

The European Union's Blind Eye
How the EU ignores Israel's failure to fulfil
its obligations under EU agreements



Extended and Updated Edition 2011
Compiled for Sadaka by Dr. David Morrison
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Sadaka – The Ireland Palestine Alliance, 7 Red Cow Lane, Smithfield, Dublin 7, Ireland.
email: info@sadaka.ie web: www.sadaka.ie
Bank account: Permanent TSB, Henry St., Dublin 1. NSC 990619 A/c 16595221

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Executive Summary

The Euro-Mediterranean Partnership between the EU and states bordering the Mediterranean came into being on 28 November 1995 with the signing of the Barcelona Declaration. 11 Mediterranean states, including Israel, signed the Declaration on that date. Extraordinarily, the EU allowed Israel to sign even though, at the time of signing, it was in blatant contravention of obligations contained in the Declaration.

For example, the Declaration obliges its signatories to “respect the territorial integrity and unity of each of the other partners” and a series of other norms of international law. Lebanon and Syria signed the Declaration and became EU partners along with Israel in November 1995. At that time, parts of Lebanon and Syria were under Israeli military occupation and the Golan Heights had been annexed by Israel. Clearly, Israel was failing to “respect the territorial integrity and unity” of its Lebanese and Syrian partners in 1995, when it signed the Barcelona Declaration containing this obligation. Nevertheless, the EU turned a blind eye to Israel’s ongoing breach of the partnership agreement at the time it signed – and allowed it to become an EU partner.

And the EU has continued to turn a blind eye ever since and allowed Israel to remain an EU partner, even though today Syrian and Lebanese territory remains under Israeli military occupation and Israeli military aircraft frequently invade Lebanese air space.

THE EU HAS ENTERED into a number of agreements with Israel, beginning with the Euro-Mediterranean Partnership. These agreements oblige the parties to them to abide by generally recognised principles of international law.

Israel has been, and still is, guilty of contravening generally recognised principles of international law in a variety of ways, contrary to its obligations in agreements with the EU. We document some of these contraventions in this paper. But the EU has continuously turned a blind eye to these contraventions and, despite them, continuously enhanced its relations with Israel.

As we have said, under the Euro-Mediterranean Partnership Israel is required to “respect the territorial integrity and unity” of its partners, which Israel has failed to do throughout the life of the partnership in respect of Lebanon and Syria. Under the Euro-Mediterranean Partnership Israel is also required to “act in accordance with the United Nations Charter”, which Israel has signally failed to do throughout the life of the partnership – since it continues to contravene more UN Security Council resolutions than any other state in the world. The EU has turned a blind eye to these failures by Israel and been happy to maintain Israel as a partner.

THE ASSOCIATION AGREEMENT with Israel, under the Euro-Mediterranean Partnership, commonly known as the Euro-Med Agreement, has given Israel privileged access to the EU market since 2000. According to Article 2 of the Agreement, “respect for human rights and democratic principles” is an “essential element” of the Agreement – not an optional element, nor a desirable element, but an essential element.

There isn't the slightest doubt that Israel has continuously failed to live up to these obligations, a primary example being its economic strangulation of Gaza, which the EU itself described as "collective punishment", contrary to international humanitarian law. But the EU has again turned a blind eye to Israel's abuses of international humanitarian law and refused to contemplate a suspension of the Agreement until such times as Israel meets its obligations.

SINCE 2004, ISRAEL has been an EU partner in the European Neighbourhood Policy (ENP). Under it, for example, Israel is supposed to take steps to promote and protect the rights of the Arab minority in Israel and to move towards a comprehensive settlement of the conflict in the Middle East. Here is the conclusion of a European Commission report on Israeli progress published in April 2008:

"Issues raised in the framework of the political dialogue included inter alia: the peace process, the situation in the Middle East, the situation of the Arab minority in Israel, restrictions of movement in West Bank and Gaza Strip, the construction of the separation barrier, administrative detentions, the dismantling of outposts, the envisaged expansion of certain Israeli settlements in East Jerusalem, more checkpoints. Little concrete progress has however been achieved on the issues as such."

There has been no significant change since this was written. Nevertheless, the EU turned a blind eye to Israel's failure to make progress and on 16 June 2008 made a decision to upgrade its relations with Israel. While this upgrade was formally put on hold in the aftermath of Israel's military assault on Gaza in December 2008/January 2009, it has never been revoked and in reality the EU has continued to enhance its relations with Israel in a variety of ways.

1 The Euro-Mediterranean Partnership

Section 1 outlines some of the obligations required of signatories to the Barcelona Declaration, which established the Euro-Mediterranean Partnership. It shows that Israel was already in breach of obligations under the Declaration at the time of signing and has continued to be in breach ever since. It contrasts the EU's concern about Iran's alleged nuclear weapons with its lack of concern for Israel's very real nuclear weapons. Finally, some of Israel's breaches of the Declaration today are outlined.

1.1 The Barcelona Declaration

The most important development in the EU's relations with Israel (see Appendix A) occurred in November 1995, with the signing of the Barcelona Declaration [\[1\]](#), which established the Euro-Mediterranean Partnership [\[2\]](#). This Partnership encompassed the 15 EU states at the time plus 11 states in the Mediterranean region (Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia and Turkey) and the Palestinian Authority.

