element.

Israel has continuously failed to live up to the human rights obligations in Article 2. Here are two of many examples:

### **(1) Israeli discrimination against its Arab minority**

The Israeli state deliberately discriminates against its Arab minority (which makes up nearly 20% of its population) and has done so since the foundation of the state. The EU has said so, and the former Israeli Prime Minister, Ehud Olmert, has said so.

On discrimination against Israeli Arabs, a EU report on Israel published in April 2004 [8] states:

“The Arab minority, Muslim, Christian and Druze, makes up almost 20% of the Israeli population. Although the Declaration of Independence proclaims equality for citizens, Israeli legislation contains laws and regulations that favour the Jewish majority. ... As highlighted by an Israeli Commission report presented in 2003 (“Or Commission”), the Arab minority also suffers from discrimination in many areas including budget allocations, official planning, employment, education and health. ... The Arab minority is severely affected by the Nationality and Entry into Israel Law of 2003, suspending for a renewable one-year period, the possibility of family reunification, subject to limited exceptions.

“About 100,000 Arabs (Bedouins), mostly in the Negev, live in villages considered illegal by the State. ...” (p 10)

“According to the Israeli poverty definition, about 14% of the Israeli households were living in poverty in 2001, and the share is expected to have risen in the following years. Figures are higher among the Arab minority (where 45% of the families fell in the poverty category).” (p 16)

And it's not as if Israel has taken steps to eliminate, or even mitigate, this discrimination since 2004. In April 2008, the European Commission published a report entitled *Implementation of the European Neighbourhood Policy in 2007: Progress Report Israel* [9]. Here is what it says on this issue:

“The promotion and protection of the Israeli Arab minority did not advance significantly during the reporting period , particularly in areas like land allocation, housing, planning, economic development, investment in social infrastructure and justice. A number of initiatives were launched in the field of justice and education but results were limited. The Arab education system continued to lag behind Jewish education.” (p 3)

Giving evidence to a parliamentary commission of inquiry on 11 November 2008, Ehud Olmert said:

“I feel uncomfortable with the fact that the state for many years acted improperly and should have made fundamental changes. We have not yet overcome the barrier of discrimination, which is a deliberate discrimination and the gap is insufferable” [10].

He continued:

“... there are government agencies who employ a miniscule number of Israeli Arabs, among them the Bank of Israel and Israel Electric Company. There is no argument that there were ministries and offices that did not accept Arabs. It's terrible that there is not even one Arab

employee at the Bank of Israel and at the Electric Company Arab workers represent less than one percent of all employees.”

It isn't obvious that Israel is showing respect for the human rights of its Arab minority, as required by Article 2 of the Euro-Med agreement.

## **(2) Israeli treatment of Palestinians in Gaza**

Notwithstanding its “disengagement” from Gaza in August 2005, Israel is still the Occupying Power in Gaza within the meaning of the Fourth Geneva Convention. As such, it is responsible for the welfare of the 1.5 million Palestinians in Gaza.

The test in international law for the existence of a state of occupation is “effective control”. Israel is in “effective control” of Gaza, since it continues to exercise:

- Substantial control of Gaza's land crossings;
- Control on the ground through incursions and sporadic ground troop presence, and ground fire from Israel into Gaza;
- Complete control of Gaza's airspace;
- Complete control of Gaza's territorial waters;
- Control of the Palestinian population registry (including who is a “resident” of Gaza);
- Control of tax policy and transfer of tax revenues;

(For a discussion of this, see *Disengaged Occupiers: The Legal Status of Gaza* [11], by the Israeli human rights organisation, *Gisha*).

For many years, Israel has maintained an economic blockade of Gaza of increasing severity, by closing the crossings between Israel and Gaza. This is in breach of international humanitarian law, to be specific, Articles 33 and 55 of the Fourth Geneva Convention.

Article 55 requires that:

“To the fullest extent of the means available to it the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate.” [12]

Israel has signally failed to fulfil this obligation placed upon the Occupying Power by international humanitarian law.

This has not merely been a sin of omission on Israel's part. On the contrary, it has been a deliberate act of Israeli policy, with the objective of exerting pressure on the people of Gaza collectively to reject Hamas. Lest there be any doubt about it, here's what the US embassy in Tel Aviv reported back to Washington on 3 November 2008:

“Since the Hamas takeover, Israel has designated Gaza as a ‘hostile entity’ and maintained an economic embargo against the territory. ... As part of their overall embargo plan against Gaza, Israeli officials have confirmed to econoffs [US embassy economic officers] on multiple occasions that they intend to keep the Gazan economy on the brink of collapse without quite pushing it over the edge [13]

This deliberate act of Israeli policy is in breach of Article 33 of the Fourth Geneva Convention, which forbids the Occupying Power from applying "collective penalties" on people under occupation. Article 33 states:

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." [14]

In February 2008, John Holmes, UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, reported to the Security Council on Israel's economic blockade of Gaza. He said:

"... the effective Israeli isolation of Gaza is not justified, given Israel's continuing obligations to the people of Gaza. It amounts to collective punishment and is contrary to international humanitarian law." [15]

Israel's economic blockade of Gaza, which has got much more severe since John Holmes made those remarks, is contrary to international humanitarian law. Israel is therefore in breach of Article 2 of the Euro-Med Agreement.

This collective punishment of the people of Gaza was going on before Operation Cast Lead, Israel's military assault on Gaza, which began on 27 December 2008 and killed over 1,400 Palestinians, including more than 400 women and children. This collective punishment has continued since Operation Cast Lead with increased severity.

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These are but two examples of Israel's failure to live up to the human rights obligations in Article 2 of the Euro-Med Agreement. There are, and always have been, ample grounds for the EU suspending the Agreement and depriving Israel of its privileged access to the EU market.

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