

The EU role in the Israeli-Palestinian conflict

What is the potential of the 2013 European Commission Guidelines on eligibility of Israeli enterprises in the Occupied Territories for financial support?

Introduction

- The Israeli-Palestinian is one of the longest ongoing confrontations in the world.
- The Occupied Territories are not recognised internationally as part of Israel.
- All attempts to end the conflict over these territories have failed.
- EU principles and values tend to promote measures for conflict resolution.
- The *de facto* occupation and the need for regional stability and economic growth tend to promote acceptance of the *status quo*.

The 2013 Guidelines

- In 1995 the European Union and Israel signed an Association Agreement.
- Starting in 1998 the European Union at various levels and through various bodies has recognised the exceptional status of the Occupied Territories, excluding them from the terms of the Association Agreement.
- The 2013 Guidelines prohibit the issuing of EU grants, funding, prizes or scholarships to Israeli entities unless a settlement exclusion clause is included. Israeli institutions and bodies situated across the pre-1967 Green Line will be automatically ineligible.

“...often considered an “economic giant”, the EU remains to some a “political dwarf”. ”
(Al-Fattal, 2010: 3)

Economic giant



The EU is the biggest financial donor to the Palestinian Authority. It is calculated that the EU has provided an average of €500 million a year to the PA. (More, 2008: 88)

The EU is undoubtedly a payer, but is it also a player?

The EU is Israel's biggest buyer: EU states account for 55% of Israel's foreign trade. (Isma'I, 2011: 18)

After the Madrid Conference in 1991 the EU's economic role in the territories increased dramatically.

Normalising Israeli-EU relations

Political dwarf

Protecting Palestinian rights

- 1995 EU and Israel sign the Association Agreement, the legal basis for EU-Israeli relations.
- 1995 The Barcelona Process formed the basis of the Euro-Mediterranean Partnership which has expanded and evolved into the Union for the Mediterranean.
- 2003 European Neighbourhood Policy: a foreign relations instrument of the EU.
- 2004 Allowance from the European Commission for Israel to participate in the Galileo project for a Global Navigation Satellite System.
- 2008 Union for the Mediterranean.



- 1998 Dispute starts over the legal treatment of products exported to the EU from Israeli-Occupied Territories.
- 2001 Commission guidelines establish no preferential treatment for Occupied Territories.
- 2004 European Commission establishes that Israel must label products with their origin for customs control.
- 2010 Brita case: ruling of the European Court of Justice. Products from the West Bank do not qualify for preferential customs treatment under the EU – Israel agreement.
- 2011 Palestine admitted as a member of UNESCO. EU voting division: for 11, against 5 and abstain 11.
- 2013 Guidelines.

Conclusions

- The EU has less influence than it should on the conflict.
- Israel has been able to circumvent the guidelines by incorrect labelling and using parent companies.
- The EU has a weak foreign policy due to internal divisions.
- The 2013 Guidelines are a new opportunity for influence, but there need to be more mechanisms and specific resources in place for them to be operational and enforceable.

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support?

Executive summary



Sociology degree

End of degree project

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The Israeli-Palestinian conflict is one of the longest ongoing confrontations in the world. Not only is it a strategic priority for Europe, as the EU 2003 Security Strategy states, but Europe has also much to gain from conflict resolution. Many have discussed the role the EU has to play, whether economic or also political, and one informed opinion is that the EU is underplaying its hand. The EU, whose principles and values tend to promote measures for conflict resolution, is not the only organisation to propose initiatives, but all attempts to end the conflict over these territories have so far failed. And even though the Occupied Territories are not recognised internationally as part of Israel, the situation has remained unresolved for over 40 years now.

The European Commission 2013 Guidelines prohibit the issuing of EU grants, funding, prizes or scholarships to Israeli entities unless a settlement exclusion clause is included. Israeli institutions and bodies situated across the pre-1967 Green Line should be automatically ineligible.

The EU lacks political influence but is the largest financial donor to the Palestinian Authority and biggest trade partner for Israel. It is sometimes said that the EU is an “economic giant” but a “political dwarf”. Has the EU changed this through the 2013 Guidelines?

The 2013 Guidelines seek to leverage the EU's economic position. It is the first time that the EU has shown its disagreement with Israeli policy not just through political statements but through economic policy.

However, their effectiveness remains in doubt because Israel labels its products in a way that masks their geographical origin, making it difficult for the EU and its citizens to distinguish between Israel and the Occupied Territories.

The core problem of these Guidelines is that they distinguish between Israel and Israeli companies in the Occupied Territories as if they were different, but very often they are separate parts of the same company. How then is the EU supposed to know who it can promote economic relations with? The 2013 Guidelines could be no more than grandstanding. The EU seeks to honour its core values but it cannot do so effectively due to its own internal divisions.