The Barcelona Declaration set up what it describes as "a comprehensive partnership among the participants" and the participants undertook to behave according to international norms in their relations with other states, promising to

"act in accordance with the United Nations Charter and the Universal Declaration of Human Rights, as well as other obligations under international law, in particular those arising out of regional and international instruments to which they are party;"

The participants also entered into a number of specific obligations in respect of their "partners" in the Euro-Mediterranean Partnership, for example, to:

- (1) "refrain, in accordance with the rules of international law, from any direct or indirect intervention in the internal affairs of another partner;"
- (2) "respect the territorial integrity and unity of each of the other partners;"
- (3) "settle their disputes by peaceful means, call upon all participants to renounce recourse to the threat or use of force against the territorial integrity of another participant, including the acquisition of territory by force, and reaffirm the right to fully exercise sovereignty by legitimate means in accordance with the UN Charter and international law;"

1.2 Israeli breaches of the Barcelona Declaration in 1995

In 1995, when Israel signed the Barcelona Declaration and undertook to abide by these principles, so did Lebanon and Syria. At that time, Israel was occupying parts of Lebanon and Syria militarily and it had annexed the Syrian Golan Heights. By no stretch of the imagination could it be said that Israel was refraining from intervention in the internal affairs of its Lebanese and Syrian partners, or respecting their territorial integrity, or settling disputes with them by peaceful means. Manifestly, Israel was contravening

obligations (1), (2) & (3) in the Barcelona Declaration, at the time it signed the Barcelona Declaration.

At that time, Israel was also in breach of the general obligation in the Barcelona Declaration to “act in accordance with the United Nations Charter”. It was in military occupation of the West Bank and Gaza (as well as parts of Lebanon and Syria) contrary to Article 2.4 of the UN Charter (see Appendix B).

Also, Article 25 of the UN Charter requires UN member states, including Israel, “to accept and carry out the decisions of the Security Council” [\[3\]](#). In 1995, Israel was in violation of some 25 Security Council resolutions requiring action by it and it alone (see Appendix C). These demanded, amongst other things, that Israel

- cease building Jewish settlements in the occupied territories, including in Jerusalem
- reverse its annexation of East Jerusalem and the Golan Heights
- open its nuclear facilities to IAEA inspection.

President Bush told the UN General Assembly on 12 September 2002:

“We want the United Nations to be effective, and respectful, and successful. We want the resolutions of the world's most important multilateral body to be enforced.” [\[4\]](#)

There is no excuse for Israel failing to implement “the resolutions of the world's most important multilateral body”.

Manifestly, Israel was contravening the general obligation in the Barcelona Declaration to “act in accordance with the United Nations Charter”, at the time it signed the Barcelona Declaration.

So, the EU was happy to make Israel a partner in 1995, even though at that time it was in contravention of the terms of the partnership, as set out in the Barcelona Declaration. The EU simply turned a blind eye to Israel’s contravention of the obligations in the partnership agreement at the time it signed – and allowed it to become an EU partner.

That is an extraordinary stance for the EU to adopt.

1.3 EU double standards vis-à-vis Israel and Iran

In the Barcelona Declaration, Israel also signed up to the following:

“The parties shall pursue a mutually and effectively verifiable Middle East Zone free of weapons of mass destruction, nuclear, chemical and biological, and their delivery systems.

“Furthermore the parties will consider practical steps to prevent the proliferation of nuclear, chemical and biological weapons as well as excessive accumulation of conventional arms.”

Israel is the only state in the Middle East that possesses nuclear weapons (and probably the only one that possesses chemical and biological weapons). So, its disarmament of these weapons is a necessary, and probably a sufficient, condition for bringing about a “Middle East Zone free of weapons of mass destruction”, as required by the Barcelona Declaration. However, progress in bringing this about has been noticeable by its absence since Israel signed up to “pursue” this objective in 1995.

There has been no progress either on the Security Council’s demand in resolution 487, passed on 19 June 1981, that “Israel urgently ... place its nuclear facilities under IAEA [International Atomic Energy Agency] safeguards” [5]. 30 years later, Israel still hasn’t opened its nuclear facilities to IAEA inspection, nor is there any noticeable pressure from the EU to make it do so, let alone disarm in order to produce a nuclear free zone in the Middle East, which parties to the Barcelona Declaration are supposed to “pursue”.

By contrast, Iran’s nuclear facilities, including its uranium enrichment facilities, are open to IAEA inspection. It is worth noting that, after extensive inspection in Iran, the IAEA has found no evidence that Iran has a nuclear weapons programme, or ever had one. By contrast, Israel has possessed nuclear weapons and the means of delivering them for around 40 years. It is estimated that today Israel has around 200 nuclear warheads and various delivery systems, including by submarine-launched missiles. It is capable of wiping Iran, and every Arab state, off the map at the touch of a button.

Strange that the EU is actively pressuring Iran about its nuclear activities, but not Israel, despite the requirement in its partnership agreement with Israel to “pursue a mutually and effectively verifiable Middle East Zone free of weapons of mass destruction”.

1.4 Israeli breaches of the Barcelona Declaration today

Today, Israel is still contravening the terms of the Euro-Mediterranean Partnership as laid down in the Barcelona Declaration in a variety of ways, much as it was doing in 1995.

