



United Against Torture

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**Israel and the Occupied Palestinian Territories
A study on the implementation of the EU
guidelines on torture and other cruel, inhuman or
degrading treatment or punishment**

by

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at the request of the United Against Torture Coalition

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EXECUTIVE SUMMARY

The present study analyses the level of implementation in Israel and the Occupied Palestinian Territories (OPT) of the *EU guidelines on torture and other cruel, inhuman or degrading treatment or punishment* (hereinafter referred to as ‘the guidelines’), which were adopted by the EU General Affairs Council on 9 April 2001 “to provide the EU with an operational tool [...] to support and strengthen ongoing efforts to prevent and eradicate torture and ill-treatment in all parts of the world”. As stated in the Introduction to the guidelines, “[r]espect for human rights features among the key objectives of the EU’s common foreign and security policy (CFSP)”.

The overall aim of this study is to enhance the implementation of the EU guidelines and their contribution towards the prevention and eradication of all forms of torture and ill-treatment in both Israel and the OPT. It is *inter alia* based on a considerable amount of information collected in connection with the author’s mission to the region in October 2007.

Following a **General Introduction**, the study briefly describes, in **Section 2**, the EU foreign policy, including the question of torture and ill-treatment and the contents of the guidelines, which provides numerous examples of measures, which the EU and its Member States will take or urge third countries to take in order to prevent and eradicate all forms of torture and ill-treatment.

In **Section 3**, the study provides an overview of the absolute prohibition of torture and ill-treatment under international human rights law and humanitarian law. The point of departure is in this respect that the right to be free from torture and other forms of ill-treatment or punishment may not be violated under any circumstances and that states of emergency may not be invoked to justify violations of this fundamental right. In the next place, the report shows that the States Parties to the two International Covenants on Human Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) are legally bound to respect the terms of these treaties also in times of armed conflict and occupation, and this concomitantly with the additional application of international humanitarian law.

Section 3 examines how the Israeli and Palestinian legislations respectively deal with torture and ill-treatment. Then, although this report is not aimed at providing an assessment of the many serious political, human rights and humanitarian problems, as such, in Israel and the OPT, the actual existence of torture and ill-treatment in Israel and the OPT is to some extent dealt with in **Section 4**. It is shown that torture and ill-treatment exist in both Israel and the OPT, and that this unlawful treatment is facilitated by several factors, including, among others, a lack of stringent investigative, punitive and disciplinary measures to deal with the problem.

Section 5 of the study then explains the EU relations with Israel and the Palestinian Authority (PA) through the European Neighbourhood Policy, the EU-Israel Association Agreement and the Interim Association Agreement which the European Community concluded with the PLO for the benefit of the PA. It examines, in particular, how, if at all, the question of torture and ill-treatment or related issues have been included in the political dialogue. The EU and its Member States do however provide considerable financial assistance to human rights projects managed by local NGOs.

The level of knowledge and use of the guidelines among the European Commission Delegations (ECDs) and EU Missions in Israel and the OPT is analysed in **Section 6**. While all relevant EU actors contacted in Israel, the OPT and Brussels appear to be aware of the existence of the guidelines, this does not mean that they use them in their daily work. Indeed, overall, the EU Missions do not appear to have set any priorities on the basis of the guidelines for purposes of preventing torture and ill-treatment in Israel and the OPT, and there appears to be only little to moderate support or interest in *formally* upgrading human rights issues on the agenda of the political discussions with Israel and the OPT.

Section 7 of the study deals with the specific actions taken by the EU in order to prevent and eradicate torture and ill-treatment in Israel and the OPT. With regard to the EU-Israel political dialogue it is known that questions relating to administrative detention have been dealt with, although not the subject of torture and ill-treatment as such. There are contradictory opinions as to whether the conditions of detention in Israeli prisons have been formally considered within the political dialogue. In general, it was difficult to get a full and objective view of the extent to which human rights has been on the political agenda with regard to the PA.

Examples of challenges to the prevention of torture and ill-treatment in Israel and the OPT are found in **Section 8**, while **Section 9** contains suggestions for future actions provided by EU representatives, local NGOs and other actors. Although an improvement in the human rights situation in Israel and the OPT is seen to be very difficult, some actors also believe that there *is* room for improvement and that the EU *has* a role to play in this respect.

In **Section 10** the author concludes, *inter alia*, that there is a considerable need to provide both the EU actors and NGOs with more information on the guidelines and how they can be used to promote the eradication of torture and ill-treatment. It is also concluded that human rights in general, and the question of torture and ill-treatment, in particular, cause considerable discomfort to EU actors in their dealings with Israel.

The author's recommendations for future strategies are contained in **Section 11**. After some general recommendations, the section provides 28 specific recommendations to the EU and an additional 18 recommendations to local NGOs, all aimed at strengthening the prevention and eradication of torture and other forms of ill-treatment in Israel and the OPT. The report ends with some concluding remarks in **Section 12**.