The Guidelines lay the basis for an important turn in events but they do not ensure it will happen. Alone they are insufficient. There is a lack of specific measures, mechanisms and funding for these guidelines to be carried out and monitored.

UNIVERSITAT AUTÒNOMA DE BARCELONA

SOCIOLOGY AND POLITICS FACULTY

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Sociology degree
Final year project

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Introduction

The Israeli-Palestinian conflict is one of the longest ongoing confrontations in the world. “This conflict has become one of the principle determinants affecting the relationship of the Arab states with the world” (Isma’i, 2011: 52). The 2003 European Security Strategy states that the “Arab-Israeli conflict is a strategic priority for Europe” and Rosemary Hollis (2004: 196) among others states that “Europe has much to gain from conflict resolution”. The conflict is a way of consolidating EU power but it also responds to many EU interests. Europe wants to have access to energy resources, is concerned about both Israel and Europe’s security and is aware that immigrants from the area may import regional conflicts, for example in the form of terrorist threats (Al-Fattal, 2010: 33).

Not only the EU but the whole international community has rejected “a historical claim” or “biblical right” of the Jewish people to all of Palestine. Nonetheless, how much has actually been done to enforce international law, to end Israeli occupation and to stop the settlement expansion? In spite of repeated EU criticism of Israel – its 1982 invasion of Lebanon, Israeli annexation of East Jerusalem and the Golan Heights, its handling of the first Palestinian intifada, the continuous settlement drive and the construction of a separation barrier in violation of international law, the attack on the Gaza flotilla and the continued blockade of the Gaza Strip – this did not prevent the EU and its member states from developing excellent economic relations with Israel, including an EU-Israeli free trade agreement, Israeli participation in European research and development projects and its privileged status in the European Neighbourhood Policy framework. (Neugebauer, 2014)

The EU is often seen as a peace-maker, whose duty is to find solutions to conflicts (Diez, Pace, Rumelili and Viktorova, 2006: 34) and specifically border conflicts. The European Union can have a significant impact on the transformation of border conflicts. The question is, “Does it?”

Historical context

Due to the Six-Day War in 1967, between Israel and the neighbouring states of Egypt, Jordan and Syria, and the Yom-Kippur War in 1973 between a coalition of Arab states and Israel, during the 1970s there was growing tension between Israel and the European Economic Community¹ and

¹ The European Economic Community (EEC) was an international organization created by the Treaty of Rome of

closer ties between the EEC and Arab countries. Europe became one of the leading international supporters of Palestinian self-determination. This resulted in the Venice Declaration of the European Council of 1980: which because of Israeli rejection led to a loss of EU diplomatic influence over Israel. The EU only recovered some level of trust with Israel as a result of the Madrid Conference in 1991², after which the EU economic role in the region increased dramatically, and the Oslo Agreements of 1993, which established the basis for a two-state solution for the first time. This was the last major European involvement in attempts to resolve the conflict. It also set an important precedent for future developments: a steady increase in trade relations between Israel and the EU, and the emergence of the EU as the main external donor to the Palestinian Authority (Diez, Pace, Rumelili and Viktorova, 2006: 65). According to Agnès Bertrand-Sanz (in Bulut, 2010: 86), the EU has provided an average €500 million per year to the Palestinian Occupied Territories.

In this context the EU signed Association Agreements, which contain a strong economic and a relatively weak political dimension (Stettler in Diez, Pace, Rumelili and Viktorova, 2006: 65) with Israel in 1995 and the Palestine Liberation Organization administration of the Palestinian Authority in 1997. Perthes (in Diez, Pace, Rumelili and Viktorova, 2006: 23) has argued that the EU is a so-called “payer” but not a ‘player’ in the Israeli-Palestinian conflict.

In order to derive some influence from its economic position, in July 2013 the European Commission released a press statement (see Annex A) summarising its new 2013 Guidelines (see Annex B), whose aim was to create a distinction between Israel and the Occupied Territories regarding EU financial support of “Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards”.

1957. Its aim was to bring about a common market and economic integration, among its six founding members: Belgium, France, Italy, Luxembourg, the Netherlands and West Germany

2 The EU was handed the responsibility for the Regional Economic Development Working Group, bringing together Palestinians, Israelis, Jordanians and Egyptians to develop economic cooperation projects in the region.

Research questions

What is the significance of these new Guidelines? Do they represent a turning point for EU policy and influence on Israel? Or are they just another tentative step forward that may be overtaken over by other events?

The Guidelines are the first attempt by the EU to have political leverage through economic action. Previously the emphasis has been on diplomatic measures and always under the long shadow of US policy. Quoting Nathalie Tocci (in Bulut, 2010: 26), “the European Union has privileged political dialogue as a means to influence Israel”.

In this study we will make a tentative analysis of EU influence on the Israeli- Palestinian conflict in the light of the new Guidelines. We might find that the statement of the Guidelines is insufficient or on the contrary that they are overambitious, and that they might fail because of that, or that it is too early to gauge what effect the Guidelines are having or will have, or that the Guidelines may remain unused by EU member states or that there is insufficient funding of operational mechanisms, for example in providing effective customs control.

