

**Inaction is Complicity:
The European Union, the Donor Community and Israel**

Mary Nazzal

2005

TABLE OF CONTENTS

Abstract.....	4
Acknowledgements.....	5
Introduction	6
Israel, International Law and the International Court of Justice.....	10
Chapter 1	12
The EU: Guiding Principles and Palestine.....	12
EU-Israel Association Agreement.....	14
Background.....	14
Trade	15
Human Rights	18
Exclusion: Palestinian “Citizens” of Israel	20
Chapter 2	25
EU Complicity.....	25
Political Pressure.....	26
Suspension: The Human Rights Clause	28
Suspension: To Fulfill EU Law	29
Economic Leverage	32
Olmert Arrangement and European Neighbourhood Policy	33
Repercussions and “Dirty Hands”	35
Chapter 3	38
Humanitarian Assistance and Donor Aid.....	38
Donor Debate	40
Withdrawal of Aid.....	42
Donor Action.....	47
UN Action	49
Civil Society Action.....	52
Reflections	56
Works Cited	59

Abstract

The question of Palestine/Israel is of urgent international concern and international actors are legally required to fulfil their *erga omnes* obligations towards the dispute as affirmed by the International Court of Justice in 2004. The misapplication of the EU-Israel Association Agreement illustrates that in its contractual relations with Israel, the European Union has failed to fulfil its international legal obligations and is furthermore complicit in Israeli violations by failing to counter Israel's material breaches of the Agreement. Instead of upgrading its bilateral relationship by including Israel in the European Neighbourhood Policy, the EU is legally obligated to suspend the Agreement. The donor community is similarly complicit in Israeli violations by relieving Israel of its obligations as an occupying power. Donors must engage in advocacy and adopt a more robust and confrontational approach to help defy Israeli violations of international law. Both the EU and the donor community are currently supporting a deluxe occupation where Israel receives unconditional benefits from EU cooperation instruments and is allowed to further entrench a military occupation and apartheid system paid for by the international community. States, the United Nations, and civil society must take concrete legal and political action as called for by the ICJ to combat Israeli crimes, international complicity and a situation of lawlessness and impunity.

Acknowledgements

Deep thanks to the *Grassroots Anti-Apartheid Wall Campaign*, the *ElectronicIntifada.net* publication team and the *Palestine Right to Return Coalition*, all of whom the author had the satisfaction of working alongside over the years.

Introduction

All States parties to the Fourth Geneva Convention are obliged to ensure compliance by Israel with the international humanitarian law embodied in this Convention. Israel's defiance of international law poses a threat not only to the international legal order, but to the international order itself. This is no time for appeasement on the part of the international community.¹

Anyone familiar with the Palestine/Israel "conflict"² is likely to be well versed in Israeli violations of international law. Indeed, the United Nations (UN) along with international, Palestinian and Israeli non-governmental organisations (NGO) draw urgent attention to Israel's blatant disregard of international humanitarian law (IHL), international human rights law, and general principles of international law. Western governments likewise tend to join the chorus of criticism and express their deep dismay at Israel's deviation from the path to "peace."³ The Advisory Opinion declared by the International Court of Justice (ICJ) last year affirms perhaps in the strongest possible terms the illegality of Israeli policies in the occupied Palestinian and Arab territories (OPTs). While Israel's behaviour as a rogue state

¹ John Dugard, UN Special Rapporteur on human rights in the Occupied Palestinian Territories to the UN Human Rights Commission, "Question of the violation of human rights in the occupied Arab territories, including Palestine," 7 December 2004 (E/CN.4/2005/29).

Available online: [//domino.un.org/UNISPAL.NSF/0/9c172354fe3c565785256f8e006f3988?OpenDocument](http://domino.un.org/UNISPAL.NSF/0/9c172354fe3c565785256f8e006f3988?OpenDocument)

² The situation in Israel and Occupied Palestine is often grossly (mis)portrayed as a "conflict" between equals rather than occupier against occupied, or oppressor against oppressed. Etienne Balibar explains that the notion of a "conflict" with its strategic connotations becomes largely misleading, unless it refers to a very special kind of *dissymmetric* conflict.

See: "The information war," *Bitter Lemons*, 17 November 2003, Edition 42. Available online:

www.bitterlemons.org/previous/bl171103ed42.html ; Ali Abunimah, "Gross misinformation: the media in the Palestinian-Israeli conflict," *The Electronic Intifada*, 4 July 2005.

Available online: [//electronicintifada.net/v2/article3963.shtml](http://electronicintifada.net/v2/article3963.shtml).

³ "Peace" over recent decades has been equated with a series of "peace plans," including the Oslo Accords or the 'Road Map,' all of which divorce the question of Palestine from the international legal principles that guarantee Palestinians their rights. Opposing Oslo or the "peace process" on grounds that peace divorced from justice equals institutionalised injustice, has been interpreted as opposing "peace" altogether. "Peace" should not be allowed to cover imperialist/repressive policies, as Edward Said used to say, "equality or nothing."

See: Human Rights Watch, "The 'Roadmap:' Repeating Oslo's human rights mistakes," *Human Rights News*. Available online: www.hrw.org/backgrounder/mena/israelpa050603.htm ; B'tselem, "The underside of the peace process: Human Rights in the West Bank, East Jerusalem, and the Gaza Strip, B'tselem, Jerusalem: 2000: www.btselem.org ; Edward Said, *Peace and Its Discontents: Essays on Palestine in the Middle East Peace Process*, New York: Vintage, 1996; Edward Said, *The End of the Peace Process: Oslo and After*, London: Granta, 2000.

has been established in the eyes of many, less attention has been paid to the active role the *international community*⁴ plays in supporting such behaviour. Upon closer inspection, it becomes clear that rather than helping to reconcile the conflict, various international actors are actively aiding and abetting Israeli violations of international law. By doing so, much of the international community could be considered culpable for contravening several legal principles pertaining to Palestine/Israel. While numerous examples could support such a contention,⁵ this paper will focus on the donor community as well as the European Union (EU) in terms of its contractual relations with Israel. Analysis will focus exclusively on the EU-Israel Association Agreement to illustrate how it is implemented by Israel in violation of international law, EU law, and in violation of the Agreement itself. While this state of affairs has been recognised by certain Member States and EU bodies, the EU has not acted to reconcile itself with the legal principles it is said to endorse. By *failing* to ensure that Israel implements its bilateral agreements in a legal manner, the EU has put itself in a position where it is *complicit*⁶ in Israeli violations of international law. Instead of taking the

⁴ All italics are by author for emphasis, unless otherwise noted.

⁵ Present day World Bank policy for example, is rooted in its explicit support for Israel's "disengagement plan" and despite the ICJ Opinion that instructs the international community not to "render aid or assistance" in maintaining the situation created by the wall, the World Bank has formulated all its recent policies on the assumption of the continued presence of the wall, Israel's closure system, and the overall occupation apparatus. See: The Anti-Apartheid Wall Campaign, "'Developing' Israeli apartheid: The World Bank, international aid, and the ghettoization of Palestine," 18 May 2005. Available online: [//stopthewall.org/analysisandfeatures/921.shtml](http://stopthewall.org/analysisandfeatures/921.shtml) ; The Anti-Apartheid Wall Campaign, "One Year after the ICJ-The G8 and World Bank cementing Israeli apartheid and occupation," 7 July 2005. Available online: [//stopthewall.org/analysisandfeatures/960.shtml](http://stopthewall.org/analysisandfeatures/960.shtml) ; World Bank, "Disengagement, the Palestinian economy and the settlements," *World Bank*, June 2004 ; World Bank, "Stagnation or revival? Israeli disengagement and Palestinian economic prospects," *World Bank*, December 2004.

⁶ The concept of *complicity* in international law is complex and can arguably be divided into 3 categories: direct, indirect and silent complicity. International criminal law for example suggests that direct complicity requires intentional participation, but not necessarily any intention to do harm, only knowledge of foreseeable harmful effects. For example, the UN Criminal Tribunal for Rwanda in the *Akayesu* case concluded, "anyone who knowing of another's criminal purpose, voluntarily aids him or her in it, can be convicted of complicity even though he regretted the outcome of the offence." Paragraph 539, see: www.ictj.org/ENGLISH/cases/Akayesu/judgement/akay001.htm. The International Criminal Tribunal for the Former Yugoslavia in the *Tadic* case also considered forms of complicity, namely to "aid and abet, counsel and procure." See: www.un.org/icty

According to Sir Geoffrey Chandler, Chair of Amnesty International UK, "Silence or inaction will be seen to provide comfort to oppression and may be adjudged complicity. Silence is not neutrality. To do nothing is not an option." As

appropriate legal and political action, the EU has attempted to conceal clear legal irregularities by upgrading its agreements with Israel as indicated by the new "European Neighbourhood Policy" and sustaining if not increasing donor aid and humanitarian assistance to the Palestinians. In turn, aid agencies have begun to seriously question whether the continued implementation of such a scheme leaves the donor community itself unintentionally culpable for contributing to Israel's disregard for international legal standards.

This paper will firstly overview Israeli violations of international law by drawing on various aspects of the ICJ Opinion paying particular attention to the obligations of third parties and the *erga omnes* character of the dispute as expressed in Article One common to all Geneva Conventions, which calls on all parties "to respect and ensure respect" for the Conventions.⁷ The EU-Israel Association Agreement will then be unpacked to highlight two integral articles, namely the "rules of origin" and the "human rights" clauses, both of which serve to define the precise character of Israel's (mis)application of the Agreement. More importantly however for the purpose of this paper, is a demonstration of the EU's stark failure to initiate concrete action to counter what amounts to a material breach of the Agreement and the serious repercussions of such inaction. The paper will then examine various routes that the EU is obligated to take in order to bring itself back in line with

quoted in C. Avery, "Business and human rights in a time of change," in M T. Kamminga, S. Zia-Zafiri (eds.), *Liability of Multinational Corporations under International Law*, The Hague: Kluwer Law International, 2000, pg 17-73.

All in all, international law arguably considers intentional participation in an internationally wrongful act as constitutive of complicity in the breach of international human rights law.

See: James Crawford, "Second report on state responsibility" UN Doc, International Law Commission, (A/CN.4/498/Add.1) 1 April, 1999 ; International Law Commission "Principles of international law recognized in the charter of the Nürnberg tribunal and the judgement of the tribunal" adopted at the 2nd session, *Yearbook of the International Law Commission, 1950*, vol II, see: www.un.org/law/ilc/texts/nurnberg.htm ; Christopher Kutz, *Complicity: Ethics and law for a collective age*. Cambridge: Cambridge University Press, 2000.

⁷ For analysis on Article One, see: Iain Scobbie, "Smoke, mirrors, and killer whales: The international court's opinion on the Israeli barrier wall," 5 *German Law Journal* 9, 1 September 2004.

international law while also serving to push Israel into the realm of legality, a domain historically and presently unfamiliar to the Jewish state. The following section will then overview a related debate within the donor community that is currently questioning the ways in which humanitarian assistance in the OPTs may not only be contravening IHL, but may also be contributing to the continued Israeli occupation and subjugation of the Palestinian people. In light of the realities on the ground, it will be argued that aid agencies need to incorporate political advocacy into their mandate and abandon their traditional role for a more confrontational approach to help bring Israel into that previously unknown domain of legality. Such a change on the part of aid agencies underlines just one way in which the international community can respond to the ICJ's call for "further action," an urgent demand that will be examined in the final section by introducing a few alternative legal and non-legal routes available to both states and civil society to help bring not only Israel in line with humane legal standards, but the international community as well.

Israel, International Law and the International Court of Justice

The landmark ICJ ruling of last year was the clearest judicial pronouncement to date on the international legal principles that apply to the Israeli/Palestinian conflict.⁸ While at face value the opinion is non-binding, it is nonetheless a declaratory statement of the applicable law by the UN's chief judicial organ and the highest judicial authority in the world. It draws attention to the violations of the applicable law and the consequences arising from those violations under international law, namely customary rules of state responsibility arising from wrongful acts.⁹ The Court stated clearly in essentially unanimous terms¹⁰ that all Israeli settlements in the OPTs have been established in breach of international law, that the wall is illegal, and that Israel is legally obliged to dismantle it and pay compensation to all persons who have suffered any form of material damage as a result of its construction. Furthermore, the Court affirmed Israel's status as an Occupying Power and the applicability of the Fourth Geneva Convention¹¹ in addition to core international human rights covenants to the OPTs. In Paragraph 159, the Court declared that all states were obligated not to recognise the illegal situation created by the illegal construction of the wall, and not to provide assistance or aid in maintaining it. The Opinion

⁸ For commentary on the ICJ opinion see: Richard Falk, "Towards authoritativeness: The ICJ ruling on Israel's security wall," 99 *American Journal of International Law* 1, January 2005.

⁹ The Advisory Opinion resembles the Court's judgement in the Namibia case, which determined the territory as occupied and cleared the way for UN organs to take action against South Africa.

¹⁰ American judge, Thomas Buergenthal dissented from the group claiming that the Court did not fully explore Israel's security concerns. However, he agreed on the unconditional applicability of IHL to the OPTs and that Palestinians were entitled to exercise their right of self-determination. Buergenthal also expressed "serious doubt that the wall would...satisfy the proportionality requirement to qualify as legitimate self-defense." British judge Rosalyn Higgins "whose intellectual force is widely admired in the US" supported the decision.

See: Richard Falk, "America Outside Consensus on the Wall," *Truth Out*, 24 July 2004.

¹¹ See: Ardi Imseis, "On the Fourth Geneva Convention and the Occupied Palestinian Territory," 44 *Harvard International Law Journal* 65, 2003; Ardi Imseis, "Critical Reflections on the International Humanitarian Law Aspects of the ICJ Wall Advisory Opinion," 99 *American Journal of International Law* 102, 2005.

further emphasised the duty of all states¹² as High Contracting Parties to the Fourth Geneva Convention of 1949 to “respect and ensure respect” for the Convention. Recalling Article One common to all four Geneva Conventions of 1949, the Court pronounced,

It follows from that provision [Article 1] that every State party to that Convention, whether or not it is a party to a specific conflict, is under an obligation to ensure that the requirements of the instruments in question are complied with¹³.

Indeed, having established the *erga omnes*¹⁴ character of the dispute the Court confirmed that states have “additional obligations to ensure Israel’s compliance” with the Conventions. The Opinion then declared that the United Nations General Assembly (UNGA) and Security Council should consider “further action” to compel Israel to abide by international law and bring an end to the current “illegal situation” on the ground. While the violent construction of the wall may have added a new dimension to the conflict, overall the Court did not have to invoke any new legal principles to reach its decision and in conceptual terms the Opinion was rather unremarkable, as it simply reaffirmed the countless UN resolutions and other legal documents that have applied to the Palestine/Israel conflict for decades.

¹² See: “UN Meeting on Question of Palestine discusses responsibility of governments in upholding international law,” *UNIS*, 9 March 2005 ; Full text of Geneva Conventions available: www.icrc.org/ihl.nsf/WebCONFULL?OpenView

¹³ Legal consequences of the construction of a wall in the Occupied Palestinian Territory, ICJ, 9 July 2004, Paragraph 158. *Hereinafter*, ICJ Wall. Case available online: www.icj-cij.org/icjwww/idocket/imwp/imwp_advisory_opinion/imwp_advisory_opinion_20040709.pdf

¹⁴ ICJ Wall, Paragraph 155. “*Erga omnes*” is a legal obligation for all. For background information, see: Maurizio Ragazzi, *The Concept of International Obligations Erga Omnes*, Oxford University Press, 2000.

Chapter 1

The EU: Guiding Principles and Palestine

The Treaty of Nice establishing the European Community (EC) states that Community policy “shall contribute to the general objective of developing and consolidating democracy and the rule of law” and “to that of respecting human rights and fundamental freedoms.”¹⁵ The Treaty on the European Union affirms that the body is founded on the principles of “liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law.”¹⁶ Recently, the European Council’s first Common European Security Strategy defines one of its key objectives as “upholding and developing international law.”¹⁷ All such proclamations including the European Convention of Human Rights¹⁸ are legally binding on all Member States and the European Charter of Fundamental Rights adopted in 2000 is intended to serve as an “instrument inspiring respect for fundamental rights” by European institutions and states. In general terms, the EU as an entity operating within international law is subject to customary international law including the Geneva Conventions to which all Member States are likewise signatory and bound to respect “in all circumstances.” This obligation naturally has an inter-state dimension which has been recognised by the EU on several occasions and it is this dimension which is of greatest concern for this analysis.

¹⁵ Treaty establishing the European Community (Treaty of Nice), 24 December 2004. See Articles 177 & 181a. Available online: [//europa.eu.int/eur-lex/lex/en/treaties/index.htm](http://europa.eu.int/eur-lex/lex/en/treaties/index.htm)

¹⁶ Treaty on European Union, Article 6. Available online: [//europa.eu.int/eur-lex/lex/en/treaties/index.htm](http://europa.eu.int/eur-lex/lex/en/treaties/index.htm)

¹⁷ European Council, “A secure Europe in a better world: European security strategy,” Brussels, 12 December 2003. Available online: www.iss-eu.org/solana/solanae.pdf

¹⁸ Charter of Fundamental Rights of the European Union. Available online: www.europarl.eu.int/charter/default_en.htm

Built on such seemingly respectable foundations, the EU has forged an image of itself as a body concerned first and foremost with universally promoting the rule of law¹⁹ and human rights and is therefore also perceived as espousing a relatively “even-handed” approach to the Palestinian/Israeli conflict, a stance which is indeed substantiated by much of its “declarative diplomacy.”²⁰ As early as 1973 at the Copenhagen summit, the EU passed a resolution calling on Israel to withdraw from the OPTs, for the respect of sovereignty of states within secure and recognised borders, and for the recognition of the “legitimate rights of the Palestinians.”²¹ In 1980, the body expanded its position in the Venice declaration stressing the integral role of the Palestine Liberation Organisation (PLO) and calling on Israel to respect the Palestinian right to self-determination. The Declaration of the European Council on the Middle East issued in 1990 affirmed that, “settlements in the territories occupied by Israel since 1967, including East Jerusalem are illegal under international law.” The Declaration further reaffirmed the *de jure* applicability of the Fourth Geneva Convention to the OPTs and called on Israel to “adhere to its obligations toward the Palestinian population in the territory under its occupation which is protected by that Geneva Convention.”²²

As such declarations indicate, the EU and its Member States have, at least on a rhetorical level, been acting in accordance with international legal principles over the

¹⁹ Despite such an image, law in Europe is arguably built on “dark legacies,” see: Christian Joerges and Navraj Singh Ghaleigh (eds), *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism Over Europe and Its Legal Traditions*, Oxford: Hart Publishing, 2003.