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Abbreviations

ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and Peoples' Rights
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
COHOM	EU Council Working Group on Human Rights
CRC	Convention on the Rights of the Child
EC	European Commission
ECD	European Commission Delegation
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECTAO	European Commission Technical Assistance Office for the West Bank and Gaza Strip
EIDHR	European Initiative for Democracy and Human Rights
ENP	European Neighbourhood Policy
EU	European Union
EU COPPS	EU Coordinating Office for Palestinian Support
G.A.O.R.	General Assembly Official Records
GCMHP	Gaza Community Mental Health Programme
GSS	General Security Services
HOM	Head of Mission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICS	Italian Consortium of Solidarity
IDF	Israel Defence Forces
ISA	Israel Security Agency
OPT	Occupied Palestinian Territories
PA	Palestinian Authority
PCATI	Public Committee against Torture in Israel
PICCR	Palestinian Independent Commission for Citizens' Rights
PLC	Palestinian Legislative Council
PLO	Palestine Liberation Organization
TRC	Treatment & Rehabilitation Center for Victims of Torture
UAT	United Against Torture Coalition
UN	United Nations

1 General Introduction

1.1 Preliminary remarks

The overall focus of the present report is to examine the implementation of the European Union (EU) guidelines on torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as “the guidelines”) in Israel and the Occupied Palestinian Territories (OPT). The ultimate purpose of the study is to explore new ways and means for the EU and its Member States to effectively contribute to promote the prevention and eradication of torture and ill-treatment in this region, jointly with relevant public and civil stakeholders.

This is the second annual report of the United Against Torture, a coalition of Palestinian, Israeli and international organisations funded by the European Union. The coalition was created in 2005 by the Italian Consortium of Solidarity (ICS) in partnership with the Public Committee Against Torture in Israel (PCATI), the Treatment & Rehabilitation Center for Victims of Torture (TRC) and the Mandela Institute for Political Prisoners in order to combat torture and other forms of ill-treatment in both Israel and the OPT.

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This report will begin with a brief section on EU foreign policy and the question of torture and ill-treatment, which will also provide basic information on the aforementioned EU torture prevention guidelines. The report will next provide an overview of the prohibition of torture and ill-treatment under national and international law as well as of the situation in Israel and the OPT with regard to the existence of such unlawful treatment.

The report will then generally consider the specific relations that the EU and its Members States have with Israel and the OPT, including the extent to which the question of torture or ill-treatment, and/or other related issues, have been taken into consideration in the drafting of the country reports, action plans and other relevant documents. In the next place, the report will analyse the level of knowledge and use of the guidelines among in particular EU representations, and to the extent possible, it will thereafter focus on specific EU sponsored initiatives and projects aimed at implementing the guidelines in Israel and the OPT. It will end with a number of recommendations to both the EU and NGOs for the purpose of strengthening the prevention and eradication of torture and ill-treatment in this region.

Two clarifications need however to be made. Firstly, this report concerns the situation in Israel and the OPT until the end of October 2007 and it has not taken into

consideration changes that may have occurred thereafter in the relations between in particular the EU and the PA due to the preparations of the peace negotiations between Israel and the PA. Secondly, and as already previously indicated, the views, conclusions and recommendations presented in this report may not be shared by either the EU, the UAT or its individual member organisations. For these views, conclusions and recommendations, as well as for any errors that may exist in the text, the author of the report remains, alone, responsible.

1.2 Terminology

For purposes of this report, the expression “torture and ill-treatment” or “torture and other forms of ill-treatment”, covers torture, cruel, inhuman or degrading treatment or punishment. These forms of ill-treatment are *all* strictly prohibited at *all* times and in *all* circumstances under international law.

The term ‘Occupied Palestinian Territories’ is understood to mean both the West Bank and the Gaza Strip, although technically speaking, Israel has withdrawn from the Gaza Strip. However, it is still in various ways in control of Gaza, including the entry to and exit from that area. The expression Palestinian Authority (PA) refers to the administrative organisation that has, in principle, legislative, executive and judicial authority, but not full sovereignty, over parts of the West Bank and Gaza Strip.

1.3 Methodology

In doing this study, the same methodology has been applied as the one used by the consultant in the carrying out of a similar study on seven different countries for the European Parliament (EP) Subcommittee on Human Rights. That report, entitled *The Implementation of the EU Guidelines on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, was made in association with the World Organisation against Torture and presented to the EP Subcommittee on 28 June 2007.¹

In the first place, questionnaires were consequently sent to various stakeholders in Israel and the OPT, such as the European Commission Delegation (ECD) in Tel Aviv, the European Commission Technical Assistance Office for the West Bank and Gaza Strip (ECTAO), EU Ambassadors and/or other relevant EU contact persons in the EU

¹ The study carried out for the European Parliament concerned the implementation of the guidelines in the following countries: Algeria, Bangladesh, Egypt, Georgia, Morocco, Uganda and Ukraine. For the text of the report, see http://www.omct.org/pdf/various/2007/ep_study_torture_2007.pdf; (that study will hereinafter be referred to as “EP study on *The Implementation of the EU Guidelines on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*”).

Missions, and NGOs particularly active in this specific field. Eleven questionnaires were returned, three from EU actors and eight from various NGOs in both Israel and the OPT.

Secondly, the consultant thereafter met with several officials working on the Middle East within the EC secretariat in Bruxelles on 18 September 2007. Finally, she visited Israel and the OPT from 19 to 30 October 2007 in order to meet with as many stakeholders as possible from the EC Delegations, EU Member States, other European countries, international organisations and local NGOs.

1.4 Acknowledgements

The consultant is much obliged to the diplomatic missions and organisations, who either received her and/or returned the completed questionnaires. Without their valuable cooperation it would have been impossible to draft this report:

- In Tel Aviv: The EC Delegation, the Embassies of Finland, the Netherlands, Norway, Portugal, Sweden, and Switzerland, the International Committee of the Red Cross (ICRC), and Amnesty International-Israel;
- In Jerusalem: The Consulate General of Italy, the ICRC, the Italian Consortium of Solidarity (ICS), the Public Committee against Torture in Israel (PCATI), and B'Tselem;
- In Ramallah: The EC Technical Assistance Office for the West Bank and Gaza (ECTAO), the Dutch Representative Office, the United Nations Office of the High Commissioner for Human Rights (OHCHR), and the Treatment & Rehabilitation Center for Victims of Torture (TRC).