EU influence on the Israeli-Palestinian conflict

In all situations of regional conflict, other countries can endeavour to exert an influence to protect their own interest in a variety of ways: through international organisations, through their own diplomatic initiatives, through conditional economic support and trade, through cultural and educational or research ties, and so on. In general terms, all of these channels of influence can be grouped into economic and political.

A payer or a player?

The EU is not only the biggest financial donor to the Palestinian Authority (PA) but it is also Israel's biggest buyer: according to Israel Ports Development & Assets Company Ltd. (IPC) Ltd, which is responsible for the development of Israel's three commercial seaports in Haifa, Ashdod and Eilat, the EU accounts for 55% of Israel's foreign trade (€23 billion). The EU's first financial assistance to Palestinian territories was in 1971 through the United Nations Relief and Work Agency for Palestine Refugees in the near East, the UNRWA and it has consistently been since then the largest aid donor for Palestinians (Al-Fattal, 2010: 54).

The main bone of contention between different authors is not whether the EU is a “payer” - undoubtedly it is - but if it is also a “player”, that is a party capable of influencing the resolution of the conflict. As Esra Bulut (2010: 43) puts it: “A multifaceted profile of a complex player, not just payer, emerges from the analysis of various dimensions of EU involvement”, emphasising the EU's political role in the conflict. Others, like Rosemary Hollis, argue that the EU stopped being a player by following the US in the Hamas boycott in 2006 and labelling it as a terrorist organisation (in Bulut, 2010: 45). Following the strategy of isolating Hamas, EU donations also decreased, thereby collectively punishing all the Gazan population and missing an opportunity to enhance Palestinian unity. This undermined the EU role as a potential stakeholder in the conflict. Others consider that the EU has never played a political role in the conflict and has only been able to have an influence through economic means. Voltolini asserts that despite its persistent and evident involvement the EU is considered an actor with a secondary role (Voltolini, 2013: 42) and Hollis (in Bulut, 2010: 32) affirms that the EU role is so limited that it “only acts when the USA gives it permission to”. Along the same lines these authors establish that the EU political role is extremely unbalanced in comparison to its economic impact, both through aid and trade.

Could the EU do more?

A further difference of opinion among analysts is the extent to which the EU is responsible for its own lack of influence, using Arab disunity as an excuse (Isma'i, 2011: 33), or whether the EU is doing as much as it can in the face of the reluctance of the other parties to let it participate. Stettler (in Diez, Pace, Rumelili and Viktorova, 2006: 25) reminds us that, even if Palestinian activists have wished for the EU to take a more direct political role, they forget the “limited compulsory influence which the EU has on Israel”. Möckli (in Bulut, 2010: 13) argues that the difficulty in gaining recognition as a relevant agent in Middle East diplomacy has led to the EU desisting from trying to establish an independent role and has instead started “to seek to influence US policy”. Another disadvantage the EU suffers is as Möckli states (in Bulut, 2010: 14) that “neither the US nor Israel approve of a European role in Middle East diplomacy”. All too often EU statements and positions have lent weight to the “commonly held perception in Israel that Europe is pro-Palestinian”(in Diez, Pace, Rumelili and Viktorova, 2006: 31). An illustrative instance of this was in April 2001, when Shimon Peres, at the time Israel's Foreign Minister, publicly rejected an offer from the European Union to arbitrate in the conflict, affirming that Washington was Israel's preferred peace partner. Peters and Dachs (in Isma'i, 2004: 38) also state that there is the belief in Israel that Europe cannot be trusted. This has also lead some Arab states to overlook the EU role, holding the belief that at the end of the day “the US is the sole holder of influence” (Isma'i, 2011: 30). Others state that the European role has oscillated between one that resembles that of an “independent and effective partner and one that resembles that of a follower or a secondary partner” (Nafi'l, 2004: 136).

EU internal divisions

What all of the authors seem to agree on is that the main obstacle to EU influence is internal division: EU member states are more united in terms of economic policy than in their political standpoint. As Al-Fattal (2010: 34) states: “the EU is an expression of the discussions among its member states, which makes the EU appear divided and paralysed at times. There is a disagreement on the conflict, some put more emphasis on Israel's security while others put it on the human security perspective.” For example, only 8 of the 27 states currently fully recognise the Palestinian Authority (Sikorski, 2010: 34). Hollins (in Bulut, 2010: 56) points to “the lowest common denominator”, referring to the fact that any agreement only includes items that all member states can agree on. Hisham (in Isma'i, 2011: 38) identifies three main currents in the European Union:

one group lead by France, Italy, Spain and Ireland, who call for an active and effective European role regarding the Arab-Israeli conflict; another group lead by the United Kingdom which considers that the EU should not undertake a role that might place it in opposition to the USA; and finally a group around Germany, Belgium, the Netherlands and Denmark who tend to give full backing to US initiatives. Esra Bulut comments on “the puzzling diversity in the assessments of the EU role: what are the different objectives and priorities of those making them?”, which leads to some of the parties seeing the EU as a “inconsequential actor with nevertheless useful funds and technical expertise.” (Bulut, 2010: 36)

The EU is also divided when it comes to its institutions. It has so many different agencies that internal coordination is complicated. The EU has 16 different institutions and other bodies, among which are the European Parliament, the European Council, the European Commission and the Court of Justice of the European Union.