²⁰ “Declarative diplomacy” sets out commitments and positions without attaching them to any actual or potential consequences to a third state’s interests. EU’s declarative diplomacy with regard to Israel is thus the range of declarative acts by EU institutions and Member States in response to Israeli policies and practices. As defined by the Euro-Mediterranean Human Rights Network (EMHRN) report, “A Human rights review on the EU and Israel,” December 2004. See: www.euromedrights.net ; *Hereinafter*, EMHRN Report.

²¹ See: Isabelle Avran, “How Europe could put pressure on Israel,” *Le Monde Diplomatique*, July 1998. Available online: [//mondediplo.com/1998/07/18israel](http://mondediplo.com/1998/07/18israel)

²² “Declaration of the European Council on the Middle East,” Dublin, 25-26 June 1990. See text online: www.europarl.eu.int/summits/dublin/default_en.htm

course of several decades. Such political statements combined with the huge amounts of aid directed to the Palestinians would lead one to believe that European states are at the very least, not aggravating the situation on the ground. While the EU's declarative diplomacy has addressed Israel on the correct legal basis, little regard has been paid to those elements of international law that assign general responsibilities to states relative to the illegal acts of third states. Such an oversight however is not surprising when one recognises that in its *contractual relations* with Israel, the EU as a third party, is acting in contravention of both its own law and international law. In fact, a closer look at such bilateral relations sharply challenges the EU's image as a neutral body acting in the best interests of the region and in compliance with international law. The following legal analysis of the EU-Israel Association Agreement reveals that not only is the EU acting outside its own legal parameters, but that it may actually be facilitating Israeli violations of international human rights law and IHL.

EU-Israel Association Agreement

Background

The EU established a bilateral preferential trade agreement with Israel in 1975, which was renewed as a full Association Agreement in 1996²³ as part of the Barcelona Process.²⁴ This Agreement between EU Member States and Israel essentially provides contracting parties with reductions on customs duties or exemptions in trade relations. As with all such agreements between the EU and non-EU states, it applies to *sovereign* territory only and follows EU law as well as public international law. Against such a clear

²³ EU-Israel Association Agreement, June 2000. Hereinafter, *Association Agreement*. Full text available online: www.eu-del.org.il/english/content/eu_and_country/asso_agree_en.pdf

²⁴ For information on Euro-Mediterranean Partnership/Barcelona Process. See: [//europa.eu.int/comm/external_relations/euromed/index.htm](http://europa.eu.int/comm/external_relations/euromed/index.htm)

legal framework, it is a relatively straightforward task to determine and illustrate that the Agreement is being implemented on illegal grounds. In fact, it has been recognised by certain European states and by Israel itself that Israel implements its agreements with the EU in violation of general law and in violation of the agreements themselves. The nature of such violations fall mainly²⁵ under two umbrella categories: “rules of origin” and “human rights.” The following will overview the nature of such violations and then tackle the inadequacy of the EU response therein as essentially it is the *failure* to take effective measures to combat such violations that incriminates the EU.

Trade

The legal debate surrounding the “rules of origin” clause of the Agreement has received increasing attention in recent years due to pressure by both European member states and NGOs. Apart from official Israeli attempts to distort the issue²⁶ the equation remains simple: since the beginning of the occupation, Israeli customs services have consistently certified products produced in the OPTs as originating in the “State of Israel.” Amongst the reasons for doing so is the desire to benefit from preferential treatment under the successive agreements governing trade between Israel and the EU.²⁷ By (mis)labeling

²⁵ There are several other areas in which Community is vulnerable to complicity in Israel’s human rights violations. See EMHRN Report, pg. 32-33.

²⁶ Israel considers the OPTs as “administered areas” and holds a different view of their legal status and its subsequent obligations. See: Kenneth Anderson (legal editor), “Israel’s views of the application of IHL to the West Bank and Gaza Strip,” in *Crimes of War: What the Public Should Know*, Crimes of War Project, W.W. Norton & Company, New York/London, 1999. Also see: www.crimesofwar.org ; Emma Playfair, “Playing on principle? Israel’s justification for its administrative acts in the Occupied West Bank,” in *International Law and the Administration of the Occupied Territories*, Oxford: Oxford University Press, 1992.

²⁷ Other reasons could be ideological, political, or colonial. See for example: Joseph Massad, “Rome and Jerusalem Revisited,” *Al-Ahram Weekly*, 19-24 February 2004 ; Gabriel Ash, “Diagnosing Benny Morris: the mind of a European settler,” *The Electronic Intifada*, 28 January 2004. Available online: [//electronicintifada.net/v2/article2379.shtml](http://electronicintifada.net/v2/article2379.shtml)

products in this fashion, Israel is openly violating the “territorial scope of the agreement”²⁸ and the clause governing “rules of origin.”²⁹ The explicit purpose underlying these articles is to make sure that preferential treatment is granted only to products manufactured within the territory of the parties, therefore excluding products wholly or substantially produced in the OPTs. Such provisions serve to ensure that the EU falls in line with international law on belligerent occupation that considers the West Bank including East Jerusalem, Gaza, and the Golan Heights,³⁰ Israeli-occupied territory and not part of Israel. As mentioned earlier, the status of these territories as occupied was reaffirmed by the ICJ and the EU has been careful to construct and interpret its bilateral agreements with Israel in accordance with applicable public international law, as illustrated by the Agreement’s territorial clauses.

Despite such attempts however, Israel has consistently applied preferential trade agreements with the EU to the OPTs since 1975. In February 2000, Israel not only confirmed that it engaged in such an illegal practice, but also stated that it would intentionally continue to do so.³¹ Israel refuses to distinguish between products manufactured in the OPTs and those produced in the territory of the State of Israel. Since Israel issues “proofs of origin” that fail to distinguish between both territories, EU customs authorities are unable to detect or prevent the granting of EU preferences to products

²⁸ The “territorial scope of the agreement” is stated in Article 83: “The Agreement shall apply, on the one hand, to the territories in which the Treaties establishing the European Community and the Coal and Steel Community are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of the State of Israel.” *Association Agreement*.

²⁹ The “rules of origin” clause, or Article 2 of Protocol 4, states: “...the following products shall be considered as (...) originating in Israel: (a) products wholly obtained in Israel within the meaning of Article 4 of this Protocol; (b) products obtained in Israel which contain materials have undergone sufficient working or processing in Israel within the meaning of Article 5 of this Protocol. *Association Agreement*.”

³⁰ The Golan Heights and East Jerusalem have been illegally annexed to Israel through domestic legislation. The annexation of East Jerusalem was codified in 1980 by the Israeli “Basic Law: Jerusalem Capital of Israel” which gave “constitutional status” to the violation of the customary prohibition against the unilateral annexation of occupied territory, as reaffirmed by the ICJ. Israel has passed several such Basic Laws that codify acts that violate peremptory principles of international law.

³¹ Christian Aid, “Facts on the ground: The end of a two-state solution,” *Christian Aid*, 21 October 2004, pg. 59. Available online: www.christian-aid.org.uk/indepth/410israelopt/index.htm ; *Hereinafter*, Christian Aid.

originating in settlement-based enterprises which should not legally receive preferential treatment such as duty import exemptions. Israel's practice of certifying products produced in the OPTs as "Made in Israel" represents a fraud and violation of EU customs law. All in all, Israel's incorporation of the OPTs, including East Jerusalem, under its treaty making authority stands in clear contrast to the EU-Israel Agreement's stated territorial scope of applicability. This illegal interpretation has translated into practice on the ground in areas other than trade³² as settlements also participate in other EU-Israel cooperation instruments, such as the Agreement on Scientific and Technical Cooperation.³³

On a basic level, such illegal behaviour challenges the underlying aim of the Agreement to promote "harmonious development and economic development between the Community and Israel"³⁴ and the EU has not only the right but also the obligation to refuse entitlement of trade preferences to Israeli settlement products and products of doubtful origin.³⁵ In more grave terms, the (mis)application of the Agreement due to the (mis)labeling products amounts to a material breach of IHL and the Fourth Geneva Convention in particular, which considers the mere existence of settlements to be

³² European entities have been and continue to be involved in the construction of illegal infrastructure in the OPTs. EU states are obligated to ensure that companies headquartered in their jurisdiction are not complicit in breaches of IHL and international human rights law in the OPTs. The UN norms on human rights responsibilities of transnational corporations provide the most comprehensive frame of reference in this regard. Failure to do so will undermine commitments that member states have made in the Organisation for Economic Co-operation and Development guidelines for multinational enterprises. See: www.oecd.org

³³ For text of Agreement on Scientific and Technical Cooperation.

See: [//europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_154/l_15420030621en00800090.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_154/l_15420030621en00800090.pdf)

³⁴ Article One, *Association Agreement*.

³⁵ Article 32 of the *Agreement's* Fourth Protocol gives the importing state the right to verify the "movement certificates" of products if reasonable doubt as to the authenticity of such documents exists. If the verification responses provided by the exporting country are insufficient, the importing country's authorities "shall refuse entitlement of preferences irrespective of the real origin of the product in question." In such cases EU States can then act to recover duties from importers. This procedure is nevertheless practically unsustainable since Israel can dispute the *definition* of the nature and origin of such products and ultimately has the power to label products as it sees fit. In such a situation Community law does not indicate the appropriate legal recourse.

See: Rosa Maria Lopez-Jorriin, "The European Commission's role as guardian of the treaties in ensuring the proper application of external agreements by partner countries, including their territorial scope and rules of origin," *European Commission's Directorate General for Taxation and Customs*, 20 June 2002. For this and other relevant papers: www.aprodev.net/palestine-israel/Proceedings_Hearing2002.htm

unequivocally illegal. According to the Vienna Convention on the Law of Treaties, a material breach “consists in the violation of a provision essential to the object or purpose of the treaty.”³⁶ Israel’s illegal application of the Agreement to the OPTs clearly contradicts the stated purpose of the Agreement that aims to achieve “regional cooperation with a view to the consolidation of peaceful coexistence and economic and political stability.”³⁷ All in all, by labeling products originating from those territories as “Made in Israel,” Israel is acting in violation of the Association Agreement, Community law, and IHL, all of which clearly distinguish between the “State of Israel” and the OPTs. While such a backdrop would presumptively give the EU sufficient reason to adopt measures to ensure Israeli compliance with the Agreement, the EU is also faced with Israeli violations of the Agreement’s “human rights” article bearing in mind that respect for international human rights is also an *erga omnes* obligation.

Human Rights

The “human rights” article or “essential element” clause³⁸ of the Association Agreement stipulates that relations between Israel and the EU, as well as the Agreement itself, “shall be based on respect for human rights and democratic principles.”³⁹ Such standards are intended to guide the internal and international policy of both parties and to mirror the general principles of state responsibility reaffirmed by the ICJ. Under the

³⁶ According to the Vienna Convention on the Law of Treaties, a material breach of a treaty consists *inter alia* in “the violation of a provision essential to the accomplishment of the object or purpose of the treaty” Article 60. Available online: www.un.org/law/ilc/texts/treaties.htm

³⁷ See Article One, *Association Agreement* for purposes.

³⁸ The human rights clause was created in 1995 as an ‘essential element’ in all EU bilateral agreements following difficulties faced by the EU in suspending relations with the former Yugoslavia in 1991, in which case the EU had to rely on general international law because it lacked the appropriate legal instrument. See: Lorand Bartels, “A legal analysis of human rights clauses in the EU’s Euro-Mediterranean Association Agreements,” 9 *Mediterranean Politics*, 3, 2004 .

³⁹ Article Two, *Association Agreement*.

Agreement, the EU is legally bound to ensure that Israel abides by basic human rights and democratic principles and in addition to the Agreement itself, EU policies in the “areas of economic, financial and technical cooperation, as well as development cooperation” are legally required to contribute to the EU’s general objective of respecting human rights and fundamental freedoms.⁴⁰ Despite the inclusion of such principles within the Agreement and within EU policy in general, this human rights framework is nevertheless difficult to reconcile with Israel’s widely documented and consolidated practice of violating human rights law and IHL.

Israel breaches a spectrum of human rights⁴¹ on a daily basis in both its external and internal policy. The annexation wall and the overall occupation apparatus for example, violate the right to freedom of movement as well as the rights to adequate housing, food, family life, education and health. Such rights are enshrined in international treaties and human rights instruments such as the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.⁴² Israel is also guilty of systematically denying the Palestinian people of their right to self-determination.⁴³ Such grave violations of human rights are regularly condemned by the UN Commission on Human Rights, the

⁴⁰ Treaty Establishing the European Community (Treaty of Nice), See Articles 170 & 181a. Available online: [//europa.eu.int/eur-lex/lex/en/treaties/index.htm](http://europa.eu.int/eur-lex/lex/en/treaties/index.htm)

⁴¹ While this paper is based on a “human rights” framework, as a paradigm it can certainly be critiqued from various perspectives. See for example: Makau Mutua, “The ideology of human rights,” *Virginia Journal of International Law* 36, 1996; David Kennedy, “The international human rights movement: Part of the problem?” 14 *Harvard Human Rights Journal* 2001; James Gathii, “International Law and Eurocentricity,” 9 *European Journal of International Law*, 1998.

⁴² Other human rights instruments include; the International Covenant on Economic Social and Cultural Rights, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women. For more information on Israeli violations of Palestinian human rights, see: Palestinian Center for Human Rights: www.pchrgaza.org

⁴³ See: Antonio Cassese, “The Israel-PLO Agreement and self-determination,” 4 *European Journal of International Law* 546-571, 1993; John Quigley, “David v. Goliath: Humanitarian and human rights law in light of the Palestinian right of self-determination and right to recapture territory taken by force,” 21 *New York University Journal of International Law & Politics* 489, 1988-1989.

UNGA, and well-established human rights organizations.⁴⁴ As affirmed by the ICJ, Israel has also systematically violated several compulsory rules of IHL, by constructing an entire occupation apparatus⁴⁵ and failing to respect and preserve the public life, economic life, and habitat of the protected civilian persons under its occupation.⁴⁶ Instead of complying with such obligations, Israel is guilty of unlawful use of force against civilians,⁴⁷ such as collective punishment and the unlawful destruction of civilian property, such as home demolitions.⁴⁸ While the EU may have concluded Association Agreements with other states guilty of violating human rights law, Israel is arguably unique since its violations are not only a consolidated practice, but a practice *institutionally codified* in Israel's national laws,⁴⁹ which is perhaps most clearly illustrated by the (mis)treatment of Palestinian "citizens" of Israel.

Exclusion: Palestinian "Citizens" of Israel

The definition of Israel as a fundamentally "Jewish State" has translated into a condition of perpetual institutionalised discrimination for Israel's non-Jewish citizens, the

⁴⁴ See annual report by Amnesty International: [//web.amnesty.org/report2003/isr-summary-eng](http://web.amnesty.org/report2003/isr-summary-eng) ; and annual report by Human Rights Watch: [//hrw.org/english/docs/2005/01/13/isrlpa9806.htm](http://hrw.org/english/docs/2005/01/13/isrlpa9806.htm)

⁴⁵ Article 49 of the *Geneva Convention relative to the Protection of Civilian Persons in Time of War* (12 August 1949), states, "The Occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies." See text of Convention: www.unhchr.ch/html/menu3/b/92.htm

⁴⁶ Article 55 states, "[T]o the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores, and other articles if the resources of the occupied territory are inadequate." See text of Convention: www.unhchr.ch/html/menu3/b/92.htm

⁴⁷ See: Joel Greenberg, "Illegal targeting of civilians," Horst Fisher, "Collateral damage," Daoud Kuttub, "Collective punishment", and Amira Hass, "Destruction of civilian property." All in *Crimes of War: What the public should know*.