Finally, the consultant expresses her sincere gratitude to the ICS for facilitating her visit to Israel and the OPT.

In connection with her visit, the consultant also held a one day training seminar in East Jerusalem primarily for non-governmental organisations from both Israel and the OPT on the subject of *The EU guidelines on torture and other cruel, inhuman or degrading treatment of punishment: Strategies for their implementation in Israel and the Occupied Palestinian Territories*.

2 EU Foreign Policy and the Question of Torture and Ill-Treatment

2.1 The EU guidelines against torture and ill-treatment

The express purpose of the EU guidelines on torture and other cruel, inhuman or degrading treatment or punishment, which were adopted by the EU General Affairs Council on 9 April 2001, “is to provide the EU with an operational tool to be used in contacts with third countries at all levels as well as in multilateral human rights fora in order to support and strengthen on-going efforts to prevent and eradicate torture and ill-treatment in all parts of the world”. The guidelines are thus wide-ranging, including not only direct EU relations with so called third states, that is to say states that are not Members of the Union, but also international organisations having competence in the human rights field, such as the United Nations and regional human rights organisations.

While not legally binding, as such, the guidelines constitute “*a practical tool to help the EU and its Member States promote respect for international legal rules outlawing torture and other forms of ill-treatment at all times, including in times of war or other kinds of public emergencies*”; the guidelines can thus also be regarded as “an important politico-moral obligation for the EU and its Member States to do their utmost to enhance the protection against all forms of torture and ill-treatment in the world”.²

As stressed in the operational part of the guidelines, “[t]he EU’s *objective* is to influence third countries to take effective measures against torture and ill-treatment and to ensure that the prohibition against torture and ill-treatment is enforced”. In its contacts with third countries, the EU will, therefore, “when deemed necessary, express the imperative need for all countries to adhere to and comply with the relevant international norms and standards and will consequently emphasise that torture and ill-treatment are forbidden under international law.” Finally, “[t]he EU will make its objectives known as an integral part of its human rights policy and will stress the importance it attaches to the prevention of torture and ill-treatment with a view to its global eradication.”³

To achieve these objectives, the guidelines then provide examples of actions that “*the EU will take*” at different levels.⁴ Firstly, the issue of torture and ill-treatment “shall, where relevant,” be part of the human rights component of the political dialogue with third countries and regional organisations. Secondly, the EU will, for instance, make démarches and issue public statements “urging relevant third countries to undertake effective measures against torture and ill-treatment” and also use confidential and public démarches in “well documented individual cases of torture and ill-treatment”. Finally, “[c]ombating and preventing torture and ill-treatment will be considered a priority in bilateral and multilateral co-operation for the promotion of human rights, inter alia in collaboration with civil society, including in the legal field and the field of training.”⁵

² EP study on *The Implementation of the EU Guidelines on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, p. 26.

³ Quotations from part III of the guidelines, section entitled “EU actions in relations with third countries”; emphasis added.

⁴ Italics in original text.

⁵ For these actions, see part III.A of the guidelines.

In the next place, part III B of the guidelines contain a long non-exhaustive list of actions against torture and ill-treatment that *“the EU will urge third countries to take”*, and among them are the following actions, in particular:⁶

- “prohibit torture and ill-treatment in law, including criminal law”;
- “condemn, at the highest level, all forms of torture and ill-treatment”;
- “take effective legislative, administrative, judicial and other measures to prevent the occurrence of acts of torture and ill-treatment in any territory under its jurisdiction”;
- “prevent the use, production and trade of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment and prevent the abuse of any other equipment to these ends;
- adhere to international norms and procedures, including the CAT, the ICCPR, the regional conventions and the various individual complaints procedures;
- adopt and implement safeguards and procedures relating to places of detention;
- establish domestic legal guarantees;
- combat impunity;
- establish and implement standards and measures to protect groups requiring special protection;
- allow domestic procedures for complaints and reports of torture and ill-treatment;
- provide reparation and rehabilitation for victims of torture and ill-treatment;
- allow domestic visiting mechanisms;
- establish national institutions “which can effectively address the prevention of torture and ill-treatment”;
- provide effective training; and
- support the work of the medical professionals, etc.

Among other initiatives, finally, the EU will “continue to raise the issue of torture and ill-treatment in multilateral fora, such as the UN, the Council of Europe and the OSCE” and will also “support the relevant international and regional mechanisms”, such as the Committee against Torture, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the relevant Special Rapporteurs “and stress the need for states to co-operate with the mechanisms.”⁷

⁶ Italics in original text.

⁷ Israel is not a member state of the OSCE, but the organisation maintains “special relations” with six Mediterranean countries, including Israel, see <http://www.osce.org/about/19293.html>. With regard to the Council of Europe, Israel has parliamentary observers to the Council’s Parliamentary Assembly, see http://www.coe.int/T/e/Com/about_coe/member_states/default.asp.

