



THE EASY READER

*to "a Human Rights Review
on the EU and Israel" (2004-2005)*



Euro-Mediterranean Human Rights Network
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Introduction

November 2005 marked the 10th anniversary of the launch of the Barcelona Process between the EU and its neighbouring countries

(Algeria, Tunisia, Morocco, Egypt, Jordan, Syria, Lebanon, the Palestinian Authorities, Israel, Turkey and Malta and Cyprus that became EU members in 2004). Central to the Barcelona Declaration is the commitment by all parties to respect and promote human rights. Here 10 years down the road, neither the EU nor Israel is living up to these commitments.

Through its occupation of the Palestinian territories and discrimination against the Palestinian Arab minority in Israel, Israel is violating international humanitarian and human rights law.

Through its actions and sometimes lack of actions, the EU continues to assist many of Israel's illegal policies. The EU seems to prefer forming new "understandings" and "practical arrangements" with Israel (and the

Palestinian Authority) despite their disrespect for international humanitarian and human rights law.

This booklet serves as a separate introduction to the second Euro-Mediterranean Human Rights Network (EMHRN) review of the EU's compliance with its on human rights commitments in its relation to the

This easy-reader will give special attention to:

- EU's approach to the implementation of the European Neighbourhood Policy.
- The issues raised in connection with Israel's implementation of the Gaza Disengagement plan.
- The inclusion of Israel in the pan-euromed system of free trade while Israel continues to apply its privileged trade agreements to settlement enterprises established in the occupied Palestinian territories.

state of Israel. In line with the first assessment it examines the EU's statements and its actions in relation to Israel, and the 'essential element' clause, which is incorporated into all EU framework agreements with third countries.

EU's commitments to human rights

The EU must construct and implement its external relations in accordance with the requirements of general international law, including laws that contribute to the protection of human rights.

Article 2 of the Euro-Mediterranean Association Agreement², between the EU and Israel widely referred to as the "essential element's clause", commits the EU and Israel, to base their relations on the respect for human rights and democratic principles.

In dealing with states engaged in armed conflict or belligerent occupation, such as Israel, the EU and all member states are bound by Article 1 of the Geneva Convention of 1949 to "respect and ensure respect for [those] Conventions in all circumstances".

Articles 177 and 181a in the Treaty establishing the European Community stipulate that Community policies in the areas of development cooperation as well as economic, financial and technical cooperation shall contribute to the general objective of respecting human rights and the fundamental freedoms.

Article 11 of the Treaty on European Union stipulates that the EU's Common Foreign and Security Policy aims to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.

Who Is Who In The EU?

♣ The Council of the European Union

- consists of EU member states' ministers (whoever minister responsible for the certain issue discussed)
- passes European laws (together with the European Parliament)
- approves the EU's budget (together with the European Parliament)
- takes EU's policy decisions
- has main responsibility for the EU's foreign and security policy

♣ The European Parliament (EP)

- the only directly elected body in the EU. Elections every five years
- Members of Parliaments sit together in 7 Europe-wide political groups
- passes European laws (together with the Council)
- approves the EU's budget together with the Council)
- monitors the work of the European Commission through parliamentary questions

♣ The European Commission (EC)

- drafts proposals for new EU laws and presents them to the European Parliament and the Council
- implements EU policies
- guardian of the European treaties and laws
- can act against rule-breakers, taking them to the Court of Justice, if necessary

European Neighbourhood

The European Neighbourhood Policy (ENP) is the latest policy presented by the EU to enhance relations with non-candidate neighbouring countries.

The aim is to promote stability and prosperity beyond the EU's new borders and avoid drawing new dividing lines in the post-enlargement Europe. While the Barcelona Process remains the cornerstone of the EU's relations with the region and the Association Agreements the legal foundation of bilateral relations, the new Neighbourhood Policy is supposed to complement and boost the existing agreements.

// In the framework of implementation of the ENP, the Commission is committed to ensuring that human rights and democratisation issues are fully taken into account in the political chapter of the Action Plans"³

The EU negotiates an Action Plan with each ENP country which makes up the overall strategic and policy target for the partnership. One aim in the Action Plan is to create a sub-committee on human rights in each Action Plan in order to ensure respect for human rights.

In the case of Israel, the human rights sub-committee was not created. The matter was reportedly debated, but Israel refused to accept

such a sub-committee on the grounds that it was contrary to Israel's self-image as a democracy. Few EU member states opposed the Israeli objection and the matter did not come to a vote.

Instead the Commission decided to make human rights an item under the sub-committee on Political Dialogue and Cooperation. The same logics were applied to the Palestinian Authority, apparently based on the argument that the exclusion of one human rights sub-committee can be justified by the exclusion of another.