⁴⁸ See reports by the *Israeli Committee Against House Demolitions*: www.icaht.org

⁴⁹ Israel has introduced new laws to legalise the construction of the wall and incursions into civilian areas, such as the attack on Rafah in 2004. A range of bureaucratic instruments, such as, zoning, planning, law, and permits have also been used to establish the settlements. In 1984, a comprehensive framework was put in place to apply all Israeli laws to settlers, including national insurance law, army service obligations, and entry on the population register. See: Eyal Benvenisti, *Legal Dualism: The Absorption of the Occupied Territories into Israel*, Boulder, Colorado/London: Westview Press, 1990, pg. 3-21.

majority of whom are Palestinian who make up 20 percent of Israel's total population. In terms of the right to political participation for example, a 1985 amendment to the "Basic Law on the Knesset" prevents the participation of any one who denies Israel as "the State of the Jewish people" or denies "the democratic nature of the State."⁵⁰ While Israel's "Basic Law" on "Human dignity and liberty" establishes "the values of the State of Israel as a Jewish and democratic State," it conveniently fails to mention the rights of its Palestinian citizens. The apparent contradiction inherent in Israel's self-definition as a Jewish yet purportedly democratic state in the ethno-democratic mix of contemporary Palestine/Israel is the subject of increasing debate both within Israel and abroad.⁵¹ In the absence of constitutional equality, Palestinian-Israelis face discrimination in education,⁵² employment⁵³ and other fields.⁵⁴ These discriminatory state policies and others governing citizenship⁵⁵

⁵⁰ Azmi Bishara, "Jewishness versus democracy," *Al-Ahram Weekly*, 28 October - 3 November 2004. Available online: [//weekly.ahram.org.eg/2004/714/op63.htm](http://weekly.ahram.org.eg/2004/714/op63.htm)

⁵¹ See for example a debate entitled "Zionism is the real enemy of the Jews," held at *intelligence² forum*, 25 January 2005. Transcript/video available online: www.intelligencesquared.com

⁵² Two ordinary statutes, the "Compulsory Education Law" (1949) and the "Pupil's Rights Law" (2000) frame the right to education. The latter institutes two separate school systems, one for Jews and the other for Palestinians. Palestinian schools are discriminated against in budget allocation; Palestinian pupils comprise a third of the total school population but their schools receive just 7% of the education ministry's budget. As a result, the standards of education are significantly lower in Palestinian schools. See: Human Rights Watch Report, "Second Class," *Human Rights Watch*, November 2001. Available online: www.hrw.org/reports/2001/israel2/

⁵³ Large sections of the Israeli economy are officially off limits to Palestinian workers on "security" grounds. This includes government corporations such as Bezeq, the telecoms company, electric companies, State banks, not to mention defence industries such as the Rafael Armaments Authority, the nuclear reactor, the secret nuclear weapons factory and the Israeli aircrafts industry. See: Jonathan Cook, "Democratic and Jewish," *Al-Ahram*, Issue 698, 8-14 July & Issue 699 15-21 July 2004; Jonathan Cook, "Arab workers face discrimination in Israel," *Al-Jazeera*, 13 March 2004. Available online: [//english.aljazeera.net/NR/exeres/33C79FBE-FFEF-4005-AB28-D96DD6C1E82F.htm](http://english.aljazeera.net/NR/exeres/33C79FBE-FFEF-4005-AB28-D96DD6C1E82F.htm)

⁵⁴ Israel has instituted a system of "national priority areas," almost exclusively Jewish communities, where extra benefits are offered to residents and businesses. Over 70% of the poorest areas in Israel today are Arab. See: Shira Kamm, "The Arab Minority in Israel: Implications for the Middle East Conflict," *Mossawa*, September 2002, pg. 12.

⁵⁵ Israel's "Law of return" of 1950 for example allows anyone with Jew "heritage" to immigrate to Israel and automatically be granted Israeli citizenship. While this law guarantees the generous distribution of Israeli citizenship to all Jews, millions of dispossessed Palestinian refugees are denied the right of return to the homes they were forced to flee during the Nakbe of 1948. See: the *Palestine Right to Return Coalition*: www.al-awda.org

and landownership rights⁵⁶ act to disadvantage, impoverish, disturb, and displace Palestinian-Israelis.

Another recent legislation that has attracted widespread coverage is the “Nationality and Entry into Israel Law,” passed as a “temporary order” in 2003.⁵⁷ This law outrightly prohibits the granting of residency or citizenship to Palestinians from the OPTs who are married to Israeli citizens thereby banning family unification. It predominantly targets Palestinian-Israelis as they tend to marry individuals from the OPTs and moreover, the general policy for residency and citizenship status in Israel for all other “foreign spouses” has remained unchanged. Regarding this legislation Member of European Parliament (MEP) Daniel Cohn-Bendit stated,

[This law] contravenes many international human rights instruments ratified by Israel with regard, in particular, to Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination ratified by Israel in 1979.

He continued to question former Commissioner of External Affairs, Chris Patten,

Is not the Commission of the opinion that this law violates Article 2 of the Association Agreement between the EU and Israel? What steps does the Commission intend to take in order to convince the competent Israeli authorities to abolish this law or not to implement it?

Patten responded expressing concern that this law may cause “potential discrimination” in the “highly sensitive area of family rights” and reaffirmed that “Israeli respect for human rights constitutes an essential element” of the Agreement and of its “relationship with the

⁵⁶ The “Absentees’ Property Law” of 1950 sanctions the outright confiscation without indemnity of all lands owned by those Palestinians expelled by Israel. Palestinian citizens of Israel today continue to suffer from policies of land confiscation, home demolitions, and other forms of “quiet transfer.” Over 100,000 Palestinian Bedouins for instance have been targeted by discriminatory legislation as demonstrated by the “National Planning and Building Law” of 1965. This law essentially “re-zoned” the land in the Negev which housed hundreds of historical Palestinian villages turning it into non-residential agricultural land and open space owned by Israel. Such a law has paved the way for various policies designed to uproot the Palestinian Bedouins. See: “By all means possible,” *The Arab Association for Human Rights*, July 2004. Available online for download: www.arabhra.org/publications/reports/PDF/NaqabReport_English.pdf

⁵⁷ This law is also retroactive as it prohibits the granting of legal status to anyone who did not submit such a request before May 2002. The Knesset has extended the law several times, for updates see: “Special report: Ban on family unification,” *Adalah: The Legal Center for Arab Minority Rights in Israel*; www.adalah.org/eng/famunif.php

Union.”⁵⁸ These laws demonstrate the explicitly discriminatory purpose behind much Israeli legislation⁵⁹ and Patten’s statement indicates that the Commission recognises this purpose and further recognises that the EU is walking a rapidly disappearing line when it comes to Israel, human rights, and its bilateral relationship.

Against this backdrop of structural and institutional discrimination, one must evaluate how cooperation instruments such as the EU-Israel Association Agreement could possibly fulfill their aim to “promote respect for human rights and democratic principles.” The EU has declared on several occasions that the promotion and protection of “the rights of minorities as well as fundamental freedoms constitute a major objective of the EU’s external relations.”⁶⁰ However, on a basic level, obstacles in fields such as education and employment effectively limit Palestinian-Israeli participation in EU-Framework Programmes including loan programmes. Such exclusion inevitably occurs despite the EU-Israel Association Council’s declaration that Israeli partners in such programmes “cover the whole spectrum of the Israeli society.”⁶¹ A main objective of the EC-Israel Agreement on Scientific and Technical Cooperation for example aims to benefit the scientific community, the private sector, and the general public in Israel.⁶² While all such agreements are designed to be accessible to all, Palestinian-Israelis remain sidelined since they are ultimately excluded from the huge umbrella of Israeli universities and institutes supported by the Israeli government. As it stands, Palestinian-Israelis have little or no opportunity to participate in

⁵⁸ Answer to written question by Daniel Cohn-Bendit (Verts/ALE) 30 January 2004. See: [www.europarl.eu.int/bulletins/pdf/01c_bu-a\(2004\)01_en.pdf](http://www.europarl.eu.int/bulletins/pdf/01c_bu-a(2004)01_en.pdf)

⁵⁹ For a list of Israel’s main discriminatory laws, see: *Institutionalized Discrimination against Palestinian Citizens of Israel*, Adalah’s report to the World Conference against Racism, Racial Discrimination, Xenophobia and related Intolerance, Durban, South Africa, August-September 2001. Available: www.adalah.org/eng/intladvocacy2001.php

⁶⁰ Declaration of the European Union on the Fourth Meeting of the Association Council EU-Israel, Brussels 17-18 November 2003. See: [//domino.un.org/UNISPAL.NSF/0/882be19b29c5b4a785256de20057fe73?OpenDocument](http://domino.un.org/UNISPAL.NSF/0/882be19b29c5b4a785256de20057fe73?OpenDocument)

⁶¹ Ibid.

⁶² See: EC-Israel Agreement on Scientific and Technical Cooperation: www.eu-del.org.il/english/projects/2nd.pdf

any of the EU-Israel cooperation instruments and the EU has not acted to prevent such exclusion of Israel's Palestinian minority from equitable participation in the supposed benefits of cooperation instruments.

Chapter 2

EU Complicity

In light of the European Council's key objective to "uphold and develop international law,"⁶³ one could reasonably expect that the EU would hold Israel accountable for blatantly breaching its legal obligations. However, no concrete action has been taken thus sparking a debate in Brussels which has recently been fueled by the ICJ opinion. As confirmed by a human rights review on the EU-Israel relationship commissioned by the Euro-Mediterranean Human Rights Network (EMHRN), "the EU is confronted with Israel's improper execution of the trade-related provisions of the Association Agreement, based on Israel's internationally unlawful application of the Agreement to occupied territory." The EU is also "confronted with Israel's continuing policy-based violations of international human rights and humanitarian law in the OPTs" and inside Israel. According to its own Community law, including the "essential element" clause, the EU is legally obligated to prevent its relations with Israel from being conducted on this basis. By not acting to prevent the Agreement from operating in an internationally unlawful manner, the EU stands accused of violating Community law because although the Agreement may be legally correct *on paper*, it is clearly being *implemented* in contravention of international law. From another angle, the EU has ended up *protecting* Israel from legal and political accountability by helping Israel escape the normal penalties or costs that would ordinarily result from such blatant violations. In contrast to its declaratory criticism, the EU's "operative diplomacy"⁶⁴ has thus far failed to satisfy the obligation of refraining from facilitating Israeli violations.

⁶³ European Council, "A secure Europe in a better world: European Security Strategy," Brussels, 12 December 2003. Available online: www.iss-eu.org/solana/solanae.pdf

⁶⁴ The EU's "operative diplomacy" towards Israel is the range of engagements and transactions through which the EU seeks to influence the political behaviour of Israel and through which the EU may fulfil, neglect, or even violate the above-mentioned obligations relative to Israel's respect for human rights and international law. See *EMHRN*, pg. 7.

The EU's reluctance to engage Israel on its violation of the "rules of origin" and "human rights" clause on a principled legal basis clearly amounts to deference at best or acquiescence. As affirmed by the ICJ, states have a general duty not to recognise or accept such illegal acts, and not to aid or assist in maintaining the illegal situation resulting from them. However, in the interest of preserving and expanding its privileged relations with Israel, "in several notable instances the EU has violated this obligation with conspicuous deliberateness."⁶⁵ The fact that the EU has allowed its contractual relations with Israel to operate in such an illegal manner has not gone unnoticed however and its precarious position is increasingly being challenged.

Political Pressure

Against the backdrop of the ICJ opinion, the EU has come under mounting pressure to drastically transform its relationship with Israel in accordance with international law. The UN Special Rapporteur on the Right to Food, Jean Ziegler stated last year,

There is only one possible weapon to fight for the right to food: that's article 2 of the contract of association between Israel and the EU. Grave violations of the right to food have been recorded, they are clear. This accord must be suspended.⁶⁶

In July 2005, lawyers acting on behalf of campaign group "War on Want" sent letters to European Commission President Jose Manuel Barroso and British Foreign Secretary Jack Straw "challenging them to provide evidence of any action they have taken to curtail human rights abuses against Palestinians living under Israeli military occupation." A parallel

⁶⁵ EMHRN Report, pg. 24.

⁶⁶ "Palestine 2005: Time for sanctions against Israel," *War on Want*, 2005. Available online for download: www.waronwant.org/download.php?id=274

request is being made of the British government under the Freedom of Information Act.⁶⁷ Political shifts can also be observed within the EU as illustrated by the body's position on the wall which arguably underwent a dramatic shift before and after the ruling: before the judgment, the EU abstained on the UNGA Resolution of December 2003⁶⁸ that requested an Opinion from the ICJ due to "the conviction of many Member States that transferring the matter of the Wall to a legal forum would do nothing to advance the political process necessary for peace."⁶⁹ Following the ruling, Member States voted unanimously in support of the UNGA Resolution of August 2004, which clearly signified the body's acceptance of the Court's key positions.⁷⁰ While the significance of such a shift and the effects of sustained political pressure should not be underestimated, the EU remains unprepared to address the conflict from a purely legal perspective and has been particularly silent on the implications for the EU-Israeli relationship of the Opinion's dicta pertaining to the obligations of third states. While the EU has yet to address the fundamental contradictions and transgressions that overshadow their contractual relations with Israel, several legal

⁶⁷ The group consisting of individuals affected by illegal Israeli policies, a charity, and London solicitors, are formally requesting the European Commission to provide evidence of all written communication with the Israeli government, including minutes of meetings and internal memoranda, regarding the wall since the ICJ ruling. See: "Lawyers challenge EU and UK over inaction on Palestine," *War on Want*, 20 July 2005. Official letters available: www.waronwant.org/download.php?id=274

⁶⁸ This abstention was criticised by several MEPs, one of whom stated during a Parliament debate, "Palestinians rightly point to the inconsistency of our position of urging them to give up violence, while simultaneously denying them the chance to seek redress through international legal institutions. A Palestinian negotiator observed that the US, the UK, and Germany asked the Palestinians not to have recourse to violence, but when the Palestinians have recourse to diplomacy the door is slammed on them." Lucas (Verts/ALE), Debates in the European Parliament, 11 February 2004, see: www3.europarl.eu.int/cre/cre?FILE=0211me&LANGUE=EN&LEVEL=DOC&NUMINT=3-132&LEG=L5

⁶⁹ Statement by Minister Roche at the European Parliament on behalf of the Council of Ministers on the EU position on the ICJ hearing, 11 February 2004. See statement: [//domino.un.org/UNISPAL.NSF/0/a253b27921f92ddf85256e370054fa9a?OpenDocument](http://domino.un.org/UNISPAL.NSF/0/a253b27921f92ddf85256e370054fa9a?OpenDocument)

⁷⁰ See GA Resolution ES-10/15 on Advisory Opinion, 2 August 2004. Text available online: [//domino.un.org/unispal.nsf/0/f3b95e613518a0ac85256eeb00683444?OpenDocument](http://domino.un.org/unispal.nsf/0/f3b95e613518a0ac85256eeb00683444?OpenDocument)

In July 2005, the EU's foreign policy chief Javier Solana stated "We think Israel has the right to defend itself, but we think the 'fence' which will stand outside the territory of Israel is not legally proper and it creates also humanitarian problems. Eric Silver, "Palestinians 'rage' at proposed 'fence' across Jerusalem," *The Independent*, 12 July 2005.

avenues to do so are available and a starting point could be the Agreement itself which has built-in safeguards in the case of irregular application.

Suspension: The Human Rights Clause

The Agreement's "human rights" clause establishes the right of each party to address the human rights-related conduct of the other and further establishes the basis for taking positive or negative measures to ensure respect for such principles. It offers parties a lawful means of imposing a sanction in response to a partner's violation of human rights.⁷¹ Suspension of the Agreement or the application of sanctions are reasonable negative measures that the EU has previously utilised against several countries or against their leaders. Agreements have been suspended or partially suspended in response to failures to respect human rights and democratic principles,⁷² or in response to violations of trade-related provisions.⁷³ In view of this precedent and the existence of the "human rights" clause, the EU is evidently treating Israel as an exception to the rule. Thus far, the EU has not considered suspension to be a suitable punitive measure and has justified this position

⁷¹ Lorand Bartels, "A legal analysis of human rights clauses in the EU's Euro-Mediterranean Association Agreements," 9 *Mediterranean Politics* 3, 2004 .

⁷² The EU has adopted sanctions and other negative measures against several countries due to their lack of respect for human rights. While EU measures against Afghanistan, Iraq, Libya and so on were adopted following UN Security Council resolutions, measures against countries including Belarus, Burma, Cuba, Haiti, Indonesia, Moldova, Nigeria, and Zimbabwe have been taken on the EU's own initiative. For a full list of EU measures taken against third countries, see: [//ue.eu.int/PESC/legislation/LISTE%20SANCTIONS.pdf](http://ue.eu.int/PESC/legislation/LISTE%20SANCTIONS.pdf)

⁷³ In April 2003 the European Commission suspended the EC-Serbia and Montenegro free trade agreement and in particular, the zero tariff preference on imported sugar following findings by the European Anti-fraud Office (OLAF) which was unable to verify whether sugar exported to the EC actually originated in the partner country. See:

www.eudelyug.org/en/news/news/final20040120/final20040120.htm

The EC-Turkey Euro-Mediterranean Association Agreement also came under scrutiny when EC customs authorities identified Turkey's non-compliance with rules of origin for canned tuna. As a result of EU pressure, Turkey introduced changes in its national legislation and operational practices and the European Commission resumed regular conditions for tuna imports in June 2004. See: europa.eu.int/comm/taxation_customs/tuna-EN.pdf

The EC also has initiated sanctions against the US by introducing counter-measures on a list of US products in the long-standing WTO dispute on the US Foreign Sales Corporations of March 2004. See:

http://europa.eu.int/comm/trade/issues/respectrules/dispute/pr270204_en.htm

on several grounds. Such measures are said to be counter-productive since a stated objective is to “bring Israel closer to the EU” and Member States are currently engaged in a debate of whether to freeze cooperation with Israel or expand cooperation in order to gain influence.⁷⁴ Other reservations highlight the fact that the EU has a substantial trade surplus with Israel as its principal trading partner, well ahead of the United States (US). While initiating some sort of sanction against Israel as a *punitive* measure may seem like an appropriate response to violations of the “human rights” and “rules of origin” clause, the EU is not actually *obligated* to do so under Community law and international law.⁷⁵ Aside from these articles however, the EU may be obligated to initiate sanctions on other legal grounds.

