



المركز الفلسطيني لحقوق الإنسان

PALESTINIAN CENTRE FOR HUMAN RIGHTS

Gaza, 18 March 2010

The Honourable Baroness Catherine Ashton
High Representative of the European Union for Foreign Affairs and Security Policy
Vice President of the European Commission

Dear Baroness Catherine Ashton,

On this, the occasion of your first visit to the Gaza Strip, we wish to offer our congratulations on your new position, and to wish you the best in this next stage of your career. We truly appreciate your decision to visit Gaza, to meet with local organizations and to get a direct knowledge of the situation on the ground.

However, we would also like to take this opportunity to express our concern regarding the EU's role in Israel and the occupied Palestinian territory (oPt). In particular, we would like to draw your attention to the EU's system of preferential trade links with Israel (the EU-Israel Association Agreement), and the perhaps unintended consequences of the EU's unwavering support: the sustainment of a system of violations of international human rights and humanitarian law.

It is a sad reality that the two most consistent features of Israel's occupation are: continuous and escalating violations of international law, and impunity for such violations. At the Palestinian Centre for Human Rights (PCHR) we believe that these two factors are inter-related and, indeed, inter-dependent. History has proven that as long as States or individuals are granted impunity, they will continue to violate the law.

The international community, and the EU in particular, has been complicit in Israel's illegal occupation policy; a policy which has resulted in the tragic reality you see today in the Gaza Strip. Indeed, the EU not only tolerates Israeli persistent violation of international law but also it continues to reward Israel financially, despite the State's well documented disregard of the Palestinian people's legitimate human rights.

This policy stands in stark contrast with the EU's stated values, and indeed with the legal rules which regulate the relationship between the EU and Israel. The Preamble to the EU-Israel Association Agreement highlights the importance which the Parties attach to the principles of the United Nations Charter, particularly the observance of human rights and democracy, noting that these principles "form the very basis of the Association".



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It is vital that respect for the rule of law be returned to the forefront of international relations; PCHR firmly believe that respect for human rights and the rule of law are necessary preconditions to any future peace and thus cannot be sacrificed in the interests of 'political progress'.

The European Union "is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights".¹ To this end, Article 3 of the Treaty on European Union requires that, in its relations with the wider world, the EU shall contribute to the protection of human rights and the strict observance of international law. This represents a legal obligation, incumbent on both the European Union, and its individual Member States.

Since 1995 the European Commission has formalized a policy of including human rights and democracy clauses in agreements with all third countries.² These conditional clauses are aimed, in the first place, at encouraging third states dealing with the EU to respect human rights. Second, such clauses aim at ensuring that the EU, via its economic policies, does not contribute to any violations of its core principles and thus protects its intrinsic values.³

Article 2 of the EU-Israel Association Agreement contains such a clause:

"Relations between the Parties, as well as the provision 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."

The fact that respect for human rights and democratic principles constitute an 'essential element' of this agreement has definite legal ramifications; specifically, violation of an essential element (i.e. a condition) of a Treaty is equivalent to "a repudiation of the treaty"⁴ and is thus, in keeping with customary international law, grounds for suspending the operation of the treaty in whole or in part.

¹ Article 2, Consolidated Version of the Treaty on European Union and the Treaty on the Functioning of the European Union, Doc. No. 6655/1/08/Rev 1, 30 April 2008.

² Commission Communication on the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries, COM (95) 216 final, 23.5.1995.

³ Directorate-General for External Policies of the Union, *Human Rights and Democracy Clauses in the EU's International Agreements*, DGExPo/B/PolDep/Study/2005/06, 29.09.2005.

⁴ Article 60(3)(a), Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, United Nations *Treaty Series* vol. 1155, p. 331.



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Moreover, Article 79(2) of the EU-Israel Association Agreement stipulates that “If either Party considers that the other Party has failed to fulfil an obligation under the Agreement, it may take appropriate measures”. Such appropriate measures necessarily include the suspension of the agreement.

Under Article 218(9) of the Treaty on European Union, it is you, as the High Representative of the Union for Foreign Affairs and Security Policy, who has the power to propose the suspension of an association agreement.

