



EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK  
RÉSEAU EURO-MÉDITERRANÉEN DES DROITS DE L'HOMME  
الشبكة الأوروبية - المتوسطية لحقوق الإنسان

## **Active but Acquiescent: EU's Response to the Israeli Military Offensive in the Gaza**

### EXECUTIVE SUMMARY

In view of Israel's military offensive in the Gaza Strip between 27 December 2008 and 18 January 2009, which caused an unprecedented level of death and destruction, the Euro-Mediterranean Human Rights Network (EMHRN) set out to examine the policies of the European Union (EU) towards the conflict.

The report analyses the EU's policies towards Israel and the Palestinians and the manner in which the EU has deployed these policies, before and during the Operation Cast Lead.<sup>i</sup> It finds that the EU's collective reaction has been marked by a reiteration of largely unchanged policies fraught with old dilemmas, which emerge from a general consensus between the member states:

- On diplomacy, the EU remained largely ineffective:
  - It called for an immediate and permanent ceasefire, yet failed to secure this goal by refusing to exert pressure on Israel and by not engaging with and thus not being able to exert influence on Hamas.
  - The EU condemned attacks on civilians and on UN and medical buildings, personnel and vehicles, yet refrained from calling for an international independent investigation into violations of international humanitarian law (IHL) and international human rights law (IHRL).
  - The EU called for the opening of border crossings and for an end to arms smuggling, but has only engaged in petty negotiations on the precise nature and quantity of humanitarian goods allowed into Gaza.
- On EU aid to the Occupied Palestinian Territory (OPT), the EU proposed a surge in humanitarian aid without demanding from Israel any compensation for or investigation into destroyed facilities funded by the EU which are still under construction, despite its ongoing inability to channel effectively funds to Gaza and regardless of the unsustainability of EU aid policy towards the OPT.
- Finally, the EU asserted its political intention to pursue an upgrade of bilateral relations with Israel, despite the IHRL and IHL violations committed by Israel during and after "Operation Cast Lead" and without having found a legal solution to existing misapplications of EU-Israel agreements.

The report argues that before Operation Cast Lead and particularly since 2006, when Hamas won the Palestinian Legislative Council (PLC) elections, the Union acted within a wider international context within which the escalation of the conflict could take place.

More specifically, the policy of boycotting Hamas and isolating Gaza, financing the PA-controlled West Bank and unconditionally supporting Israel, was not a road to the respect of IHL or a two-state solution, but rather made the accomplishment of these two EU declared objectives for a peaceful Middle East less likely. The military offensive in Gaza was the tragic testimony of this fact.

The degree of divergence between the member states goes far in explaining the emergence of three points of current ambiguity within the EU.

- The first concerns the actual cause of conflict, with some member states assigning unambiguous responsibility to Hamas while others distance themselves from this view.
- The second regards the EU's border monitoring efforts. Whereas on most occasions EU initiatives are mentioned in the context of the need to secure open access and implement the Agreement on Movement and Access (AMA), on other occasions the emphasis is placed on anti-arms smuggling, which could entail a further sealing of Gaza's borders, particularly if actions are taken to detect and destroy tunnels before access is assured.
- A final point of ambiguity regards the formation of a Palestinian national unity government, and in particular whether reconciliation is genuinely favoured by the EU throughout the OPT or whether the EU seeks to reinstate the PA in Gaza given its inability to conduct border monitoring, reconstruction and aid policy under current conditions.

When assessing the EU's response to the military offensive in Gaza,<sup>ii</sup> the observer is struck by the growing "gap" separating EU political aims and legal commitments, and the absence of concrete measures to ensure that such goals are accomplished and commitments kept. Following the analysis of the EU's response, the report argues that a critical reason for this discrepancy between words and deeds lies in the EU's "active" pursuit of the "two state solution" alongside its increasing "acquiescence" to human rights and IHL violations. As underlined by one official, 'the EU and its member states have been blinded by their main objective of Palestinian statehood, neglecting the improvement of human rights and IHL'.<sup>iii</sup>

Moving away from past dilemmas and resolving new ambiguities, concerted efforts would combine a more coherent and consistent general approach based on human rights and IHL. Specific recommendations to ensure a more consistent, credible and effective EU policy towards the conflict aimed at fulfilling the EU's political vision and complying with the EU's legal commitments include:

- First, the EU and its member states should promote and support both independent international and domestic criminal investigations into alleged violations committed during the conflict by all parties;
- Second, the EU must give a longer-term orientation to its aid to the OPT, while being careful to respect the principles of neutrality, impartiality and independence in channelling humanitarian assistance;
- Third, the EU must formulate a viable and well thought-out strategy to engage with a new Palestinian government representing a first step towards Palestinian reconciliation and respecting human rights and democratic principles;
- Fourth, the EU must re-evaluate its border monitoring activities by ensuring that member states' anti-arms smuggling efforts take place only following the regular opening of all crossings to Gaza, by either receiving binding guarantees from Israel that it would not impede the access of EU monitors to Rafah or stationing EUBAM monitors in Egypt rather than Israel, and by ensuring that the Rafah crossing is but one access point, and that Israel allows the full access to and from the Strip.
- Finally, the EU must seriously reassess its bilateral relations with Israel. It is time for the EU to stop its blind eye approach to Israeli actions and introduce the logic of human rights and IHL as the cornerstone of its "political" approach towards the conflict.

---

<sup>i</sup> While focusing on the EU's reactions in the run-up to, and the evolution and aftermath of, "Operation Cast Lead", the report begins by setting the political, legal and policy context in which the EU's reactions are constructed and pursued. The legal framework within which EU policies towards the conflict are pursued consists in two main sets of norms: (1) principles and norms pertaining to international human rights and humanitarian law as well as rules on responsibility of states and of international organizations; and (2) specific EU commitments and instruments that can be of a binding or non-binding nature. The specific policy instruments the EU can deploy in order to contribute to the fulfilment of its goals can be grouped under three main headings: diplomacy, contractual relations and capacity-building, the latter of which includes aid and European Security and Defence Policy missions to the OPT. Each policy heading has built into it different mechanisms for influencing the conflict and promoting the EU's objectives and compliance with legal commitments.

<sup>ii</sup> Regarding the military offensive itself, the report briefly presents an overview of the main actions and violations of IHL. While the EU's response is analysed within the legal framework of IHRL and IHL, we seek to present an overview of the main violations of IHL committed by all sides for the sake of analysing this response, based on the existing documents and reports from EMHRN members, other NGOs, the International Committee of the Red Cross and the United Nations.

<sup>iii</sup> Interview with EU official, March 2009.