Suspension: To Fulfill EU Law

The original purpose of suspension in international law is to “enable a state to *protect itself* from the unwanted consequences of a treaty’s partner’s violation of essential provisions of a treaty.”⁷⁶ Since the EU is currently confronted with internationally unlawful Israeli policies that violate human rights and other elements of Community law, it can respond by initiating sanctions in order to fulfill its *own* human rights-related requirements and not as a purely punitive measure against Israel. On this point, the EMHRN explains,

Ironically, the fact that the EU would be compelled to act by its own law, and against its own political preferences, could render such measures more effective than a sanction at persuading Israel of the cogency of the rules of international law it is violating.⁷⁷

⁷⁴ Debates of the European Parliament on EC-Israel Agreement on Scientific and Technical Cooperation. Sitting of 10 March 2004. See text of debate:

[//europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/ce102/ce10220040428en05270527.pdf](http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2004/ce102/ce10220040428en05270527.pdf)

⁷⁵ EMHRN Report, pg. 17.

⁷⁶ *Ibid.*, pg. 18.

⁷⁷ *Ibid.*

Under the Agreement the EU is legally bound to ensure that both sides respect human rights and democratic principles and that such principles guide their internal and international policy. The Agreement has essentially created obligations in Community law that are binding on EU institutions which are, along with Member states, supposed to apply Community law as they expect the European Courts would do so. In case of deficient execution, the Agreement has generally laid out a method of dispute resolution, which includes dialogue, cooperation, technical assistance⁷⁸ and a compulsory settlement mechanism if a consensual agreement is unreachable.⁷⁹ Article 79, known as the “non-execution clause” allows for “appropriate measures” that would “least disturb the functioning of the Agreement,” but more importantly it allows for the full suspension of the Agreement in order to protect the EU’s own obligations and interests from harm.⁸⁰ If no solution is reached, Article 82 allows for the termination of the Agreement.⁸¹ Moreover, if a competent EU institution determines that a partner’s misapplication of the Agreement is preventing the Community, its institutions, or Member States from performing their *own obligations* under Community law and/or international law, the Agreement *must* be suspended.⁸² Apart from the Association Agreement, the right to suspend agreements in the case of material breaches is a customary principle of international law codified by the law of treaties and therefore within reach of the EU. Israel’s violations of the “rules of origin” and “human rights” clause is clearly preventing the EU from abiding by its own obligations

⁷⁸ Article 70, *Association Agreement*.

⁷⁹ *Ibid*, Article 75.

⁸⁰ Article 79 states, “The Parties shall take any general or specific measures required to fulfil their obligations under the Agreement. They shall see to it that the objectives set out in the Agreement are attained.”

⁸¹ *Ibid*, Article 82.

⁸² This rule applies when measures short of suspension would fail to resolve the problem and when suspension would serve to do so. The scope of the suspension must be sufficient to put an end to the violations of Community law resulting from the association partner’s malpractice under the Agreement. See EMHRN Report, pg. 22.

to respect IHL and general human rights law thereby making suspension an appropriate route of legal action.

Several MEPs have recognised the urgency of the situation and called for the Agreement's outright suspension as illustrated by a resolution adopted in 2002 which called on the Council and the Commission "to demand that the Israeli government, "comply with the latest UN resolutions and make a positive response to the current efforts undertaken by the EU to achieve a peaceful solution to the conflict." The resolution further called "on the Commission and Council, in this framework, to *suspend* the EU-Israel Association Agreement."⁸³ On another occasion in 2004, the European Parliament called Israeli military action against Palestinians "acts of terror" and called once again for the suspension of the Agreement.⁸⁴ Such demands are also being voiced on a national level as illustrated by two Early Day Motions passed by the UK House of Commons in 2004.⁸⁵ One called on the British government "to use all means at its disposal, including the introduction of sanctions against Israel" to persuade it "to comply with the International Court of Justice and the UN Resolution."⁸⁶ The other Motion called for the suspension of the Agreement "until [Israel]

⁸³ The Council of Ministers refused to implement this decision, with Britain, Netherlands and Germany as the only states opposing suspension. See: European Parliament Resolution Text (P5_TAPROV(2002)0173) 10 April 2002. Available online: www.europarl.eu.int/meetdocs/delegations/plco/20020612/07EN.pdf

Israel's unlawful implementation of the Agreement and the EU's failure to act to counter such behaviour highlights the possibility that Community law is being implemented in a deficient manner by the responsible Community *institutions*. If responsibility for deficient implementation can be determined, any EU institution or Member State with standing can call on the responsible party to terminate its violations. If this call is not heeded, an action against the responsible institution can be brought before the European Court of Justice. Other persons, EU nationals and others directly affected by the general failure to act may also have standing to bring forth an action in Community courts. See EMHRN, pg. 23.

⁸⁴ Sharon Sadeh, "EU: IDF actions that harm civilians akin to 'acts of terror'" *Haaretz*, 1 April 2004.

⁸⁵ See text of Early Day Motion, 1288: [//edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=24876&SESSION=682](http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=24876&SESSION=682)

⁸⁶ See text of Early Day Motion, 162: [//edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=162&SESSION=873](http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=162&SESSION=873)

It should nevertheless be noted that the British government continues to sign discreet agreements with Israel in violation of international law. See for example: Ali Abunimah, "Britain's double game," *The Electronic Intifada*, 14 April 2005. Available online: [//electronicintifada.net/v2/article3757.shtml](http://electronicintifada.net/v2/article3757.shtml)

lifts the movement restrictions which it has placed on Palestinian trade.”⁸⁷ Israel’s system of closure, curfews, and other “movement restrictions” have of course not been lifted, but rather have been further entrenched by the apartheid wall. When viewed against the conditions of international law, suspension would not be considered a sanction in the negative sense of the term,⁸⁸ but rather it would signify the *implementation* of a customary norm of international law, namely, the non-compliance of one Party negates the obligation of compliance of the other Party.⁸⁹

Economic Leverage

As mentioned earlier, the EU has officially expressed its unwillingness to take such measures claiming a desire to increase leverage with Israel. Such an argument however, overlooks the fact that through suspension, the EU would essentially be using its economic clout to gain such leverage. As the International Development Committee of the House of Commons argues, “The EU should not shy away from using economic pressure to gain political leverage with Israel.”⁹⁰ As Israel’s principal trading partner, the EU’s trump card is its economic clout and Israel is clearly sensitive to the opportunities associated with such cooperation instruments which act as EU’s principal political instruments in the first place.

During the first *Intifada* for example, the suspension of scientific and inter-university

⁸⁷ The EU and the PLO signed an Euro-Mediterranean interim Association Agreement on trade and cooperation in 1997. However, Israel has officially and in practice opposed its implementation. Former Israeli Prime Minister Benjamin Netanyahu proposed to recognise the Agreement if the EU *extended preferential treatment to settlement products*. All trade between the OPTs and third countries is subject to Israeli control and passes through Israeli customs.

⁸⁸ While sanctions are viewed negatively due to their devastating effects on Iraq, jurists argue that they were no longer legitimate following Iraq’s withdrawal from Kuwait and its acceptance of Security Council resolutions. See: Hans Von Speck “America’s war America’s peace,” Presentation given at “A hearing on the project for the new American century” at the Brussels Tribunal, 14-17 April 2004. See: www.brusselstribunal.org

⁸⁹ As expressed in Article 6 of the Vienna Convention on the Law of Treaties, “*inadimplenti non est adimplendum*.” See Treaty text online: www.un.org/law/ilc/texts/treaties.htm

⁹⁰ International Development Committee, “Development assistance and the OPTs,” *House of Commons*, 15 January 2004. Pg. 7. Available: www.publications.parliament.uk/pa/cm200304/cmselect/cmintdev/230/230.pdf.

Hereinafter: International Development Committee.

cooperation played a key part in the re-opening of the Palestinian universities that had been shut down for months by the Israeli army.⁹¹ Given these realities, one must question the reasoning behind the EU's striking unwillingness to undertake such measures. A likely explanation is the fact that the EU is itself reaping extraordinary benefits from its illicit relationship with Israel. On this point the European Commission stated in no uncertain terms,

*The trade balance with Israeli is very, very heavily in our favour. So when you say, 'What is the benefit of impact on Israel of these arrangements,' at the moment the European Union is doing quite well out of them both in terms of industrial trade and agricultural trade... So I am not sure what would be the result of disrupting these or interrupting these. It may actually harm the European Union more than it harms Israel.*⁹²

Indeed, recent initiatives such as the Olmert Arrangement and European Neighbourhood Policy adopted by the EU to "bring Israel closer" indicate that financial rewards could be acting to derail the body from abiding by humane legal principles.

Olmert Arrangement and European Neighbourhood Policy

While calls for sanctions or suspension have persisted, the EU has not responded in kind and has rather formulated a "technical arrangement" commonly known as Olmert Arrangement. The Arrangement's main tenets stipulate that EU customs authorities should rely on Israeli declarations on the origin of products and cease to ask Israel for verification. Furthermore, it clearly proposes to alter the meaning of the Association Agreement in international law to allow Israel to continue to apply it to the OPTs and does not even claim to "end the settlement-related import fraud perpetrated against the European Community

⁹¹ See: Isabelle Avran, "How Europe could put pressure on Israel," *Le Monde Diplomatique*, July 1998. Available online: [//mondediplo.com/1998/07/18israel](http://mondediplo.com/1998/07/18israel)

⁹² International Development Committee, pg. 65.

as a result of Israel's ongoing malpractice."⁹³ In actuality, the explicit purpose behind the Arrangement was to make way for the EU's "European Neighbourhood Policy," (ENP) a framework aimed at increasing EU "cooperation" with Eastern Europe and Mediterranean countries.⁹⁴ While Israel was one of the first countries chosen to implement the first step of the ENP, an economic and political "Action Plan," such a Plan could only move forward once the controversy regarding "rules of origin" was resolved. A series of bilateral negotiations has thus led to a situation today where the EU must agree to amend the "rules of origin" clause of the Agreement before Israel can participate in the Pan-Euro-Mediterranean preferential trading system. The EU can in no way agree to such an amendment without *legalising* Israel's malpractice under the Agreement. However, in spite of this blatant disregard for the applicable legal principles, the Commission has agreed with Israel to recommend that the arrangement be endorsed by the EU in the EU-Israel Association bodies. The Commission has also agreed to argue that the Arrangement satisfies the EU's conditions for bringing Israel into the regional trade system.

Given the Commission's stance on the issue, the EU General Affairs and External Relations Council approved the EU-Israel Action Plan as part of the ENP in December 2004, placing Israel one step below full membership in the EU.⁹⁵ According to the Plan, "the EU and Israel are now closer together than ever before and, as near neighbours, this will reinforce their political and economic interdependence." The Plan continues,

⁹³ EMHRN Report, pg. 26.

⁹⁴ The EU's ENP offers the prospect of free access to goods, services, people, and capital to countries surrounding the EU in exchange for economic and political reform drawn up in each individual state. In addition to Israel, action plans have been drawn up between the EU and Moldova, Ukraine, Morocco, Tunisia, Jordan and the Palestinian Authority.

⁹⁵ Ilil Shahr, "85% of Israelis wish to join "anti-Semitic" EU," *Maariv*, 10 March 2004. Available online: [//maarivintl.com/index.cfm?fuseaction=article&articleID=4372](http://maarivintl.com/index.cfm?fuseaction=article&articleID=4372)

Enlargement offers the opportunity for the EU and Israel to develop an increasingly close relationship, going beyond co-operation, to involve a significant measure of economic integration and a deepening of political co-operation.⁹⁶

In the face of Israel's criminal human rights record, the Plan claims the "EU and Israel share the common values of democracy, respect for human rights and the rule of law and basic freedoms"⁹⁷ and aims to build ties in new areas and encourage and support Israel's objectives for further integration into European economic and social structures.

Furthermore, the Plan ironically purports to help fulfil provisions in the Association Agreement, the very agreement that is already being implemented in contravention of Community and international law. With regard to the besieged Palestinian population, the Plan only speaks of "reforms, transparency, accountability and democratic governance"⁹⁸ and conveniently fails to mention the apartheid wall, torture, or other Israeli violations of human rights law and IHL. While the EU is obligated to ensure that its cooperation with Israel is *conditioned* on concrete and effective steps to end all discriminatory state practice and rectify its effects, in an utter display of disregard for international law, the EU has failed to make Israeli compliance with international law a precondition for expanding bilateral relations in such an extravagant manner.

Repercussions and "Dirty Hands"

If the EU formally pursues such a route it will be faced with a series of grave repercussions. The unsettling possibility exists that the EU is in fact acquiescing to Israel's insistence on applying and implementing a Community agreement in a manner that

⁹⁶ See proposed EU-Israel Action Plan, online: [//europa.eu.int/comm/world/enp/pdf/action_plans/Proposed_Action_Plan_EU-Israel.pdf](http://europa.eu.int/comm/world/enp/pdf/action_plans/Proposed_Action_Plan_EU-Israel.pdf)

⁹⁷ Ibid.

⁹⁸ Ibid.

contravenes international law. Such a decision may be unprecedented and if the Community agrees to follow through with the “Olmert Arrangement” and by extension the Action Plan, it will be directly accommodating the illegal policies and national legislation used by Israel to justify its settlement, annexation, and apartheid practices. The explicit purpose behind such a shocking display of rogue behaviour would be to remove a persistent inconvenience to the EU and enable Israel’s participation in the new regional trade area. Instead of attempting to ensure that its relations are conducted on a legal basis, the EU is apparently upgrading its relationship with Israel with no strings attached. By doing so, in the words of political analyst Arjan el Fassed, “the EU officially has become part of the problem and formally endorsed Israel's state practices vis-a-vis an oppressed population.”⁹⁹ In order to remain on the right side of the law, the EU can neither formally accept the Arrangement nor the ensuing Plan as long as Israel continues to violate previous bilateral agreements and the applicable international law. At the very least, by acting as an exception to its own rules, the EU is signalling to the Palestinians and Israelis that it considers the rules that govern the international system unimportant.¹⁰⁰ Furthermore, an official acceptance of Israel in the ENP in present-day conditions “would place the Member States alongside Israel in violating the Fourth Geneva Convention of 1949.”¹⁰¹

⁹⁹ Arjan El Fassed, “In bed with Israel: EU’s close relationship with Israel supports abuse,” *The Electronic Intifada*, 11 March 2005. Available online: [//electronicintifada.net/v2/article3600.shtml](http://electronicintifada.net/v2/article3600.shtml) ; Also see: Arjan El Fassed, “EU launches new initiative as deportation of Palestinians is extended,” *The Electronic Intifada*, 3 November 2004. Available online: [//electronicintifada.net/v2/article3225.shtml](http://electronicintifada.net/v2/article3225.shtml)

¹⁰⁰ On this point, Karma Nabulsi reminds us that ““good governance”” means applying principles that you are happy to apply to other conflicts. “Citing UN security resolutions on the admissibility of the acquisition of territory by force everywhere but occupied Palestine is not good governance. Encouraging Iraqi exiles and refugees to participate in elections while treating Palestinian refugees as pariahs is not applying democratic principles that the international community seems to want to teach the Palestinians.” See: Karma Nabulsi, “Britain and Europe are funding Israel’s Occupation and Expansion,” *The Guardian*, 1 March 2005.

¹⁰¹ EMHRN Report, pg. 26.

A persistent EU failure may further act to transform the current unlawful implementation of the Association Agreement into a consolidated practice. This may lead to the eventual loss of legal ground for claiming the correct implementation of the EU's customs law or human rights law with any third country let alone Israel.¹⁰² An ongoing disregard on the part of the EU and Member States to take action against Israeli violations of IHL may also indicate that "they have accepted becoming material beneficiaries of Israel's settlement policy," involving them directly in Israel's unlawful behaviour.¹⁰³ Thus, as it stands, the EU and its Member States cannot claim to have "clean hands" as they are not complying with the duty to refrain from acts that knowingly facilitate violations of human rights and IHL by a third party. They are similarly guilty of violating their "duty of care" by failing to take any precautionary measures when it is clear that their action and/or inaction is facilitating, aggravating, or simply increasing the likelihood of serious violations of human rights.¹⁰⁴

¹⁰² Aprovev, "The European Community – Israel Association Agreement: An introduction to its provisions, implementation, and Euro-Mediterranean background," *Aprovev Working Group on the Middle East*, August 2004, pg. 32. For this report and other related documents, see: www.aprodev.net/palestine-israel/public_documents.htm

¹⁰³ Ibid.

¹⁰⁴ EMHRN Report, pg. 13.

