

The EU's aid to the occupied Palestinian territory

One year after the
Paris Donors' Conference



Policy Note by CIDSE Working Group Palestine/Israel

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CIDSE is an alliance of 16 catholic development organizations from Europe and North America with a secretariat based in Brussels. The members of the Working Group on Palestine/Israel – Broederlijk Delen, CAFOD, CCFD, Cordaid, Misereor and Trócaire – are actively involved in the region through partners in Israel and the occupied Palestinian territory. Together with our local partners we work to reduce poverty and build peace through development and humanitarian programmes.

Over the years, our efforts have brought much-needed hope to ordinary Israelis and Palestinians, but they have also been severely undermined by the continuing conflict and unlawful occupation policies. Inspired by the principles of Catholic social teaching and the rules of international humanitarian and human rights law, we believe it is our duty to speak up and address those that can fundamentally improve the current situation.

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EXECUTIVE SUMMARY

On 17 December 2007, at the Paris Donors' Conference for the Palestinian State, the European Union confirmed its status as the Palestinians' most generous donor. An unprecedented \$3.4 billion was pledged to support Prime Minister Fayyad's Palestinian Reform and Development Plan for the 2008-2010 period. One year later, it has become clear that this considerable sum will not be sufficient. Despite all the humanitarian assistance and aid efforts, significant improvements in the social-economic situation have not been achieved and, if the EU's policy remains as it is today, there is little hope that this will soon change. Aid alone is unable to compensate for the harm done by the institutionalised and often unlawful Israeli restrictions on Palestinian movement and access.

Despite the Palestinian Reform and Development Plan and close to \$2 billion in donor aid, **Palestinian poverty and aid dependency has only increased in 2008**. This is especially true of the Gaza Strip where life is becoming more and more desperate. In November 2008 Gaza had a poverty rate of 76% and an unemployment rate of 45%, with more than 1.1 million ordinary Gazans dependent on food aid in order to survive. The current situation there not only amounts to an economic collapse but also qualifies as a humanitarian crisis.

While the Palestinian Authority and the donors have largely fulfilled their commitments under the PRDP, Israeli movement and access restrictions have been identified by the World Bank as the main reason for the lack of Palestinian economic growth and development. In the Gaza Strip, the near-complete Israeli closure is destroying the economy and local institutions, and is obstructing the delivery of humanitarian and development aid. In the West Bank, Israeli obstacles to Palestinian freedom of movement increased in 2008 despite commitments given at the Annapolis talks. The Palestinian private sector, which is the engine of sustainable economic growth, continues to be severely constrained and fails to generate adequate revenues for the Palestinian Authority. This failure contributes to the persistent fiscal crisis and seriously raises the question as to whether donors will be able to gradually reduce their direct budget support as foreseen by the PRDP.

The CIDSE Working Group on Palestine/Israel, an alliance of European catholic development organizations, calls on the EU to draw conclusions from the experience of the past year and to urgently revise its policy towards the region. **It is time for the European Commission and the Member States to start investing their political capital in order to discourage the unlawful use of force which undermines their aid efforts.** This includes conducting bilateral relations with the parties to the conflict in a manner that does not violate international or Community law. The upgrading of EU-Israel relations, which was decided at the Association Council in June 2008, provides an excellent opportunity to build a new relationship based on mutual respect for both parties' legal obligations. Policy makers should not let that opportunity go to waste.

In particular, **we call upon the EU to reintroduce the logic of international law and the rights-based approach** in all of its engagements with Israel and the Palestinians, including the provision of humanitarian and development aid.

I. The EU's aid strategy: vision and past implementation

As the largest donor to the Palestinians, the European Union, from the outset has conceived its aid effort as a policy instrument in the Mediterranean region. **Its aid is primarily aimed at strengthening the peace process** in the context of continued Israeli occupation and the transitional agreement between Israel and the PLO. By giving support to the Palestinian Authority (PA) the EU hoped to stimulate Palestinian state-building and development. According to the scenario anticipated, the PA would successfully establish its authority and become an effective administrator and provider of public services, while gaining popular legitimacy. By improving the security situation, it would gradually win the Israeli public's confidence and stimulate their acceptance of a final status agreement, thereby enabling the Palestinians to exercise their right to self-determination.

