

EU'S POSITION ON THE MIDDLE EAST PEACE PROCESS: KEY INCONSISTENCIES

INTRODUCTION

This paper points out nine key inconsistencies in the European Union's position on the Middle East Peace Process (MEPP) as defined in the EU's Council Conclusions over recent years and puts forth concrete recommendations for rectifying them. The paper was prepared by a group of 15 European and international humanitarian, development, human rights and peace organisations with operations or partners in Israel and the occupied Palestinian territory (OPT). The paper, based on an analysis of the conclusions of the EU's General Affairs and External Relations Council (GAERC) on the MEPP, does not aim to provide a comprehensive assessment of all inconsistencies, but to address several of the most significant ones.

The undersigned organisations believe that in order to play a genuinely constructive and impartial role in the search for a just and viable solution to the Israeli-Palestinian conflict, the EU must correct these inconsistencies in future Council Conclusions.

Why the EU's position matters

The EU's words are important. The EU is a major trading partner of Israel, a major donor to the Palestinian Authority, and member of the Middle East Quartet. The positions taken in Council Conclusions, often after lengthy discussions among the Member States, are the basis for policies and actions of the EU on the ground. They also guide the EU's and Member States' diplomacy on the MEPP in dealing with the parties to the conflict and on the international level. The EU's positions have an impact on the diplomatic process and on developments on the ground. The support, condemnation or silence of the EU in relation to various actions of the parties to the conflict also send important signals that may affect their calculations and behaviour as well as the positioning and behaviour of other members of the international community.

At the same time, while improving the EU's declaratory stance is important and necessary, it is not enough. Crucially, the EU also needs to act on its statements by adopting policies and concrete measures that give effect to its declared positions.

1. GAZA INQUIRY

The Council failed to support an independent inquiry into the Gaza conflict in contrast with its active support for such investigations into other recent conflicts.

- Overwhelming evidence of major violations of international humanitarian law (IHL) and international human rights law (IHRL) by all parties to the Gaza conflict of December 2008 - January 2009 has been collected by impartial human rights organisations. In spite of this, and in spite of civil society calls for ensuring accountability for these violations, the Council has refrained from calling for an independent inquiry or from supporting or endorsing the ongoing United Nations inquiries (primarily the UN Headquarters Board of Inquiry and the fact-finding mission led by Justice Richard Goldstone on behalf of the UN Human Rights Council). In its January 2009 Conclusions, the Council only stated that it would "follow closely

investigations into alleged violations of international humanitarian law", a formulation which was repeated in the June Conclusions. The EU eventually did express support for the Goldstone Mission in a statement at the UNHRC on 15 June 2009 calling "on all parties to fully co-operate with the Mission" although it failed to do so in the Council Conclusions from the same day.

- This is in stark contrast with the EU's unambiguous and active support for such investigations into other recent conflicts:
 - In the case of Sri Lanka, the Council stated in its Conclusions of 18 May 2009: "The EU calls for the alleged violations of [international humanitarian law and human rights law] to be investigated through an independent inquiry. Those accountable must be brought to justice."
 - On the Georgia conflict, the EU went a step further and launched its own Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG). The aim of the mission was "to investigate the origins and the course of the conflict in Georgia, including with regard to international law, humanitarian law and human rights, and the accusations made in that context...including allegations of war crimes".¹ The EU allocated €1.6 million for the mission, which is expected to present its findings in September 2009.
- In the Israeli-Palestinian context, the Council has only called for accountability in relation to the intra-Palestinian conflict between Fatah and Hamas in June 2007. The Council then strongly condemned attacks by Hamas stating: "All those responsible for criminal acts in violation of the standards safeguarded by international humanitarian law and of fundamental human rights must be held accountable."²

Recommendation: *The Council should take the same principled position with regard to accountability for the Gaza conflict as it has done on other conflicts mentioned above. The Council should call for all those accountable for violations of IHL and IHRL to be brought to justice and work to implement recommendations of the UN inquiries.*

2. GAZA BLOCKADE

The Council has failed to stress the illegality of the blockade of Gaza, in contrast with its language recognising the illegality of Israeli settlements.