The West Bank and Gaza remain under Israeli military control, as do parts of Lebanon and Syria, and East Jerusalem and the Golan Heights remain annexed. Today, Israel is violating even more Security Council resolutions requiring action by it and it alone (see Appendix C).

The building of Jewish settlements on occupied Arab land continues apace, contrary to Security Council resolutions and the total number of Jewish settlers on occupied Arab land is now around 500,000. It is worth noting that this transfer of population to occupied territory is a war crime under the Rome Statute of the International Criminal Court. Article 8.2(b)(viii) of the Statute defines

“the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies” [6]

as a war crime.

Since 1995, Israel has added to its illegal activity as an occupying power by building a wall in the West Bank. In July 2004, the International Court of Justice declared (see Appendix D):

“A. The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law;

“B. Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;” [\[7\]](#)

Israel has categorically refused to comply with this ruling by the Court – and has continued to build the wall, contrary to its obligation in the Barcelona Declaration to act in accordance with its obligations under international law.

Israel’s use of force, and threat to use force, contrary to Article 2.4 of the UN Charter, continues unabated. On 6 September 2007, an Israeli aircraft entered Syrian airspace and bombed a building allegedly housing a nuclear facility (which is not obviously compatible with the principle of settling disputes with a partner by peaceful means, as required by the Barcelona Declaration). Israeli aircraft regularly enter Lebanese airspace and violate Lebanese sovereignty, and hardly a day passes without a member of the Israeli government threatening to attack Iran.

One might think that this continued contempt shown by Israel for the principles enshrined in the Declaration establishing the partnership might lead the EU to question Israel’s suitability as a partner. But, on the contrary, on 16 June 2008, the EU made a decision to upgrade its relations with Israel. While this upgrade was formally put on hold in the aftermath of Israel’s military assault on Gaza in December 2008/January 2009, it has never been revoked and in reality the EU has continued to enhance its relations with Israel in a variety of ways.

2 The Euro-Med Agreement

Section 2 discusses the human rights clause in the Euro-Med Agreement, signed by Israel in 1995. It cites UN, EU and Irish government sources, who all categorically state that Israel has breached international humanitarian law by its economic strangulation of Gaza. It concludes that the EU has turned a blind eye to Israel's contravention of human rights obligations under the Euro-Med Agreement.

2.1 The Euro-Med human rights clause

In November 1995, Israel signed an Association Agreement [\[8\]](#) with the EU under the Euro-Mediterranean Partnership. This is commonly known as the Euro-Med Agreement. It gave Israel privileged access to the EU market from 1 June 2000. The EU provides the largest market for Israeli goods after the US, around 30% of Israel's exported goods, amounting to €8.8 billion, going to the EU in 2009 [\[9\]](#).

The Euro-Med Agreement also contains human rights obligations. Article 2 of the Agreement states:

“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.

2.2 Israeli breaches of international humanitarian law

There isn't the slightest doubt that Israel has continuously failed to live up to these obligations, notably in its treatment of the people of Gaza.

Notwithstanding its 'disengagement' from Gaza in August 2005, Israel is still the Occupying Power there within the meaning of the Fourth Geneva Convention, since it remains in 'effective control'. As such, it is responsible for the welfare of the 1.5 million Palestinians living in Gaza.

Yet, 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.” [\[10\]](#)

Israel has signally failed to fulfil this obligation.

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." [11]

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." [12]

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." [13]

The EU itself has described the economic strangulation of Gaza as 'collective punishment', External Relations Commissioner Benita Ferrero-Waldner saying on 21 January 2008:

"I am against this collective punishment of the people of Gaza. I urge the Israeli authorities to restart fuel supplies and open the crossings for the passage of humanitarian and commercial supplies." [14]

Irish Foreign Minister, Micheál Martin agreed, telling Dáil Éireann on 5 November 2008:

"The Government agrees with those who state that the effective isolation of Gaza constitutes collective punishment and is illegal under international humanitarian law." [15]

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.

2.3 EU fails to act on Israeli breaches

So, it is widely acknowledged that, by its economic strangulation of Gaza, Israel has violated international humanitarian law.

And it is not as if this economic strangulation of Gaza is a momentary lapse from an otherwise unblemished record of human rights compliance. On the contrary, the collective punishment of the people of Gaza is the openly acknowledged policy of the Israeli Government that has been in operation, to a greater or lesser extent, for years.

Famously, when Israel limited commercial shipments of food into Gaza in 2006, a senior government adviser, Dov Weisglass, explained that “the idea is to put the Palestinians on a diet but not to make them die of hunger” [\[16\]](#).

There is not the slightest doubt that, by its economic strangulation of Gaza in recent years, Israel breached its human rights obligations under Article 2 of the Association Agreement, obligations that are stated to be an “essential element” of the Agreement. And Israel’s treatment of the people of Gaza is but one example of its inhuman treatment of Palestinians. If Article 2 of the Euro-Med Agreement is to be taken seriously, then the Agreement should be suspended.

But, yet again, the EU turned a blind eye to Israel’s contravention of obligations under an EU-Israel agreement.

3 The European Neighbourhood Policy (ENP)

Section 3 describes the upgrade of EU relations with Israel in 2004, namely, its admission as a partner within the European Neighbourhood Policy. It cites reports published by the European Commission which describe Israel's discrimination against its Arab minority and its breaches of international humanitarian law in its treatment of Palestinians within the Occupied Territories.

