



A Human Rights Review on the EU and Israel

— Mainstreaming or Selectively Extinguishing Human Rights?

2004-2005

Executive Summary & Recommendations

EMHRN December 2005

EXECUTIVE SUMMARY

Introduction

A Human Rights Review on the EU and Israel (2004-2005) is the second EMHRN annual assessment of European Union (EU) compliance with its own human rights commitments in its relations to Israel.¹ It examines EU and Member State positions and responses to Israeli violations of international human rights and humanitarian law in the occupied Palestinian territories and in Israel.

Behind the report is a coalition of Palestinian, Israeli, Arab and European NGOs.

Conclusions

This review concludes in particular that:

- The remarkable lack of coherence between the EU's legally correct declarative diplomacy² and its operative diplomacy³ in its relations with Israel continues.
- Israel continues to violate the human rights of Palestinians in the occupied Palestinian territories and discriminate against the Palestinian Arab minority in Israel, and the EU's operative diplomacy continues to accommodate many of Israel's illegal policies.
- The EU's political priority is the implementation of the Quartet's "roadmap". For that, the EU prefers relying on forging new "understandings" and "practical arrangements" with Israel and the Palestinian Authority that disregard international humanitarian and human rights law and facilitate their disregard by Israel.
- The political echelon of the EU overlooks the necessity of ensuring respect for the rules of international humanitarian law to the construction of a viable and successful Palestinian state, and the achievement of respect for fundamental human rights throughout the region. The harm to security and stability caused by such lack of respect for international humanitarian law is also overlooked.
- During 2004-2005, the EU has concluded at least two "practical arrangements" with Israel in order to make it possible for Israel to maintain its internationally unlawful practices while enjoying the benefits of EU-Israel cooperation:
 - 1) a technical arrangement on customs cooperation that aims to avoid the need for a lawful "solution to the EU-Israel bilateral issue of rules of origin"; and
 - 2) an informal arrangement to eliminate the *visible* participation of Israeli settlement-based research enterprises in the EU's Framework Programme for Research and Technological Development.
- In relation to Israel's "disengagement plan" the EU has been silent on the applicability of international humanitarian law, despite Israel's self-declared intention to improperly release itself from its responsibilities as occupying power on the basis of measures implemented with the help of, among others, the EU.
- As the previous review showed, 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.

1 The review is published by the Euro-Mediterranean Human Rights Network (EMHRN), a network of 84 Arab, European, Israeli and Turkish human rights organisations, institutions, and individuals committed to universal human rights and based in 28 countries of the Euro-Mediterranean region.

2 Declarative diplomacy sets out commitments without attaching them to any actual or potential consequence.

3 Operative diplomacy consists of actions taken in the bilateral or multilateral spheres that influence the decisions of a third state.

- For Israel to begin to respect its obligations under international law, the EU and other third states must begin to respect theirs. The existing climate of general disrespect for the law by states has helped engender the growing problems of human insecurity, lawlessness and unregulated political violence observed within the occupied Palestinian territories, and may soon make the establishment of a fully sovereign and viable Palestinian state impossible.
- Some pro forma action points relating to respect for human rights and international humanitarian law have found their way into the text of the EU/Israel Action Plan, but only as insubstantial undertakings to “work together”, “promote” or “explore”. While the EU’s recommendation for benchmarking set out in its 2003 *Communication on a Wider Europe – Neighbourhood* still awaits implementation for all Action Plans under the ENP, the human rights-related commitments that have been set out in the EU/Israel Action plan can not be usefully benchmarked, since all of the actions referred to can be “performed” without producing any objective change in compliance or implementation.

Just as its predecessor one year ago did, the second EMHRN *Human Rights Review on the EU and Israel (2004-05)* presents several instances where Israel implements its agreements with the EU, based on its rejection of its key international obligations as an occupying power, and as a state of all its citizens. The EU can not knowingly allow its contractual relations with any third country to operate in this manner without itself violating EU law and international humanitarian law. The EMHRN therefore presents the following recommendations.

RECOMMENDATIONS

The report's recommendations remain largely unchanged from those reached in the 2003-2004 report, but are updated to reflect recent developments:

Based on the conclusions of this review the EMHRN again recommends the following:

