

# **The European Union's Blind Eye**

**How the EU ignores Israel's failure to fulfil  
its obligations under EU agreements**

**Ireland Palestine Solidarity Campaign  
October 2008**

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**Compiled by David Morrison  
October 2008**



## **A report by the Ireland Palestine Solidarity Campaign**

The IPSC was established in 2001 by established Irish human rights and community activists, academics and journalists who were deeply concerned with the developing situation in the Occupied Palestinian Territories. In partnership with Palestinians living in Ireland, the IPSC was formed to provide a voice for Palestine in Ireland and in Europe.

The IPSC is an independent, non-party political organisation, run by volunteers committed to a just and sustainable peace in the Middle East.

The IPSC campaigns for justice for the Palestinian people, through raising public awareness about Israel's human rights abuses in the occupied territories, violations of international law and the historical causes of the injustices to the Palestinians that lie at the heart of the Israeli/Palestinian conflict.

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## Executive Summary

ON 1 SEPTEMBER 2008, the EU decided that meetings with Russia about a new partnership agreement would be postponed “until [Russian] troops have withdrawn to the positions held prior to 7 August”, that is, until the Russian military occupation of Georgia (outside South Ossetia and Abkhazia, at least) had ended.

On 28 November 1995, the EU allowed Israel to become a partner, under Euro-Mediterranean Partnership arrangements with states bordering on the Mediterranean. At the time, Israeli troops were occupying parts of Lebanon and Syria and the Occupied Palestinian Territories (the West Bank and Gaza) and had been for many years – Lebanon since 1978, the rest since 1967.

Clearly, the EU has applied very different standards in its relations with Israel and Russia. Had the conditions applied to Russia in September 2008 been applied to Israel in November 1995, the EU would have refused to enter into negotiation with Israel about becoming a partner until all Israeli troops had been withdrawn from Lebanon, Syria and the Occupied Palestinian Territories.

THERE IS ANOTHER extraordinary aspect to the EU's relations with Israel – the EU has been happy to sign agreements with Israel even though, at the time of signing, Israel has been contravening obligations contained in the agreements themselves.

For example, the Barcelona Declaration, which established the Euro-Mediterranean Partnership, 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, Syria and Israel signed the Barcelona Declaration and became EU partners 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. But the EU turned a blind eye to Israel's breach of the partnership agreement at the time it signed the partnership agreement – 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 signed in November 1995. These agreements oblige the parties to them, including Israel, to abide by generally recognised principles of international law.

It is our contention that 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 submission. But the EU has continuously turned a blind eye to these contraventions and, despite them, continuously enhanced its relations with Israel, most recently, on 16 June 2008.

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 – since it has occupied parts of their territory militarily. 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, gives Israel privileged access to the EU market. According to Article 2 of the Agreement, “respect for human rights and democratic principles” is an “essential element” – 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, the most recent example being its economic strangulation of the people of Gaza in 2007/8, which the EU itself described as “collective punishment”, contrary to international humanitarian law. But the EU has again turned a blind eye to abuses of international humanitarian law by Israel and refused to contemplate a suspension of the Agreement until such times as Israel meets its obligations.

SINCE 1995, ISRAEL has been an EU partner in the European Neighbourhood Policy (ENP). Here again, 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.”

Once again, the EU turned a blind eye to Israel's failure to make progress and decided on 16 June 2008 to “upgrade” its relations with Israel.

## 1 The Euro-Mediterranean Partnership

Section 1 outlines some of the key terms of 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 points out that the EU lays down very different standards for partnership with Russia and Israel – Israeli military occupation is not a bar to an EU partnership. 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, Israel's breaches of the Declaration today are described.

### 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 15 EU states 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 “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.”

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 Israel 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 obligations in the partnership agreement at the time it signed the partnership agreement – 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 Russia**

In September 2008, the EU decided that meetings with Russia about a new partnership agreement would be postponed “until [Russian] troops have withdrawn to the positions held prior to 7 August” [4], that is, until the Russian military occupation of Georgia (outside South Ossetia and Abkhazia, at least) had ended.

