

**STOP THE WALL CAMPAIGN**



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## Briefing by Stop the Wall Campaign

Necessary consequences  
of  
Israeli repression  
and failed judicial system  
on  
EU-Israel relations

## Summary:

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- 1) The EU has clearly defined regulations demanding the respect of international law and human rights in third countries and the EU to promote this respect. All agreements with Israel, including the EU Neighbourhood Policy, the EU-Israel Association Agreement and the EU-Israel Action Plan contain these stipulations and highlight that bilateral relations are based on a commitment to 'common values'.
- 2) The meeting with Stop the Wall has highlighted some of the violations of international law and human rights Israel pursues constantly and systematically against the Palestinian people. These include: repression of human rights defenders, arbitrary detention and the illegal use of administrative detention, repression of communities struggling against the Wall via collective punishment and low level warfare, intentional and targeted injuries and killings of civilians, and the ongoing construction and maintenance of the Wall. Israel clearly is not committed to 'common values'.
- 3) Though the EU has seemingly wiped the issue of the Wall completely from its diplomatic agenda, it has raised concerns about some of these violations. However, Israel has not shown any interest in transforming concerns expressed by the European Union in discussions with the Israeli authorities in a change of policy to the better – on the contrary.
- 4) The EU's continued refusal to acknowledge Israeli non-cooperation as such has led to a culture of non-dialogue and Israeli impunity for violations of agreements with the EU and human rights and obligations under international law.
- 5) The EU stands in clear violation of its own stipulation that the Action Plans and ENP are to reflect the degree on which the common values are achieved. It has clearly flouted its obligations under the Human Rights clause.

## Recommendations:

- a. Based on Article 2, the EU should reconsider the 2002 vote of the European Parliament to suspend the EU-Israel Association Agreement due to Israel's continuous violations of human rights.
- b. The European Union should not start any negotiations on a new Action Plan until Israel complies with Article 2 of the EU-Israel Association Agreement, which states that "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."
- c. In particular, the EU should not allow Israel to join or hold a special relationship with the Europol as long as the Israeli judicial system is seriously compromised.

# The framework of the EU-Israel relations

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## 1. The EU Neighbourhood Policy

The European Commission has pointed out that *“the intensity and level of ambition of relations with each ENP partner is differentiated, reflecting the degree to which common values are effectively shared”*. It further stated that *“the tailor-made Action Plans contain a number of priorities intended to strengthen commitment to these values.”*<sup>1</sup>

The Commission has drawn up periodic reports on progress within the Action Plans and on areas needing further effort. The first set of progress reports were issued in 2006.

*“Any proposals concerning the further development of the EU’s contractual links with each partner will be made in the light of these reports.”*

## 2. The EU-Israel Association Agreement

The introduction states that *“the importance which the Parties attach to the principle of economic freedom and to the principles of the United Nations Charter, particularly the observance of human rights and democracy [...] form the very basis of the Association”*.

Article 2 (the Human Rights clause) states that *“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.”* Article 2 is legally binding.

## 3. The EU-Israel Action Plan

The EU-Israel Action Plan reiterates that *“the level of ambition of the EU/Israel relationship will depend on the degree of commitment to common values as well as the mutual interests and the capacity of each party to implement jointly agreed priorities. The pace of progress of the relationship will acknowledge fully the efforts and concrete achievements in meeting those commitments.”*

It further defines the basic values as *“democracy, rule of law and respect for human rights and international humanitarian law”*.

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<sup>1</sup> Communication from the Commission to the Council on the Commission proposals for action plans under the European Neighbourhood Policy (ENP), 2004, COM(2004) 795 final, Brussels, 9 December 2004

The first priority of the Action Plan is to “*enhance political dialogue and co-operation, based on shared values, including issues such as facilitating efforts to resolve the Middle East conflict, [...] promoting the protection of human rights*”.

