



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK

RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME

الشبكة الأوروبية - المتوسطية لحقوق الإنسان

STATEMENT

(16/12/2009)

The Gaza offensive: one year on

No peace without respect for international law, No respect for international law without EU pressure

One year after the Israeli offensive on the Gaza Strip (27/12/08–18/01/09) and despite the UN Fact Finding Mission's conclusions that both Israeli military forces and Palestinian armed groups have violated international law and committed war crimes amounting to grave breaches of the Geneva Conventions and possibly crimes against humanity, no one has been held accountable for the crimes committed, including the killing of more than 1400 Palestinians and 13 Israelis and the estimated 22.000 buildings completely destroyed or badly damaged. Moreover, the illegal siege of 1.5 million people of the Gaza Strip has continued, worsening drastically the humanitarian situation in the Strip.

Given its close relation with Israel and its position as main donor to the Palestinians, the EU and its 27 Member States have a particular responsibility to ensure that international human rights and humanitarian law are respected in Gaza. They not only have obligations as High Contracting Parties of the Geneva Conventions to ensure respect for these conventions, but they must also adhere to EU treaty obligations. In particular, they must respect Article 11 of the Treaty on the European Union, which establishes the consolidation of the rule of law and the respect for human rights as one of EU's foreign policy objectives.

The government of Israel has insisted that its conduct in the course of the Gaza offensive did not violate the laws of war. Following media exposure of severe violations and some external pressure, Israeli military bodies opened internal probes into allegations made, based on complaints submitted by NGOs. However although a small number of these have led to criminal investigations, they remain within the military system and do not match the proper standards of promptness, effectiveness, independence and transparency. Ongoing investigations do not examine policy levels but relate only to isolated incidents by individual soldiers. The EMHRN regrets that calls from within Israel and from some EU member states to hold an Independent Commission of Inquiry into the events have not been answered and that in October the Israeli political and security cabinet declared its rejection of all such proposals.

The EMHRN commends the decision of the Palestinian Authority (PA) to create an independent commission of inquiry which is currently being set up by the Palestinian Council of Ministers. The commission will consist of a number of independent judges from within and without the Occupied Palestinian Territory (OPT) mandated to investigate all allegations of international law committed by both the Palestinian National Authority as well as Hamas.

The EMHRN notes the EU commitment to “assess seriously”¹ the Goldstone report and to “follow-up closely”² the investigations by the parties into the alleged violations of international law. However, until today, the EU as a whole has failed to actively support an independent inquiry into the violations committed - in contrast with its active support for such investigations into other recent conflicts³ - and to seek accountability for violations of international humanitarian law (IHL) by both Israel and the Palestinian armed groups. The EU also failed to support the Goldstone recommendations at the UN, based on the claim that positive pressure on both sides to open independent and proper domestic investigations are preferable to the threat of international justice mechanisms. However, in practice, the EU has not taken any concrete steps to encourage the sides to hold such investigations, nor is it monitoring the steps taken by Israel and the Palestinian groups to that end.

On the contrary, several Member States tend to consider the Goldstone report as an obstacle to the “Peace Process”. During the UN General Assembly vote in November 2009 on a resolution endorsing the Human Rights Council Report and proposing further steps to ensure genuine investigations and accountability, the EU exhibited inconsistency, a lack of consensus and did not live up to its stated commitments to fight impunity⁴, to uphold the rule of law and promote respect for international law.

The EMHRN welcomes the stronger language on Gaza in the Council conclusions on the Middle East Peace Process on 8 December 2009. However, while the EU has generally spoken out against the Israeli siege on the Gaza Strip calling for the immediate and unconditional opening of the crossings, the EU has not yet declared the blockade illegal under international law nor as collective punishment⁵. In March 2009, the EU and the international community as a whole have pledged US\$4.5 billion in aid at the donor conference in Sharm el-Sheikh for the reconstruction of Gaza. By doing so, without simultaneously putting pressure on Israel to acknowledge and abide by its obligations under international law, the EU releases Israel from its legal obligations and responsibility as occupying power to provide for the welfare of the protected Palestinian civilian population. While the continued blockade of the Gaza Strip has prevented this aid from reaching those who desperately need it, the EU has also refrained from seeking any compensation for damage to EU-funded projects under construction in Gaza during Israeli military offensive on Gaza which is estimated at EUR 12.35 million⁶. The EU did not seek guarantees from Israel regarding avoiding destruction of and damage to EU projects in the future. Moreover, in practice, the EU acquiesced in Israeli collective punishment and closure of the Gaza Strip. For example, by permitting and operating under Israeli restrictions on fuel purchases, the EU has implicitly recognized these restrictions as lawful.