Based on the Union's *acquis communautaire*, EU policy-makers are convinced that security and stability are not possible without political cohesion and a successful state. They understand that for the peace process to succeed and for Palestinian development to take place, a solid administrative infrastructure is necessary. **Working on a state-building agenda from the very beginning**, the EU also wanted to build confidence among Palestinians in order to achieve readiness for compromise during the negotiations with Israel. The assumption was that stimulating the Palestinian economy would be the key to the success of the ongoing peace process. Economic growth would transform the existing conditions of poverty and dependence on Israel and lay the basis for a viable state.

In the 1990s a consensus existed among the donor community that little or no pressure was to be exerted on the Israeli side, in order not to spoil the outcome of the peace process. So from the early stages on, **the EU deviated from a rights-based approach** – which would have been compatible with its strategic objectives – but rather opted to be pragmatic in order to maintain Israel's cooperation. When supporting Palestinian institutions, the EU's assumption was that the PA's authority would gradually be expanded, both territorially and in terms of competences. In hindsight, this assumption proved wrong. Since the start of the peace process, Israel in many respects tightened its grip on the occupied Palestinian territory. New restrictions on movement became institutionalised and the peace process was accompanied by the biggest settlement expansion since 1967. With the occupation's economic foundations intact and Israel retaining control over external borders and key production factors, the Palestinian socio-economic situation gradually deteriorated.¹

The EU's aid efforts were based on premises that increasingly did not correspond to the realities on the ground. When faced with the PA's difficulties to govern and foster prosperity, the EU nevertheless held on to these premises. Along with other major donors, **it did not sufficiently address the fundamental problems arising from Israel's abuse of effective control** over the occupied Palestinian territory and failed to develop a coherent strategy to tackle violations of international humanitarian and human rights law. The state-building scenario was clearly premised on Israel respecting its duties as an occupying power. Its refusal to do so had far-reaching consequences.

¹ Dr. Anne Le More, "Is aid doing more harm than good? Fifteen years of diplomatic and aid policies in support of Israeli-Palestinian peacemaking", Presentation delivered at the CIDSE seminar on "The EU's aid to the occupied Palestinian territory: How to improve coherence and effectiveness?", Brussels, 7 November 2008.

The outbreak of the second Intifada in 2000 forced donors to shift much of their energy from long-term institution-building to emergency aid.² Assistance was provided to prevent a humanitarian disaster, for the weak Palestinian economy virtually collapsed and Israel refused to fulfil its duty to ensure the welfare of the Palestinian population. The Israeli closure regime, the construction of the Wall since 2002 and the closure of the Gaza Strip only aggravated the situation. The 2006 election victory of Hamas, an organisation on the EU terrorist list, demonstrated the impasse of the EU's aid strategy, as it prompted the Union to isolate the very institutions it had so much invested in. Only in the summer of 2007, after some of the worst intra-Palestinian violence and a dramatic change in the political situation, did the EU resume its original course. Meanwhile much damage to the state-building effort had been done.

II. The Paris Donors' Conference

One year ago, on 17 December 2007, representatives from 87 countries and international organizations gathered in Paris to attend the International Donors' Conference for the Palestinian State jointly hosted by France, Norway, the European Commission and Middle East Quartet Special Envoy Tony Blair. **The Conference was the largest Palestinian donor meeting since 1996 and proved to be a big success:** no less than \$7.7 billion was pledged to support the Palestinians over a three year period (2008-2010). The European Union – Member States and European Commission – confirmed itself as the largest donor and alone pledged a total of \$3.4 billion. These amounts include direct budget support to the PA, development aid, as well as humanitarian assistance.³

The Paris Donors' Conference was built on the momentum created by the Annapolis peace talks between Israel and the PA in November 2007, which foresaw the establishment of a Palestinian state by the end of 2008. Following the violent power struggle between Hamas and Fatah in the Gaza Strip, the conference also constituted **a strong sign of support for Palestinian President Abbas and Prime Minister Fayyad's caretaker government.** In Paris, the international donor community explicitly expressed and demonstrated its confidence in the Palestinian Reform and Development Plan (PRDP), Fayyad's ambitious program for building a peaceful and prosperous Palestinian state.