## EU internal Evaluation:

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- 1) ENP Progress Report on Israel in 2005<sup>2</sup> states that “*the informal working group on human rights provided an opportunity for discussing issues inter alia on the enhancement of the rights of minorities, international humanitarian law, relevant international conventions and protocols*”. No further progress regarding human rights and international law noted.
- 2) ENP Progress Report on Israel in 2007<sup>3</sup> reiterates that “*any consideration of the bilateral EU-Israel relations in the context of the ENP Action Plan must take into account the persisting Israeli-Arab conflict and the overall political developments in the Middle East, in particular the Annapolis process launched in November 2007.*”

### Progress regarding human rights and international law:

Positive: “*An EU-Israel informal working group on human rights met in February 2007.*”

Negative: “*The lack of progress on a certain number of commitments undertaken in the framework of the Action Plan (for example “facilitating the Palestinian trade”) has had a negative impact on the Palestinian economy, through the continuing restrictions on access and the movement of goods and persons.*”

### European action:

Though Israel has clearly not responded positively to European concerns and has intensified its violations of the stipulations of the Association Agreement, the Action Plan and its obligations under international law, “*the ENP has clearly enhanced the pace of cooperation between the EU and Israel in a large number of fields: from enhanced EU-Israel political dialogue to Israel's involvement in a number of European initiatives. Having agreed a framework protocol with the EC, Israel is the front-runner in making use of the new possibilities for ENP partner countries' participation in Community programmes. It has also sought closer cooperation with EC and EU agencies. In October*

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<sup>2</sup> Commission staff working document accompanying the communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy, Brussels, 29 November 2006

<sup>3</sup> Commission staff working document accompanying the communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy, Brussels, 3 April 2008

*2007 Israel agreed to start bilateral negotiations on a Free Trade Agreement on the liberalisation of services and establishment, at the beginning of 2008.”*

⇒ The EU stands in clear violation of its own stipulation that the Action Plans and ENP are to reflect the degree on which the common values are achieved. It has clearly flouted its obligations under the Human Rights clause.

### 3) ENP Progress Report on Israel in 2008<sup>4</sup>:

#### Progress regarding human rights and international law:

*Positive: “In 2008, Israel’s willingness to engage with the EU in a constructive dialogue on sensitive issues continued to grow, and closer political co-operation and dialogue was achieved. The agendas and items discussed at formal and informal meetings at different levels bear witness to this. Matters raised included inter alia the legal and economic situation of minorities in Israel, children affected by armed conflict, administrative detention, access to education/health/place of employment/judiciary in the oPt.”*

*Negative: “Progress with regard to the promotion of democracy, rule of law and respect for human rights and international humanitarian law was limited, in particular following the Gaza crisis at year-end, preceded by an 18-months blockade of Gaza.”*

*“Little progress was made regarding cooperation with the EU on a comprehensive settlement of the Israeli-Palestinian conflict. Despite Roadmap obligations and the commitment made at the Annapolis conference to freeze settlements’ growth, a sharp increase in settlement and outpost construction can be noted for 2008, including in East Jerusalem.*

*“No significant progress can be noted on secure and safe movement of civilians and goods in the West Bank and Gaza. During the reporting period, the EU on a number of occasions raised individual cases of Human Rights defenders facing travel restrictions or other obstacles to carrying out their work in the context of the political dialogue. Human rights defenders are being subject to unjustifiable restrictions on freedom of movement, violence and ill-treatment by Israeli settlers as well as Israeli security forces.*

*“The European Commission expressed its concern about the restricted access to holy places in its meetings with Israeli authorities.”*

Other concerns were mentioned.

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<sup>4</sup> Commission staff working document accompanying the communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy , Brussels, 23/04/2009

### European action:

June 2008 Association Council gives a favourable response to Israel's upgrading request.

In October 2008 the Joint Supervisory Board (JSB) of Europol asked for an opinion on whether Europol can start negotiations with Israel regarding the transmission of personal data by Europol to Israel. The JSB gave a positive opinion, including limited conditionalities<sup>5</sup> and in April 2009, the Council adopted a decision authorising the director of Europol to enter into negotiations with Israel with a view to concluding an operational cooperation agreement<sup>6</sup>.

⇒ The EU stands in clear violation of its own stipulation that the Action Plans and ENP are to reflect the degree on which the common values are achieved. It has clearly flouted its obligations under the Human Rights clause.