- The Council has taken a firm stance on the blockade of Gaza's borders, calling for "the immediate and unconditional opening of crossings for the flow of humanitarian aid, commercial goods and persons to and from Gaza without which the unimpeded delivery of humanitarian aid, reconstruction and economic recovery will not be possible".³ However, the Council has not declared the blockade illegal, in contrast with the EU's position on settlements which it affirms as "illegal under international law".⁴ This can give the impression that the EU does not unequivocally consider the blockade illegal or that compliance with international law is not a central consideration in its approach to Gaza.
- The blockade of Gaza's crossings constitutes a serious contravention of multiple provisions of IHL and IHRL:⁵
 - Punishing the entire civilian population living in Gaza for the acts of combatants violates the IHL prohibition of collective punishment.⁶ The EU has twice referred to

¹ Council Decision 2008/901/CFSP of 2 December 2008 concerning an independent international fact-finding mission on the conflict in Georgia.

² Council Conclusions, 18 June 2007.

³ Council Conclusions, 15 June 2009.

⁴ Ibid.

⁵ "Gaza Closure Defined: Collective Punishment. Position Paper on the International Law Definition of Israeli Restrictions on Movement in and out of the Gaza Strip", Gisha - Legal Center for Freedom of Movement, December 2008. "Rafah Crossing: Who holds the keys?", Gisha - Legal Center for Freedom of Movement and Physicians for Human Rights – Israel, March 2009.

the blockade as “collective punishment” in statements of the Slovenian and French presidencies in 2008⁷, but it has failed to do so in Council Conclusions.

- The blockade violates the duty of Israel as the occupying power to safeguard the health and welfare of the civilian population of the Gaza Strip.⁸ Israel remains the occupying power given its continued effective control over Gaza - a view shared by the United Nations, the International Committee of the Red Cross and other parties.
- The blockade also violates IHL, including the right to freedom of movement, to health, to decent living conditions, to protection from hunger, and special duties to protect children.⁹
- Restrictions on humanitarian supplies and staff by states controlling the border crossings violate the duty that all states owe under IHL to allow and facilitate the passage of humanitarian goods to civilians affected by an armed conflict, irrespective of the existence of a state of occupation.¹⁰

Recommendation: *The Council should condemn the blockade of Gaza as collective punishment and state that it is illegal under international law.*

3. WALL

The Council has ceased criticising Israel’s construction of the Wall in the OPT since July 2007 despite the EU’s obligation to challenge it.

- Since the start of Israel’s construction of the Wall until July 2007, the EU has in its Council Conclusions regularly expressed concern about it. The EU has also demanded that Israel stop and reverse construction inside the OPT, including in and around East Jerusalem, which it affirmed is in contradiction of international law.¹¹ Since July 2007, however, the Wall has disappeared from Council’s language and has not been mentioned in its Conclusions ever again, even though the construction on occupied Palestinian land has continued.
- As the Quartet stated in June 2005, the route of the Wall “results in the confiscation of Palestinian land, cuts off the movement of people and goods, and undermines Palestinians’ trust in the Roadmap process as it appears to prejudge the final borders of a Palestinian state”. If completed, the Wall will result in 9.5% of the West Bank territory including East Jerusalem being de facto annexed to Israel. 35,000 Palestinians in the West Bank and the majority of Palestinians in East Jerusalem will live between the Wall and the Green Line, cut off from the rest of the West Bank. 125,000 Palestinians will be surrounded on three sides and 26,000 others will live in closed enclaves.¹²
- The Advisory Opinion of the International Court of Justice (ICJ) of July 2004 confirms that construction of the Wall in the OPT is illegal and calls for its dismantling. It also emphasises that states party to the Fourth Geneva Convention have the obligation to ensure Israel’s compliance with IHL as embodied in that convention. All EU Member States voted in favour of the UN General Assembly Resolution endorsing the ICJ’s Advisory Opinion and demanding Israel’s compliance with it.¹³

⁶ Article 33 of the Fourth Geneva Convention.

⁷ EU Presidency Statement of 2 March 2008; Declaration by the Presidency of the Council of the European Union of 14 November 2008; The European Parliament has also used the term “collective punishment” in its resolution of 15 January 2009 on the situation in the Gaza Strip.

⁸ Article 43 of the Hague Regulations and articles 55, 56, 59 and 61 of the Fourth Geneva Convention.

⁹ Articles 13 and 25 of the Universal Declaration of Human Rights, article 12 of the International Covenant on Civil and Political Rights, articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on the Rights of the Child.