Chapter 3

Humanitarian Assistance and Donor Aid

The EU's misapplication of the Association Agreement is just one example of how one international body could be considered complicit in Israeli violations of international law. The arms trade¹⁰⁵ is another area in which the EU is similarly culpable for facilitating Israel's illegal behaviour as several Member States continue to funnel arms to Israel without complying with the criteria of the EU Code of Conduct on Arms Exports.¹⁰⁶ While for logical reasons arms sales help Israel sustain the occupation, a less obvious and less researched area that could be impacting the situation similarly is that of donor aid. EU member states and others have thus far chosen to pour huge amounts of aid into Palestinian communities, rather than take more controversial steps to bring an end to Israeli violations of international law. This humanitarian approach arguably arises from "a liberal impulse among rich countries which seek to contribute to development and the alleviation of suffering," but in the words of Jeff Halper, it is also "an impulse which stops short of endorsing the political changes required to end the conflict."¹⁰⁷ Flashy monetary pledges arguably serve to conceal the EU's failure to act on other matters such as trade for example. Aid has always played a prominent role in Palestine/Israel and became of central importance following the signing of the Oslo agreement in 1993 when international donors

¹⁰⁵ Israel's military budget in 2002 was 9% of its GDP totalling \$9.8 billion, which is 3 times higher than the US and 4 times higher than the world average. It is the 10th biggest arms exporter in the world with military exports exceeding \$2.49 billion in 2000. See: "Arming the occupation: Israel and the arms trade," *Campaign Against Arms Trade (CAAT)*, October 2002. Available online: www.caat.org.uk/information/publications/countries/israel-1002.pdf

¹⁰⁶ Israel's arms imports come mainly from the US. In 2001 alone for example, US arms sales were worth \$2.95 billion. Arms are also increasingly being imported from Germany, France, and the UK, among others. See: Harald Molgaard, "Arms exports and collaborations: The UK and Israel: Developments since CAAT's 'Arming the Occupation' Report," *CAAT*, June 2005. Available online for download: www.caat.org.uk/information/publications/countries/israel-0605.pdf ; Also see: Oxfam's Campaign against the Arms Trade: www.oxfam.org/eng/programs_camp_arms.htm

¹⁰⁷ Jeff Halper, "'Victims of war are not like victims of earthquake:' The conflict between humanitarianism and political work," in Michael Keating, Anne Le More, and Robert Lowe (eds), *Aid, Diplomacy, and Facts on the Ground*, London: Royal Institute of International Affairs, 2005, pg 189. *Hereinafter*, Halper.

embarked on an unprecedented aid programme.¹⁰⁸ For the most part development aid is financed by foreign governments in the form of Overseas Development Assistance through multilateral agencies, such as the UN, or their own bilateral agencies such as DFID.¹⁰⁹ In turn, NGO's like Christian Aid, receive funding from both.¹¹⁰ The development industry has flourished over recent years and the OPTs are currently exceptionally aid dependent receiving one billion dollars a year or an average of 315 dollars per capita. Despite such massive amounts of aid, several social indicators in the OPTs today are comparable to parts of sub-Saharan Africa¹¹¹ with two out of five Palestinians living below the poverty line and sixteen percent living in absolute poverty.¹¹² The World Bank predicts that poverty levels will climb to 56 percent in 2006 and 72 percent in Gaza.¹¹³ According to the World Food Programme (WFP), over a million Palestinians are food-insecure¹¹⁴ and food insecurity/vulnerability in some areas of Gaza is reaching 90 percent. Despite growing

¹⁰⁸ At that point aid was directed at 3 main goals: to support the implementation of the agreement and to sustain the “peace process”; to contribute to Palestinian socio-economic development; to build Palestinian institutions. See: Anne le More, “The international politics of aid in the occupied Palestinian territory,” *Humanitarian Exchange/ Humanitarian Practice Network at Overseas Development Institute*, No. 28, November 2004. Available online for download: www.odi.org.uk/Africa_Portal/pdf/humanitarianexchange028.pdf ;

Hereinafter, Le More, *Humanitarian Exchange Report*.

¹⁰⁹ For more information, see: DFID, “Country Assistance Plan for Palestinians,” May 2004. Available online: www.dfid.gov.uk/countries/asia/palestine.asp; UK House of Commons International Development Select Committee, *Development Assistance and the Occupied Palestinian Territories: Second Report of Session 2003–04, Volume 1* (HC 230), 5 February 2004. Available online: www.publications.parliament.uk/pa/cm200304/cmselect/cmintdev/230/230.pdf

¹¹⁰ Research for this section was primarily done on aid from the EU and Member States, since they are the greatest contributors to the OPTs and the EU is the biggest donor to the PNA. An argument centred on ODA from the US would require a different approach. Unlike most other donors, USAID has imposed conditionalities on aid, for example in 2001, “the local USAID head, Larry Garber, announced that US aid to the Palestinians would stop if the PNA declared Palestinian independence, and made further aid conditional on positive political developments.” See: Sari Hanafi, “Palestinian NGOs and the second *Intifada*,” in *Humanitarian Exchange Report*.

Palestinian NGOs called for a complete boycott of USAID in protest of the “American official support for Israeli crimes.” The call to boycott was published in Palestinian and Arab newspapers on several occasions in throughout 2002 and 2003. For general info, see: www.usaid.gov/wbg

¹¹¹ See: Charlotte Dunn, “Humanitarian response in the occupied Palestinian territory: a donor perspective,” in *Humanitarian Exchange Report*, pg. 21.

¹¹² See: Jean-Luc Siblot, Genevieve Wills, and Tarek Abu Haj (WFP) “Food Security in the occupied Palestinian territory,” in *Humanitarian Exchange Report*.

¹¹³ “Disengagement, the Palestinian Economy, and the Settlements,” *World Bank*, June 2004, pg. 31.

¹¹⁴ According to WFP definitions, “Food insecurity exists when people lack secure access to sufficient amounts of safe and nutritious food for normal growth and development and an active and healthy life.” On WFP work in the OPTs see: www.wfp.org/country_brief/indexcountry.asp?country=275

levels of Palestinian malnutrition, the territories do not suffer from food shortages and rather it is the Israeli occupation that is directly responsible for the dismal conditions facing Palestinians today. Donors are not faced with a natural disaster situation; they are dealing with a belligerent occupier that is causing a catastrophic situation. Aid workers are increasingly recognising that humanitarian activities are blurring these political sources of conflict and suffering. In the words of former¹¹⁵ commissioner-general of UNRWA Peter Hansen, "There can be no humanitarian solutions to the crisis, there can only be political solutions."¹¹⁶ Indeed, in light of the ICJ Opinion, donors are seriously questioning to what extent the international community is financing the Israeli occupation and the destruction of Palestinian livelihood.

Donor Debate

The Advisory Opinion along with the worsening situation on the ground has made it increasingly difficult for donors to obscure the reality of the occupation and Israel's obligations under IHL. During the peace industry boom when aid was directed mostly for development purposes, "donors preferred to downplay rather than antagonise Israel."¹¹⁷ However, the worsening humanitarian crisis, the intensification of Israeli attacks against Palestinian civilians, the reoccupation of most Palestinian territory not to mention the wall, have all forced IHL back onto the international agenda. The main dilemma facing donors relates to the obligations of both Israel and the donors themselves: Israel bears the primary

¹¹⁵ See: "Annan drops UNRWA head after US, Israeli campaign," *Reuters*, 20 January 2005.

¹¹⁶ Christian Aid, pg. 51.

¹¹⁷ Le More, *Humanitarian Exchange Report*, pg. 19.

responsibility¹¹⁸ to provide assistance to those under its occupation¹¹⁹ and donors have an obligation to ensure that these laws are complied with. Many now agree that donor assistance to the OPTs “plays into and reinforces the Israeli occupation of Palestine,” and “relieves Israel of its obligations as the occupier.”¹²⁰ Such assistance “rebuilds whatever Israel destroys and enables the continuation of such actions” and simply “maintains levels of poverty” resulting from a strict closure regime by providing food and other essentials.¹²¹ Another one of the challenges facing donors questions how aid can be dispensed in conformity with international law. The ICJ ruling instructs third parties “not to render aid or assistance”¹²² that may maintain the situation created by the wall. Donors are therefore examining what level of assistance should be extended to Palestinians trapped in the so-called ‘seam-zone’ between the wall and the ‘green line,’ for example.¹²³ Others ask

¹¹⁸ In addition to obligations under the Fourth Geneva Convention, Israel also has a broad obligation to ensure the welfare of the population in the territories under Article 43 of the Hague Regulations.

¹¹⁹ Israel would be obliged to export foodstuffs to Palestine, provide electricity, water, fuel, communications infrastructure and so on. As a result, Israel would be “out of pocket by as much as \$2 billion annually, not counting the cost of the international aid burden which Israel would have to shoulder—unless it chose to allow Palestinians to starve while the world watches.” See: Yossi Alpher, “Israel’s aid responsibilities towards the Palestinian population,” in *Aid, Diplomacy, and the Facts on the Ground*, pg. 156.

¹²⁰ Humanitarian agencies are allowed to offer services and operation in *cooperation* with Israel, but they are *prohibited* from providing assistance *in lieu* of the occupying power or pre-empting Israel’s responsibilities, according to Article 60 of the Fourth Geneva Convention.

¹²¹ Mary B. Anderson, “‘Do no harm:’ The impact of international assistance to the occupied Palestinian territory,” in *Aid, Diplomacy, and the Facts on the Ground*, pg. 144. *Hereinafter*, Anderson.

¹²² As of May 2004, donors had spent an estimated \$23 million on projects designed to moderate the negative effects of the wall on surrounding Palestinian communities. Such projects include the repair of water infrastructures, land reclamation and rehabilitation projects, employment generation schemes, the establishment of mobile health clinics and the construction of shelters for children waiting for the wall’s gates to be opened to go to school. See: Palestinian National Authority, *The Annexation and Expansion Wall: Impacts and Mitigation Measures*, Ramallah, 31 May 2004, pg. 2. Available on Ministry of Planning site: www.mop.gov.ps/

¹²³ Donors are concerned to ensure that their projects do not influence any *demographic changes* near the wall since halting funds for projects inside the “Seam-Zone” or other “closed areas” may accelerate the movement of Palestinians from their homes within these areas. On the other hand, aid channelled to areas east of the wall or outside “closed areas” could also accelerate such population shifts. Unofficially, donors have voiced their reluctance to fund infrastructure in these areas because of the uncertainty of their long-term viability. See: David Shearer and Anuschka Meyer, “The dilemma of aid under occupation,” in *Aid, Diplomacy, and the Facts on the Ground*, pg. 172. *Hereinafter*, Shearer; Life in “closed areas” is practically impossible as Palestinians are required to get permits from the Israeli authorities to stay in their homes and these permits have to be renewed on a regular basis. Needless to say, these permits are very rarely issued and babies born in these areas are not granted such permits. Movement in and out of such areas for all purposes, including for medical treatment, is heavily restricted;

whether the funding of new roads¹²⁴ in the OPTs actually *reinforces* the existence of illegal settlements or whether donors should rebuild¹²⁵ Palestinian homes and towns illegally demolished by Israel.¹²⁶ The overall conundrum for donors is whether to prolong current aid levels in the face of further economic decline and mounting humanitarian need¹²⁷ or to adopt a more “robust, even confrontational aid policy towards Israel in an effort to encourage it to assume its obligations.”¹²⁸

Withdrawal of Aid

The International Committee of the Red Cross (ICRC) could be viewed as having adopted a robust, legally principled stand when it took the “painful decision” to terminate two major relief programmes to the Palestinians at the end of 2003 on grounds that its programme “was not designed to substitute for the responsibility of the occupying power

See: Amira Hass, “IDF redefines Palestinians West of the fence,” *Ha’aretz*, 14 October 2003.

¹²⁴ Israel has requested funding for roads that would “assist the contiguity between Palestinian areas.” Such requests fail to point out that such funding is directed towards solidifying a segregated road network complete with bypass highways and tunnels for Jews only. Expanding the road network further consolidates the settlement system and the occupation.

See: *B’Tselem*, “Forbidden roads-the discriminatory West Bank roads regime,” August 2004, pg. 16. Available for download online: www.btselem.org/English/Publications/Summaries/200408_Forbidden_Roads.asp

Also see map of Jewish-only roads and tunnels in the OPTs. Available online: [//stopthewall.org/maps/856.shtml](http://stopthewall.org/maps/856.shtml)

Much of the aid recently pledged from the US government to the Palestinians will go to the directly to Israel to build terminals and checkpoints, thus entrenching Israel’s occupation system.

See: Glenn Kessler, “Restrictions imposed on aid to Palestinians,” *Washington Post*, 5 May 2005. The Israeli government has made the “upgrading” of “checkpoints” and “crossings” *dependent* on international funding. See: Meron Benvenisti, “The Disgrace outside their windows,” *Ha’aretz*, 14 July 2005.

¹²⁵ Israeli journalist Amira Hass reported for example that Israel’s devastation of Palestinian infrastructure during its “Defensive Shield” operation in March-April 2003 cost approximately \$350 million, which equals the amount invested in that infrastructure by donors in the entire preceding year.

¹²⁶ The most extensive destruction has occurred in the southern Gaza Strip town of Rafah where as of June 2004, more than 15,000 people, nearly 9% of Rafah’s total population of 167,000, had lost their homes in the previous four years. David Shearer, head of OCHA in the OPTs, asks, “If Israel were presented with the \$15 million bill for Rafah’s reconstruction, as international law stipulates, would it prompt a rethinking of military strategy and encourage other methods of surveillance that cause less harm to civilians and property.” See: Shearer, pg. 175.

Also see: OCHA and UNRWA, *Rafah Humanitarian Needs Assessment: Submission to the Local Aid Coordination Committee*, 4 June 2004, pg. 3. See: www.ochaopt.org

¹²⁷ See: Sharmila Devi, “Aid donors pay the price for security clampdowns by Israel,” *Financial Times*, 6 August 20.

¹²⁸ Shearer, pg. 169.

which is Israel”¹²⁹ and “it refused to take over the obligations of the Occupying Power” to take care of civilians living under occupation.¹³⁰ The ICRC stressed that instead of being a sudden and acute emergency, the humanitarian needs of the Palestinians were related to the Israeli occupation and closure policy and “the gravity of the situation demanded that the ICRC shift its emphasis from humanitarian assistance provider to custodian of IHL.”¹³¹ According to the ICRC, this custodian role was and is still fulfilled by systematically documenting the “destruction of infrastructure,” the “humanitarian effects of closures, checkpoints, and other policies aimed at restricting freedom of movement for Palestinians,” and by “reminding the Israeli and the international community of their obligations under IHL.”¹³² While the ICRC’s decision was not followed by other donors and much of its food assistance programme was covered by the WFP, whether the ICRC precedent should be followed is an open and complex question that deserves further consideration.

The withdrawal of aid would be an ultimate source of political pressure and would “launch one of the greatest non-violent acts of resistance in history and throw an otherwise unsustainable occupation back on to the occupying power.” Israel would be faced with almost four million impoverished Palestinians living in the ruins of a destroyed economic and physical infrastructure. Faced with these conditions of its own creation, Israel would be unable to maintain its occupation and a dramatic change, if not collapse, of the occupation apparatus would be likely.¹³³ Whether this call to action is initiated by the PA or aid

¹²⁹ Cameron Barr, “Aid gets political for Red Cross,” *Christian Science Monitor*, 26 November 2003.

¹³⁰ Simon Schorno, “Why humanitarian assistance is not a long-term solution in the occupied Palestinian territory,” in *Humanitarian Exchange*, pg. 23-25.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ Halper, pg. 191.

agencies themselves, for it to be truly effective and for the PA not to become (or arguably continue to be) an instrument of its own oppression, the PA should also step down.¹³⁴

It is nonetheless doubtful that the current PA would take any steps that would compromise their power or position and donors are additionally hesitant to adopt such a decision since “it is unlikely that Israel would step in to supply adequate relief.”¹³⁵ Plus, it is considered by many to be morally problematic to try to force a change in Israeli behaviour by refusing to meet pressing Palestinian humanitarian needs.¹³⁶ Such a move, while perhaps legally appropriate, would contest the *raison d’être* of such agencies under the Red Cross Red Crescent Code of Conduct. Some Palestinians also offer reasons for not favouring the withdrawal of aid including; personal costs to those dependent on support, “loss of solidarity,” and loss of international witnesses in the OPTs.¹³⁷ On another level, already alarming poverty levels would be 40 percent higher without donor funding.¹³⁸ Indeed, such a dramatic change is potentially very dangerous, as Sarah Roy warns, “if donors withdraw their assistance, there will be a humanitarian disaster in Gaza.”¹³⁹ Considering the grave realities on the ground, the withdrawal of assistance demands careful consideration without losing sight of Israel’s legal responsibilities as the occupying power. Apart from the question of aid withdrawal, the straightforward legal arguments underpinning the ICRC’s decision highlight a series of other issues of donor concern.

Agencies are questioning whether the deep-seated involvement of donors is actually weakening the ability of local Palestinian organisations to resist oppression. Both aid

¹³⁴ Ghazi Hamad, “To dissolve or not to dissolve,” *Palestine Report*, 28 January 2004.

¹³⁵ Le More, *Humanitarian Exchange Report*, pg. 19.

¹³⁶ See: Rex Brynen, “Donor said to Palestine: Attitudes, incentives, patronage, peace,” in *Aid, Diplomacy, and the Facts on the Ground*, pg. 133.

¹³⁷ Anderson, pg. 147.

¹³⁸ “Four years - Intifada, closures, and Palestinian economic crisis,” *World Bank*, October 2004, pg. 83.

¹³⁹ Sarah Roy, “Developing the Gaza Strip in the event of Israel’s disengagement: possibilities and constraints,” in *Aid, Diplomacy, and the Facts on the Ground*, pg. 208. *Hereinafter*, Roy.

workers and aid recipients are arguably finding themselves in a state where “catastrophe” and its aftermath have become “routine.”¹⁴⁰ Humanitarian assistance, according to Halper, “plays a perversely enabling function in relieving the oppressor of responsibility for its actions by providing a kind of safety net¹⁴¹ for the local population.”¹⁴² By providing this “safety net,” humanitarian agencies could be complicit in a key Israeli strategy that aims to impoverish the Palestinian population to break its resistance to policies of “quiet transfer” and “ghettoization,” while avoiding a humanitarian crisis that might provoke outside intervention. Needless to say, complicity should not be equated with concurrence with Israel’s illegal behaviour since humanitarian workers are generally appalled by the conditions in the territories. However, as Halper explains,

The attempt to inject funds and resources into a political conflict, in which the stronger party employs tactics of de-development and deliberate impoverishment, results only in contributing to its perpetuation.¹⁴³

On another level, some development funds¹⁴⁴ are seen as a tool of *de-politicisation*¹⁴⁵ or as *de-legitimising* the Palestinian resistance.¹⁴⁶ A survey carried out in August 2002 found that

¹⁴⁰ Words and labels related to the “occupation” also can be seen as *sanitising* it and *reinforcing* its “legitimacy.” The idea of “permits” for example conveys the message that Palestinians are temporary residents or in transit, rather than the ‘indigenous’ people of the area. The use of the term “incursion” to describe dangerous Israeli military assaults into occupied civilian areas is also misleading and “reinforces the ‘business as usual’ feelings on which Israeli policy depends.” See: Anderson, pg 145-7.