1. The EU should establish a public review mechanism with clear measurable benchmarks that will enable it to assess how its agreements with third countries are being implemented and applied with regard to respect for human rights.
2. Members of the European Parliament should pursue dialogue with the European Commission promoting the establishment of clear and transparently applied benchmarks for assessing third country human rights practice in light of the Union's own commitments to human rights. The establishment of such benchmarks would additionally provide an opportunity for parliamentarians to address well-targeted questions to the Commission and the Council regarding Israel's human rights practices and the EU's responses.
3. The implementation of the Action Plan with Israel under the European Neighbourhood Policy (ENP) should be based on a clear acknowledgement by Israel of its status and duties as an Occupying Power. When reviewing the Action Plan, a provision for technical dialogue and practical cooperation aimed at promoting the implementation of international human rights and humanitarian law in occupied Palestinian territory should be added. Also the current items listed in the Plan should be translated and sequenced into concrete actions and/or programmes.
4. The EU should press again for the establishment of a human rights sub-committee under the EU-Israel Association Agreement. Human rights NGOs should systematically be consulted and informed about the work of such a committee.
5. The European Commission should consult relevant civil society organisations when carrying out periodic human rights reviews of the implementation of the Action Plan and the EU-Israel Association Agreement.
6. Israel considers the territories occupied in 1967, including East Jerusalem, to fall under its treaty-making authority. This interpretation stands in clear contrast to the EU-Israel agreements' stated territorial scope of applicability. The External Relations Directorate General and the Commission at the highest level should therefore ensure that *all* Directorate Generals are notified of Israel's treaty breaking interpretation and are obliged to take proper action ensuring the agreements' lawful application and implementation, in keeping with the principle of human rights mainstreaming.

In addition the EU should ensure that:

- a. Assistance funds directed through implementing agencies working in the occupied Palestinian territories are not used in contravention to the International Court of Justice's injunction that states not render aid or assistance in maintaining the situation created by the construction of the barrier/wall.
- b. Entities participating in the illegal construction of infrastructure in occupied territory are not allowed to participate in any EU-Israel cooperation instrument.

- c. Entities established in illegal Israeli settlements do not participate in any way in the EU's bilateral and regional cooperation instruments provided for in the EU's agreements with Israel or with the Palestinian Authority.
 - d. All EU public procurement tenders stipulate that entities located in Israeli settlements, or entities with branches or subsidiaries in settlements, are not qualified to participate.
7. The EU should make increased and regular public reference to illegal actions carried out by the armed forces of Israel that are causing the humanitarian crisis in the occupied Palestinian territory. The EU should call on Israel to stop these illegal actions, reverse their effects to the fullest extent possible, and make correct reparation for the harm they have wrongfully caused.
 8. The EU should also make it clear to Israel that the EU's provision of humanitarian assistance is within the rules of international humanitarian law and does not release Israel of its responsibilities as an Occupying Power. The EU should demand reimbursement from Israel for all additional costs incurred on the provision of humanitarian relief deliveries as a consequence of access and mobility restrictions imposed unlawfully by Israel's military authorities.
 9. In light of the effects of Israel's systematic discriminatory treatment of its Arab citizens on their opportunities for participation in the range of EU-Israel cooperation instruments, the EU should take steps to ensure that its cooperation with Israel is conditioned on concrete and effective steps to end all discriminatory state practice and rectify its effects.
 10. Should Israel request a loan facility from the European Investment Bank or any other Community financing instrument, the relevant EU financial institution should make a clear and determined effort to enable minority access to the new lending opportunities. In the case of Community grants, the EU should earmark a substantial share of the funds for minority use.
 11. As recommended in the 2003-2004 report, the 'Olmert Arrangement' for implementing the EU-Israel protocol on origin was not formally accepted by the EU nor endorsed by the EU-Israel Association bodies, as this would have entitled Israel to continue applying the Association Agreement to the occupied territories. For this same reason, the European Union should not act to bring Israel into the Pan-Euro-Mediterranean free trade area while Israel continues to apply the Agreement to the occupied territories and continues to certify products from illegal settlements as originating in Israel.

Based on the new developments reviewed in this report, and its updated conclusions, the EMHRN makes the following additional recommendations:

Structural and Institutional

European Neighbourhood Policy Instrument

The "safeguard amendments" to the ENPI currently being considered in the European Parliament, should be adopted, and incorporated into all other EU external financial instruments. The proposed amendments would ensure that all agreements and measures taken under the ENPI will be implemented in accordance with the requirements of general international law and the *aquis communautaire*.

European Initiative for Democracy and Human Rights

A new successor financial instrument to the EIDHR should be prepared and adopted to ensure continued and expanded EU support for civil society human rights promotion efforts throughout the Neighbourhood, and world-wide, independently of the politically managed ENPI.

The European Agency for Human Rights

The European Union Agency for Fundamental Rights should be given a role in reviewing implementation of the human rights clauses in all Association Agreements by both sides. It should monitor and promote coherence between the Union's general policy commitments and statements on the one hand, and third country human rights-related practice and the EU's own operative diplomacy on the other. It should perform this role with full political independence.

Political

- The EU should develop and implement a strategy to place respect for human rights and international humanitarian law by all parties involved in the Middle East peace process at the centre of efforts to put that process back on track. It should be applied to the EU-Israel dialogue, and all elements of EU-Israel relations across all EU policies.
- The EU should develop and articulate legally correct positions setting out the responsibilities that the EU will itself respect in implementing and further developing EU-Israel relations, specifically taking into account Israel's policies and practices as an occupying power, the measures being taken in connection with the "disengagement plan", and the discriminatory policies and practices that continue to operate in Israel.
- The EU should set appropriate self-enforced conditions and limits on EU involvement in the disengagement process, and ensure that the conclusion of new 'soft law' or 'practical arrangements' involving Israel are consistent with the above.