Subordination of EU policy to US policy

Where there is full agreement among the authors studied is that, regardless of a possible role for the EU, it certainly has not been a major player to date. Since 1967 Israel has become the dominant power in the Middle East, with unconditional US support, leaving very little space for the EU to manoeuvre. It is difficult for the EU to adopt an independent policy, with regard to the US for a variety of reasons: the limited political influence that economic assistance creates, the reluctance of the Israelis to allow the EU to play a central role, the belief among all the relevant actors that the United States is the truly vital player in any peace process, Europe's distaste for traditional balance-of-power politics, and the internal divisions within Europe. Due to its special relationship with Israel and the influence of the Jewish lobby on US policy, it is impossible for the US to play a neutral role (Hemmer, 2010: 22).

In this project we have aimed to discover if the EU has started to use its economic clout to put pressure on Israel politically. This would involve the EU using its role as a “payer” to become a “player”. Is the EU leveraging its payer role to become a player?

The 2013 Guidelines

Up to 2013

The 2013 Guidelines are the latest in a series of political statements and initiatives coming out of Europe. Politically the EU position has not undergone any dramatic changes since a single foreign policy position on this matter was formulated in the 1970s (Diez, Pace, Rumelili and Viktorova, 2006: 7) The EU has been quite unified as to what it considers to be the only way forward for conflict resolution in Israel and Palestine. It calls on Israel to withdraw its military forces from the Occupied Territories and to stop all settlement activities, including the evacuation of the existing settlements. Furthermore, it also calls for the establishment of an independent Palestinian State and a halt to any violent activities by Palestinians. Palestine and the Arab states must also recognise the state of Israel within its internationally recognised borders. (Isma'i, 2011: 17) Since the 1980s it has made many pronouncements on Israeli policies: against the wall, the settlements and the occupation. It has also called for the establishment of an independent Palestinian State: “the EU has been quite consolidated (sic) over what it considers the only way forward for conflict resolution in Israel and Palestine; it is in the way to do it that the member states differ” (Diez, Pace, Rumelili and Viktorova, 2006: 7). But at the same time relations between the EU and Israel have become “constantly deepening economic relations” (Sarto, 2011: 45) although the situation on the ground hasn't changed for the better, but rather has worsened. This lends support to the notion that current EU policy is to strengthen economic ties despite EU political ambiguity. The group of member states led by Germany seem to hope to continue without needing to take a firm stand either way if they can consolidate economic ties with both sides. As a result of this Europe has not intensified its diplomatic discourse while it has actively developed trade relations with Israel. Heller (2004: 34) mentions that “the EU has been receptive to Israeli suggestions to separate “politics” from “economics” by compartmentalising the Arab-Israeli conflict from the development of EU-Israel relations”. Should we therefore consider the EU an “economic giant” but a “political dwarf”? (Al-Fattal, 2010: 24)

Furthermore, as Sarto states, “the deepening of relations with Israel without applying any sort of conditionality (unlike in the case of Hamas, boycotted after the 2006 election victory in Gaza), has eroded the EU's legitimacy among the Palestinians, and this is far more pertinent than any EU concession to the Arab side” (Sarto, 2011: 34).

In 1995 the European Union and Israel signed an Association Agreement. Then, in 1998 the European Union at various levels and through various bodies recognised the exceptional status of the Occupied Territories, excluding them from the terms of the Association Agreement. In February 2010 the European Court of Justice established that “products originating in the West Bank do not qualify for preferential customs treatment under the EC-Israel Agreement”³. This was the first time that the EU differentiated Israel from the Occupied Territories, since until then as Hollis (in Bulut, 2010: 98) states, “EU actions do not make clear distinctions between dealing with Israel *per se* and with Israeli enterprises and settlers in the Occupied Territories”.

In effect, in 2010, the EU took its political discourse against the settlements a step further. But, has this changed the facts on the ground? The main problem is that Israel has established its de facto international borders to include the Occupied Territories. “Israel itself does not distinguish between the Occupied Territories and its internationally recognised territory” (Bulut, 2010: 23). Nonetheless Tocci (in Bulut, 2010: 54) has written that “Israel has not been required by the EU to acknowledge officially that products produced in settlements do not originate in Israel”, provoking complex problems for the EU in establishing and labelling product origins, in particular since it is Israel that labels them. As Anne Schuit (2014) states, “Israel does not distinguish between the territory of Israel proper and the territories it occupies, and thus labels products stemming from the settlements to originate from Israel. Despite the fact that Israel hereby violates the provisions of the Agreement, the European Commission so far has not taken any meaningful steps to stop this practice. The EU leaves it to the individual member states to prevent settlement products from entering the European markets, and relies on their customs authorities to verify the origin of the products”⁴.