The PRDP, which requires about \$5.6 billion to be fully implemented, runs over a period of three years (2008-2010) and outlines the key budgetary priorities of the PA. One of its principal objectives is to address the Palestinian fiscal crisis caused by the wide gap between the PA's expenditures and revenues. It introduces fiscal reforms – such as the reduction of the PA's wage bill by reducing government employment – and a series of measures to enhance public financial management. The plan also provides for a Security Sector Reform and Transformation Programme which aims at meeting Israeli and international concerns as well as creating an environment conducive to economic revival. For 2008, the PRDP asked the donor community for \$1,361 million in budget support to finance recurrent costs and \$427 million to

² European Commission, "Overview of EU Relations with the Palestinians": 'The Commission had to significantly increase its humanitarian and emergency assistance to the occupied Palestinian territory in order to avoid a breakdown of basic social services and a humanitarian disaster. The Commission shifted much of its assistance from more long-term institution-building to badly needed humanitarian assistance, support to refugees (through UNRWA), and development assistance'.

(http://www.delwbg.cec.eu.int/en/eu_and_palestine/overview.htm)

³ Website of the French Ministry of Foreign Affairs: http://www.diplomatie.gouv.fr/en/country-files_156/israel-palestinian-territories_290/palestinian-territories_2156/international-donors-conference-for-the-palestinian-state-pledges-recap-22.01.08_10509.html

finance development investment. By 2010 the required budget support would decrease to \$1,250 million while public investments would rise to \$667 million.⁴

The PRDP assumes a real GDP growth rate of 3.5% in 2008, rising to 5% in 2009 and 6% in 2010. Because of the expanding population, this projected growth is expected to yield only a slight rise in income per capita and unemployment is not expected to decline significantly. Along with fiscal reforms, the growing economy would enable the PA to reduce its fiscal deficit from 28.4% in 2007 to 17.1% of GDP by 2010.⁵ At the time of the Paris Donors' Conference, the IMF projected a real GDP growth of 3.0% for 2008.⁶ In a paper presented at the Conference, the World Bank stressed that the growth rates anticipated by the IMF and PRDP would depend on all relevant actors living up to their commitments. The Bank attached particular importance to the relaxation of the Israeli closure regime in order to revive the private sector: *'With the full amount of anticipated aid but no changes in movement and access restrictions, total real growth will continue to be negative, averaging around -2%, during the 2008-2012 period.'*⁷

Shortly after the Paris Donors' Conference, on 1 February 2008, the European Commission launched PEGASE, a new mechanism to channel its financial assistance to the Palestinians. PEGASE differs in many respects from its predecessor, the Temporary International Mechanism (TIM), which was set up after the 2006 Hamas election victory and the suspension of direct aid. Contrary to the TIM, it does not bypass the PA, but works in full coordination and partnership with the Palestinian government. PEGASE has a three-year horizon which corresponds to that of the PRDP and is fully aligned with its priorities. It covers both recurrent expenses and public development investments, but excludes the humanitarian assistance which is provided through the European Community Humanitarian Aid Office (ECHO) and the United Nations Relief and Works Agency (UNWRA).⁸ In Paris the European Commission pledged a total of €440 million (\$650 million) for 2008, with more than €325 million to support the PRDP via PEGASE, making it the single largest donor at the conference.⁹

III. The uneven implementation of the PRDP in 2008

The PRDP constitutes an action plan whose successful implementation is dependent on the fulfilment of the three parallel conditions for Palestinian economic revival identified by the World Bank: donor aid, PA reforms and Israeli resolution of movement and access restrictions. In 2008 both the PA and the international donor community have made significant progress to achieve the objectives set out by the PRDP. Despite these efforts, the virtuous cycles of economic growth arising from parallel initiatives by the three crucial actors has not been achieved. For the past year, the IMF has indicated a modest GDP growth of 0.8 percent. With an average annual population growth of 2.6 percent, this amounts to a decline of per capita income and an overall increase in aid dependency.¹⁰ The humanitarian situation in the Gaza Strip is especially dramatic. With a poverty rate of 76% and an unemployment rate of 45% in

⁴ Palestinian National Authority, *Building a Palestinian State Towards Peace and Prosperity*, Paris, 17 December, p.26.

⁵ Ibid. pp.24-25.

⁶ World Bank, *Palestinian Economic Prospects: Aid, Access and Reform*, 22 September 2008, p.12.

⁷ World Bank, *Investing in Palestinian Economic Reform and Development. Report for the Pledging Conference*, Paris, 17 December 2007, p.19.

⁸ European Commission, PEGASE Factsheets, 28 January 2008.