2.2 EU implementation of the guidelines against torture and ill-treatment

As shown in the preceding sub-section, the guidelines provide a rather comprehensive list of measures to be taken by the EU in order to promote the prevention and eradication of torture and ill-treatment in the world. The question is, however, how their implementation is to be monitored. As stressed in part III of the guidelines, “the EU Heads of Mission will include an analysis of the occurrence of torture and ill-treatment and the measures taken to combat it” and they will also “provide periodic evaluation of the effect and impact of the EU actions”. According to a Working Paper published by the General Secretariat of the EU Council in 2002, the “HOMs reports are a very important source of information” and “should include an analysis of the occurrence of torture and ill-treatment, measures taken to combat it, suggest EU action and evaluate EU action taken”.⁸ Specific elements to be contained in the reports are set out in an annex to the Working Paper and they include: the status of ratification of relevant international and regional instruments and complaints procedures, possible patterns of torture, individual cases of torture, implementation of safeguards against torture, the attitude of the government concerned to investigation, rehabilitation and prevention activities, sources of information, evaluation of EU action taken and suggested EU action.⁹

The Council Working Group on Human Rights (COHOM) and the relevant Geographical Working Groups will then, on the basis of the reports submitted by the HOMs “and other relevant information, such as reports and recommendations from UN Special Rapporteurs and Treaty Bodies as well as non-governmental organisations, identify situations where EU actions are called upon, agree on further steps or make recommendations to higher levels.”¹⁰

According to the Working Paper, the HOMs are thus, for instance, “encouraged to send observers to trials where there is a reason to believe that a person has been subjected to torture or ill-treatment. They are also encouraged to visit places of detention and talk with local NGOs.”¹¹

With regard to *bilateral actions*, the Working Paper specifies that the issue of torture and ill-treatment

“should be raised at all relevant levels, where well documented cases of torture and ill-treatment arise, or where protection standards and their implementation need to be strengthened. EU action, in particular on individual cases, may be undertaken confidentially, when that is considered the most effective way of achieving a positive response or relevant out of concern for the victim, his

⁸ EU doc. 15437/1/02, REV 1, COHOM 16, PESC 566 of 10 December 2002, entitled “Working Paper on the Implementation of the EU Guidelines on Efforts to Prevent and Eradicate Torture” (hereinafter referred to as the “Working Paper”), p. 2.

⁹ *Ibid.*, p. 5.

¹⁰ Part III of the guidelines, section entitled “Assessment”.

¹¹ Section 2 of the Working Paper, p. 2.

family or others. In political dialogues or human rights dialogues with third countries, the EU should underline its commitment to the global eradication of torture and other forms of cruel, inhuman or degrading treatment or punishment.”¹²

According to the Working Paper, furthermore, “[t]he EU could carry out demarches on well-documented individual cases of torture and ill-treatment, including torture of human rights defenders, personnel at rehabilitation centres etc.”, and it “should urge the authorities in the country concerned to ensure physical safety, provide information and apply relevant safeguards”. In addition, the EU “should call for prompt investigation, accountability for perpetrators and rehabilitation, redress and reparation for victims.” However, actions on individual cases “should be determined on a case-by-case basis.”¹³

The Working Paper finally provides, for instance, that “[c]ombating and preventing torture and ill-treatment should be considered a priority in bilateral and multilateral co-operation for the promotion of human rights, inter alia in collaboration with civil society, including in the legal field and the field of education and training, in particular of persons responsible for law enforcement.” Consequently,

“[t]he EU should consider offering support for the implementation of recommendations by the UN Committee against Torture ... and other relevant Treaty Bodies, such as ... the UN Special Rapporteur on Torture and the UN Human Rights Committee. The EU could also envisage offering support in the setting up of independent mechanisms and bodies for investigation and offer technical assistance for the investigation and prosecution of torture allegations and the prevention of torture, for example by providing forensic experts, while underlining that responsibility for implementing such recommendations rests with the States to which such recommendations are addressed.”¹⁴

The implementation of the guidelines was assessed by COHOM in the end of 2004, but the results of this assessment has remained confidential.

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If and to what extent the guidelines have been used or are being used by the ECD and EU Embassies in Tel Aviv or the General Consulates and Representative Offices in Jerusalem and Ramallah is difficult to know with any certainty. However, on the basis of the questionnaires received and discussions held with some of these EU actors, there is a good, albeit incomplete, basis for concluding that much more work needs to be done in

¹² Section 3 of the Working Paper, p. 2.

¹³ *Ibid.*, p. 3, para. 3.3.

¹⁴ *Ibid.*, p. 4, section 4 on “**Technical Assistance**”. The UN Special Rapporteur on Torture is here wrongly cited as a Treaty Body; the Special Rapporteurs are not treaty based but belonging to the so called special procedures of the UN Human Rights Council; for more information on the UN special procedures, see <http://www2.ohchr.org/english/bodies/hrcouncil/>

order for the EU actors to fully integrate the guidelines in their work to prevent and eradicate torture and ill-treatment in both Israel and the OPT. The extent of the use of the guidelines will be further dealt in particular in sections 6 and 7 below.

However, before considering the implementation of the guidelines in Israel and the OPT in some detail, this report will first provide some general information about the legal prohibition of torture and ill-treatment, the existence of such unlawful treatment in Israel and the OPT, and the EU relations with Israel and the PA.

3 The Law

3.1 The prohibition of torture and ill-treatment under international law

Although it should be redundant, it is necessary to stress that torture and other cruel, inhuman or degrading treatment or punishment *are strictly forbidden under international law at all times, even in the direst of circumstances*. Notwithstanding the degree of severity of the problem or threat a nation is facing, international law provides no grounds *ever* to torture, or otherwise ill-treat or even degrade other human beings. We may not like what a person is suspected of having done or the acts he or she is suspected of being about to commit, but as human beings we have to raise above such personal and often irrational feelings in order to strictly abide by the law, which must apply equally to all without discrimination. Both international human rights law and international humanitarian law are of undisputed clarity in this respect.