¹⁴¹ On this point, Meron Benvenisti states, “Israel isn’t even required to display minimal politeness and gratitude to the donor states for their generosity in providing the economic safety net. Indeed, the greatest contributor - the European Union as a body and European states individually - are treated with contempt and condescension: pay up and shut up, or we’ll accuse you of anti-Semitism.” See: Meron Benvenisti, “International community supports a deluxe occupation,” *Ha’aretz*, 11 September 2003.

¹⁴² Halper, pg.189-190.

¹⁴³ Ibid, pg. 190.

¹⁴⁴ UNRWA is generally seen in a positive light, see: Nader Said, “Palestinian perceptions of international assistance,” in *Aid, Diplomacy, and the Facts on the Ground*.

¹⁴⁵ For example, after an Israeli military assault on Palestinian civilian areas in 2002 which left thousands without food or medical supplies, the media aired images of emergency convoys and workers assembling relief packages. In situations like these, Palestine becomes a “humanitarian issue” rather than a political struggle of an occupied people.

¹⁴⁶ Methods of *de-politicisation* include: solely funding projects and/organisations that are non-political in nature; restricting elements of projects that could be viewed as being political; and pressuring Palestinian organisations to publicly distance themselves from criticism of the Israeli occupation and public support of Palestinian resistance. See:

55 percent of Palestinians perceived international funding as reinforcing the occupation and 62 percent “felt that donor countries were using funding to get further concessions from the Palestinians concerning their national rights.”¹⁴⁷ Tensions are further highlighted in the aftermath of Israeli military assaults when foreigners are often the only aid workers allowed into destroyed areas. By merely carrying out their mandate, relief workers are, albeit unwillingly, helping Israel *marginalise* the Palestinian Authority and other Palestinian service providers.¹⁴⁸ Another such instance occurred when Palestinian organisations issued a general call for non-compliance with Israel’s new permit system designed to further dissect and control the OPTs. Foreign NGOs and agencies went ahead and applied for these special permits indirectly indicating an acceptance of Israel’s apartheid policies.¹⁴⁹ These examples illustrate the vast array of urgent issues facing international humanitarian agencies with regard to their internal policy and the international legal dimension of the conflict and while donors arguably need to remain involved in the territories,¹⁵⁰ the precise character of such involvement needs to be redefined.

‘Yasmine Awad’ and ‘Robert E. Foxsohn, “Breaking the Complicity: ‘Developing Palestine means ending the occupation,” *manifest*, 11 August 2002.

¹⁴⁷ Nader Said, “Palestinian perceptions of international assistance,” in *Aid, Diplomacy, and Facts on the Ground*, pg. 104 ; Also see: Sari Hanafi, “Palestinian NGOs and the second *Intifada*,” in *Humanitarian Exchange Report*.

¹⁴⁸ Select donors also regularly call for the reform of the Palestinian Authority, this “unintentionally reinforces assertions by the Israelis that the newly formed and still embryonic Palestinian governmental and public administration structures are a failure” and that Palestinians are “not ready to be peace partners.” On the other hand, decisions (that are sometimes formalised), not to engage with anyone who is in any way connected to Hamas reinforces societal divisions and the monolithic perception that Hamas is purely a “terrorist” group. This ignores the fact that Hamas meets many of the humanitarian and other needs of a significant portion of Palestinians. See: Anderson pg. 146.

¹⁴⁹ Foreign donors also offered local NGOs little support at the World Conference Against Racism when Palestinian NGOs reached a consensus to term Israel an “apartheid state.” Foreign agencies failed to give their approval not necessarily because they thought this was an inaccurate description, but because such a stand would require the adoption of a new approach similar to the one they adopted during the struggle against apartheid South Africa.

¹⁵⁰ In the meantime, the EU and other states 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. Indeed, “Israel’s eagerness for aid to continue is not matched at the operational level by the willingness to assist with aid delivery.” Shearer, pg. 168.

Moreover, there is evidence that Israel gains economically from aid flows. According to UNCTAD, approximately 40% of all assistance to the OPTs finds its way back to Israel in the form of goods and services. See: United Nations

Donor Action

The policies of individual governments or bodies such as the EU often determine the boundaries of donor activity thus leaving donors with little recourse to independent criticism.¹⁵¹ Hence, donor debate has thus far been largely sterile and without policy repercussions. For example, statements issued under the umbrella of the Association for International Development Agencies (AIDA) may call on the Israeli government to increase humanitarian access to the OPTs, but fall short of strong advocacy work to end Israeli occupation. In spite of such limitations, the situation on the ground is forcing donors to go beyond their traditional reactive role in favour of a more politically active one. Plus, as aid levels mount, donors will need to account to their public over why their taxes are being used to fund an occupation for which they have minimal responsibility. While humanitarian assistance can neither bring an end to a root cause of the problem, the occupation,¹⁵² nor provide the needed *political* solution, it can as Mary Anderson explains, “change the political space in which political actors respond.”¹⁵³ In recognition of the man-made nature of the humanitarian crisis in the OPTs, agencies are therefore examining if and how to engage in advocacy work. The International Development Committee of the House of Commons were surprised during a recent visit to the West Bank when “unusually..no one asked for money!” The group reported that “Neither the PA, nor the NGO’s, nor the UN

Conference on Trade and Development, 50th Session, *Report on UNCTAD’s Assistance to the Palestinian People*, 28 July 2003, pg. 8. Available online for download: www.unctad.org/en/docs/tb50d4_en.pdf

¹⁵¹ Additionally, agencies often do not want to threaten their charity or non-profit status and in the face of increasing “anti-terror” legislation in Western states, donors are having to further restrict any statements/project funding which could threaten their legal status or government funding.

¹⁵² Removing “access controls” imposed by the Israelis would have increased at minimum real GDP by 21%, whereas a doubling of development assistance-without easing closure-would only reduce the number of people living in poverty by 7% by the end of 2004. See: “Twenty Seven Months – Intifada, Closures and Palestinian Economic Crisis, An Assessment,” *World Bank*, May 2003.

¹⁵³ Anderson, pg. 153.

Agencies saw their problems as rooted in a shortage of funding. But they all asked for advocacy and political pressure to end the occupation.”¹⁵⁴

Indeed, select donors are expanding their mandate and engaging in activities such as: placing a humanitarian emphasis on legal protection and legal assistance, researching and collecting detailed data on the economic costs of occupation¹⁵⁵ to both Israelis and Palestinians.¹⁵⁶ On a local level, it is important that Palestinian NGOs demand that their donors take a public stand on basic principles or refuse their funding.¹⁵⁷ Expressing an immediate concern Roy argues that “donor activism should focus on helping Palestinians remain on their land and in their homes and to resist any policy that would forcibly dispossess them.”¹⁵⁸ Given the current situation on the ground, agencies should make such advocacy a central part of their mandate and focus on real issues such as the refugees, the end to Israeli occupation and apartheid policies, and not only on “safe issues” designated by their back-donors. While tensions between advocacy and neutrality do exist, as the International Development Committee explains,

Given that there is a such a widespread recognition of the need for political solutions, and that the basic rights of Palestinians are not addressed in any political negotiation, and given the destruction of Palestinian political and civic institutions, *it is difficult to see how development organisations can avoid being involved in advocacy.*¹⁵⁹

Advocacy should be accompanied with active lobbying to donor’s respective governments to pressure Israel through sanctions, boycotts, or diplomacy to end the occupation and

¹⁵⁴ International Development Committee, pg. 63.

¹⁵⁵ Chris McGreal, “Hidden costs of Israel’s occupation policies,” *The Guardian*, 25 February 2005. Available online: www.guardian.co.uk/israel/Story/0,2763,1424883,00.html

¹⁵⁶ Mary Anderson believes that such data could constitute the basis for a large public relations and education campaign in Israel, that could increase the level of Israeli objection to the occupation. See: Anderson, pg. 147-9.

¹⁵⁷ Palestinian NGOs should realise that they have power within the donor-NGO ‘partnership’, because without the implementing organizations, there is no development system. See: ‘Yasmine Awad’ and ‘Robert E. Foxsohn, “Breaking the Complicity: ‘Developing Palestine means ending the occupation,” *manifest*, 11 August 2002.

¹⁵⁸ Roy, pg. 208.

¹⁵⁹ International Development Committee, pg. 64.

conform with the relevant international legal principles. Even though the G8 summit promised even more financial assistance, Western states can no longer “mask direct political assistance to Israel by offering economic assistance to the Palestinians.”¹⁶⁰ As a Palestinian legal advisor stated, “it will be a real tragedy if the G-8 thinks the occupation is going to end just by throwing money at it.”¹⁶¹ Certainly, such “charity” sustains the Israeli occupation and further subjugates the Palestinians while delaying the pursuit of other effective strategies that are more likely to push Israel towards compliance with international law. The following section will very briefly overview the nature of a few of such strategies that ultimately aim to bring not only Israel, but the international community as well, in line with the applicable legal principles affirmed by the ICJ.

UN Action

After acknowledging the primary objective of the UN to maintain “peace and security” and to promote the peaceful resolution of disputes, the ICJ emphasised the “urgent necessity” for the UN to “redouble its efforts to bring the Israeli-Palestinian conflict...to a speedy conclusion.”¹⁶² The Court had a clear message for its fellow UN organs as Pieter H.F. Bekker explains, “it rebuked the Security Council for having repeatedly failed to exercise its primary responsibility for the maintenance of international peace and security as a result of a veto of one of its permanent members.”¹⁶³ In view of the judgment, the UNGA stepped in and voted overwhelmingly to demand that Israel heed the

¹⁶⁰ Karma Nabulsi, “Britain and Europe are funding Israel’s occupation and expansion,” *The Guardian*, 1 March 2005.

¹⁶¹ Mich Potter, “Billions for Mideast set to grab spotlight,” *Toronto Star*, 5 July 2005. Also see: Arjan el Fassed, “G8 and Disengagement: Palestine needs justice not charity,” *The Electronic Intifada*, 4 July 2005. Available online: [//electronicintifada.net/v2/article3964.shtml](http://electronicintifada.net/v2/article3964.shtml)

¹⁶² ICJ Wall, Paragraph 160/161.

¹⁶³ Bekker was Senior Counsel to Palestine during the ICJ proceedings. See: Pieter H.F. Bekker, “The United Nations and international law,” *International Conference on Middle East Policies*, 6 November 2004.

Opinion and its international obligations.¹⁶⁴ Indeed, although the Opinion did not elaborate on the precise nature of the necessary action, it represented the beginning of a legal struggle by providing a framework for developing new political and legal strategies of resistance.¹⁶⁵

As a first step, the UNGA could return to the ICJ and ask the Court to determine the legal consequences of a Security Council veto that prevents it from exercising its duties,¹⁶⁶ thus enabling a legal consideration of the US veto, which has long prevented the Council from addressing the Palestinian issue. On the other hand, the UNGA “Uniting for Peace Resolution” of 1950 is perhaps a more efficient and appropriate step to counter repeated US vetoes and the Security Council’s failure to maintain “peace and security.” By means of this well-known¹⁶⁷ and tested procedure (by none other than the US) the UNGA can demand the withdrawal of Israel from the OPTs and call for a UN Peacekeeping Force to be deployed in the territories.¹⁶⁸ According to the terms of the resolution, the UNGA can adopt comprehensive economic, diplomatic, and travel sanctions against Israel, a measure taken repeatedly against the former criminal apartheid regime in South Africa.

The UNGA could also move for the *de facto* suspension of Israel throughout the entire UN system based on the fact that Israel has expressly repudiated both Resolutions

¹⁶⁴ During UNGA talks on the draft, the Israeli representative “thanked God that the fate of Israel and the Jewish people was not decided by the Assembly. See: “UN Assembly votes overwhelmingly to demand Israel comply with ICJ ruling,” *UN News*, 21 July 2004. The resolution also called for the Secretary General to establish a register of damage caused by the wall to all persons concerned. See: “UN registry of damage to Palestinians from Israeli barrier moves step closer,” *UN News*, 11 January 2005. Also see: “UN Committee on Palestine considers concrete action by international community,” *UN DPI*, 11 May 2005.

¹⁶⁵ Andrew N. Rubin, “One year on: We are no longer able to see the sun set,” *The Electronic Intifada*, 9 July 2005. Available online: [//electronicintifada.net/v2/article3985.shtml](http://electronicintifada.net/v2/article3985.shtml)

¹⁶⁶ Azem Bishara, “The Court has spoken: What next?” *The Electronic Intifada*, 1 July 2004. Available online: [//electronicintifada.net/v2/article2893.shtml](http://electronicintifada.net/v2/article2893.shtml) ; Gregory Khalil, “Just say no to vetoes,” *New York Times*, 19 July 2004.

¹⁶⁷ See text of “Uniting for Peace Resolution” (377): www.un.org/Depts/dhl/landmark/pdf/ares377e.pdf

This resolution has been discussed for decades in Palestinian political circles. See for example, Mary Barrett, “PLO Looks at the Uniting for Peace Plan in UN,” *Arab American News*, Vol. VI, No. 269, 30 June-6 July, 1990.

¹⁶⁸ Francis A. Boyle, *Palestine, Palestinians, and International Law*, Atlanta: Clarity Press, 2003, pgs. 19, 147, 158. *Hereinafter*, Boyle.

181 and 194, the very resolutions that recognised Israel and admitted it into the UN in the first place. Israel could also be suspended for failing to abide by the ICJ judgment. As Richard Cummings explains, "failure by a United Nations member or entity with observer status to adhere to the advisory opinion on any matter of law could specifically give rise to a suspension by the General Assembly of its voting rights,"¹⁶⁹ as experienced by South Africa after it violated an ICJ Advisory Opinion. Since the US would undoubtedly use its veto power to prevent the formal expulsion of its ally, the UNGA is able and *obligated* to exercise its UN Charter powers under Chapter IV to *de facto* suspend Israel from all UN bodies, just like it did to the criminal regimes in South Africa and the former Yugoslavia. In the words of Francis A. Boyle, "The criminal apartheid regime in Israel has become the new pariah of international law and must be treated as such by the entire world."¹⁷⁰

From another angle and in view of US attempts to sabotage the International Criminal Court,¹⁷¹ the UNGA can establish an separate International Criminal Tribunal for Palestine (ICTP) within which Israeli war criminals can be prosecuted.¹⁷² These individuals are both civilian and military and include former and present political leaders of Israel. Under Article 22 of the UN Charter, the UNGA has powers to set up "subsidiary organs" such as an ICTP which would mirror the structure of the International Criminal Tribunal for the Former Yugoslavia by applying the rules of international criminal law applicable to an

¹⁶⁹ Richard Cummings, "Human Rights, international law and peace in the Middle East," *Tikkun*, January 2004.

¹⁷⁰ Boyle, pg. 158 ; Also see: Azmi Bishara, "A short history of apartheid," *Al-Ahram Weekly Online*, 8-14 January, Issue No. 672. Available online: [//weekly.ahram.org.eg/2004/672/op10.htm](http://weekly.ahram.org.eg/2004/672/op10.htm)

¹⁷¹ See: *Human Rights Watch*, The US and the International Criminal Court." See: www.hrw.org/campaigns/icc/us.htm ; "U.S. suspends military aid to nearly 50 countries (who support the ICC)," *Reuters*, 1 July 2003.

¹⁷² A case was lodged in Belgium by 23 survivors of the 1982 massacres in Sabra and Shatila charging Ariel Sharon and other Israeli government ministers with war crimes, crimes against humanity, and genocide related to the massacres that crushed these 2 refugee camps in Lebanon. It was raised in Belgium due to a Universal Jurisdiction Law that incorporated the Geneva Conventions into Belgian criminal law. However, this legislation was curtailed by Belgium following immense US pressure to repeal the law. For more information, see: www.indictsharon.net ; Also see, John Borneman, "Universal jurisdiction: Reflections on the 'Case of Ariel Sharon,'" *The Daily Star*, 27 December 2004.

“international armed conflict,” the correct legal categorisation for Israeli military aggression against the Palestinians.¹⁷³ A solid case¹⁷⁴ could also charge Israel in front of the ICJ with the violation of Article 2¹⁷⁵ and other clauses of the 1948 Genocide Convention. Palestinian claims date back to the *Nakbe* or dispossession of 1948 and onwards until the present day and any of the 132 contracting parties to the Convention have standing to sue Israel to stop what Boyle calls “its ongoing and longstanding campaign of genocide against the Palestinians.”¹⁷⁶ These strategies represent legitimate state-level actions that while effective must be accompanied, or perhaps preceded, by action on a civil society level. The divestment/disinvestment campaign accompanied with the grassroots boycott movement for example, are key strategies that aided in the dismantling of South Africa’s apartheid regime and are now attracting increasing global support for the Palestinian cause.

Civil Society Action

Universities,¹⁷⁷ churches,¹⁷⁸ labour unions,¹⁷⁹ and others are joining a globally orchestrated movement to boycott Israel¹⁸⁰ and divest/disinvest from it.¹⁸¹ Alongside

¹⁷³ This is in contrast to the International Criminal Tribunal for Rwanda (ICTR), which deals with an “internal armed conflict,” See: Boyle pg. 158.

¹⁷⁴ Francis A. Boyle, “Palestine: Sue Israel for genocide before the International Court of Justice,” *Muslim Minority Affairs*, No. 1., pg. 161-166, 2000.

¹⁷⁵ See, “Bibliography of Genocidal/Apartheid acts inflicted by Israel on the Palestinians,” in Boyle, pg. 178-200.

¹⁷⁶ Boyle, pg 160.