⁹ Ferrero-Waldner, Speech, Paris Donor Conference, 17 December 2007.

¹⁰ World Bank, *Aid, Access and Reform*, p.18

November 2008, the 76% of the population already receiving direct aid are increasingly looking to the international community for help.¹¹

Much of the responsibility for the dire Palestinian development situation lies with Israel. **Despite its commitments in Paris, Israel has made very little progress with regard to the reduction of movement and access restrictions.** In the West Bank the number of closure obstacles increased rather than decreased in 2008, notwithstanding the clear improvements in the security situation made by the PA. During the same period the general closure of Gaza continued, destroying the local economy and preventing at times even the delivery of the most basic humanitarian aid, a policy which can only be characterised as de-development. The severe consequences of the institutionalised Israeli movement and access restrictions are evident. The Palestinian private sector, which the PRDP rightly identifies as the engine of sustainable economic growth, is unable to live up to expectations and fails to generate enough revenue for the PA. This failure contributes to the persistent fiscal crisis and raises the question as to whether donors will be able to gradually reduce their budget support as foreseen by the PRDP.

1. Donor support

Donor assistance has been crucial to the implementation of the PA's PRDP. According to the special ambassador responsible for the organisation of the Paris Donors' Conference, \$1.5 billion had been disbursed by donors in the form of budget support to the PA by early November 2008. This achievement was referred to as *'the first time that after a donor conference disbursements are above the pledges.'*¹² At public development investment level however, it seems that the donor pledges did not fully materialise. By the end of August, the PA's Ministry of Planning had recorded disbursements for only \$64 million, although estimates indicate that this amount may have risen to \$150 million by the end of September. This contrasts with the \$427 million required by the PRDP.¹³ In this context, donors should take care that their strong focus on state-building and budget support does not prevent them from supporting Palestinian civilian society and investing in sustainable socio-economic development, as has happened in the past.

Although direct budget support to the PA was very substantial, the financial aid was allocated on a rather 'ad hoc and unpredictable basis.'¹⁴ According to the World Bank, the PA was unable to plan expenditure beyond a two-month horizon due to difficulties in securing support and had to rely on monthly assistance packages. Recognising the problem, the European Commission set the example for other donors by frontloading its assistance. Only three months after the Paris Donors' Conference, the Commission made €300 million available to finance activities under the PEGASE mechanism (€229 million) and to support Palestinian refugees through UNRWA.¹⁵ A large share of the money provided through PEGASE was used

¹¹ OCHA, *Protection of Civilians Weekly Report No.287 (19-25 November 2008)*, 27 November 2008, p.1.

¹² Intervention by Mr Pierre Duquesne at the CIDSE seminar on "The EU's aid to the occupied Palestinian territory: How to improve coherence and effectiveness?", Brussels, 7 November 2008; According to the World Bank donors had provided approximately \$1.2 billion USD in recurrent budget support by the end of August 2008 (World Bank, *Aid, Access and Reform*, 22 September 2008, p.34).

¹³ World Bank, *Aid, Access and Reform*, p.34. ; According to the special ambassador responsible for the organisation of the Paris Donor Conference, Pierre Duquesne, roughly \$300 million in project aid had been disbursed by early November 2008.

¹⁴ World Bank, *Aid, Access and Reform*, p.35.

¹⁵ European Commission, "European Commission provides €300 million to PEGASE and UNRWA in fulfillment of its Paris Pledge to support the Palestinian people", 25 March 2008.

to cover the PA's recurrent expenses and has added some stability to the PA's financing patterns. By November 2008, the European Commission had committed €486 million, thereby exceeding its Paris pledge. Of this total amount €311 million was channelled through PEGASE – €258 million for budget support and €53 million for development projects – and €142 million were provided through UNWRA and ECHO.¹⁶

2. PA reforms

Reports indicate that during the past year **the PA has largely maintained the path set out by the PRDP and has made significant progress in the implementation of its fiscal reforms.** One crucial step was the reduction of the wage bill, achieved by reducing government employment from over 180,000 at the end of 2007 to approximately 141,000.¹⁷ This containment measure, along with other fiscal and public finance management reforms have reduced the recurrent deficit from about 26.7% of GDP in 2007 to about 22.5% in 2008, qualified by the World Bank as '*a remarkable step towards fiscal discipline given the difficult environment.*'¹⁸ Nevertheless, the fiscal crisis persists. In the absence of economic growth and continued Israeli restrictions, the PA is unable to generate the anticipated revenue and will need significantly more external budget support in the future.¹⁹ Given the inadequate social safety net and with unemployment on the rise, the potential social consequences of the drastic downsizing of the PA's work force should be taken into consideration.