#### 4) Council conclusions on the Middle East Peace Process, Brussels, December 8 2009:

The EU Council lists 12 points, most of them dealing with various forms of Israeli violations of international law and human rights. It further states that:

*"Recalling the EU's position as expressed at the Association Council in June 2009, the Council reaffirms its readiness to further develop its bilateral relations with Israel within the framework of the ENP."*

⇒ The EU stands in clear violation of its own stipulation that the Action Plans and ENP are to reflect the degree on which the common values are achieved. It continues to flouted its obligations under the Human Rights clause.

## Conclusions:

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The meeting with Stop the Wall has highlighted only a fraction of the violations of the common values and human rights and international law committed by Israel. These include:

- The repression of human rights defenders, including arrest and intentional killings.
- The illegal use of administrative detention.
- The repression of communities struggling against the Wall, amounting to collective punishment and in certain cases to low level warfare.
- Intentional and targeted killings of civilians.
- The ongoing construction and maintenance of the Wall.

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<sup>5</sup> The fourth activity report of the Joint Supervisory Body of Europol, 2006-2008, p.28.

<sup>6</sup> Press Release of the 2936th Council meeting, Justice and Home Affairs, Luxembourg, 6 April 2009

European action regarding these issues:

- A number of the above issues have been repeatedly raised during the years, including the protection of human rights defenders and concerns about administrative detention.<sup>7</sup>
- Commensurate with the continuously deteriorating human rights situation on the ground, the EU has in fact expressed increasing criticism over the years.
- Unfortunately, key issues, such as the Wall itself and the repression against the communities fighting for the implementation of the ICJ decision are completely ignored.

Result:

The impact of the European Union's action was hardly relevant. On the whole, Israel has not shown any interest in transforming concerns expressed by the European Union in discussions with the Israeli authorities in a change of policy to the better – on the contrary.

Findings:

- At this stage, Israeli willingness to engage in dialogue on human rights and international law can no longer be considered a positive progress, as it clearly does not lead to positive effects on the ground. These dialogues are transformed by Israel into an effort of management and containment of international criticism that is to serve as a substitute for effective change on the ground.
- The EU's continued refusal to acknowledge Israeli non-cooperation as such has led to a culture of non-dialogue and Israeli impunity for violations of agreements with the EU and human rights and obligations under international law.
- A 'peace process' that is not based on the fundamental values mentioned in the Action Plan cannot promote lasting and sustainable peace. Only if the European Union can effectively promote respect for human rights and international law and accountability will it be able to meaningfully contribute to peace in the region.
- The EU has guidelines for 'restrictive measures/sanctions' that include the suspension of Association Agreements. In fact, the European Parliament in its 2005 resolution on the human rights and democracy clause in European Union agreements *"applauds, none the less, the experiment conducted to date with the human rights and democracy clause in Articles 9 and 96 of the Cotonou Agreement, which has even led to the temporary suspension of economic and trade cooperation with some ACP States on the grounds of serious human rights violations, thus enhancing the European Union's determination*

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<sup>7</sup> The Ad Hoc Human Rights working group formed within the framework of the Association Agreement has already in the first meeting discussed the European concerns regarding administrative detention. (See: <http://www.euomedrights.net/usr/00000024/00001278.ppt>)

*and credibility; advocates the development of this experiment and its inclusion as a standard feature in EU/third country agreements;”<sup>8</sup>*

- Israel does not comply with the basic values on which the EU-Israel Action Plan was based – and it has not shown any intention to do so. Any negotiations on a new Action Plan would contradict the basic assumption of the previous Plan, which makes the level of the EU-Israel relationship dependent upon the commitment to common values.

## Recommendations:

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The European Union should continue raising their concerns with Israeli authorities but complement this with concrete steps to underline its determination and safeguard its credibility. These steps should include:

- a. Based on Article 2, the EU should reconsider the 2002 vote of the European Parliament to suspend the EU-Israel Association Agreement due to Israel’s continuous violations of human rights.
- b. The European Union should not start any negotiations on a new Action Plan until Israel complies with Article 2 of the EU-Israel Association Agreement, which states that "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."
- c. In particular, the EU should not allow Israel to join or hold a special relationship with the Europol as long as the Israeli judicial system is seriously compromised.

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<sup>8</sup> European Parliament resolution on the human rights and democracy clause in European Union agreements (2005/2057(INI))