Publication of the 2013 Guidelines

The European Commission’s new Guidelines (see Annex B) regarding the award of EU support to Israeli entities or to their activities in the territories occupied by Israel since June 1967 made headlines for months in Israel. The feeling in Israel, according to Felix Neugebauer (2014), “is that for the first time an international body has taken an effective measure that goes beyond the usual verbal criticism of Israel’s activities in the Occupied Territories (the West Bank, the Gaza Strip, the Golan Heights and East Jerusalem)”. From 2014 onwards, agreements concerning

³ Court of Justice of the European Union , PRESS RELEASE No 14/10 , Luxembourg, 25 February 2010

⁴ More information at:

<http://www.ypri.org/research/34-eu-import-of-products-originating-from-the-israeli-settlements-on-the-west-bank>

community-funded programmes, such as research grants, scholarships and cultural exchanges, must state explicitly that they apply to Israel in its pre-1967 borders.

The European Commission states that the EU “does not recognise Israel’s sovereignty” in any of the territories captured in 1967, “irrespective of their legal status under domestic Israeli law.” (see Annex B) While this has been the EU position for years, the new Guidelines, and the ongoing debate about labelling products from West Bank settlements, demonstrate that the EU is becoming increasingly impatient with Israel’s continuing ‘colonisation’ of the West Bank.

The Guidelines are also a sign that the EU has realised that current Israeli policies may render inviable the two-state solution, that the EU and its member states have diplomatically and economically supported ever since the Oslo process. Though disputing the legality of Israeli control of territories beyond the pre-1967 line, Brussels has always expressed its commitment to Israel’s security and right to exist. While EU member states are deeply divided with regard to other questions dear to Israel, they have a common position on Israel’s settlement policy. The Guidelines distinguish between pre-1967 Israel and the territories; they delegitimise the occupation, not the state of Israel. (Neugebauer, 2014)

Limited scope of the Guidelines

The Guidelines apply only to joint programmes of Israel and the European Union itself, not to the EU’s 28 member states’ bilateral relations with Israel. In effect, this provision waters down any impact the Guidelines could have because most initiatives both economically, such as import controls, and politically, such as cultural exchanges, take place at the nation state level.

A turning point?

The 2013 Guidelines represent a turning point in the context of EU-Israeli trade relations: never before has the EU proposed limitations of this kind on Israel. This may be because Israel and Europe share such strong economic relations that economic sanctions would also harm EU member states. Even though in 2004 the Israeli Ministry of Foreign Affairs recognised that restrictions of this kind could harm the Israeli economy and cause serious economic and political damage to Israel, the EU failed to apply this kind of pressure for nine years. (Diez, Pace, Rumelili and Viktorova,

Are the Guidelines insufficient or overambitious?

The EU seems to underestimate its potential influence on Israel. Israel is not as dependent on EU money for survival as is the Palestinian Authority but EU financial aid and trade is by no means negligible. “Economic means have played a greater role in effecting a broader-scale political change in Palestine”, since the PA depends on substantial EU assistance for its daily existence and management of its fledgling institutional structure.(Diez, Pace, Rumelili and Viktorova, 2006: 22) Aid is the EU's most important bargaining chip, since it is the largest donor in the region. Furthermore, trade relations offer significant leverage for the EU. According to Alejandro Pozo (2012), in his study “Security as a business”, Israeli arms exports to Europe totalled \$1,600 million: one of Israel's biggest markets is defence.⁵

Do the Guidelines merely pay lip-service to EU policy on ethical trade while in fact the international military-industrial complex continues to operate on a basis of business as usual?

Operation of the Guidelines

We have been unable to find any data on specific funding for measures to implement the Guidelines in the EU as a whole and also for member states. The Guidelines refer to relations between Israel and the EU as a whole but without specific actions it is unclear how these Guidelines can be put into effect for the regulation of bilateral relations such as trade with member states.