The prohibition of torture and ill-treatment at the international and national levels was dealt with in the UAT first annual report published in 2006¹⁵ as was the applicability of the relevant norms in Israel and the OPT and these subjects need not therefore be dealt with in detail in this report. However, for purposes of clarity and logic, a general overview of the law will be made.

In the first place, the right not to be subjected to torture or other forms of ill-treatment is in particular contained in the following international and regional human rights treaty provisions, among others:

International

- article 7 of the International Covenant on Civil and Political Rights (ICCPR), 1966;

¹⁵ *Getting around the International Prohibition of Torture – Responsibilities of the Israeli Government and the Palestinian National Authority*, Jerusalem, UAT, December 2006, pp. 37 (hereinafter referred to as UAT, *Getting around the International Prohibition of Torture*; the report was written by Professor Antonio Merchesi; the text can be found at: <http://www.unitedagainsttorture.org/>

- articles 1 to 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984;
- article 37(a) and see also article 39 of the Convention on the Rights of the Child (CRC), 1989;

Regional

- article 15 of the European Convention on Human Rights (ECHR), 1950;
- article 5 of the American Convention on Human Rights (ACHR), 1969;
- article 5 of the African Charter on Human and Peoples' Rights (ACHPR), 1981.
- articles 16 and 17 of the African Charter on the Rights and Welfare of the Child, 1990.

At the regional level, moreover, two treaties exist which specifically focus on the prevention and/or punishment of torture and other forms of ill-treatment, namely:

- the Inter-American Convention to Prevent and Punish Torture, 1985; and
- the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987.

Israel is a State Party to the ICCPR, the CAT and the CRC, and its initial and periodic reports submitted under these treaties have been considered respectively by the Human Rights Committee, the Committee against Torture and the Committee on the Rights of the Child. However, Israel has not yet ratified the Optional Protocol to the CAT that provides for independent visiting mechanisms to places of detention. Furthermore, it has neither ratified the Optional Protocol to the ICCPR, which allows for individual communications, nor has it accepted the right to individual petition under article 22 of the CAT. On the other hand, it is of interest to note that Israel is also a State Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). Although not directly dealing with torture and ill-treatment, state actions disrespecting economic, social and cultural rights have been found to frequently be the cause of serious human rights abuses, such as extrajudicial executions as well as torture and ill-treatment.¹⁶ Some of the conclusions and recommendations of the various treaty bodies with regard to Israel will be considered below.

Although the exercise of some of the rights guaranteed by international human rights treaties can be derogated from in public emergencies that threaten “the life of the nation” (art. 4(1) ICCPR and art. 15(1) ECHR) or “the independence or security of the State Party” (art. 27(1) ACHR) to the extent “strictly required” by the exigencies of the situation, an absolute prohibition on derogations from various rights, including the right not to be tortured or ill-treated, is contained in articles 4(2) of the ICCPR, 15(2) of the

¹⁶ See press release on: *OMCT addresses the UN Committee on Economic, Social and Cultural Rights on the root causes of torture and other forms of violence in Kenya and the Philippines*, Geneva, OMCT, 27 November 2007.

ECHR and 27(2) of the ACHR.¹⁷ Although the African Charter on Human and Peoples' Rights does not contain any derogation provision, the African Commission on Human and Peoples' Rights has unequivocally held that the Charter does not allow the States Parties to derogate from its provisions in emergency situations; even a civil war cannot, consequently, be used as a legal shield to violate the rights in the Charter, including the right not to be subjected to torture and ill-treatment in article 5.¹⁸

It follows that international human rights law is applicable not only in times of peace, but also in times of crisis and even war. In times of armed conflict, human rights law is moreover complemented by international humanitarian law. This legal approach has also been adopted by the relevant international treaty bodies. It is in this respect noteworthy that, as shown below, torture and other forms of ill-treatment are also strictly outlawed under the Geneva Conventions and its two Protocols Additional of 1977. However, it needs to be pointed out that, while international human rights law applies to *all* persons without discrimination, international humanitarian law has, in principle, a more narrow field of application. Thus, for instance, common article 3 to the four Geneva Conventions of 1949, which concerns armed conflicts not of an international character, is applicable to "[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, *detention* (emphasis added), or any other cause" (article 3(1)). However, these persons "shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria". To this end, furthermore, "the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

In addition to the prohibition in common article 3, torture, corporal punishment and other forms of ill-treatment are also expressly prohibited by articles 6 and 32 of the

¹⁷ On the question of non-derogable rights, see e.g. SVENSSON-McCARTHY, Anna-Lena, *The International Law of Human Rights and States of Exception* – With Special Reference to the *Travaux Préparatoires* and Case-Law of the International Monitoring Organs, The Hague/Boston/London, Martinus Nijhoff Publishers, 1998 (International Studies in Human Rights Vol. 54), Part IV, pp. 371-563 (hereinafter referred to as SVENSSON-McCARTHY, *The International Law of Human Rights and States of Exception*).

¹⁸ ACHPR, *Commission Nationale des Droits de l'Homme et des Libertés v. Chad*, Communication No. 74/92, decision adopted during the 18th Ordinary Session, October 1995, para. 21.