In November 1995, the EU allowed Israel to become a partner, at a time when Israeli troops were occupying parts of Lebanon and Syria and the Occupied Palestinian Territories (the West Bank and Gaza) and had been for many years – Lebanon since 1978, the rest since 1967. Had the conditions applied to Russia in September 2008 been applied to Israel in November 1995, the EU would have refused to enter into negotiation

with Israel about becoming a partner until all Israeli troops had been withdrawn from Lebanon, Syria and the Occupied Palestinian Territories.

Clearly, the EU has applied very different standards in its relations with Israel and Russia. On the one hand, Israel was allowed to become an EU partner in 1995, even though large swathes of territory not its own had been under Israeli military occupation for many years, and is allowed to remain a partner even though most of this territory remains under Israeli military occupation today. By contrast, Russia is not allowed to enter into negotiation about a partnership with the EU without ending its month long occupation of parts of Georgia.

What possible justification can there be for the EU applying such extraordinarily different standards to Israel and Russia?

#### **1.4 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" [\[5\]](#). 27 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".

### 1.5 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.

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;”

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 decided to “upgrade” its partnership with Israel.

## 2 The Euro-Med Agreement

Section 2 outlines 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 [\[6\]](#) 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 2000. Today, about 33% of Israel's exports are to the EU and 37% of its imports are from the EU (amounting to €9.8 billion and €13.8 billion, respectively, in 2006).

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, the most recent example being its economic strangulation of the people of Gaza in 2007/8. Of this, John Holmes, UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, told the Security Council on 26 February 2008:

"... 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." [\[7\]](#)

Collective punishment is contrary to Article 33 of the Fourth Geneva Convention, which 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." [\[8\]](#)

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." [\[9\]](#)

The Irish Foreign Minister, Dermot Ahern, agreed, telling Dail Eireann on 11 March 2008:

"I remain deeply concerned about the worsening humanitarian situation in Gaza. It is unacceptable that Israel should isolate the people of Gaza and cut off essential supplies in order to exert pressure on them to reject Hamas. I agree with the United Nations that this constitutes collective punishment and is illegal under international humanitarian law." [\[10\]](#)

### **2.3 EU fails to act on Israeli breaches**

So, the UN, the EU and Ireland are of the firm opinion 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" [\[11\]](#).

There is not the slightest doubt that, by its economic strangulation of Gaza in 2007/8, 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. If Article 2 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. Despite these departures from European values, and despite a plea from Palestinian Prime Minister Salam Fayyad, the EU decided to further upgrade its relationship with Israel within the ENP in June 2008.

#### 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 [\[12\]](#). 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 – €9 million – is specifically allocated to it (see European Neighbourhood and Partnership Instrument [\[13\]](#)). 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."

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 [\[14\]](#) was based on a European Commission report on Israel [\[15\]](#) 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 was 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)

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* [\[16\]](#). 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 [my emphasis], 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)

### **3.3 Israeli action in the Occupied Territories**

On Israeli action in the occupied territories, the European Commission report from May 2004 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 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 [my emphasis]. 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)

### **3.4 The EU ignores plea by Palestinian Prime Minister**

So, according to the Commission report of April 2008, little progress had been made towards the fulfilment of important objectives in the ENP Action Plan.

A reasonable person might conclude that it was time for the EU to put its foot down and insist that its relations with Israel be frozen until such times as Israel took action to address these issues. The Palestinian Prime Minister, Salam Fayyad, thought so and, on 4 June 2008, wrote a letter saying so to the Prime Minister of each of the 27 member states of the EU, to José Manuel Barroso, the President of the European Commission, to Javier Solana, the EU High Representative for the Common Foreign and Security Policy, to Benita Ferrero-Waldner, the Commissioner for External Relations, and to Hans-Gert Pöttering, the President of the European Parliament.