A further problem is the distinction between Israel and the Occupied Territories from a commercial point of view. Companies trading from the Occupied Territories are usually part of larger Israeli concerns and can easily camouflage the precise location of their activities.⁶

5 A major selling point for Israeli arms exports is that they are “tested in the field”. As the charity War on Want states: “The new Watchkeeper drone being developed for the UK military is based on a model that Israel has ‘field tested’ in attacks on Gaza which left many Palestinians dead, including children.” More information available at: <http://www.waronwant.org/news/press-releases/18040-new-uk-drone-field-tested-on-palestinians>

6 The charity Who Profits analyses which Israeli companies profit from the Occupation. Arava Export Growers is an example of an Israeli company based in Israel which also has market gardens in the Occupied Territories. For more information: <http://www.whoprofits.org/company/arava-export-growers>

Beyond the Guidelines

Some consider flourishing economic relations as an implicit acceptance of the current situation. As Al-Fattal states, “The EU has often applied post-conflict resolution mechanisms to the Palestinian Territories, while at the same time (deliberately or unintentionally) postponing or neglecting to deal with the core issue: the occupation.” Lending economic support to the PA without ending the occupation might be considered “a substitute for international political will and to compensate for the lack of genuine bilateral negotiations between the parties”(Al-Fattal, 2010: 19). Aid alone cannot buy peace. Right from the start the EU has used a post-conflict peace-building strategy when there is still a continuing conflict. To the point that international aid has in a way ended up being harmful: it attempts to shore up a tragic *status quo*.

There is a further factor that may have a decisive influence on the course of events: the growing social movements exerting pressure on all organisations in Israel and Europe. The Boycott, Divestment and Sanctions (BDS) movement⁷ is a significant example of this kind of pressure group⁸. Through these actions European citizens are demanding that the EU honour its values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. The growth of these movements has gone hand in hand with the increasing severity of Israeli actions. The BDS has become a lever for influencing the current state of affairs. It has failed so far to have a significant economic impact but it has raised awareness of what is going on in Israel and Palestine. This has made it harder for the EU to casually enter into new agreements.

It is too early to say for sure if the EU Guidelines are having any real effect. The policy is certainly in place and if the conditions are favourable in terms of social pressure and political will they may be applied. But, without continued pressure from social groups and political leaders the guidelines may be in the long run another missed opportunity. Are they worth the paper they are written on?

7 “In 2005, Palestinian civil society issued a call for a campaign of boycotts, divestment and sanctions (BDS) against Israel until it complies with international law and Palestinian rights.” The BDS is modelling its campaign on the Anti-Apartheid campaign which took place in the 1980s in South Africa. More information available at: <http://www.bdsmovement.net/>

8 For example, at the beginning of this year “Dutch pension fund giant PGGM had withdrawn its investments from Israel’s five largest banks because of their involvement in West Bank settlements”. Available at: <https://www.middleeastmonitor.com/articles/10144-spring-in-the-step-of-bds-as-a-worried-israel-plans-push-back>

Conclusions

The Israeli-Palestinian conflict, one of the longest in modern history is influenced by many different actors. Many have discussed the role the EU has to play in it, whether its influence is only economic or also political, but many seem to believe that the EU is underplaying its hand.

The 2013 Guidelines offer a new opportunity to intervene in the conflict, by deriving influence from the EU's economic position. Do the Guidelines point to a new political path? It is the first time that the EU has shown its disagreement with Israeli policy not just through political statements but through economic policy.

But, are they applicable? If Israel labels its products in a way that masks their geographical origin, it is difficult for the EU and its citizens to distinguish between Israel and the Occupied Territories. Further research is necessary to evaluate specific indicators, such as reported human rights infringements and expansion of settlements in the Occupied Territories.

The core problem of these Guidelines is that they distinguish between Israel and Israeli companies in the Occupied Territories as if they were different, but very often they are separate parts of the same company. How then is the EU supposed to know who it can promote economic relations with?

The 2013 Guidelines could be no more than grandstanding. The EU seeks to honour its core values but is crippled by its own internal divisions.

The Guidelines lay the basis for an important turn in events but they don't ensure it will happen. Alone they are insufficient. There is a lack of specific measures, mechanisms and funding for these guidelines to be carried out and evaluated.

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Annex A: EU press statement

Statement by the Delegation of the European Union to the State of Israel on the European Commission Notice (16.07.2013)

On June 30 European Commission adopted a Notice containing guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards. These guidelines set out the territorial limitations under which the Commission will award EU support to Israeli entities

These guidelines were prepared as a follow up to the political decision taken by the foreign ministers of the EU Member States at the EU Foreign Affairs Council of 10 December 2012. This stated that, "all agreements between the State of Israel and the EU must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967."

The guidelines are also in conformity with the EU's longstanding position that Israeli settlements are illegal under international law and with the non-recognition by the EU of Israel's sovereignty over the occupied territories, irrespective of their legal status under domestic Israeli law.

At the moment Israeli entities enjoy financial support and cooperation with the EU and these guidelines are designed to ensure that this remains the case. At the same time concern has been expressed in Europe that Israeli entities in the occupied territories could benefit from EU support.

The purpose of these guidelines is to make a distinction between the State of Israel and the occupied territories when it comes to EU support.

The European External Action Service has informed the Israeli Mission to the EU prior to the publication of the notice and has invited the Israeli side to hold discussions on the agreements which are in preparation.