This follows the common line of argument that in the context of the Middle East Peace Process human rights can not be separated from politics.

The European Neighbourhood and Partnership Instrument (ENPI) will start in 2007 and will be one of six financial instruments that will provide the legal basis for all European Community funding of measures and activities that implement the EU's external policies including the European Neighbourhood Policy.

It is expected that the ENPI will be relied upon to finance joint activities supporting the implementation of the EU-Israel Action Plan as well as regional and multilateral activities involving Israel under the ENP.

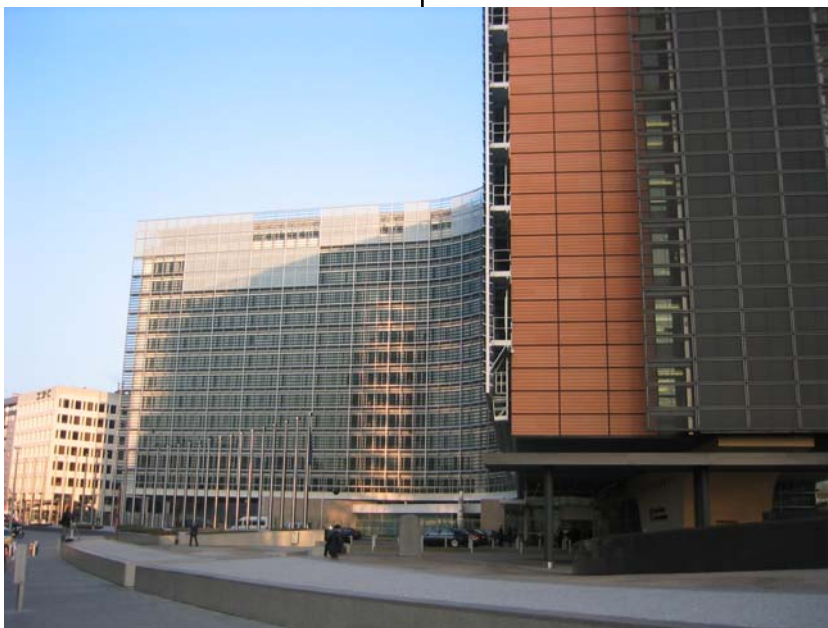
European Neighbourhood

The goal envisaged by the Commission is to broaden Israel's participation in the EU's internal market. It is thus likely that the ENPI will be used to finance "targeted administrative cooperation", i.e. the kind of activity that construct the "practical arrangements" which afford Israel the opportunity to continue its cooperation with the EU despite breaches of the agreements.

The European Commission in consultation with the Council is in charge of the financial instruments including the ENPI, as well as selection and prioritisation of strategies and goals and negotiations of the ENP Action Plans. This combined with the flexibility of the instruments, makes it very difficult for the European Parliament to have a say in how the budgets are actually used.

The Parliament is now trying to obtain a political "voice" in shaping the priorities, conditions and a thrust of cooperation with partner countries under the financial instrument.

The European Parliament is currently considering two sets of "safeguard amendments" to secure the implementation of activities under the ENPI against the kind of political mismanagement discussed in the review. With the amendments in place unlawful implementation of any agreement would amount to maladministration by the Commission and then the Parliament (or any member state) would be in a position to call on the Commission to act. In event of an unsatisfying response by the Commission the Parliament would be empowered to bring such a case before the Court of Justice.



"Berlaymont" building that houses the European Commission, Brussels, Belgium

Gaza “Disengagement”

In December 2003 Israeli Prime Minister Ariel Sharon presented the Disengagement Plan, an Israeli plan to disengage from the Gaza Strip.

Israel has never recognised its status as an occupying power in the occupied Palestinian territories. The Israeli Disengagement Plan was aimed at dispelling any such claims of Israel being an Occupying Power. However under international law the Gaza Strip is still occupied and Israel is still responsible for the Palestinians living under its occupation.

The EU has failed to respond firmly to the “disengagement” and has avoided clearly addressing Israel’s continued responsibility under international law. Numerous reasons were voiced in Brussels for this lack of response by the EU. One explanation given was that Israel should be “rewarded” for its withdrawal from Gaza and that the “disengagement” had changed the attitude in the EU towards Israel.

Another reason expressed was the difference among member states in the perception of the relation of International Humanitarian Law to the Middle East

Peace Process, was making it hard to reach consensus among 25 member states. Yet another reason given was that affirming Israel’s occupation could give militant movements justification for carrying on its resistance against Israel.