3.1 Purpose of the ENP

A further upgrade in EU-Israel relations took place in 2004, when Israel became a "partner" in the EU's European Neighbourhood Policy [\[17\]](#). This encompasses both the EU's southern neighbours that were already in the Euro-Mediterranean Partnership and its Eastern European neighbours.

The EU provides money for projects under the ENP, €5.6 billion in total being allocated for the period 2007-10. However, because of Israel's relatively advanced state of economic development, a very small amount of this – €8 million – is specifically allocated to it (see European Neighbourhood and Partnership Instrument [\[18\]](#)). Clearly, Israel's reasons for participating in the ENP are political rather than economic.

EU relations with other states under the ENP are supposed to be tailored to the honouring of human rights and other obligations. As the ENP website says:

"The EU offers our neighbours a privileged relationship, building upon a mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development). The ENP goes beyond existing relationships to offer a deeper political relationship and economic integration. The level of ambition of the relationship will depend on the extent to which these values are shared." [\[17\]](#)

Despite Israel's manifest failure to meet its obligations under earlier agreements with the EU, Israel was in the first tranche of 7 states with which the EU agreed ENP action plans in December 2004.

3.2 Israeli discrimination against its Arab minority

The action plan for Israel [\[19\]](#) was based on a European Commission report on Israel [\[20\]](#) dated May 2004. One might expect that this would have examined Israel's human rights record closely in order to determine whether or not Israel shared European values and was therefore fit for an ENP relationship. And it does, to a degree: in a 24-page document, there are a few paragraphs that comment on (a) discrimination against Israeli Arabs and (b) Israeli action in the Occupied Territories.

On discrimination against Israeli Arabs, the document says:

"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)

Giving evidence to a parliamentary commission of inquiry on 11 November 2008, former Israeli Prime Minister, Ehud Olmert added weight to this assessment, saying:

“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” [\[21\]](#).

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.”

One might have thought that a state which, throughout its existence, has deliberately engaged in religious discrimination against its Arab minority would be deemed unfit by the EU for an ENP relationship. Root and branch opposition to religious discrimination is surely a fundamental European value.

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* [\[22\]](#). 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. A clear strategy for land allocation to Israeli Arabs remains to be adopted. In March 2007, the UN Committee for the Elimination of Racial Discrimination (CERD) published a report on the situation of the Israeli Arab minority and asked the Israeli government to take significant measures to promote minority rights in the above-mentioned areas.” (p 3)

Lest it be thought that progress has been made since 2007, here is an extract from a second Commission report, *Implementation of the European Neighbourhood Policy in 2009: Progress Report Israel* [\[23\]](#), published in May 2010:

“As regards rights of minorities, little progress was registered in the situation of the Arab minority. Arab citizens are still underrepresented in the civil service and in government offices, with a participation of only 6.7%, although the Law for Fair Representation of Arabs and Women in Governmental Offices sets a target of 10% by 2010. There were further decreases in budget allocations to the Arab sector. More sustained efforts are needed to further increase employment of Arab employees in the public sector, as well as regarding housing and planning schemes, economic development, investment in social infrastructure and justice (see also section on Employment and Social policy). With regard to the Bedouins, the Goldberg Commission, set up in 2008, recommended that the recognition of Bedouin villages takes place on a broad basis and following an accelerated schedule. The Government appointed an implementation team for that purpose in January 2009, but this team made little progress in its work. Its detailed implementation plan was due in July 2009 but had not been finalised by the end of 2009. 99 house demolitions took place in Bedouin communities in 2009 and at least 39 houses were demolished in the Negev after the reporting period, in early 2010.” (p3)

In the section on Employment and Social policy, the report states:

“Poverty and inequality remain widespread in Israel. Over 20% of households are below the poverty line compared to the OECD average of 11%. Poverty is concentrated among the 20% of the population belonging to the Arab minority (of which 50% are below the poverty line) and the estimated 8% who are ultra-orthodox Jews (of which 60% are below the poverty line). The Bedouin community suffers from a very high poverty rate estimated at 80% among the unrecognized villages.” (p 8)

There the European Commission states bluntly that Israel continues to discriminate deliberately against its Arab minority.

3.3 Israeli action in the Occupied Territories

On Israeli action in the occupied territories, the European Commission report from May 2004 [\[20\]](#) says:

“... In August 2003 the [United Nations] Committee [for Human Rights] reiterated its concerns at the increasing extent of human rights violations in those territories, particularly through military operations, the obstruction of freedom of movement and house demolitions. The EU recognises Israel’s right to protect its citizens from terrorist attacks. It has urged the Government of Israel, in exercising this right, to exert maximum effort to avoid civilian casualties and take no action that aggravates the humanitarian and economic plight of the Palestinian people. It has called on Israel to abstain from any punitive measures which are not in accordance with international law, including extrajudicial killings and destruction of houses.” (p 8)

It is difficult to believe that these few sentences constitute the full extent of what the EU has to say about the misery Israel has inflicted on Palestinians in 40 years of occupation. Even so, one might have thought that the evidence presented in them was sufficient to render Israel unfit in the eyes of the EU for an ENP relationship. Surely, the EU cannot be said to have common values with a state that engages in “extrajudicial killings and destruction of houses”.