¹⁰ Article 23 of the Fourth Geneva Convention and article 70(2) of the First Additional Protocol to the Geneva Conventions.

¹¹ Council Conclusions, 12 July 2004.

¹² “Five Years After the ICJ Advisory opinion: A Summary of the Humanitarian Impact of the Barrier”, OCHA, July 2009.

¹³ United Nations General Assembly Resolution ES-10/15 of 20 July 2004.

- The Council's silence about the ongoing construction of the Wall is clearly not in accordance with its obligation to ensure Israel's compliance with IHL. On the contrary, it sends the signal that international law can be violated without accountability and that the EU can be worn down over time by third states' intransigence. The ceasing of critique could be seen as tacit tolerance of, or even assent to, the Wall as a fact on the ground.

Recommendation: *The Council should resume regularly expressing its concern about the Wall in the OPT and its illegality under international law and reiterate its support for the recommendation of the ICJ 2004 Advisory Opinion including requesting its immediate and unconditional dismantling.*

4. SETTLEMENTS

The Council has taken a strong position on Israeli settlements but has dropped its earlier calls to reverse the settlement policy.

- The EU has repeatedly stressed through Council Conclusions its deep concern about continuing settlement construction as an illegal activity and an obstacle to peace. It has urged Israel to "immediately end settlement activities, including in East Jerusalem and including natural growth".¹⁴
- In the past, however, the Council also repeatedly urged Israel to "reverse its settlement policy"¹⁵, making clear that a freeze of settlement activity is only the first step. The Council has failed to maintain this stance since 2004, which could give the impression that the EU now views existing settlements as irreversible facts on the ground.
- The EU has also failed to repeat its demand for "the abolition of financial and tax incentives and direct and indirect subsidies, and the withdrawal of exemptions benefiting the settlements and their inhabitants" as expressed by the EU heads of states in the European Council in June 2005.
- While a freeze of settlement activity is a necessary first step, all existing settlements are illegal under international law, as recognised by the EU. Moreover, the existing settlements and the related infrastructure including checkpoints and roads for settlers are causing gross human rights violations as well as economic and social costs to Palestinians.
- The EU has a duty not to recognise or give assistance to violations of international law committed by a third country. Concern remains that the EU has not adopted sufficient policies to uphold this obligation with respect to settlements. Nor has it taken sufficient safeguards to ensure that settlements and settlers are not benefiting from EU-Israel cooperation instruments.

Recommendation: *In addition to calling for a freeze of settlement activity, the Council should again also call for a reversal of the settlement policy including abolition of financial benefits to settlers. It should also take further steps to ensure that any existing cooperation instruments between the EU and Israel are only applied to Israel proper and in no case to settlements.*

¹⁴ Council Conclusions, 15 June 2009.

¹⁵ See, e.g. Council Conclusions, 17-18 June 2004.

5. SETTLER VIOLENCE

The Council is calling on the Palestinian Authority to improve law and order in the West Bank, but not on Israel to enforce law upon settlers perpetrating violence.

- The EU has been urging the Palestinian Authority (PA) “to continue to make every effort to improve law and order”, as stated in the latest Council Conclusions on the MEPP of June 2009. At the same time, the Council fails to address Israel’s serious lack of enforcement of the rule of law in the West Bank, for example with regard to violence perpetrated by settlers. The lack of enforcement comes on top of the illegality of many Israeli policies and actions under international law, including the settlement enterprise and the Wall.¹⁶
- When Palestinians attack Israelis, Israeli authorities invoke all means – often in violation of IHL and IHRL – to punish the perpetrators. In contrast, when Israeli settlers attack Palestinians (or Israeli and foreign peace activists and human rights defenders), the authorities generally fail to enforce the rule of law. Usually they fail to intervene to stop attacks when they are happening, make filing complaints difficult and inadequately follow up complaints that are filed, thereby effectively encouraging settler violence.¹⁷ More than 90% of investigations into settler attacks monitored by the Israeli organisation Yesh Din were closed by the Israeli police without indicting any suspects.¹⁸ At the same time, PA security forces do not possess law enforcement powers vis-à-vis Israeli citizens, so they cannot protect Palestinians from settler violence.
- Settler violence against Palestinians is not less serious than Palestinian attacks on Israelis in the West Bank. Between January 2006 and October 2008, more Israeli civilians were killed by Palestinians than vice versa (10, compared to 4), but the number of Palestinians injured by Israeli settlers far outnumbered Israelis injured by Palestinians (293, compared to 116).¹⁹ The settler actions against Palestinians include, inter alia, physical assaults, throwing stones, gunfire, destroying olive trees and crops, stealing or killing livestock, damaging houses, and blocking roadways.
- The failure of the Council to express specific concern about settler violence and to urge Israel to improve the rule of law, while only calling on the PA to improve law and order, resembles Israel’s double standard in its treatment of Palestinian and Israeli settler violence. Settler violence has not been specifically mentioned in Council Conclusions on the MEPP over the recent years.²⁰