Besides public finance reforms, the PA also committed to reform and transform the security sector in order to establish law and order in Palestinian cities. This year it has made considerable efforts to achieve that goal. Following the Nablus security operation in late 2007, large contingents of Palestinian security forces were deployed in Jenin and most recently in Hebron. These deployments have produced **clear results in terms of safety and security.** At the same time, however, the PA was also confronted with two major problems which severely undermined the impact of its security efforts: the lack of control over Gaza and continued Israeli incursions in the West Bank.²⁰ While the PRDP correctly identifies the establishment of a secure environment as a precondition for economic recovery, it is also important that donors continue to make sure that force is not used in an arbitrary or authoritarian manner, especially in the current political context.

After the take-over of power by Hamas in June 2007, **the PA no longer controls the Gaza Strip and is largely unable to implement the necessary reforms and development investments there.** The PRDP is based on the assumption that this is a temporary constraint and fully integrates Gaza in terms of recurrent and development expenditures.²¹ In case the isolation of Gaza should continue, the PA committed itself '*to work to maintain the supply of humanitarian assistance, the continued payment of public sector salaries and social transfers,*

¹⁶ European Commission, DG Relex, "EC assistance to the Palestinians in 2008 (last updated November 2008)".

¹⁷ World Bank, *Aid, Access and Reform*, p.28.

¹⁸ World Bank, *Country Brief – West Bank and Gaza*, September 2008.

¹⁹ For 2008, the need for recurrent budget support was recently estimated by the World Bank at about \$1.85 billion, which is almost half a billion more than foreseen by the PRDP. (World Bank, *Aid, Access and Reform*, p.30.)

²⁰ World Bank, *Aid, Access and Reform*, pp.32-33.

²¹ PNA, *Building a Palestinian State*, p.30: 'While the actions of Hamas in Gaza have had an impact on our ability to implement our reform and development agenda there, the PRDP is prepared on the assumption that this is a temporary constraint. Gaza is fully incorporated into the PRDP, both in terms of recurrent and development expenditures'.

and the provision of critical basic services - including electricity, water and sanitation, and health and education'.²² However, because of the Palestinian political rift and the Israeli closure even the provision of basic services has proven difficult in 2008. For example, in the health and education sectors the Hamas-Fatah dispute has resulted in large-scale strikes which started at the end of August and continue today. These strikes not only affect the quality of the education and health services, but also result in a situation where tens of thousands of public servants are being paid by the PA for 'not making any contribution to development'.²³ Donors should be aware that the Palestinian political divide and current politicization of the situation negatively impacts on aid efficiency and should undertake steps to address this problem.

3. Resolution of Israeli movement and access restrictions

In 2008 Israel made extremely limited progress in reducing its movement and access restrictions imposed on Palestinians in Gaza and the West Bank. In fact, the September 2008 OCHA report indicates that the number of closure obstacles has risen rather than decreased from 563 in the beginning of 2008 to 630 in September, amounting to a 12% increase. These figures are indicative, but do not capture the entire scope of the Israeli matrix of control. Other layers of this system include prohibitions on access to vast areas of land combined with a permit regime, restrictions on the use of main roads, 'flying' checkpoints, curfews, and age and gender restrictions.²⁴ The construction of the Wall on occupied Palestinian territory continued in violation of international law, destroying property and separating Palestinians from their neighbours and families, from their land and from basic services.

Israeli measures to enhance Palestinian movement and access were often misleading and did not fundamentally improve the situation. For example, up until September of this year, the Israeli army publicly announced the removal of a total of 100 closure obstacles. Only 25 of these, however, were considered by OCHA as genuine obstacles, the others were either seen as insignificant or had already been removed in the past.²⁵ During the same period, Israel also invested vast sums of money in the construction of so-called 'fabric of life roads', routes that re-connect Palestinian communities severed by Israeli obstacles or restrictions using tunnels and underpasses. Some of these roads have eased Palestinian movement, but at the same time they also kept intact and even further entrenched the discriminatory Israeli system of restrictions in the West Bank. The OCHA report concludes: '*In reflecting on the policy implemented for the last eight years, one can note that what was once justified by the Israeli authorities as a short-term military response to violent confrontations and attacks on Israeli civilians, appears to be developing into a permanent system; a system, which is fragmenting the West Bank territory and affecting the freedom of movement of the entire Palestinian population*'.²⁶

The current Israeli restrictions are primarily linked to the Israeli settlements, which are illegal under international humanitarian law.²⁷ These settlements, along with the related transportation and security infrastructure, constitute the main reason for the territorial

²² Ibid. p.4.