Official Israeli government policies and practices vis-à-vis Palestinians’ human rights have long been a matter of concern. Indeed this was one of the decisive factors which resulted in the extended five year period between the signing of the EU-Israel Association Agreement in 1995, and its entry into force in June 2000. During the ratification process, several national Parliaments raised doubts regarding Israel’s commitment to the respect of human rights. The British government, for instance, deemed it necessary to clarify that “assent to the EU-Israel Association Agreement did not imply acceptance by the Government or by Parliament of Israel’s current standard of human rights practice, nor indeed of Israel’s conduct under certain key provisions of the existing EU-Israel Interim Agreement on trade-related matters.”⁵

The period since the entry into force of the Association Agreement has witnessed serious increase of Israel’s violations of international law which have been well-documented by numerous independent national and international organisations, UN bodies, and the International Court of Justice. Their findings need not be repeated here. Significantly, on 10 April 2002, the European Parliament voted for the suspension of the EU-Israel Agreement if Israel failed to comply with the latest UN resolutions on the Middle East Peace Process and if it did not give a positive response to the EU peace efforts.

In response to Israel’s persistent violations of international law, the EU has consistently advanced a position of ‘quiet diplomacy’. This strategy is summed up by the Commission as follows:

⁵ See V. Miller, The Human Rights Clause in the EU’s External Agreements, House of Commons Library, 16 April 2004, available at www.parliament.uk.



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The EU's policy is based on partnership and cooperation, and not exclusion. It is the EU's view that maintaining relations with Israel is an important contribution to the Middle East peace process and that suspending the Association Agreement which is the basis for EU-Israeli trade relations but also the basis for the EU-Israel political dialogue, would not make

the Israeli authorities more responsive to EU concerns at this time. It is a well-known fact that economic sanctions achieve little in this respect. Keeping the lines of communication open and trying to convince our interlocutors is hopefully the better way forward.⁶

PCHR acknowledge that are merits to this approach. However, almost 10 years after the EU-Israel Association Agreement entered into force, and over 15 years since it was first signed, it is abundantly clear that this approach has failed. Israel's recent decisions to authorise further settlements in occupied Palestinian territory and its discriminatory and illegal actions in occupied East Jerusalem, are testament to the State's belligerence in the face of international law.

As you will have seen, the situation is particularly desperate in the Gaza Strip. The illegal closure imposed by Israel and endorsed by the Quartet, has impeded the urgently needed rebuilding of basic infrastructure, especially following the damage caused during last year's Israeli military offensive.⁷ Furthermore the multitude of allegations of international humanitarian law breaches and human rights violations committed during the conflict are still – more that 14 months after the facts - waiting for a serious investigation. As a result of the flawed Israeli judicial system, thousands of victims in Gaza are denied their fundamental right to seek justice and ask for reparation.⁸

The UN Fact Finding Mission on the Gaza Conflict concluded that the "prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action" and that all States, especially those members of the Quartet, "should ensure that respect for the rule of law, international law and human rights assume a central role in internationally sponsored peace initiatives". These conclusions have been endorsed by the European Parliament,⁹ the Human Rights Council,¹⁰ and the UN General Assembly.¹¹

⁶ "The EU and the Middle East Peace Process", updated 5 August 2002, at http://europa.eu.int/comm/external_relations/mepp/faq/index.htm#6.

⁷ See the Report issued by several NGOs 'Failing Gaza. No rebuilding, no recovery, no more excuses. A report one year after Operation Cast Lead', December 2009.

⁸ See PCHR Report 'Genuinely Unwilling: Israel's Investigations into Violations of International Law including Crimes Committed during the Offensive on the Gaza Strip, 27 December – 18 January 2009, February 2010.

⁹ European Parliament Resolution of 10 March 2010 on implementation of the Goldstone recommendations on Israel/Palestine.



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At this juncture, it is perhaps appropriate to paraphrase an old proverb, “insanity is doing the same thing in the same way and expecting different results.” The time for a new approach has come. This approach must be firmly grounded in the rule of international law.

Baroness Ashton, if the European Union’s international standing is to be preserved, the Union can no longer continue to exude a double standard when it comes to the State of Israel. Indeed, this double standard not only is in violation of the EU’s own obligations, specifically Article 21(3) of the Treaty of European Union. By its inaction the EU also becomes complicit in Israel’s policy of disregard for fundamental human rights and its violations of international law.

We kindly ask that, in the interests of human rights, and in acknowledgement of all individual’s legitimate right to the equal protection of the law, you propose the suspension of the agreement itself of the EU-Israel Association Agreement.

We stand ready to provide you with any further assistance.

Yours respectfully,

Raji Sourani,
Director,
Palestinian Centre for Human Rights

¹⁰ The Council of Europe in December 2009 adopted a strong position on the Gaza blockade and urged “the full implementation of UNSCR 1860 and the full respect of international humanitarian law”. It also called for an “immediate, sustained and unconditional opening of the crossing for the flow of humanitarian aid, commercial goods and persons to and from Gaza”.

¹¹ UN General Assembly resolutions of 5 November 2009 and of 26 February 2010 on the implementation of the report of the UN Fact-Finding Mission on the Gaza Conflict.