¹⁷⁷ See for example, Columbia University’s Divestment Campaign, www.columbiadivest.org, which the author was personally involved in initiating. Or for a full list of University Divestment Campaigns, see: www.israel-divest.org

¹⁷⁸ The United Church of Christ, the Presbyterian Church USA, the World Council of Churches, the United Methodist Church, and the Anglican Church, have all passed resolutions condemning Israel and calling for some level of divestment. The Episcopal Church revoked its decision to divest due to pressure from Jewish-American groups.

See: Tom Regan, “Mideast divestment movement picks up steam,” *Christian Science Monitor*, 7 July 2005. “Church group hints at Mideast divesting,” *The New York Times*, 23 February 2005.

¹⁷⁹ See for example, Labour for Palestine Campaign based in the US; www.laborforpalestine.org

¹⁸⁰ See: Ilan Pappé, “Back the boycott,” *The Guardian*, 24 May 2005.

Available online: [//education.guardian.co.uk/egweekly/story/0,,1490283.00.html](http://education.guardian.co.uk/egweekly/story/0,,1490283.00.html) ;

Omar Barghouti, “Boycott as resistance: The moral dimension,” *The Electronic Intifada*, 28 December 2004.

¹⁸¹ In simple terms, “divestment” calls for the sell-off of all investments in corporate entities that do business with Israel, whereas “disinvestment” calls for the elimination of any investments in Israel.

international activists, Palestinian civil society representing “three integral parts of the people of Palestine,” Palestinian refugees, Palestinians under occupation, and Palestinian-Israelis, have called for boycott, divestment, and sanctions against Israel until it meets its obligation to recognise the Palestinian right to self-determination.¹⁸² As South African Archbishop Desmond Tutu recognised, “moral and financial pressure is again being mustered one person at a time” against Israeli oppression.¹⁸³ Over 40 universities in the US alone are demanding a review of all university investments and disinvestment from Israel¹⁸⁴ and academic boycotts in the UK continue to gain steam despite the Britain’s Association of University Teachers recent decision to reverse its boycott of Israeli universities.¹⁸⁵ Elsewhere in Europe, the General Workers Union in Denmark cancelled a huge order of computer hardware from an Israeli firm, Radix Technologies, and called on all its members to boycott Israeli products and has remained steadfast in its position.¹⁸⁶ Coop Norge, Norway’s second largest store chain, announced a boycott of all products from Israel. This decision was buttressed by Norway’s Transport Workers’ Union which had previously announced that its members would block any Israeli products that came through their hands.¹⁸⁷

¹⁸² This appeal calls more specifically for Israel to comply with the precepts of international law by:

1. Ending its occupation and colonisation of all Arab lands and dismantling the Wall;
2. Recognising the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and
3. Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194. See: *Joint Advocacy Initiative*, “One year on: Palestinian civil society calls for boycott, divestment, and sanctions,” 9 July 2005.

¹⁸³ Desmond Tutu, “Build moral pressure to end the Israeli occupation of Palestinian lands,” *International Herald Tribune*, 25 October 2002 ; See also, Desmond Tutu, “Apartheid in the Holy Land,” *The Guardian*, April 29, 2002.; Desmond Tutu, “Of occupation and apartheid do I Divest?” *CounterPunch*, October 17, 2002.

¹⁸⁴ Ian Urbina, “The analogy to apartheid,” *Middle East Report* 223, Summer 2002. Available online: www.merip.org/mer/mer223/223_urbina.html. Hereinafter, Urbina.

¹⁸⁵ Omar Barghouti and Lisa Taraki, “Academic freedom in context,” *Al-Ahram Weekly*, 16-22 June 2005. Available online: <http://weekly.ahram.org.eg/2005/747/op13.htm>

¹⁸⁶ Urbina.

¹⁸⁷ Ibid.

Entire cities are themselves aiming to legislate against Israeli policies. In 2002, the city council in Berkeley, California considered a proposal drafted by the locally based Peace and Justice Commission calling for a municipal boycott of all financial ties to Israel. Among other demands, the proposal called for UN peacekeeping troops be sent to the region and called on Congress to hold hearings on the region's human rights violations. The measure was eventually voted down following political pressure, but activity in this direction is on the rise.¹⁸⁸ Last year, a former tank gunner in the Israeli army and vocal supporter of divestment stated to a Massachusetts audience,

We are asking the city of Somerville, as well as other cities and civic institutions, to divest from companies involved in selling arms, bulldozers and military technologies that are used by the Israeli army to commit war crimes against Palestinians.

He called on those committed to human rights to “demand that their tax-dollars are not invested in companies that sell equipment and ammunition that fuel Israel's consistent and appalling violations of international law and human rights.” Representing a growing number of Israelis, he expressed his belief that “economic pressure is the most effective way to end the brutal occupation of the West Bank and Gaza, and bring peace and security to Palestinians and Israelis.”¹⁸⁹ Israeli-Jews and other Jews have created other vocal groups such as “Not in my Name” or “Jews against the Occupation,”¹⁹⁰ which represent a very important part of grassroots activity against Israeli crimes.¹⁹¹ Another significant development is the *refusenik* movement encompassing those Israelis who refuse to serve

¹⁸⁸ Charles Burrell, “Berkeley rejects Mideast boycott measure,” *San Francisco Chronicle*, 24 April 2002. See: “Students for Justice in Palestine, www.justiceinpalestine.org, University of California Divest from Israel, www.ucdivest.org

¹⁸⁹ Shamai Leibovitz, “Divesting conducive to Israeli-Palestinian peace,” *The Jordan Times*, 30 November 2004.

¹⁹⁰ See: *Jews for Justice for Palestinian*: www.jfjfp.org ; Jews against the occupation: www.jatonyc.org ; Shifra Eva Stern, “Why seeking justice for the Palestinians is the Jewish cause,” *The Electronic Intifada*, 10 March 2004. Available online: [//electronicintifada.net/v2/article2487.shtml](http://electronicintifada.net/v2/article2487.shtml)

¹⁹¹ Victor Kattan, “Palestine takes centre stage at the European Social Forum,” *The Electronic Intifada*, 21 October 2004. Available online: [//electronicintifada.net/v2/article3248.shtml](http://electronicintifada.net/v2/article3248.shtml)

in the army.¹⁹² This movement resembles the South African anti-conscription drive in the late 1980s, an effort that represented a slice of the huge grassroots effort consisting of university and government divestment efforts, consumer boycotts, arms embargoes and eventual economic sanctions, under which the racist regime ultimately crumbled. The situation in Palestine/Israel demands a similar response as Israel has created, "an apartheid regime" in the OPTs "worse than the one that existed in South Africa," in the words of John Dugard, a member of South Africa's post-apartheid Truth and Reconciliation Commission. While global conditions have changed,¹⁹³ boycotting is much more difficult,¹⁹⁴ and certain differences do exist between the two situations, the South African precedent provides some sort of model for those struggling against Israeli apartheid. Such calls to action are of course huge topics within themselves, but for the purpose of this paper, they represent alternate routes that the international community, both states and civil society alike, can and should take to end the longest-standing occupation and apartheid system on earth today.

¹⁹² See: *Courage to Refuse*: www.seruv.org.il/english/movement.asp ; Yesh Gvul ("There is a Limit"): www.yeshgvul.org.il/english ; Bradley Burston, "When Israelis say, 'Hell no, we won't go'" *Haaretz*, 5 February 2004; Avi Shlaim, "Teenagers who stand for hope, sanity and decency," *The Guardian*, 22 March 2004.

¹⁹³ Urbina.

¹⁹⁴ Ibid.

Reflections

The EU and the donor community are, albeit with arguably different intentions, supporting a *deluxe* occupation: Israeli entities in the OPTs have a free hand to trade and benefit from cooperation instruments under the Association Agreement, and Israel is allowed to further entrench a military occupation and apartheid system paid for by the donor community. In the words former deputy mayor of Jerusalem Meron Benvenisti, Israel has “created an international precedent – an occupation fully financed by the international community.”¹⁹⁵ Israel is furthermore not held accountable: the EU is sweetening its bilateral agreements regardless of Israeli compliance and the donor community continues to funnel aid to the OPTs relieving Israel of its legally prescribed responsibilities under IHL. Having visited the territories in late August 2005, an official European Delegation stated “an end to the Israeli-Palestinian conflict depends on a more *determined international intervention* to achieve *accountability* from Israel and enforce its compliance with International Law.”¹⁹⁶

Indeed, the question of Palestine, like many post-colonial situations, was created by the international community and hence the world must rise to its moral responsibility to resolve it. As summed up accurately by the International Development Committee,

The fact is that Palestinians in Gaza and the West Bank have no state, neither *de jure*, nor *de facto*; no citizenship; no rights; no remedies, and no one from the international community taking the responsibility to see to ensure that an occupied people in these circumstances are treated as humanely as possible.¹⁹⁷

Herein lies the importance of the ICJ opinion for the Palestinians: it provides legal recourse to a people who possess neither meaningful sovereignty nor self-determination as a state,

¹⁹⁵ Meron Benvenisti, “International community supports a deluxe occupation,” *Ha’aretz*, 11 September 2003.

¹⁹⁶ “European delegation calls on European Union and EU Member States to hold Israel to account,” *UCP*, 28 August 2005. Also see: “Delegation headed by former Dutch prime minister Van Agt witness restrictions on movement,” *UCP*, 25 August 2005.

¹⁹⁷ International Development Committee, pg. 63.

and are therefore unable litigate their damages to a body that has historically been out of reach. While arguably brimming with shortcomings,¹⁹⁸ international law provides the Palestinians with the only path that can secure their rights especially since political negotiations have only served to strip Palestinians of their substantive rights,¹⁹⁹ including their right to self-determination. On this point, Catriona Drew highlights, “an unacknowledged trend *within* contemporary practice, which (selectively) favours pragmatic negotiation over formal legal entitlement – the all-important *peace process* over self-determination as process.” Certainly, the so-called peace process has been “invoked to *trump* rather than translate the legal framework,”²⁰⁰ and thus it remains imperative that Palestinians remain steadfast in their call for the implementation of international human rights law and IHL. The ICJ opinion is of further significance because it affirms that respect for human rights and humanitarian law *does not depend* upon a peace settlement and that a negotiated solution should be achieved on the basis of international law.

From a wider perspective, international law finds itself in another defining moment in its existence of perpetual crisis. The so-called “war on terror” has created a climate of impunity which rejects the mantra that international law should guide the actions of states. Legal principles are considered outdated and are being bypassed for the sake of combating “terrorism.”²⁰¹ Those who have high stakes in the relevance of international law should

¹⁹⁸ It should be noted that while this paper is approached from a formal legal perspective, the author recognises that international law historically and presently can very convincingly be critiqued from several angles. See: Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, 2005
S. James Anaya, *Indigenous Peoples in International Law*. New York, Oxford: Oxford University Press, 1996.

¹⁹⁹ The author is not positing a constant and discernible politics/law distinction: See Martti Koskenniemi, “The Politics of International Law,” 1 *European Journal of International Law* 1990 ; Nathaniel Berman, “In the Wake of Empire,” 14 *American University International Law Review* 1515, 1999.

²⁰⁰ Catriona Drew, “The East Timor story: International law on trial,” 12 *European Journal of International Law* 651, 2001, pg. 681. (Drew’s *italics*).

²⁰¹ See Joan Fitzpatrick, “Speaking law to power: The war against terrorism and human rights,” 14 *European Journal of International Law* 241-64 (2003).

recognise that it must now renew itself and reassert its relevance.²⁰² By failing to sanction Israel, the international community is not only complicit in Israeli crimes but it is also sustaining a situation of lawlessness and impunity. The epitome that is the question of Palestine illustrates the choice we face between a world governed by legal principles and a world where power and political as well as economic convenience reign supreme. As Etienne Balibar notes in a display of keen insight, the Palestinian cause is a "universal" one because "it is a test for the recognition of right, and the implementation of international law."²⁰³ As a universal cause, the Palestinian question demands universal action since as this paper has illustrated, "qui tacet consentire videtur,"²⁰⁴ or he who keeps silent is assumed to consent. Indeed, the dynamic way in which political support for the Palestinians is rapidly increasing across the globe indicates that the dangers of complicity and inaction are being recognised. In the words of the late Edward Said,

Remember the solidarity here and everywhere in Latin America, Africa, Europe, Asia and Australia, and remember also that there is a cause to which many people have committed themselves, difficulties and terrible obstacles notwithstanding. Why? Because it is a just cause, a noble ideal, a moral quest for equality and human rights.²⁰⁵

²⁰² See: Anne Orford, "The destiny of international law," 17 *Leiden Journal of International Law* 2004, pg. 441-476.

²⁰³ Etienne Balibar, "A complex urgent universal political cause," Address before the conference of Faculty for Israeli-Palestinian Peace (FFIPP), Universite Libre de Bruxelles, July 3-4, 2004.

[//ffipp.org/wiki/ffipp_international/etienne_balibar](http://ffipp.org/wiki/ffipp_international/etienne_balibar)

²⁰⁴ See: Barbara Whittle, "Truth and reconciliation commission: *Qui tacet consentire videtur*," 372 *De Rebus* 1999 Available online: www.derebus.org.za

²⁰⁵ Edward Said, "The meaning of Rachel Corrie: Of dignity and solidarity," *Counterpunch*, 23 June 2003.

Works Cited

- Abunimah, Ali, "Britain's double game," *The Electronic Intifada*, 14 April 2005. Available: [//electronicintifada.net/v2/article3757.shtml](http://electronicintifada.net/v2/article3757.shtml)
- Abunimah, Ali, "Gross Misinformation: the Media in the Palestinian-Israeli Conflict", *The Electronic Intifada*, 4 July 2005. Available: [//electronicintifada.net/v2/article3963.shtml](http://electronicintifada.net/v2/article3963.shtml).
- Adalah, "Institutionalized Discrimination against Palestinian Citizens of Israel", *Adalah: The Legal Center for Arab Minority Rights in Israel*, Durban, South Africa, August-September 2001. Available: www.adalah.org/eng/intladvocacy2001.php
- Adalah, "Special report: Ban on family unification," *Adalah: The Legal Center for Arab Minority Rights in Israel*. Available: www.adalah.org/eng/famunif.php
- Agreement on Scientific and Technical Cooperation, June 2003. Available: [//europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_154/l_15420030621en00800090.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/l_154/l_15420030621en00800090.pdf)
- Anaya, S. James, *Indigenous Peoples in International Law*. New York, Oxford, Oxford University Press, 1996.
- Anderson, Kenneth, "Israel's views of the application of IHL to the West Bank and Gaza Strip," *Crimes of War: What the Public Should Know*, Crimes of War Project, W.W. Norton & Company, New York/London, 1999.
- Anghie, Antony, *Imperialism, Sovereignty and the Making of International Law*, Cambridge University Press, 2005.
- Anti-Apartheid Wall Campaign, "'Developing' Israeli Apartheid: The World Bank, International Aid, and the Ghettoization of Palestine," 18 May 2005. Available: [//stopthewall.org/analysisandfeatures/921.shtml](http://stopthewall.org/analysisandfeatures/921.shtml)
- Anti-Apartheid Wall Campaign, "One Year after the ICJ-The G8 and World Bank Cementing Israeli Apartheid and Occupation," 7 July 2005. Available: [//stopthewall.org/analysisandfeatures/960.shtml](http://stopthewall.org/analysisandfeatures/960.shtml)
- Aprodev, "The European Community – Israel Association Agreement: An introduction to its provisions, implementation, and Euro-Mediterranean background," *Aprodev Working Group on the Middle East*, August 2004. Available: www.aprodev.net/palestine-israel/public_documents.htm

Arab Association for Human Rights, "By all means possible," July 2004. Available: www.arabhra.org/publications/reports/PDF/NaqabReport_English.pdf

Ash, Gabriel, "Diagnosing Benny Morris: the mind of a European settler," *The Electronic Intifada*, 28 January 2004. Available: [//electronicintifada.net/v2/article2379.shtml](http://electronicintifada.net/v2/article2379.shtml)

Association Agreement, June 2000. Available: www.eu-del.org.il/english/content/eu_and_country/asso_agree_en.pdf

Avery, C., *Business and Human Rights in a Time of Change*, in M. T. Kamminga, S. Zia-Zafiri eds, *Liability of Multinational Corporations under International Law*, The Hague, Kluwer Law International, 2000.

Avran, Isabelle, "How Europe could put pressure on Israel," *Le Monde Diplomatique*, July 1998. Available: [//mondediplo.com/1998/07/18israel](http://mondediplo.com/1998/07/18israel)

Awad, Yasmine and Robert E. Foxsohn, "Breaking the Complicity: 'Developing Palestine means ending the occupation,'" *manifest*, 11 August 2002.

B'tselem, "Forbidden roads-the discriminatory West Bank roads regime," August 2004. Available: www.btselem.org/English/Publications/Summaries/200408_Forbidden_Roads.asp

B'tselem, "The Underside of the Peace Process: Human Rights in the West Bank, East Jerusalem, and the Gaza Strip", *B'tselem*, Jerusalem 2000. Available: www.btselem.org

Balibar, Etienne, "A complex urgent universal political cause," Address before the conference of Faculty for Israeli-Palestinian Peace (FFIPP), Universite Libre de Bruxelles, July 3-4, 2004. Available: [//ffipp.org/wiki/ffipp_international/etienne_balibar](http://ffipp.org/wiki/ffipp_international/etienne_balibar)

Barghouti, Omar, "Boycott as resistance: The moral dimension," *The Electronic Intifada*, 28 December 2004.

Barghouti, Omar and Lisa Taraki, "Academic freedom in context," *Al-Ahram Weekly*, 16-22 June 2005. Available: <http://weekly.ahram.org.eg/2005/747/op13.htm>

Barr, Cameron, "Aid Gets Political for Red Cross," *Christian Science Monitor*, 26 November 2003.