Recommendation: *The Council should urge enforcement of the rule of law by both Israel and the PA without discrimination or exception.*

¹⁶ It should also be noted that Israeli settlers and Palestinians residing in the West Bank are subject to two different legal systems: Israeli settlers are governed by civil law while Palestinians are subjected to military law.

¹⁷ “Unprotected: Israeli settler violence against Palestinian civilians and their property”, OCHA, December 2008.

¹⁸ “A Semblance of Law. Law Enforcement upon Israeli Civilians in the West Bank”, Yesh Din - Volunteers for Human Rights, June 2006.

¹⁹ This does not include the much higher number of Palestinian casualties of Israeli military actions in the West Bank over the same period. See: “Unprotected: Israeli settler violence against Palestinian civilians and their property”, OCHA, December 2008.

²⁰ While ignored in Council Conclusions, settler violence has been condemned “in the strongest possible terms” in a declaration by the French presidency of the EU on 31 October 2008, as well as in the Quartet statement of 26 September 2008, which “condemned the recent rise in settler violence against Palestinian civilians, urging the enforcement of the rule of law without discrimination or exception”.

6. INTRA-PALESTINIAN HUMAN RIGHTS VIOLATIONS

The Council supports the Palestinian Authority's security efforts but is silent about the related human rights violations and the impact on Palestinian reconciliation efforts.

- PA security forces have been committing serious human rights violations in the West Bank, targeting individuals and organisations suspected of affiliation with Hamas. At the same time, Hamas forces have been committing serious abuses against members and suspected affiliates of Fatah in Gaza.²¹ Both sides have arbitrarily detained hundreds of individuals without charge or trial, and often tortured or otherwise ill-treated them.²² They have also closed down media and organisations linked to the rival factions.²³
- The Council has not addressed these abuses in its Conclusions while it has continued to commend the PA for its progress in the security field and encouraged further efforts. The Council's unqualified support for the PA's security efforts, while remaining silent about the widespread and well-documented violations, can be seen as an endorsement of these practices which are banned under international human rights treaties.
- The detention of the supporters of rival factions and other intra-Palestinian abuses are deepening the divisions among Palestinians and blocking efforts at reconciliation, which the EU says it supports. The EU's unqualified stance on the PA's security efforts is thus at odds with its position on Palestinian reconciliation. As a major donor to the PA, the EU has a responsibility to ensure that PA forces respect human rights and are politically neutral.
- The EU guidelines on torture adopted by the Council in 2001 commit the EU to act against torture by urging third countries to, inter alia, prohibit and condemn torture and ill-treatment, adopt and implement legal safeguards against torture, ban secret places of detention, bring those responsible for torture and ill-treatment to justice, and ensure that no exceptional circumstances whatsoever may be invoked as a justification of torture or ill-treatment.²⁴

Recommendation: *The Council should condemn violations of human rights by both the PA and Hamas security forces and couple its support for the PA's security efforts with an emphasis on respect for human rights and the political neutrality of the PA security forces.*

7. PRISONERS

The Council regularly calls for the release of Israeli Corporal Gilad Shalit but is usually silent about thousands of Palestinian prisoners and detainees.

- Since Palestinian militants from Gaza captured Israeli Corporal Gilad Shalit in June 2006, they have denied him his right to receive visits by the International Committee of the Red Cross (ICRC), violated his right to correspond with his family, and overall held him as a hostage in order to compel Israel to meet certain demands, in violation of IHL. The Council has in its Conclusions regularly called for his immediate release - 10 times since June 2006. The undersigned organisations share and support the EU's concern about and attention to Shalit.