Have matters improved since 2004? The European Commission progress report from April 2008 [22] says:

“Issues raised in the framework of the political dialogue included inter alia: the peace process, the situation in the Middle East, the situation of the Arab minority in Israel, restrictions of movement in West Bank and Gaza Strip, the construction of the separation barrier, administrative detentions, the dismantling of outposts, the envisaged expansion of certain Israeli settlements in East Jerusalem, more checkpoints. Little concrete progress has however been achieved on the issues as such. In 2007 the fatalities resulting from conflict-related incidents were 377 Palestinians (compared to 643 in 2006) and 13 Israelis (compared to 27 in 2006).” (p5)

Likewise, the European Commission progress report from May 2010 [23] had little progress to report. On Gaza it says:

“During 2009, the EU repeatedly called on Israel to open the Gaza crossings for the flow of aid, trade and persons to and from Gaza. While towards the end of 2009 Israel granted permission for glass and a limited range of other products to be imported into the Gaza strip and a limited range of agricultural products to be exported, including strawberries and cut flowers, there was no significant improvement as regards access to Gaza. Only minimum access was granted to allow the delivery of humanitarian assistance. This undermines the ability of Palestinians to meet basic needs such as protection, shelter, food, water, and healthcare. Restrictions on the import of construction material also have a negative impact on the population, 90% of whom are aid-dependent.

“The Israeli Security Agency in several instances denied authorisation, citing security concerns, to medical patients attempting to exit the Gaza Strip in order to access medical treatment.”

There, the European Commission admits that Israel continues to commit collective punishment against the people of Gaza.

3.4 EU fails to act on Israeli breaches

The ENP action plan for Israel drawn up by the European Commission in 2004 boldly asserts:

“The EU and Israel share the common values of democracy, respect for human rights and the rule of law and basic freedoms.” [19]

The ENP progress reports drawn up by the European Commission in 2008 and 2010 freely admit that Israel is guilty of (a) deliberate discrimination against its Arab minority and (b) collective punishment, and other human rights violations, against Palestinians in Gaza.

Have religious discrimination and collective punishment now become European values? If not, then perhaps the EU should reconsider its ENP partnership with Israel?

4 The Road Map

Section 4 outlines the commitments contained in the Road Map, which was promoted by the Middle East Quartet, of which the EU is a member. It shows that the EU failed to criticise Israel for failing to live up to those commitments, let alone punish it for failing to do so.

4.1 Road Map pre-conditions

The Road Map is the internationally approved framework for negotiations between Israel and the Palestinians about a “two-state solution” [24]. It was drawn up by the US and approved by the Middle East Quartet (US, EU, Russia and the UN Secretary General) in April 2003. The EU is therefore a party to this agreement, which was later endorsed by the Security Council in resolution 1515 [5] passed in November 2003.

The Road Map requires Israel to take a number of well-defined steps prior to the start of negotiations. These include:

- “Israeli leadership issues unequivocal statement affirming its commitment to the two-state vision of an independent, viable, sovereign Palestinian state living in peace and security alongside Israel”
- “GOI [Government of Israel] immediately dismantles settlement outposts erected since March 2001”, and
- “Consistent with the Mitchell Report, GOI freezes all settlement activity (including natural growth of settlements)”.

These conditions couldn't be clearer: before negotiations start, Israel must

- make a public commitment to an independent, viable, sovereign Palestinian state,
- dismantle all settlement outposts erected since March 2001, and
- freeze all settlement activity, including natural growth

On 25 May 2003, the Israeli Government, then headed by Ariel Sharon, approved the Road Map by 12 votes to 7, albeit with reservations [25]. However, these reservations did not relate to the pre-conditions. The PLO accepted the Road Map without reservations.

These pre-conditions are the least one would expect Israel to adhere to prior to negotiations about the establishment of a Palestinian state. It makes very little sense to begin such a process if Israel is not committed publicly to the creation of an independent, viable Palestinian state at the end of it. Nor does it make sense to begin such a process while Israel is continuing to colonise the territory which is supposed to belong to the Palestinian state at the end of the process. As Michael Tarazy, a legal advisor to the PLO, once said, that's like negotiating over a piece of pizza while one party to the negotiations is eating it.

4.2 Israel's failure to honour Road Map pre-conditions

Israel fulfilled none of these conditions prior to the recently aborted brief round of negotiations. Prime Minister Binyamin Netanyahu never made a public commitment to an independent, viable, sovereign Palestinian state. It was only after severe pressure from the US that, in a speech on 14 June 2009 [\[26\]](#), he used the word "state" to describe the Palestinian entity that might be the outcome of negotiations. But, he said that the security needs of Israel demanded "clear commitments" from the US that "in a future peace agreement, the territory controlled by the Palestinians will be demilitarized", by which he meant:

"without an army, without control of its airspace, and with effective security measures to prevent weapons smuggling into the territory - real monitoring, and not what occurs in Gaza today. And obviously, the Palestinians will not be able to forge military pacts. Without this, sooner or later, these territories will become another Hamastan."

Clearly, the "state" he had in mind would be neither independent, viable nor sovereign, as required by the Road Map. Rather, it would be firmly under Israeli control, much as Gaza is today.

And, Netanyahu categorically refused to "freeze all settlement activity", as required by the Road Map, even for a limited period, despite being offered an enormous bribe by the Obama administration to do so.