Barrett, Mary, "PLO Looks at the Uniting for Peace Plan in UN," *Arab American News*, Vol. VI, No. 269, 30 June-6 July, 1990.

Bekker, Pieter H.F., "The United Nations and international law," *International Conference on Middle East Policies*, 6 November 2004.

Benvenisti, Eyal, *Legal Dualism: The Absorption of the Occupied Territories into Israel*, Boulder, Colorado/London: Westview Press, 1990.

Benvenisti, Meron, "The Disgrace outside their Windows," *Ha'aretz*, 14 July 2005.

Benvenisti, Meron, "International community supports a deluxe occupation," *Haaretz*, 11 September 2003.

Berman, Nathaniel, "In the Wake of Empire," *American University International Law Review* Vol. 14, No.1515, 1999.

Bishara, Azem, "The Court has spoken: What next?" *The Electronic Intifada*, 1 July 2004.
Available:
[//electronicintifada.net/v2/article2893.shtml](http://electronicintifada.net/v2/article2893.shtml)

Bishara, Azmi, "A short history of apartheid," *Al-Ahram Weekly Online*, 8-14 January, Issue No. 672. Available:
[//weekly.ahram.org.eg/2004/672/op10.htm](http://weekly.ahram.org.eg/2004/672/op10.htm)

Bishara, Azmi, "Jewishness versus democracy," *Al-Ahram Weekly*, 28 October - 3 November 2004. Available:
[//weekly.ahram.org.eg/2004/714/op63.htm](http://weekly.ahram.org.eg/2004/714/op63.htm)

Borneman, John, "Universal jurisdiction: Reflections on the 'Case of Ariel Sharon,'" *The Daily Star*, 27 December 2004.

Boyle, Francis A., *Palestine, Palestinians, and International Law*, Atlanta: Clarity Press, 2003.

Boyle, Francis A., "Palestine: Sue Israel for genocide before the International Court of Justice," *Muslim Minority Affairs*, No. 1, 2000.

Burress, Charles, "Berkeley rejects Mideast boycott measure," *San Francisco Chronicle*, 24 April 2002.

Burston, Bradley, "When Israelis say, 'Hell no, we won't go'" *Haaretz*, 5 February 2004.

Campaign Against Arms Trade (CAAT), "Arming the Occupation: Israel and the Arms Trade", October 2002. Available:
www.caat.org.uk/information/publications/countries/israel-1002.pdf

Cassese, Antonio, "The Israel-PLO Agreement and Self-Determination," *European Journal of International Law* Vol. 4, 1993.

Charter of Fundamental Rights of the European Union. Available:

www.europarl.eu.int/charter/default_en.htm

Christian Aid, "Facts on the Ground: The End of a Two-State Solution," *Christian Aid*, 21 October 2004. Available:

www.christian-aid.org.uk/indepth/410israelopt/index.htm

"Church group hints at Mideast divesting," *The New York Times*, 23 February 2005.

Cook, Jonathan, "Arab workers face discrimination in Israel," Al-Jazeera, 13 March 2004. Available:

[//english.aljazeera.net/NR/exeres/33C79FBE-FFEF-4005-AB28-D96DD6C1E82F.htm](http://english.aljazeera.net/NR/exeres/33C79FBE-FFEF-4005-AB28-D96DD6C1E82F.htm)

Cook, Jonathan, "Democratic and Jewish," Al-Ahram, Issue 698, 8-14 July & Issue 699 15-21 July 2004.

Courage to Refuse. Available: www.seruv.org.il/english/movement.asp

Crawford, James, "Second Report on State Responsibility" International Law Commission, UN Doc. (A/CN.4/498/Add.1), 1 April, 1999.

Cummings, Richard, "Human Rights, International Law and Peace in the Middle East," *Tikkun*, January 2004.

Devi, Sharmila, "Aid donors pay the price for security clampdowns by Israel," *Financial Times*, 6 August 20.

DFID, "Country Assistance Plan for Palestinians," May 2004. Available:

www.dfid.gov.uk/countries/asia/palestine.asp

Drew, Catriona, "The East Timor story: International Law on trial," *European Journal of International Law* Vol. No.651, 2001.

Dugard, John, "Question of the violation of human rights in the occupied Arab territories, including Palestine" (E/CN.4/2005/29), UN Doc.7 December 2004. Available:

[//domino.un.org/UNISPAL.NSF/0/9c172354fe3c565785256f8e006f3988?OpenDocument](http://domino.un.org/UNISPAL.NSF/0/9c172354fe3c565785256f8e006f3988?OpenDocument)

El Fassed, Arjan, "EU launches new initiative as deportation of Palestinians is extended," *The Electronic Intifada*, 3 November 2004. Available:

[//electronicintifada.net/v2/article3225.shtml](http://electronicintifada.net/v2/article3225.shtml)

El Fassed, Arjan, "G8 and Disengagement: Palestine needs justice not charity," *The Electronic Intifada*, 4 July 2005. Available:

[//electronicintifada.net/v2/article3964.shtml](http://electronicintifada.net/v2/article3964.shtml)

- El Fassed, Arjan, "In bed with Israel: EU's close relationship with Israel supports abuse," *The Electronic Intifada*, 11 March 2005. Available: [//electronicintifada.net/v2/article3600.shtml](http://electronicintifada.net/v2/article3600.shtml)
- Euro-Mediterranean Human Rights Network (EMHRN) report, "A Human Rights Review on the EU and Israel," December 2004. Available: www.euromedrights.net
- European Council, "A Secure Europe in a Better World: European Security Strategy," Brussels, 12 December 2003. Available: www.iss-eu.org/solana/solanae.pdf
- European Parliament Resolution Text (P5_TAPROV(2002)0173) 10 April 2002. Available: www.europarl.eu.int/meetdocs/delegations/plco/20020612/07EN.pdf
- Falk, Richard, "America Outside Consensus on the Wall," *Truth Out*, 24 July 2004.
- Falk, Richard, "Towards Authoritativeness: The ICJ ruling on Israel's security wall," *American Journal of International Law*, Vol. 99 No.1, January 2005.
- Fitzpatrick, Joan, "Speaking Law to Power: The War Against Terrorism and Human Rights," *European Journal of International Law* Vol. 14, 2003.
- Gathii, James, "International Law and Eurocentricity," *European Journal of International Law* Vol.9, 1998.
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949. Available: www.unhcr.ch/html/menu3/b/92.htm
- Hamad, Ghazi, "To dissolve or not to dissolve," *Palestine Report*, 28 January 2004.
- Hass, Amira, "IDF redefines Palestinians West of the fence," *Ha'aretz*, 14 October 2003.
- Human Rights Watch, "Second Class," *Human Rights Watch*, November 2001. Available: www.hrw.org/reports/2001/israel2/
- Human Rights Watch, "The 'Roadmap:' Repeating Oslo's Human Rights Mistakes," *Human Rights News*. Available: www.hrw.org/backgrounder/mena/israelpa050603.htm ;
- Human Rights Watch, "The United States and the International Criminal Court". Available: www.hrw.org/campaigns/icc/us.htm

- ICJ, "Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory", 9 July 2004,. Available:
www.icj-cij.org/icijwww/idocket/imwp/imwp_advisory_opinion/imwp_advisory_opinion_20040709.pdf
- Imseis, Ardi, "Critical Reflections on the International Humanitarian Law Aspects of the ICJ Wall Advisory Opinion," *American Journal of International Law* Vol.99 No.102, 2005.
- Imseis, Ardi, "On the Fourth Geneva Convention and the Occupied Palestinian Territory," *Harvard International Law Journal*, Vol. 44 No. 65, 2003.
- International Development Committee, "Development Assistance and the Occupied Palestinian Territories," *House of Commons*, 15 January 2004. Available:
www.publications.parliament.uk/pa/cm200304/cmselect/cmintdev/230/230.pdf
- International Law Commission , "Principles of International Law Recognized in the Charter of the Nürnberg Tribunal and the Judgement of the Tribunal", *Yearbook of the International Law Commission, 1950*, Vol. II. Available:
www.un.org/law/ilc/texts/nurnberg.htm
- Joerges, Christian and Navraj Singh Ghaleigh (eds), *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism Over Europe and Its Legal Traditions*, Oxford, Hart Publishing, 2003.
- Joint Advocacy Initiative, "One year on: Palestinian civil society calls for boycott, divestment, and sanctions," 9 July 2005.
- Kamm, Shira, "The Arab Minority in Israel: Implications for the Middle East Conflict," *Mossawa*, September 2002.
- Kattan, Victor, "Palestine takes centre stage at the European Social Forum," *The Electronic Intifada*, 21 October 2004. Available:
[//electronicintifada.net/v2/article3248.shtml](http://electronicintifada.net/v2/article3248.shtml)
- Keating, Michael, Anne Le More, and Robert Lowe (eds), *Aid, Diplomacy, and Facts on the Ground*, London: Royal Institute of International Affairs.
- Kennedy, David, "The International Human Rights Movement: Part of the Problem?" *Harvard Human Rights Journal* Vol. 14, 2001.
- Kessler, Glenn, "Restrictions imposed on aid to Palestinians," *Washington Post*, 5 May 2005.
- Khalil, Gregory, "Just say no to vetoes," *New York Times*, 19 July 2004.

Koskenniemi, Martti, "The Politics of International Law," *European Journal of International Law*, Vol. 1, 1990.

Kutz, Christopher, *Complicity: ethics and law for a collective age*. Cambridge: Cambridge University Press, 2000.

Leibovitz, Shamai, "Divesting conducive to Israeli-Palestinian peace," *The Jordan Times*, 30 November 2004.

Lopez-Jorin, Rosa Maria, "The European Commission's role as guardian of the treaties in ensuring the proper application of external agreements by partner countries, including their territorial scope and rules of origin," *European Commission's Directorate General for Taxation and Customs*, 20 June 2002. Available: www.aprodev.net/palestine-israel/Proceedings_Hearing2002.htm

Lorand, Bartels, "A Legal Analysis of Human Rights Clauses in the EU's Euro-Mediterranean Association Agreements," *Mediterranean Politics*, Vol. 9, No. 3, 2004.

Massad, Joseph, "Rome and Jerusalem Revisited," *Al-Ahram Weekly*, 19-24 February 2004.

McGreal, Chris, "Hidden costs of Israel's occupation policies," *The Guardian*, 25 February 2005. Available: www.guardian.co.uk/israel/Story/0,2763,1424883,00.html

Molgaard, Harald, "Arms exports and collaborations: The UK and Israel: Developments since CAAT's 'Arming the Occupation' Report," *Campaign Against Arms Trade (CAAT)*, June 2005. Available: www.caat.org.uk/information/publications/countries/israel-0605.pdf

Mutua, Makau, "The Ideology of Human Rights," *Virginia Journal of International Law* 36, 1996.

Nabulsi, Karma, "Britain and Europe are funding Israel's Occupation and Expansion," *The Guardian*, 1 March 2005

OCHA and UNRWA, *Rafah Humanitarian Needs Assessment: Submission to the Local Aid Coordination Committee*, 4 June 2004. Available: www.ochaopt.org

Orford, Anne, "The Destiny of International Law," *Leiden Journal of International Law* Vol. 17, 2004.

Oxfam, Campaign against the Arms Trade. Available: www.oxfam.org/eng/programs_camp_arms.htm

Pappe, Ilan, "Back the boycott," *The Guardian*, 24 May 2005. Available:
[//education.guardian.co.uk/egweekly/story/0,,1490283,00.html](http://education.guardian.co.uk/egweekly/story/0,,1490283,00.html)

Palestinian National Authority, *The Annexation and Expansion Wall: Impacts and Mitigation Measures*, Ramallah, 31 May 2004. Available:
www.mop.gov.ps/

Playfair, Emma, "Playing on principle? Israel's justification for its administrative acts in the Occupied West Bank," in *International Law and the Administration of the Occupied Territories*, Oxford, Oxford University Press, 1992.

Potter, Mich, "Billions for Mideast set to grab spotlight," *Toronto Star*, 5 July 2005.

Quigley, John, "David v. Goliath: Humanitarian and Human Rights Law in light of the Palestinian Right of Self-Determination and Right to Recapture Territory taken by Force," *New York University Journal of International Law & Politics*, Vol. 21, 1988-1989.

Ragazzi, Maurizio, "*The concept of international obligations 'Erga omnes'*", Oxford University Press 2000.

Regan, Tom, "Mideast divestment movement picks up steam," *Christian Science Monitor*, 7 July 2005.

Reuters, "Annan drops UNRWA head after US, Israeli campaign," 20 January 2005.

Reuters, "U.S. suspends military aid to nearly 50 countries (who support the ICC)", 1 July 2003.

Rubin, Andrew N., "One year on: We are no longer able to see the sun set," *The Electronic Intifada*, 9 July 2005. Available:
[//electronicintifada.net/v2/article3985.shtml](http://electronicintifada.net/v2/article3985.shtml)

Sadeh, Sharon, "EU: IDF actions that harm civilians akin to 'acts of terror'" *Haaretz*, 1 April 2004.

Said, Edward, *Peace and Its Discontents: Essays on Palestine in the Middle East Peace Process*, New York: Vintage, 1996.

Said, Edward, *The End of the Peace Process: Oslo and After*, London: Granta, 2000.

Said, Edward, "The meaning of Rachel Corrie: Of dignity and solidarity" *Counterpunch*, 23 June 2003.

Scobbie, Iain, "Smoke, Mirrors, and Killer Whales: The International Court's Opinion on the Israeli barrier wall," *German Law Journal*, Vol. 5. No. 9, 1 September 2004.

Shahar, Ilil, "85% of Israelis wish to join "anti-Semitic" EU," *Maariv*, 10 March 2004.
Available:

[//maarivintl.com/index.cfm?fuseaction=article&articleID=4372](http://maarivintl.com/index.cfm?fuseaction=article&articleID=4372)

Shlaim, Avi, "Teenagers who stand for hope, sanity and decency," *The Guardian*, 22 March 2004.

Silver, Eric, "Palestinians 'rage' at proposed 'fence' across Jerusalem," *The Independent*, 12 July 2005.

Stern, Shifra Eva, "Why seeking justice for the Palestinians is the Jewish cause," *The Electronic Intifada*, 10 March 2004. Available:

[//electronicintifada.net/v2/article2487.shtml](http://electronicintifada.net/v2/article2487.shtml)

Treaty Establishing the European Community (Treaty of Nice), 24 December 2004.

Available: [//europa.eu.int/eur-lex/lex/en/treaties/index.htm](http://europa.eu.int/eur-lex/lex/en/treaties/index.htm)

Treaty on European Union, Article 6. Available:

[//europa.eu.int/eur-lex/lex/en/treaties/index.htm](http://europa.eu.int/eur-lex/lex/en/treaties/index.htm)

Tutu, Desmond, "Apartheid in the Holy Land," *The Guardian*, April 29, 2002.

Tutu, Desmond, "Build moral pressure to end the Israeli occupation of Palestinian lands," *International Herald Tribune*, 25 October 2002.

Tutu, Desmond, "Of occupation and apartheid do I Divest?" *CounterPunch*, October 17, 2002.

UCP, "European delegation calls on European Union and EU Member States to hold Israel to account" 28 August 2005.

UK House of Commons International Development Select Committee, *Development Assistance and the Occupied Palestinian Territories: Second Report of Session 2003–04*, Volume 1 (HC 230), 5 February 2004. Available:

www.publications.parliament.uk/pa/cm200304/cmselect/cmintdev/230/230.pdf

United Nations, "UN Assembly votes overwhelmingly to demand Israel comply with ICJ ruling," *UN News*, 21 July 2004.

United Nations, "UN Committee on Palestine considers concrete action by international community," *UN DPI*, 11 May 2005.

United Nations, "UN Meeting on Question of Palestine discusses responsibility of governments in upholding international law," *UNIS*, 9 March 2005.

United Nations, "UN registry of damage to Palestinians from Israeli barrier moves step closer," *UN News*, 11 January 2005.

United Nations General Assembly Resolution ES-10/15 on Advisory Opinion, 2 August 2004. Available:
[//domino.un.org/unispal.nsf/0/f3b95e613518a0ac85256eeb00683444?OpenDocument](http://domino.un.org/unispal.nsf/0/f3b95e613518a0ac85256eeb00683444?OpenDocument)

United Nations Conference on Trade and Development, 50th Session, *Report on UNCTAD's Assistance to the Palestinian People*, 28 July 2003. Available:
www.unctad.org/en/docs/tb50d4_en.pdf

Urbina, Ian, "The analogy to apartheid," *Middle East Report* 223, Summer 2002. Available:
www.merip.org/mer/mer223/223_urbina.html

Von Speck, Hans "America's War America's Peace," Brussels Tribunal, 14-17 April 2004. Available:
www.brusselstribunal.org

War on Want, "Lawyers challenge EU and UK over inaction on Palestine," July 2005. Available:
www.waronwant.org/download.php?id=274

War on Want, "Palestine 2005: Time for Sanctions against Israel," 2005. Available:
www.waronwant.org/download.php?id=274

Whittle, Barbara, "Truth and reconciliation commission: *Qui tacet consentire videtur*," 372 *De Rebus* 1999 Available:
www.derebus.org.za

World Bank, "Disengagement, the Palestinian Economy and the Settlements," *World Bank*, June 2004.

World Bank, "Four years - Intifada, closures, and Palestinian economic crisis," October 2004.

World Bank, "Stagnation or Revival? Israeli Disengagement and Palestinian Economic Prospects," *World Bank*, December 2004.

World Bank, "Twenty Seven Months – Intifada, Closures and Palestinian Economic Crisis, An Assessment", May 2003.

All websites accessed in 2004 - 2005