Israel’s “Disengagement” Plan

According to the Office of the Israeli Prime Minister³: Israel will evacuate the Gaza Strip, including all existing Israeli towns and villages, and will redeploy outside the Strip.

Upon completion of this process, there shall no longer be any permanent presence of Israeli security forces or Israeli civilians in the areas of Gaza Strip territory which have been evacuated.

As a result, there will be no basis for claiming that the Gaza Strip is occupied territory.

Israel will guard and monitor the external land perimeter of the Gaza Strip, will continue to maintain exclusive authority in Gaza air space, and will continue to exercise security activity in the sea off the coast of the Gaza Strip.

Initially, Israel will continue to maintain a military presence along the border between the Gaza Strip and Egypt (Philadelphi route).

In general, Israel will enable the continued supply of electricity, water, gas and petrol to the Palestinians, in accordance with current arrangements.

By choosing not to refer to the occupation, and therefore International Humanitarian Law, the EU plays in to the hand of the parties on both side of the Israeli–Palestinian conflict who disregard International Law, including those elements among the Palestinians that the EU was hoping to marginalise or wean away from political violence.



Rafah, the Gaza Strip, October 2005

Rules of Origin

The EU has preferential trade agreements with a number of countries hereunder Israel, with the aim of reducing costs in relation to trade.

The EU is currently seeking to enlarge the preferential trade system with a new pan-euromed system involving all European and Mediterranean countries. The new preferential trade system is to have one single set of origin rules.

It was a clear understanding that Israel would be among the first countries to be admitted into this system. However the EU had a problem with Israel exporting products from illegal settlements in the occupied Palestinian territories as products "made in Israel". This is in violation of the Association Agreement between the EU and Israel, as the agreement does not cover the occupied Palestinian territories, which the EU does not recognise as part of Israel.

In order to tackle the problem Israel proposed a "technical arrangement", which meant that Israel would list on each proof of origin the names and Israeli postal codes of the place



of production. It would then be up to the EU customs authorities to examine each proof of origin and determine whether a product was eligible for preferential treatment. Though stating that the "technical arrangement" would not solve the EU-Israel bilateral issue of rules of origin, the Commission accepted the solution and the "technical arrangement" was put into effect in February of 2005.

The problem to the EU now is that while before the "technical arrangement", the EU customs authorities could object that Israel issued proofs of origin to settlement products, now the arrangement in fact foresees that Israel issues such proofs, as it is now the work of the EU customs authorities to void such proofs when they are not eligible for preferential treatment. It will likely only be a matter of time before the absence of any Community objection, renders Israel's practices accepted under the Association Agreement.



Private Investment

Israel has in recent years opened up economically by removing barriers on its financial markets and privatising its banking sector.

With the growing cooperation between Israel and the EU, the number of European companies investing in Israeli settlements in the occupied Palestinian territories is growing. When EU or EU member state public funds are involved in such investments, governments cannot simply downgrade their own duty of care and their own duty to respect and ensure respect for the Fourth Geneva Convention to the private sector, because as the European Commission has stated:

// where public support is provided to enterprises, this implies co-responsibility of the government in those activities”⁵

The following Israeli government tenders invite participation of EU companies in projects that implement

internationally unlawful measures:

* Jerusalem light rail

The Jerusalem light rail will connect the East Jerusalem settlements of French Hill and Pisgat Zeev to West Jerusalem. French company Alstom and multi-national company CGEA-Connex are members of the City Pass Group, which won the tender with a bid that offered to supply funding for 28% of the project, with the State of Israel funding the rest.

* A1 Railway line

In May 2005 Israel Railways Ltd published a pre-qualification tender for construction of Section B of the A1 Railway Line Modiin-Jerusalem. It is unlikely that the construction will be able to avoid West Bank territory.

The railway is obviously a permanent structure and can not be dismissed by the Israeli government as a temporary measure, as has been the case with the wall/barrier.



Private Investment

* Prison

The State of Israel posted a tender for a private prison. According to the tender the contractor will be responsible for designing and building the prison and operating it for 25 years. The updated tender is directed at three consortia that passed the initial financing stage. The first consortium includes GEPSA of France.

Several points need to be mentioned in regard to EU companies' participation in the construction and operation of a private prison in Israel:

- Israel incarcerates West Bank/Gaza administrative detainees in prisons in Israel in violation of the 4th Geneva Convention.
- Israel has signed the UN Convention against Torture but has yet to adopt it into domestic law.
- The cell space for housing inmates is alleged to be smaller than the norm in other countries including the average in Western Europe.



Abu Dis, August 2005



Conclusions

Israel continues to implement its agreements with the EU in violation of general international law, and in violation of its own agreements.