²¹ "Amnesty International Report 2009. State of the World's Human Rights", 2009; "Internal Fight: Palestinian Abuses in Gaza and the West Bank", Human Rights Watch, July 2008; "The Status of Human Rights in the Palestinian-controlled Territory. Fourteenth Annual Report", Independent Commission for Human Rights, 2008; "Annual Report 2008", Palestinian Centre for Human Rights.

²² "Torturing Each Other: The Widespread Practices of Arbitrary Detention and Torture in the Palestinian Territory", Al-Haq, July 2008.

²³ "Amnesty International Report 2009. State of the World's Human Rights", 2009.

²⁴ "Guidelines to EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", 9 April 2001.

- Over the same period, however, the Council has paid much less attention to the thousands of overwhelmingly civilian Palestinian prisoners and detainees held by Israel including hundreds of individuals held in administrative detention without charge or trial. In 2006 and 2007, the Council called 5 times for “immediate release” of Palestinian ministers and legislators detained by Israel – but without mentioning the other prisoners. In July 2007, the Council welcomed the release of 255 Palestinian prisoners and detainees by Israel. Only in December 2008 did the Council address the broader issue by stating that “Palestinian prisoners should be released in greater numbers, with priority being given to minors”.
- Although the situation of Palestinian detainees and prisoners is different to that of Shalit, it also deserves prompt international attention:
 - There are currently approximately 7,800 Palestinian prisoners held by Israel.²⁵ Palestinian detainees are usually tried in Israeli military courts which fall far short of due process and fair trial standards.²⁶
 - More than 387 Palestinians are held under military administrative detention orders without charge or trial, including several who have been held for over five years.²⁷ The way the administrative detention is applied contravenes multiple provisions of international law.²⁸
 - Palestinian prisoners include approximately 342 minors²⁹ whose rights under the UN Convention on the Rights of the Child are not respected.
 - The vast majority of Palestinian prisoners are held in prisons in Israel in violation of IHL, which prohibits the removal of detainees from the occupied territory.³⁰ This makes it difficult in practice for detainees to receive visits from family members who are often denied permission to enter Israel.³¹ In many cases family members of detainees have not been allowed visits to their imprisoned relatives for more than five years. In addition, since the Hamas takeover of Gaza in June 2007, Israel has placed a total ban on visits by family members from Gaza to their relatives in Israeli prisons.³²
 - There are many reports of torture and other ill-treatment of Palestinian prisoners including minors by the Israel Security Agency. Methods reported include prolonged tying in painful stress positions, sleep deprivation, beatings and threats to harm detainees’ families.³³ The EU guidelines on torture adopted by the Council in 2001 commit the EU to act against torture in a number of ways, as mentioned above in the case of intra-Palestinian abuses.

Recommendation: *The Council should regularly express concern about Palestinian prisoners and their treatment, call for a review of their cases in accordance with international standards of fair trial and for an overhaul of the related Israeli policies to bring them in line with relevant international law.*

²⁵ HaMoked statistics on Palestinian prisoners, July 2009.

²⁶ “Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories”, Yesh Din - Volunteers for Human Rights, December 2007.

²⁷ B’Tselem statistics on administrative detention, July 2009.

²⁸ “Alternative Report for Consideration Regarding Israel’s Fourth Periodic Report to the UN Committee Against Torture (CAT)”, United Against Torture Coalition, September 2008; “Israel – Briefing to the UN Committee Against Torture”, The Public Committee Against Torture in Israel, OMCT - World Organisation Against Torture, April 2009; “Human Rights in the Occupied Territories”, B’Tselem 2008 Annual Report.

²⁹ Figure as of 30 July 2009 provided by Defence for Children International.

³⁰ Article 76 of the Fourth Geneva Convention.

³¹ “Barred from Contact: Violation of the Right to Visit Palestinians Held in Israeli Prisons”, B’Tselem, September 2006.

³² “Gaza: families should be allowed to resume visits to relatives detained in Israel”, ICRC, 10 June 2009.

³³ “Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees”, B’Tselem, May 2007; “Palestinian Child Prisoners: The systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities”, Defence for Children International, June 2009; “Torture and Ill-Treatment. Israel and the occupied Palestinian territory”, United Against Torture Annual Report 2008.