²³ John Ging, UNWRA's Gaza Director, "The Gaza Strip on the brink of total collapse: What can donors do?", Presentation delivered at the CIDSE seminar on "The EU's aid to the occupied Palestinian territory: How to improve coherence and effectiveness?", Brussels, 7 November 2008.

²⁴ OCHA, *Closure Update - Occupied Palestinian Territory (30 April-11 September 2008)*, September 2008, pp.2-4.

²⁵ Ibid. p.2.

²⁶ Ibid. p.7.

²⁷ World Bank, *Aid, Access and Reform*, p.11.

fragmentation of the West Bank. Not only do they limit Palestinian movement and trade, they also directly or indirectly control almost 40% of the West Bank, thus depriving Palestinians from their most important natural resources: land and water. In 2008 settlement expansion in the West Bank sharply increased in violation of international law, the Road Map and the Annapolis commitments. By September some 2,500 buildings were under active construction. Already at the Paris Donors' Conference, several European and world leaders expressed their concern over the announced increase in settlement activities.²⁸ In May of this year, Benita Ferrero-Waldner, European Commissioner for external relations, reiterated this concern.²⁹

In the Gaza Strip, the continued near-complete Israeli closure has led to a collapse of the economy as well as the local institutions. Due to the ban on exports and all imports except for the most basic humanitarian items, only 23 out of Gaza's 3,900 industries are currently operating, amounting to less than 1%.³⁰ According to the World Bank's assessment *'the damage has been so severe, that it is unlikely that many establishments will be able to recover once the blockade is lifted.'*³¹ As a result of the Israeli restrictions nearly 40,000 farmers and 70,000 workers lost their jobs, making hundreds of thousands more dependent on the UNWRA's food assistance. The heavy shortages of fuel and electricity black-outs disrupt normal life and prevent the already strained water treatment plants from operating at full capacity. As a consequence, about 70-80 million litres of sewage is dumped into the Mediterranean Sea on a daily basis.³² According to the UN's Humanitarian Coordinator the continued Israeli restrictions have caused *'the degradation of daily life for most Gazan civilians – half of them children. People's lives are being increasingly reduced to a daily struggle of obtaining clean running water, fuel for cooking, and fresh foods to maintain their families.'*³³

Not only is Israel not respecting its obligations as an occupying power in Gaza, it is also violating its basic duty under international humanitarian law (IHL) to allow and facilitate rapid and unimpeded passage of all relief consignments, equipment and personnel.³⁴ The ongoing rocket and mortar attacks from Palestinian armed groups targeting civilian areas are unlawful and must be stopped. They cannot however serve as an excuse for Israel's violations. In the past it has been shown that it is perfectly possible to drastically improve living conditions in Gaza without jeopardizing the safety of its soldiers or civilians, a fact explicitly acknowledged by UNWRA.³⁵ The current closure policy constitutes an unacceptable

²⁸ Prominent examples are Tony Blair, Nicolas Sarkozy and Norwegian Minister of Foreign Affairs Jonas Gahr Støre.

²⁹ Ad-Hoc Liaison Committee (AHLC), "Opening Statement of Benita Ferrero-Waldner, Commissioner for External Relations and European Neighbourhood Policy", London, 2 May 2008.

³⁰ OCHA, *The Humanitarian Monitor (occupied Palestinian Territory) No.30*, October 2008, p.5.

³¹ World Bank, *Country Brief – West Bank and Gaza*, September 2008.

³² World Bank, *Aid, Access and Reform*, 22 September 2008, pp.22-24.

³³ OCHA, *Weekly Report No.287*, p.1.

³⁴ The Israeli restrictions on the Gaza Strip have been condemned by the UN High Commissioner for Human Rights as a 'direct contravention of international human rights and humanitarian law'. (UN OHCHR Press release, "Pillay calls for an immediate end to the Israeli blockade of Gaza", 18 November 2008.)