Despite being aware of the violations of human rights of the Palestinians in the occupied Palestinian territories and of discrimination against the Palestinian Arab minority inside Israel the EU has repeatedly chosen not to prevent this.

The EU may actually have facilitated Israel's violations of international human rights and humanitarian law by deferring to them in its own dealings with Israel.

This booklet serves as a separate introduction to the second EMHRN review of the EU's compliance with its on human rights commitments in its relation to a third country in the Barcelona Process, "a Human Rights Review on the EU and Israel" (2004-2005). The review concludes in particular that:

- ♣ The significant lack of coherence between the EU's legally correct declared diplomacy and its operative diplomacy in its relation with Israel continues.
- ♣ The EU's politically managed policies towards Israel disregard international law and ignore the harm they potentially cause to the stability and promotion of human rights in the region as a whole.

- ♣ The EU continues to conclude "practical arrangements" with Israel, arrangements that enable Israel to maintain its unlawful practices while still enjoying the benefits of the cooperation with the EU.
- ♣ With regard to Israel's "disengagement" from Gaza the EU has avoided taking a clear position despite Israel's attempt to avoid its legal obligations as an occupying power.
- ♣ The EU-Israel Action Plan under the European Neighbourhood Policy lacks a proper review mechanism to benchmark any implementation of human rights-related commitments.
- ♣ In order to make Israel respect its obligations under international law the EU must first respect theirs. By continuing to facilitate Israel's violations the EU undermines the promotion and respect of human rights.



Taking Action



The EMHRN recommends the EU, politicians, the media and anyone with an interest in upholding the EU's human rights commitments to take action.

EMHRN suggests that the EU:

- Establishes a public review mechanism with clear benchmarks enabling it to measure how its agreements with third countries are being implemented with regard to respect for human rights.
- Insists on the inclusion of a human rights sub-committee under the EU-Israel Association Agreement.
- Consults and involves relevant human rights NGOs and representatives of civil society in the review of the EU-Israel Action Plan.

EMHRN suggests that the European Parliament:

- Engages in dialogue with the European Commission to promote the establishment of clear benchmarks for assessing third countries' human rights practices in light of the Union's own commitments.
- Adopts and incorporates the "safeguard amendments" into all EU financial instruments, to ensure that all agreements and measures taken under the ENPI will be implemented in accordance with the requirements of general international law.

EMHRN suggests that members of the national Parliaments:

- Bring the violations to the attention of the local governments and request that the issue be brought up in the European Commission and at meetings of the EU ministers.

EMHRN suggests that the media:

- Communicates the conclusions of the Human Rights Review on the EU and Israel to the public to create awareness of the disrespect for human rights in EU-Israel relations.



Endnotes

- 1) "A Human Rights Review on the EU and Israel – Mainstreaming or Selectively Extinguishing Human Rights?", published by the Euro-Mediterranean Human Rights Network in March 2006. Personal authors: Rockwell, Susan; Shamas, Charles. The review can be downloaded on www.euromedrights.net
- 2) An Association Agreement is a treaty between the European Union and a non-EU country that creates a framework for co-operation between them.
- 3) Commission Staff Working Document, Implementation of the Commission Communication on the EU's Role in Promoting Human Rights and Democratisation in Third Countries, SEC(2004) 1041, 30 July 2004, p.8.
- 4) Office of the Israeli Prime Minister www.pmo.gov.il/PMOEng/Communication/DisengagemePlan/Disengagement+Plan.htm
- 5) Communication from the Commission Concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development, (COM)2002 347 final 2.7.2002, p. 23.



Map from U.S. Department of State



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It studies the EU's obligations and commitments to respect and promote human rights in its relations with Israel.

This booklet is suitable as an introduction for civil society, politicians, media and anyone with an interest in EU-Israel relations.

The EMHRN Working Group on Palestine, Israel and Palestinians consists of the following human rights activists and organisations:

- Adalah – The Legal Center for Arab Minority Rights in Israel (Israel)
- Al-Haq (The West Bank, Palestine)
- Arab Association for Human Rights (Israel)
- B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories (Israel)
- Bruno Kreisky Foundation (Austria)
- Cairo Institute for Human Rights Studies (Egypt)
- Swedish member of the International Commission of Jurists (Sweden)
- Palestinian Centre for Human Rights (Gaza, Palestine)
- Palestinian Human Rights Organisation (Lebanon)
- Public Committee Against Torture in Israel (Israel)
- Swedish Refugee Aid (Sweden)

The Euro-Mediterranean Human Rights Network is a network of more than 80 Arab, European, Israeli and Turkish human rights organisations, institutions, and individuals committed to universal human rights and based in more than 20 countries in the Euro-Mediterranean region.

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