But, Israel's failure to live to its obligations under the Road Map has attracted barely a word of criticism from the EU. As a party to the Road Map, the EU should have stood shoulder to shoulder with Palestinians as they demanded that Israel fulfil the Road Map conditions prior to the start of negotiations. But it didn't. Yet again, the EU allowed Israel's failure to live up to a past agreement to go uncriticised, let alone unpunished.

5 The Agreement on Movement and Access (AMA)

Section 5 outlines the commitments contained in the Agreement on Movement and Access, which was promoted by the Middle East Quartet, of which the EU is a member. It shows that the EU failed to criticise Israel for failing to live up to those commitments, let alone punish it for failing to do so.

5.1 AMA arrangements

The Agreement on Movement and Access [\[27\]](#), which was drawn up by the US and sponsored by the Middle East Quartet, was agreed by Israel in November 2005. Condoleezza Rice (US Secretary of State) and Javier Solana (EU High Representative for the Common Foreign and Security Policy) announced the Agreement at a press conference in Jerusalem on 15 November 2005 [\[28\]](#).

The Agreement 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, and to pave the way for the creation of a viable Palestinian state in the West Bank and Gaza. These arrangements included:

- (1) continuous operation of crossings between Israel and Gaza for the import and export of goods and the transit of people
- (2) bus and truck convoys between the West Bank and Gaza
- (3) the building of a seaport in Gaza
- (4) re-opening of the airport in Gaza

Had Israel implemented these arrangements, economic conditions in Gaza would be vastly different from those that prevail today.

5.2 Israel's failure to implement the AMA

It goes without saying that Israel has not fulfilled its obligations under the Agreement: it has not operated the crossings continuously between Israel and Gaza, as promised in November 2005, nor has it allowed any progress on transport links between the West Bank and Gaza, or on the seaport and airport in Gaza.

As a party to the Agreement, the EU should have been vociferous in demanding that Israel fulfil its obligations. But it hasn't been. From time to time, it has called for the "full implementation" of the Agreement (see, for example, in the European Council conclusions on 8 December 2009 [\[29\]](#)), but it hasn't made a public issue of Israel's failure to do so, let alone taken meaningful action to force Israel to do so, even though this failure has brought untold misery to the people of Gaza.

This failure alone should have led to the EU suspending the Euro-Med Agreement, on the grounds that Israel was in breach of the human rights obligations in Article 2 of the Agreement.

6 Conclusions

This paper has produced compelling evidence that the EU has consistently turned a blind eye to Israel's failure to fulfil its obligations in EU-Israel agreements. These obligations are not trivial matters. On the contrary, they are of the utmost importance to a just settlement in the Middle East.

For example, the Barcelona Declaration, which established the Euro-Mediterranean Partnership in 1995, obliges signatories to "act in accordance with the United Nations Charter".

Article 2.4 of the Charter forbids the acquisition of territory by force. Had the EU enforced that obligation with respect to Israel, it would have refused to allow Israel to become a partner until such times as it relinquished all the territory it had acquired by force in 1967.

Article 25 of the Charter requires UN member states to "to accept and carry out the decisions of the Security Council". Today, Israel is in violation of over 30 Security Council resolutions requiring action by it and it alone, demanding, amongst other things, that it

- cease building Jewish settlements in the occupied territories, including in Jerusalem
- reverse its annexation of East Jerusalem and the Golan Heights
- open its nuclear facilities to IAEA inspection.

As we said, these obligations in EU-Israel agreements are of great importance. In the light of Israel's failure to fulfil them, one might expect the EU to consider downgrading relations with Israel. However, the EU has constantly turned a blind eye to Israel's failure to fulfil them and instead the consistent trend has been towards upgrading relations.

Thus, when in 2007 Israeli Foreign Minister, Tzipi Livni, requested a further upgrade in relations with the EU as a 60th birthday present for Israel, the EU agreed on 16 June 2008. While this upgrade was formally put on hold in the aftermath of Israel's military assault on Gaza in December 2008/January 2009, it has never been revoked and in reality the EU has continued to enhance its relations with Israel in a variety of ways. In November 2009, for example, the EU and Israel signed the new agreement concerning reciprocal liberalisation measures on agricultural and fishery products [\[30\]](#).

In December 2010, a group of former European politicians, led by former vice-President of the European Commission, Chris Patten, suggested 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" [\[31\]](#).

That is the very least that the EU should do. It would be far better if it made clear that there will be no upgrade until Israel makes peace with its Arab neighbours including the Palestinians. Better still that the EU takes steps to downgrade its relations with Israel by suspending the Euro-Med Agreement in order to put pressure on Israel to bring this about.

* * * *

Article 21(1) of the Treaty on European Union, as amended by the Lisbon Treaty, lays down the principles that the EU should apply in the conduct of international relations. It states:

“The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.” [\[32\]](#)

It's not obvious that the EU has been guided by these principles in its relations with Israel. It has developed ever closer relations despite Israel's complete lack of respect for the principles of the United Nations Charter and international law.