³⁵ John Ging, UNWRA's Gaza Director, "The Gaza Strip on the brink of total collapse: What can donors do?" Presentation delivered at the CIDSE seminar on "The EU's aid to the occupied Palestinian territory: How to improve coherence and effectiveness?", Brussels, 7 November 2008: "There are legitimate security issues, but there are [also] politicised security issues. And we need to separate the two. So [there is the issue of] access for people. Today both of the passenger terminals in and out of Gaza are open. The problem is that they are not open to the civilian population. They're open to a select few. So if one person can go through, then so too can ten. Again if there are security considerations or concerns, then they should be set out very clearly and objectively and not politicised. Equally when it

obstruction of international relief and development efforts.³⁶ In November the French Presidency of the Council of the European Union criticised Israel for completely closing the border crossings into Gaza because *'this disproportionate response will again collectively punish the entire civilian population in Gaza where the humanitarian situation is deeply worrying.'*³⁷ Collective punishment constitutes a serious breach of international law.

Both the European Commission and the EU member states provide substantial financial support to the population of the Gaza Strip and contributed more than half of UNRWA's total budget in 2008. They also finance the industrial fuel needed to operate Gaza's only power plant through PEGASE, although its delivery is subjected to Israeli restrictions.³⁸ Throughout the past year, the power plant was unable to operate at the required full capacity because not enough fuel was allowed in by Israel. At times, the plant had to temporarily cease operations causing wide-spread black-outs and occasional protest from the European Commission.³⁹ In 2008, little if any development assistance has reached the Gaza Strip and various projects to improve the basic services for its 1.5 million inhabitants were unable to be completed or start.⁴⁰

IV. The need for a coherent, effective and rights-based EU policy

The EU has to draw conclusions from the experience of the past year and urgently needs to revise its policy towards the region. While the PA has largely fulfilled its commitments under the PRDP, any real development of the Palestinian territories is blocked by the Israeli restrictions on Palestinian movement and access and by the collective punishment of the civilian population in Gaza. Genuine social and economic progress in the occupied Palestinian territory can only be achieved by addressing these continued violations of international humanitarian and human rights law. Donor aid and PA reforms alone are ineffective.⁴¹

comes to supplies. We have a situation now where most of the fuel into Gaza in reality is coming underground because the legitimate conduit for fuel is still following the policy of restrictive access for fuel to Gaza. And again there's no operational reason for that. It's purely a political decision. Because the pipeline can be opened up to allow 100,000 litres, 500,000 litres, 1,000,000 litres. It's only the turning of a tap. That's all it is. So there's nothing particular in terms of security that prevents that tap from being turned open further. But there are big consequences on the ground (...)"

³⁶ UN OHCHR Press release, "Pillay calls for an immediate end to the Israeli blockade of Gaza", 18 November 2008.

³⁷ Statement by the Presidency of the Council of the European Union on the closure of border crossings into Gaza, 14 November 2008. ; The Presidency also deplored the Israeli refusal to allow the European heads of mission, including the French Consul General in Jerusalem who is the EU Presidency's local representative, to visit Gaza during a field trip to assess the humanitarian and economic situation.

³⁸ European Commission, "PEGASE-Frequently Asked Questions".

³⁹ For example: Benita Ferrero-Waldner, "statement on the closing of Gaza crossings," 14 November: 'I am profoundly concerned about the consequences for the Gazan population of the complete closure of all Gaza crossings for deliveries of fuel and basic humanitarian assistance. I call on Israel to re-open the crossings for humanitarian and commercial flows, in particular food and medicines. Facilitation of fuel deliveries for the Gaza Power Plant should be resumed immediately. International law requires the provision of access to essential services such as electricity and clean water to the civilian population. Recent infringements of the calm agreed in June must not lead to a renewed cycle of violence. I call on all parties to exercise restraint.'

⁴⁰ World Bank, *Aid, Access and Reform*, p.24, 35.

⁴¹ This was also the conclusion of Dr. Anne LeMore's presentation at the CIDSE seminar on "The EU's aid to the occupied Palestinian territory: How to improve coherence and effectiveness?", Brussels, 7 November 2008.