Fourth Geneva Convention. Article 6 concerns the applicability of the Convention in connection with *occupation*. It is important to add that, according to article 8, “[p]rotected persons may in no circumstances renounce in part or in entirety the rights secured to them by the present Convention”. With regard to the inviolability of rights, article 47 of the Convention, which concerns occupied territories, provides that:

“Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.”

For purposes of the situation in the OPT, it is further important to point out that article 53 prohibits the destruction of property in the following terms:

“Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.”

According to article 147 of the Convention, finally, the following acts, among others, constitute *grave breaches of the Convention*: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, wilfully depriving a protected person of the rights of fair and regular trial, and “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.”

Protocols Additional I and II to the Geneva Conventions, which concern international (Protocol I) and non-international (Protocol II) armed conflicts, also strictly prohibit torture and ill-treatment. Article 75(2) of Protocol I thus provides:

“The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

- a) violence to the life, health, or physical or mental well-being of persons, in particular:
 - i) murder;
 - ii) torture of all kinds, whether physical or mental;
 - iii) corporal punishment; and
 - iv) mutilation;
- b) outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;
- c) the taking of hostages;
- d) collective punishments; and

- e) threats to commit any of the foregoing acts.”

Article 4 of Protocol II in turn contains a list of fundamental guarantees, and of particular relevance for the subject of this report is the second paragraph of this article which reads as follows:

“Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

- a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
- b) collective punishments;
- c) taking of hostages;
- d) acts of terrorism;
- e) outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
- f) slavery and the slave trade in all their forms;
- g) pillage;
- h) threats to commit any of the foregoing acts.”

In addition, article 5 of Protocol II contains further provisions concerning the protection for persons whose liberty has been restricted.

Although Israel has not yet ratified the two Protocols, these treaties restate the basic legal principles on which there has been universal agreement, namely that torture and other forms of ill-treatment are unlawful at all times. Israel has not, in addition, ratified or acceded to the 1998 Rome Statute of the International Criminal Court. Yet, it is significant to note in this respect that, in international armed conflicts the Statute defines as *war crimes*, grave breaches of the Geneva Conventions, such as, among others: “Torture or inhuman treatment, including biological experiments”, “[w]ilfully causing great suffering, or serious injury to body or health” and “[e]xtensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” (article 8(2)(a)). Relevant examples of war crimes in non-international armed conflicts are: “Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “[c]ommitting outrages upon personal dignity, in particular humiliating and degrading treatment” (article 8(2)(c)). Finally, torture may also constitute a crime against humanity (article 7).

International jurisprudence expressly recognises the *peremptory* nature of the prohibition of torture. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has thus held that “the prohibition of torture imposes upon States obligations *erga omnes*, that is, obligations owed towards all the other members of the international

community, each of which then has a correlative right”.¹⁹ In its view, the principle proscribing torture has also “evolved into a peremptory norm or *jus cogens*, that is, a norm that enjoys a higher rank in the international hierarchy than treaty law and even ‘ordinary’ customary rules. The most conspicuous consequence of this higher rank is that the principle at issue cannot be derogated from by States through international treaties or local or special customs or even general customary rules not endowed with the same normative force”.²⁰ As explained by the Court, the *erga omnes* nature of this legal principle “appertains to the area of international enforcement (*latu sensu*)”, while its peremptory nature “relates to the hierarchy of rules in the international normative order”.²¹

It should finally be emphasised that international law not only outlaws torture and other forms of ill-treatment, but also imposes a legal obligation on states to undertake independent, impartial and effective investigations into allegations and suspicions of torture and ill-treatment, prosecute and punish the perpetrators, provide redress to the victims, and ensure that such crimes are not repeated. It would go beyond the framework of this study to deal with these legal duties in detail. Suffice it therefore to say that extensive international jurisprudence exists that provides detailed explanations of the states’ duties in this respect. In order to effectively eradicate and prevent such ill-treatment worldwide, it is essential for all states to firmly and consistently implement their legal duty to *investigate, prosecute and provide redress*.²²

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* *

As shown above, if there is something that humanity has been able to agree upon, at the theoretical level at least, it is that, in order to preserve the dignity of each individual also in particularly difficult situations, it is necessary that we all conform to some elementary standards of conduct. If not, there is a risk that we end up perishing in a mutual spiral of non-ending violence. In a sense, therefore, the absolute nature of the right not to be subjected to torture and ill-treatment can be said to have a double purpose: *In the first place* it is there “for the good of each one of us, as *potential victims* of abuse, as most of us actually are”; *secondly*, it can also be considered to be there to protect us

¹⁹ ICTY, *Prosecutor v. Anto Furundzija*, Case No. IT-95-17/1-T, judgment, 10 December 1998, para. 151. The relevant convictions and sentences were confirmed on appeal by judgment given by the Appeals Chamber on 21 July 2000.

²⁰ *Ibid.*, para. 153.

²¹ *Ibid.*, *loc. cit.*

²² For information on the duty to investigate etc. see, e.g. Chapter 15 of *Human Rights in the Administration of Justice - A Manual on Human Rights for Judges, Prosecutors and Lawyers*, New York/Geneva, OHCHR and IBA, 2003.

from the potential of becoming *perpetrators* of – or *accomplices* in – the crime of torture”.²³

3.2 Torture and ill-treatment under Israeli and Palestinian law.

In so far as the legal situation with regard to torture and ill-treatment in Israel and the OPT is concerned, it was dealt with in some depth in the first UAT Annual Report.²⁴ In this particular context it is therefore sufficient to highlight some of the major aspects of this law.