He wrote:

"It has come to my attention that the European Union is contemplating upgrading its relationship with Israel, including in the political and economic spheres, and that the Council may take a decision on this matter in its June 16th meeting.

"I am writing you to register my deep reservations concerning such an upgrade while Israel continues to systematically violate Palestinian human rights and flaunt its international obligations, including certain of its commitments to the EU." [\[17\]](#)

In his letter, Salam Fayyad went on to detail Israeli violations. But, despite the fact that the European Commission in its report of April 2008 gave weight to his case, the EU leaders to whom he had written ignored his request, turning a blind eye to Israel's failure to meet its obligations, and on 16 June 2008, the EU decided to "upgrade" its relations with Israel.

## 4 The Agreement on Movement and Access (AMA)

Section 4 outlines the commitments contained in the Agreement on Movement and Access, promoted by the Middle East Quartet, of which the EU is a member. It shows that the promise made to Palestinians that the Rafah crossing from Gaza to Egypt would be free from Israeli control has not been fulfilled, and nor has any of the other promises about movement and access in the Agreement.

### 4.1 The Rafah crossing into Egypt

In November 2005, with the signing of the *Agreement on Movement and Access* [18] by Israel and the Palestinian Authority, Palestinians in Gaza were promised access to the outside world free from Israeli control through a border crossing to Egypt at Rafah.

The agreement was promoted by the Middle East Quartet (US, EU, Russia and the UN Secretary General), so the EU had a role in bringing it about. It also had a role in the implementation of the agreement in respect of the Rafah crossing, by providing a small force (EU BAM Rafah) to monitor the operation of the crossing.

Commenting on this when the Agreement was announced, Condoleezza Rice said:

“... for the first time since 1967, Palestinians will gain control over entry and exit from their territory. This will be through an international crossing at Rafah ... .” [19]

And Javier Solana reinforced this promise on behalf of the EU:

“This is the first time that a border is opened and not controlled by the Israelis. ... So as you can imagine, this is a very important step ....”

This promise to the Palestinians has not been fulfilled. In practice, Israel has had a veto on the opening of the Rafah crossing. The EU has consistently refused to send EU BAM Rafah personnel to open the crossing when Israel doesn't want it open.

The EU BAM website states that the crossing “can only be opened by agreement between the Parties” [20], in other words, the EU accords Israel a veto over its opening. This is in flat contradiction to the promise made by Javier Solana that the crossing is “not controlled by the Israelis”.

### 4.2 Other AMA promises

This promise made to Palestinians by Javier Solana on behalf of the EU has not been honoured. It should be honoured. And so should the other promises made in the Agreement on Movement and Access:-

- other crossings for people and cargo between Israel, Gaza and the West Bank will be expanded
- regular bus and truck convoys between the West Bank and Gaza
- the reduction of obstacles to movement on the West Bank
- a seaport and airport at Gaza

None of these promises to Palestinians has been fulfilled. They should be fulfilled.

## 5 Conclusions

This submission has produced compelling evidence that the EU has consistently turned a blind eye to Israel's failure to fulfil its obligations in EU-Israel partnership agreements – and consistently upgraded its relationship with Israel despite its failure to fulfil its obligations in existing 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 enter into the Partnership until such times as Israel had relinquished all the territory it had acquired by force, and was occupying by force. That was the principle the EU applied to entering into a partnership with Russia in September 2008, when Russia was occupying parts of Georgia by force.

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 partnership agreements are of great importance. It is vital that the EU insist that Israel fulfil these, and the other obligations, that are set out in this submission. If Israel refuses to do so, then the case for the EU terminating the partnership agreements is overwhelming.

## 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.

## **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 **[21]**. 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 6 September 2007, an Israeli aircraft entered Syrian airspace and bombed a building allegedly housing a nuclear facility; 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 [22]. 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." [8]

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* [\[23\]](#)) 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 2 August 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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