Annex B: The 2013 Guidelines

19.7.2013

EN Official Journal of the European Union

C 205/9

Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards

2013/C 205/05

Section A. GENERAL ISSUES

1. These guidelines set out the conditions under which the Commission will implement key requirements for the award of EU support to Israeli entities or to their activities in the territories occupied by Israel since June 1967. Their aim is to ensure the respect of EU positions and commitments in conformity with international law on the non-recognition by the EU of Israel's sovereignty over the territories occupied by Israel since June 1967. These guidelines are without prejudice to other requirements established by EU legislation.
2. The territories occupied by Israel since June 1967 comprise the Golan Heights, the Gaza Strip and the West Bank, including East Jerusalem.
3. The EU does not recognise Israel's sovereignty over any of the territories referred to in point 2 and does not consider them to be part of Israel's territory, irrespective of their legal status under domestic Israeli law (2). The EU has made it clear that it will not recognise any changes to pre-1967 borders, other than those agreed by the parties to the Middle East Peace Process (MEPP) (3). The EU's Foreign Affairs Council has underlined the importance of limiting the application of agreements with Israel to the territory of Israel as recognised by the EU (4).
4. These guidelines do not cover EU support in the form of grants, prizes or financial instruments awarded to Palestinian entities or to their activities in the territories referred to in point 2, nor any eligibility conditions set up for this purpose. In particular, they do not cover any agreements between the EU, on the one hand, and the Palestinian Liberation Organisation or the Palestinian Authority, on the other hand.

Section B. SCOPE OF APPLICATION

5. These guidelines apply to EU support in the form of grants, prizes or financial instruments within the meaning of Titles VI, VII and VIII of the Financial Regulation (5) which may be awarded to Israeli entities or to their activities in the territories occupied by Israel since June 1967. Their application is without prejudice to specific eligibility conditions which may be laid down in the relevant basic act.
6. These guidelines apply:
 - (a) for grants — to all applicants and beneficiaries, irrespective of their role (sole beneficiary, coordinator or co-beneficiary). This includes entities participating in the action on a no-cost basis (6) and affiliated entities within the meaning of Article 122(2) of the Financial Regulation. This does not include contractors or sub-contractors selected by grant beneficiaries in conformity with procurement rules. As regards third parties referred to in Article 137 of the Financial Regulation, in the cases where the costs of financial support to such third parties are eligible under a call for proposals the authorising officer responsible may, where appropriate, specify in the call for proposals and in the grant agreements or decisions that the eligibility criteria set out in these guidelines also apply to the persons that may receive financial support by the beneficiaries;
 - (b) for prizes — to all participants and winners in contests;
 - (c) for financial instruments — to dedicated investment vehicles, financial intermediaries and sub-intermediaries and to final recipients.
7. These guidelines apply to grants, prizes and financial instruments managed, as the case may be, by the Commission, by executive agencies (direct management) or by bodies entrusted with budget implementation tasks in accordance with Article 58(1)(c) of the Financial Regulation (indirect management).
8. These guidelines apply to grants, prizes and financial instruments funded from appropriations of the 2014 financial year and subsequent years and authorised by financing decisions adopted after the adoption of the guidelines.

Section C. CONDITIONS OF ELIGIBILITY OF ISRAELI ENTITIES

9. As regards the place of establishment of Israeli entities:

- (a) In the case of grants and prizes, only Israeli entities having their place of establishment within Israel's pre-1967 borders will be considered eligible;
- (b) In the case of financial instruments, only Israeli entities having their place of establishment within Israel's pre-1967 borders will be considered eligible as final recipients.

10. The place of establishment is understood to be the legal address where the entity is registered, as confirmed by a precise postal address corresponding to a concrete physical location. The use of a post office box is not allowed.

11. The requirements set out in section C:

- (a) apply to the following types of legal persons: Israeli regional or local authorities and other public bodies, public or private companies or corporations and other private legal persons, including non-governmental not-for-profit organisations;
- (b) do not apply to Israeli public authorities at national level (ministries and government agencies or authorities);
- (c) do not apply to natural persons.

Section D. CONDITIONS OF ELIGIBILITY OF ACTIVITIES IN THE TERRITORIES OCCUPIED BY ISRAEL

12. As regards the activities/operations of Israeli entities:

- (a) In the case of grants and prizes, the activities of Israeli entities carried out in the framework of EU-funded grants and prizes will be considered eligible if they do not take place in the territories referred to in point 2, either partially or entirely;
- (b) In the case of financial instruments, Israeli entities will be considered eligible as final recipients if they do not operate in the territories referred

to in point 2, either in the framework of EU-funded financial instruments or otherwise.

13. Any activity or part thereof (7) included in an application for an EU grant or prize which does not meet the requirements set out in point 12(a) will be considered as ineligible and will not be considered as part of the application for the purpose of its further evaluation.