Lest there be any doubt about this, listen to the words of Israeli Foreign Minister, Tzipi Livni, at a meeting with Palestinian negotiators on 13 November 2007, when Terms of Reference were being drawn up for the Annapolis negotiations:

“I was the Minister of Justice. I am a lawyer...But I am against law -- international law in particular. Law in general. If we want to make the agreement smaller, can we just drop some of these issues? Like international law, this will make the agreements easier.” [\[33\]](#)

Tzipi Livni was then a senior member of the Kadima-led government headed by Ehud Olmert. She has since become the leader of Kadima, which is widely regarded as a “moderate” party.

Israel is a member of the UN and, in addition to the UN Charter, is a party to umpteen conventions and treaties, for example, the Geneva Conventions. Yet here is Israel's Foreign Minister stating dogmatically that Israel does not consider itself bound by the principles of international law embodied in these or other international instruments.

As far as Israel is concerned, this means that, for example, Security Council resolutions can be ignored and territory acquired by force contrary to Article 2.4 of the UN Charter, as the West Bank and Gaza was in 1967, can be held on to indefinitely.

Tzipi Livni's remarks constitute a confession that Israel is a rogue state, which does not consider itself bound by international norms in its relations with other states.

In December 2003, the EU approved a European Security Strategy called *A secure Europe in a better world* [\[34\]](#). This states:

“A number of countries have placed themselves outside the bounds of international society. Some have sought isolation; others persistently violate international norms. ... Those who are unwilling to do so should understand that there is a price to be paid, including in their relationship with the European Union.” (p10)

Israel claims the right to violate international norms – and persistently does so. The European Union should make it pay the price.

Appendices

A Milestones in EU-Israel relations

1975: Israel signs an economic co-operation agreement with the European Community.

1981: The Delegation of the European Commission to the state of Israel officially opens.

1995: Israel signs the Barcelona Declaration, which established the Euro-Mediterranean Partnership as a framework for political, economic and social co-operation between the EU and states in the Mediterranean region.

1995: Israel signs an Association Agreement under the Euro-Mediterranean Partnership, which granted it privileged access to the EU market in 2000.

1996: Israel becomes the first non-EU state to take part in the EU's scientific and technical research programme.

2004: Israel signs an agreement with the EU, allowing it to participate in Galileo, the EU's project for a Global Satellite Navigation System.

2004: Israel becomes a partner in the European Neighbourhood Policy agreeing an action plan with the EU covering activity in political, economic and social fields.

2008: The EU decides to further upgrade its relations with Israel.

2009: The EU puts this upgrade on hold, in the aftermath of Israel's military assault on Gaza in December 2008/January 2009. However, it has never been revoked and in reality the EU has continued to enhance its relations with Israel in a variety of ways.

B Israel's contravention of the UN Charter

Article 2.4 of the UN Charter states:

“All [UN] Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” [\[3\]](#)

Throughout its existence as a state, Israel has contravened this Article of the UN Charter on many occasions, by threatening or using force against its neighbours - and relentlessly expanded the area under its control.

IN NOVEMBER 1947, the UN General Assembly proposed that Palestine be partitioned. If Jewish leaders had accepted this UN partition plan, Israel would today consist of about 56% of the land area of Palestine, and Jerusalem would be under international control. That's what the UN General Assembly recommended in Resolution 181, passed on 29 November 1947. But they didn't.

Instead, the area allocated by the UN General Assembly for a Jewish state was expanded by force to include 78% of Palestine, even though at the time Jews made up only about a third of the population of Palestine as a whole and owned a mere 6% of the land. To ensure that Jews were numerically dominant in the new Jewish state, nearly all the Arabs — around 750,000 — were expelled from it into the rest of Palestine and the surrounding Arab states, where they and their descendants live today [\[35\]](#). Over 500 Arab villages were destroyed so that those expelled had no homes to return to.

IN OCTOBER 1956, Israel entered into a secret arrangement with the UK and France, who wished to seize the Suez Canal, whereby Israel invaded Egypt and by so doing provided the pretext for the UK and France to “intervene” and occupy the Canal Zone, ostensibly to protect the Canal. The conspirators were forced to withdraw by the US. This action was contrary to Article 2.4 of the UN Charter.

IN JUNE 1967, Israel attacked Egypt, Jordan and Syria, forcibly occupying the remaining 22% of Palestine (the West Bank, including East Jerusalem, and Gaza), plus portions of Egyptian territory (the Sinai Peninsula) and Syrian territory (the Golan Heights). These actions were contrary to Article 2.4 of the UN Charter.

The Sinai remained under Israeli military occupation until the Camp David Accords over a decade later. The West Bank and Gaza remain under Israeli military occupation today. The Golan Heights and East Jerusalem were subsequently annexed.

Israel proceeded to build Jewish settlements in the areas it occupied, contrary to Article 49 of the Fourth Geneva Convention. It has continued to do so despite Security Council demands (in resolutions 446, 452 and 465) that it cease building settlements and remove those it has built.

Likewise, Israel has refused to comply with Security Council demands that it reverse its annexation of East Jerusalem (in resolutions 252, 267, 271, 298, 476 and 478) and of the Golan Heights (in resolution 497).

Israel has also refused to comply with the ruling of the International Court of Justice in July 2004 that it “cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto” (see Appendix D).

More than 40 years later, the West Bank and Gaza remain under Israeli military control, the building of Jewish settlements on occupied Arab land continues apace, East Jerusalem and the Golan Heights remain annexed – and the Wall lengthens daily.