3.2.1 Israel

While Israel is bound by the CAT since 3 October 1991, the terms of the Convention have not yet been transformed into domestic law, and torture has not been made into a specific criminal offence. The Basic Law: Human Dignity and Liberty does however provide in section 2 that “[t]here shall be no violation of the life, body or dignity of any person as such”.²⁵ Section 4 then stipulates that “[a]ll persons are entitled to protection of their life, body and dignity.” The drafting of this latter section would appear to indicate that the State of Israel has a positive legal duty to take specific measures to protect persons whose life, body and dignity are endangered.

Although neither “torture”, nor “cruel, inhuman or degrading treatment or punishment” has been made into specific crimes under Israeli law, the Penal Law, 5737-1977, contains offences that may be applied with regard to allegations of cruel, inhuman or degrading treatment or punishment, such as oppression by a public servant (section 277) and the causing of harm with aggravating intent (section 329); legal liability for the attempt, assistance, encouragement and incitement of these offences are regulated in Chapter Five of the Penal Law, entitled “Derivative Offences”.²⁶

In 1999, the Supreme Court rendered its judgment in the case of *Public Committee against Torture in Israel et al. v. The State of Israel et al.*, which clarified – and improved to some extent – the legal situation with regard to ill-treatment in connection with interrogations.²⁷ Yet, the judgment was also inherently contradictory when it comes to the absolute prohibition of torture. Since it was considered at some length in the UAT First Annual Report 2006 it suffices in this context to highlight the Court’s inconsistencies.

²³ Statement given by the author of this report to the European Parliament Subcommittee on Human Rights on 28 June 2007.

²⁴ See *Getting around the International Prohibition of Torture* referred to in footnote 15 *supra*.

²⁵ For the text of the Basic Law, see: http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm

²⁶ UN doc. CCPR/C/81/Add.13, *Initial report of States parties due in 1993 – Israel*, §§ 171-173.

²⁷ HCJ 5100/94, *Public Committee against Torture in Israel et al. v. The State of Israel et al.*; the text can be found at: <http://www.stoptorture.org.il/eng/images/uploaded/publications/18.doc>

To begin with, the Court correctly stated that “a reasonable investigation is necessarily one free of torture, free of cruel, inhuman treatment of the subject and free of any degrading handling whatsoever” and there was also “a prohibition on the use of ‘brutal or inhuman means’ in the course of an investigation”; furthermore, human dignity included “the dignity of the suspect being interrogated”.²⁸ This conclusion was, in the view of the Court “in perfect accord” with various international treaties signed by Israel; these prohibitions were “absolute”, no exceptions to them were allowed, and there was “no room for balancing”.²⁹ “Indeed”, the Court added, “violence directed at a suspect’s body or spirit does not constitute a reasonable investigation practice” and the use of violence “during investigations can potentially lead to the investigator being held criminally liable.”³⁰ It noted, in the next place, that “it is possible to conduct an effective investigation without resorting to violence” and that, in the end, “the legality of an investigation is deduced from the propriety of its purpose and from its methods.”³¹ Prolonged sleep deprivation, or sleep deprivation at night when this is not necessary for the investigation, “may be deemed a use of an investigation method which surpasses the least restrictive means.”³²

Following this general legal discussion, the Court moved to deal with particular issues and declared illegal various kinds of ill-treatment, such as shaking, having suspects crouching on the tips of their toes for five minutes intervals, the “Shabach” method which is composed of “a number of cumulative components”, covering the suspect’s head with an opaque sack throughout his wait in the “Shabach” position and so forth.³³ It was in this connection that the Court’ inconsistencies became apparent, although in this particular context, only three of them will be noted.

The first major inconsistency can be found in the argument that, although “the individual GSS investigator – like any police officer – does not possess the authority to employ physical means which infringe upon a suspect’s liberty during the interrogation”, the situation was different if “these means are inherently accessory to the very essence of an interrogation and are both fair and reasonable”.³⁴ In the light of the particular wording of the judgment as a whole, this particular reasoning gives rise to serious concern because of its vagueness and the apparent contradiction with the Court’s earlier declaration that violence is not “a reasonable investigation practice”.

Secondly, while the Court stated in clear terms that the “necessity” defence could not constitute a source of authority, allowing GSS investigators to use physical means during interrogations, it was none the less “prepared to accept that in the appropriate

²⁸ *Ibid.*, § 23.

²⁹ *Ibid.*, *loc. cit.*

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*, §§ 24-32.

³⁴ *Ibid.*, § 38.

circumstances, GSS investigators may avail themselves of the ‘necessity’ defence, if criminally indicted.”³⁵ The interrogators might thus be exempt from criminal liability *ex post facto*, a possibility that seriously undermines efforts to rid a society of torture and other forms of ill-treatment.