14. The requirements set out in section D:

- (a) apply to activities under point 12 carried out by the following types of legal persons: Israeli regional or local authorities and other public bodies, public or private companies or corporations and other private legal persons, including non-governmental not-for-profit organisations;
- (b) apply also to activities under point 12 carried out by Israeli public authorities at national level (ministries and government agencies or authorities);
- (c) do not apply to activities under point 12 carried out by natural persons.

15. Notwithstanding points 12-14 above, the requirements set out in section D do not apply to activities which, although carried out in the territories referred to in point 2, aim at benefiting protected persons under the terms of international humanitarian law who live in these territories and/or at promoting the Middle East peace process in line with EU policy (8).

Section E. IMPLEMENTATION ARRANGEMENTS

16. Each Israeli entity referred to in points 11(a) and (b) and 14(a) and (b), which applies for an EU grant, prize or financial instrument, shall submit a declaration on honour as follows:

- (a) In the case of grants and prizes, the declaration will state that the application of the Israeli entity is in accordance with the requirements under points 9(a) and 12(a) of these guidelines, while also taking into account the applicability of point 15 thereof (9). For grants, this

declaration will be drafted in accordance with Article 131(3) of the Financial Regulation;

(b) In the case of financial instruments, the declaration will state that the application of the Israeli entity as a final recipient is in accordance with the requirements under points 9(b) and 12(b) of these guidelines.

17. The declarations under point 16 are without prejudice to any other supporting documents required in the calls for proposals, rules of contests or calls for the selection of financial intermediaries or dedicated investment vehicles. They will be included in the package of application documents for each concerned call for proposals, rules of contests and call for the selection of financial intermediaries or dedicated investment vehicles. Their text will be adapted to the requirements relevant for each EU grant, prize or financial instrument.

18. The submission of a declaration under point 16 that contains incorrect information may be considered as a case of misrepresentation or a serious irregularity and may lead:

(a) for grants — to the measures set out in Articles 131(5) and 135 of the Financial Regulation;

(b) for prizes — to the measures set out in Article 212(1)(viii) of the Rules of Application of the Financial Regulation (10) and;

(c) for financial instruments — to the measures set out in Article 221(3) of the Rules of Application of the Financial Regulation.

19. The Commission will implement these guidelines in their entirety, and in a clear and accessible manner. It will notably announce the eligibility conditions set out in Sections C and D in the work programmes (11) and/or financing decisions, calls for proposals, rules of contests and calls for the selection of financial intermediaries or dedicated investment vehicles.

20. The Commission will ensure that the work programmes and calls for proposals, rules of contests and calls for the selection of financial intermediaries or dedicated investment vehicles published by the bodies entrusted with budget implementation

tasks under indirect management contain the eligibility conditions set out in Sections C and D.

21. In order to clearly articulate EU commitments under international law, taking into account relevant EU policies and positions, the Commission will also endeavour to have the content of these guidelines reflected in international agreements or protocols thereto or Memoranda of Understanding with Israeli counterparts or with other parties.
22. The award of EU support to Israeli entities or to their activities in the form of grants, prizes or financial instruments requires engagement with Israeli entities referred to in points 11 and 14, for example, by organising meetings, visits or events. Such engagement will not take place in the territories referred to in point 2, unless it is related to the activities referred to in point 15.

(1) On the territorial application of the EU-Israel Association Agreement see Case C-386/08 *Brita* [2010] ECR I-1289, paragraphs 47 and 53.

(2) Under Israeli law, East Jerusalem and the Golan Heights are annexed to the State of Israel, whereas the Gaza Strip and the rest of the West Bank are referred to as ‘the territories’.

(3) See *inter alia* the Foreign Affairs Council conclusions on the MEPP adopted in December 2009, December 2010, April 2011, May and December 2012.

(4) The Foreign Affairs Council conclusions on the MEPP adopted on 10 December 2012 state that ‘all agreements between the State of Israel and the EU must unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967’.

(5) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 ([OJ L 298, 26.10.2012, p. 1](#)).

(6) In which case the Israeli entity will finance its participation with funding from other sources, but will nonetheless be treated as a beneficiary and may therefore have access to know-how, services, networking and other opportunities developed by the other beneficiaries as a result of the EU grant.

(7) For example, these could be nation-wide projects to be implemented in Israel, which involve both activities within pre-1967 borders and activities beyond pre-1967 borders (e.g. in settlements).

(8) For example, these could be activities under the European Instrument for Democracy and Human Rights, the Neighbourhood Civil Society Facility and/or the Partnership for Peace programme.

(9) In the case of Israeli public authorities at national level (ministries and government agencies/authorities), the declaration will contain an address for communication purposes that is within Israel's pre-1967 borders and that complies with point 10.

(10) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union ([OJ L 362, 31.12.2012, p. 1](#)).

(11) Subject to the outcome of the comitology procedures that may be required by the relevant basic act.