IN 1978, AND AGAIN IN 1982, it attacked Lebanon and occupied parts of it militarily until 2000. These actions were contrary to Article 2.4 of the UN Charter. For over 20 years, it ignored the Security Council demand (in resolution 425, passed on 19 March 1978) that called upon it “immediately to cease its military action against Lebanese territorial integrity and withdraw forthwith its forces from all Lebanese territory”. It finally withdrew its ground forces from Lebanon (apart from Shebaa Farms), because of military pressure from Hezbollah.

ISRAEL’S USE OF FORCE, and threat to use force, contrary to Article 2.4 of the UN Charter, continues unabated. On 28 December 2008, Israel mounted a ferocious military assault against Gaza, which continued for 22 days and cost the lives of more than 1,400 Palestinians, including over 400 women and children.

Today, Israeli aircraft regularly enter Lebanese airspace and violate Lebanese sovereignty; and hardly a day passes without a member of the Israeli government threatening to attack Iran – all actions that are contrary to Article 2.4 of the UN Charter.

C *UN Security Council resolutions contravened by Israel*

Israel is contravening over 30 UN Security Council resolutions [\[5\]](#), dating back to 1968, resolutions that require action by it and it alone [\[36\]](#). This doesn't include resolutions violated by Israel for a number of years that have subsequently been implemented, such as those dealing with Israel's 20-year military occupation of southern Lebanon.

In these resolutions, the Security Council demands action by Israel on, amongst other things:-

(1) Jewish settlements in occupied territories

Resolution 446, passed on 22 March 1979, demands that Israel cease building Jewish settlements in the territories it has occupied since 1967, including in Jerusalem, and that it remove those already built. Paragraphs 1 & 3 state:

[The Security Council]

1. Determines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East;

3. Calls once more upon Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories;"

The Fourth Geneva Convention bans the planting of settlers on territory under occupation. Article 49, paragraph 6, of the Convention states:

"The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies." [\[37\]](#)

Israel's failure to comply with this resolution prompted further resolutions – 452 on 20 July 1979 and 465 on 1 March 1980 – demanding compliance.

(2) The annexation of East Jerusalem

Resolution 252, passed on 21 May 1968, demands that Israel reverse its annexation of East Jerusalem. Paragraphs 2 & 3 state:

[The Security Council]

2. Considers that all legislative and administrative measures and actions taken by Israel, including expropriation of land and properties thereon, which tend to change the legal status of Jerusalem are invalid and cannot change that status;

3. Urgently calls upon Israel to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem;

Israel's failure to comply with this resolution prompted further resolutions – 267 on 3 July 1969, 271 on 15 September 1969, 298 on 25 September 1971, 476 on 30 June 1980, and 478 on 20 August 1980 – demanding the reversal of its annexation of East Jerusalem.

(3) The annexation of the Golan Heights

Resolution 497, passed on 17 December 1981, demands that Israel reverse its annexation of the Golan Heights, which were captured from Syria in June 1967. Paragraphs 1 & 2 state:

[The Security Council]

1. Decides that the Israeli decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights is null and void and without international legal effect;
2. Demands that Israel, the occupying Power, should rescind forthwith its decision;”

(4) Nuclear facilities under IAEA safeguards

Resolution 487, passed on 19 June 1981, demands that Israel open its nuclear facilities to inspection by the International Atomic Energy Authority (IAEA). Paragraph 5 states:

[The Security Council]

5. Calls upon Israel urgently to place its nuclear facilities under IAEA safeguards”.

By refusing to open its nuclear facilities to IAEA inspection, Israel is violating this resolution.

Conclusion

It is important to emphasise that these resolutions place obligations on Israel, and Israel alone, so it is within Israel's power to implement them of its own volition, without negotiation with the Palestinians or with neighbouring states. It doesn't need to negotiate with anybody before ceasing settlement building, or undoing the annexation of East Jerusalem or the Golan Heights, or opening its nuclear facilities to IAEA inspection.

Had Israel wished to do so, it could have implemented these resolutions at the time they were passed by the Security Council, or at any time since. Had Israel done so, the political landscape in Palestine would have been transformed.

D The International Court of Justice on the Wall

On 8 December 2003, the UN General Assembly passed resolution ES-10/14 requesting the International Court of Justice (ICJ) to give an Advisory Opinion on the following question:

“What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?” [5]

The Court agreed to the request and delivered the Advisory Opinion (entitled *Legal consequences of the construction of a wall in the Occupied Palestinian Territory* [7]) on 9 July 2004. The key points of the Opinion are:

- A. The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law;
- B. Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;
- C. Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem;
- D. All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction; all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention;

Regrettably, Israel has categorically refused to comply with these obligations and has continued to build the wall.

Israel has maintained this recalcitrant stance despite a near unanimous demand by the international community that it complies. In resolution ES-10/15, passed on 20 July 2004, the UN General Assembly demanded that “Israel, the occupying Power, comply with its legal obligations” as laid down by the Court [5]. This resolution was passed by 150 votes to 6. Ireland, and all other EU states, supported it. Only Australia, Israel, Marshall Islands, Micronesia, Palau and the United States opposed (representing only 5% of the world’s population).

The Court stated in its opinion:

“The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime.”

Israel has ignored the action taken four years ago by the UN General Assembly, with the support of all EU states. It is now time for the EU to seek to persuade the Security Council to take action, as requested by the Court.

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