The EU has also failed to back up its words with action. Despite the continued blockade of the Gaza Strip and the lack of accountability, and despite the June 2009 decision to put the upgrading of its relations with Israel on hold, the EU continues in practice to strengthen its economic, technical and

¹ *Statement on behalf of the European Union in the General Assembly on the Report of the Human Rights Council*. 4 November, http://www.swedenabroad.com/Page_99162.aspx

² *Council conclusions on Middle East Peace Process*, 2951st External relations Council meeting, Luxembourg, 15 June 2009: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/gena/108500.pdf

³ See paper “EU’s Position on the Middle East Peace Process: Key Inconsistencies” (jointly signed by 15 NGOs), p. 2. Available at http://en.euromedrights.org/index.php/news/emhrn_releases/emhrn_statements_2009/4018.html

⁴ *EU statement at the UN Security Council on the Middle East, including the Palestinian question*, New York, 14 October 2009: http://www.eu-un.europa.eu/articles/en/article_9105_en.htm

⁵ The EU has twice referred to the blockade as “collective punishment” in statements of the Slovenian and French presidencies in 2008, but it has failed to do so in Council Conclusions.

⁶ Europaid report “*Damage Assessment and Needs Identification in the Gaza Strip*”, submitted by EUNIDA, p. 58, March 2009: http://ec.europa.eu/europeaid/where/neighbourhood/country-cooperation/occupied_palestinian_territory/tim/documents/final_report_version6_t1.pdf

trade relations with Israel in several sectors⁷. EU's "business as usual" approach amounts to disregarding Israeli policies in the OPT, signaling EU acquiescence of or non-objection to Israel's conduct.

Despite EU's key role as member of the Quartet in mediating the "peace-process" since the signing of the Oslo Agreements the EU has too often adopted a discourse and practice, which effectively sacrifice human rights and international law for the sake of advancing a non-existing "peace process". The EU's active pursuit of the "two State solution" alongside its increasing acquiescence to Israel's violations of international law are at the center of EU's failed policy towards a peaceful solution of the Israeli-Palestinian conflict⁸. This approach has been tried, and it has failed.

Therefore, the EMHRN urge the EU to restore human right and IHL to the center of its policy and, while doing so, to:

- Call on Israel, Hamas and the PA to promptly initiate investigations that are independent, credible and in conformity with international standards into the serious violations of international human rights and humanitarian law reported by the Fact-Finding Mission, towards ensuring accountability and justice;
- Play an effective role in assisting the UN in monitoring potential investigations and other actions aimed at ensuring implementation of international law. In this regard, the EU should closely monitor – in cooperation with Israeli and Palestinian human rights organisations - if local independent and credible investigations are conducted by Israel and the Palestinian side into the serious violations of international humanitarian and human rights law referred to by the Goldstone report. The EU should report on its findings to the UN General Assembly, the Security Council and the Secretary General.
- Provide aid to the OPT in a manner that does not release Israel from its legal obligations and responsibilities toward the protected Palestinian civilian population and does not recognize internationally wrongful acts such as Israel's restriction on fuel supplies⁹.
- Condemn the blockade of Gaza as collective punishment and state that it is illegal under international law.
- Take a firm position that any upgrade of EU-Israel relations is conditioned on tangible progress in Israel's respect for international human rights and humanitarian law in the Gaza Strip and the West Bank, including East Jerusalem, as well as its peace process commitments. This includes the lifting of the blockade on the Gaza Strip and the initiation of a reliable and independent inquiry into Israeli military offensive on the Gaza Strip as recommended by the Goldstone report.

⁷ The EU and Israel signed on 4 November 2009 a new agricultural agreement providing additional liberalization in the field of agriculture. On 13 April 2009, the EU Justice and Home Affairs Council gave its green light for EUROPOL to start the negotiation of an agreement of cooperation with Israel.

⁸ See EMHRN's Report "*Active but Acquiescent: The EU's Response to the Israeli Military Offensive in the Gaza Strip*", p. 79. The report is available at <http://www.euromedrights.net/usr/00000026/00000027/00000028/00000156/00002935.pdf>

⁹ *Op. Cit.*, p 79.