It is time for the EU to start investing its political capital in order to discourage the unlawful use of force. **The Union has to conduct its bilateral relations with the parties to the conflict in a manner that is coherent with its aid policies and does not violate domestic or European law.** It must not accommodate Israel's unlawful practices in any way and needs to take effective measures to prevent Israel from applying bilateral agreements according to its domestic legislation, as has happened in the past.⁴² The upgrade of EU-Israel relations, which was decided on at the Association Council in June 2008, should mark the start of a new relationship based on mutual respect for both parties' obligations. International and Community law should determine the boundaries of the negotiations.

Systematic and institutionalised violations of the basic rules governing occupation run counter to the *acquis communautaire* and cannot go hand in hand with development. Tacit EU consent to these violations runs should be replaced by a political strategy that reverses the destructive dynamics on the ground and results in a co-ordinated and prompt response. For this purpose, the European Commission and the Member States should develop effective and law-based instruments together.

We call upon the EU to reintroduce the logic of international law and the rights-based approach, which was largely abandoned during the peace process. This approach needs to constantly inform the EU in all of its engagements with Israel and the Palestinians, including the provision of humanitarian and development aid.

Recommendations:

1. Under IHL, Israel has an obligation to ensure the welfare of the civilian population in the territory it occupies. In the past, the EU's humanitarian and development aid has vastly relieved Israel from this responsibility and the financial burden it entails. The EU should **explore and implement alternative policies in order to reshift the responsibility for the welfare of the Palestinian civilian population to Israel without exposing this population to unacceptable hardship.**
2. Delivery of EU aid should under no circumstances make use of infrastructure, services or goods produced under conditions that violate IHL (i.e. produced in settlements etc.). An obligatory mechanism must be installed that screens every aid delivery measure in order to **make sure that it does not directly or indirectly recognise, aid or assist internationally wrongful measures or the situation created by the construction of barriers in the occupied Palestinian territory.** Equally the EU must not allow private enterprises involved in the construction of the Wall and its associated technology to participate in EU-financed programs or be considered for EU tenders.

⁴² By failing to take effective measures to prevent Israel from applying bilateral agreements according to its domestic legislation, the EU gave margin to Israel's practice of applying these agreements to the settlements. This has resulted in EU customs preferences for products originating in Israeli settlements, participation of settlement-based entities in the EU's research framework programs and cooperation with settlement-based contractors in the delivery of EU-funded development aid. For specific examples, see the reports written by Susan Rockwell and Charles Shamas on behalf of the Euro-Mediterranean Human Rights Network (EMHRN): *A Human Rights Review of the EU and Israel 2003-04. Relating Commitments to Actions*, December 2004; *A Human Rights Review of the EU and Israel 2004-2005. Mainstreaming or Selectively Extinguishing Human Rights?* December 2005; *Third Annual Review on Human Rights in EU-Israel relations. Accommodating to the 'special' case of Israel*, June 2007.

3. The EU should urge the parties to the conflict to stop abusing military force or control to target civilians or civilian infrastructure. The EU has an obligation to not relieve any of the conflict parties of their international responsibilities. The EU should therefore explore and apply instruments to **assign the financial responsibility for any damage to EU-financed projects or infrastructure affected by unlawful use of force – such as house demolitions or the destruction of public infrastructure – to the internationally responsible party**. It should also refuse to bear the financial burden for the additional costs of aid delivery caused by unlawful measures such as closures, blockades or embargos on essential supplies, as is the case in Gaza.

4. The *acquis communautaire* stipulates adherence of the EU to the basic principles of IHL in all external relations. The EU has a **duty of non-recognition of internationally unlawful acts** and must refrain from participating in measures determined by unlawful policies. It must ensure, for example, that private enterprises and research institutions in Israeli settlements do not benefit from financial assistance in the context of privileged cooperation between Israel and the EU. **When opening up new areas of bilateral cooperation in the context of the European Neighbourhood policy (ENP) or under the existing Association Agreement, legal precautions should be taken in advance.**

THE CIDSE WORKING GROUP ON PALESTINE/ISRAEL

CIDSE is an alliance of 16 catholic development organizations from Europe and North America with a secretariat based in Brussels. The members of the Working Group on Palestine/Israel – Broederlijk Delen, CAFOD, CCFD, Cordaid, Misereor and Trócaire – are actively involved in the region through partners in Israel and the occupied Palestinian territory. Together with our local partners we work to reduce poverty and build peace through development and humanitarian programmes.

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