8. QUARTET PRINCIPLES

The EU has conditioned engagement with a Palestinian government on its compliance with the three Quartet principles, although the Israeli side would not satisfy equivalent principles.

- Following the electoral victory of Hamas in January 2006, the EU conditioned engagement with the Palestinian government on the three principles adopted by the Quartet: commitment to non-violence; recognition of Israel; and acceptance of previous agreements and obligations. Referring to these principles the EU imposed a diplomatic and financial boycott on the Hamas-led government, which continued also after the Palestinian government of national unity was established in March 2007. The Quartet principles were continuously stressed in the Council Conclusions in 2006 and 2007, but the Council has refrained from mentioning them since then, signalling a possible softening of the EU's position. However, as a member of the Quartet it has continued to restate the three principles, most recently on 26 June 2009.³⁴ The EU has also maintained its no contact policy with Hamas in practice.
- Israel has never been asked to comply with such (or any other) principles as a precondition for negotiations and would fail the test of compliance with equivalent principles. Most obviously, Israel continues to use violence, including in violation of IHL and IHRL.³⁵ Also Israel's acceptance of the right of Palestinians to self-determination is at best questionable and Israel's actions on the ground are directly undermining this right. As for past agreements, Israel has been flouting a number of its obligations under the agreements it has nominally accepted including the Roadmap, the Oslo Accords, and the Agreement on Movement and Access.
- While strongly condemning unlawful violence by all parties, the undersigned organisations support an inclusive process and not ostracising either Israeli or Palestinian governments and key actors. The EU's boycott of the winner of a democratic Palestinian election has been co-responsible for the ever-worsening Gaza crisis and has severely damaged the broader MEPP. In addition, by isolating Hamas, the EU has rid itself of possibilities to exert influence on the movement and has outmanoeuvred itself, delegating what could have been a key mediating role to other non-EU actors such as Turkey, Norway and Switzerland.³⁶

Recommendation: *The EU should refrain from applying the three Quartet principles as preconditions for negotiations. The EU should engage with all parties involved on both Israeli and Palestinian sides.*

9. ARMS TRANSFERS

The Council is calling for an end to arms smuggling to Gaza but not for any restrictions on arms transfers to Israel.

- The EU has in its Council Conclusions called for "an effective mechanism to prevent arms and ammunition smuggling into the Gaza Strip".³⁷ At the same time it has failed to address the issue of arms exports to Israel despite its major and repeated violations of international law and human rights, not least during the Operation Cast Lead.

³⁴ Quartet statement, 26 June 2009.

³⁵ "Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction", Amnesty International, 2 July 2009.

³⁶ "Active but Acquiescent: The EU's Response to the Israeli Military Offensive in the Gaza Strip", Euro-Mediterranean Human Rights Network, May 2009.

³⁷ Council Conclusions, 15 June 2009.

- Unlike with arms smuggled into Gaza, EU Member States themselves engage in significant arms exports to Israel. In 2007, EU Member States authorised a total of 1,018 arms export licences to Israel worth €199 million.³⁸
- Yet the Council Common Position on arms exports (former EU Code of Conduct on Arms Exports)³⁹ includes the following criteria where Israel generally fails the test:
 - "Member States shall deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression", including, inter alia, "torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments" (criterion 2a);
 - Member States will "exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe" (criterion 2b);
 - Member States will "deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law" (criterion 2c);
 - "Member States shall deny an export licence for military technology or equipment which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination" (criterion 3);
 - "Member States shall deny an export licence if there is a clear risk that the intended recipient would use the military technology or equipment to be exported aggressively against another country or to assert by force a territorial claim" (criterion 4);
 - Member States shall take into account inter alia "the likelihood of the military technology or equipment being used other than for the legitimate national security and defence of the recipient" (criterion 4c);
 - "Member States will take into account, inter alia, the record of the buyer country with regard to its compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law"; and "its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions" (criteria 6b and 6c).

Recommendation: *The EU should review application of the Council Common Position on arms exports to Israel and the Member States should refuse export licences for military equipment which would be inconsistent with the criteria in the Common Position.*

³⁸ According to the EU's 2008 report on arms export licences, published in December 2008 for the 2007 calendar year.

³⁹ Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, 8 December 2008.



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