Thirdly, and even more worrisome, the Court held that “general directives governing the use of physical means during interrogations must be rooted in an authorization prescribed by law and not from defences to criminal liability”.³⁶ In other words, “a legal statutory provision is necessary for the purpose of authorizing the government to instruct in the use of physical means during the course of an interrogation, beyond what is permitted by the ordinary ‘law of investigation’, and in order to provide the individual GSS investigator with the authority to employ these methods”.³⁷ Such legislative authorisation “would also free the investigator applying the physical means from criminal liability”, a release that “would flow not from the ‘necessity’ defence but from the ‘justification’ defence”, according to which a person shall not bear criminal responsibility for an act committed if he was obliged or authorised by law to commit it.³⁸

Still, as is made clear from the Court’s “A Final Word” – and this again appears to contradict other passages of the judgment - it did not take any stand on the question whether “it is appropriate for Israel, in light of its security difficulties to sanction physical means in interrogations”, because this was an issue that had to be decided by the legislative branch of government. Any such legislation that would infringe upon a suspect’s liberty would, however, have to comply with article 8 of the Basic Law: Human Dignity and Liberty, that will be considered in the next sub-section.³⁹ In the first part of the same passage, the Court seemed however itself to give a simple and wise answer to this important question:

“39. This decision opens with a description of the difficult reality in which Israel finds herself security wise. We shall conclude this judgment by re-addressing that harsh reality. We are aware that this decision does not ease dealing with that reality. This is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it. Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. *Preserving the Rule of Law and recognition of an individual’s liberty constitutes an important component in its understanding of security. At the end of the day, they strengthen its spirit and its strength and allow it to overcome its difficulties.* ...”⁴⁰

³⁵ *Ibid.*, § 35.

³⁶ *Ibid.*, § 37.

³⁷ *Ibid.*, § 38.

³⁸ *Ibid.*, § 37.

³⁹ *Ibid.*, § 39.

⁴⁰ *Ibid.*, *loc. cit.*; emphasis added.

3.2.2 The state of emergency and the applicability of international human rights law

A close reading of the text of the Basic Law: Human Dignity and Liberty shows that, contrary to the commands of international law, the rights concerning the life, body and dignity of any person appears to be far from absolute. Not only does this Basic Law not “affect the validity of any law (*din*) in force prior to the commencement of the Basic Law” (section 10), but in particular sections 8 and 12 allow for both ordinary and extraordinary limitations of the rights contained therein.⁴¹ Section 8 thus states that:

“There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required”.

In the next place, in dealing with emergency situations, section 12 contains an inherent contradiction in that it first states that this Basic Law “cannot be varied, suspended or made subject to conditions by emergency regulations” and then, in the next phrase, provides that:

“notwithstanding, when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than is required.”

It is noteworthy, that this provision has far less safeguards against the abusive use of emergency measures than article 4 of the ICCPR by which Israel is legally bound. In particular, it does not, for instance, contain any provision on rights that can in no circumstances be derogated from, such as the right not to be subjected to torture or ill-treatment (cf. article 4(2) of the ICCPR).

In its initial report submitted under the ICCPR in 1998, the Government of Israel explained with regard to article 4, that the country had “remained in an officially proclaimed state of public emergency from 19 May 1948, four days after its founding, until the present day”; the state of emergency had remained in force “due to the ongoing state of war or violent conflict between Israel and its neighbours, and the attendant attacks on the lives and property of its citizens”.⁴² When ratifying the ICCPR, it had therefore had to make a declaration under article 4 derogating from article 9, which concerns the right to liberty and security.⁴³ In its concluding observations the Human Rights Committee expressed “its deep concern at the continued state of emergency prevailing in Israel”, which had been in effect since its independence. It therefore recommended “that the Government review the necessity for the continued renewal of the

⁴¹ On the meaning of ‘ordinary’ and ‘extraordinary’ limitations on the exercise of human rights, see SVENSSON-McCARTHY, *The International Law of Human Rights and States of Exception*, see, e.g., pp. 49 and 721.

⁴² UN doc. CCPR/C/81/Add. 13, *Initial report of States parties due in 1993 – Israel*, § 106.

⁴³ For the text of the declaration, see *ibid.*, footnote to the same paragraph.

state of emergency with a view to limiting as far as possible its scope and territorial applicability and the associated derogation of rights”; in this regard, the Committee drew the Government’s attention to “article 4 of the Covenant, which permits no derogation from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18, and requires that permitted derogations be limited to the extent strictly required by the exigencies of the situation”.⁴⁴

In its second periodic report submitted in 2001, the Government of Israel explained that, although it had “been inclined to refrain from extending the state of emergency any further”, it could not be terminated immediately, as certain fundamental laws, orders and regulations legally depended upon its existence; the Government and the Knesset were reportedly working on “a joint program to complete the needed legislative procedures required in order to end the state of emergency”.⁴⁵ The Human Rights Committee welcomed Israel’s “decision to review the need to maintain the declared state of emergency” but remained concerned about “the sweeping nature of measures during the state of emergency” that appeared to derogate not only from article 9 as indicated by Israel in connection with its ratification of the ICCPR; in the Committee’s view, these derogations extended “beyond what would be permissible under those provisions of the Covenant which allow for the limitation of rights”, such as articles 12(3) (the right to freedom of movement) and 19(3) (freedom of expression).⁴⁶ With regard to the derogations from article 9 more particularly, the Committee was

“concerned about the frequent use of various forms of administrative detention, particularly for Palestinians from the Occupied Territories, entailing restrictions on access to counsel and to the disclose (*sic*) of full reasons of the detention. *These features limit the effectiveness of judicial review, thus endangering the protection against torture and other inhuman treatment prohibited under article 7 and derogating from article 9 more extensively than what in the Committee’s view is permissible pursuant to article 4.* In this regard the Committee refers to its earlier concluding observations on Israel and to its general comment No. 29.”⁴⁷

In the view of the Committee, the State party should consequently

“complete as soon as possible the review initiated by the Ministry of Justice of legislation governing states of emergency. In this regard, and pending the adoption of appropriate legislation, the State party should review the modalities governing the renewal of the state of emergency and specify the provisions of the Covenant it seeks to derogate from, to the extent strictly required by the exigencies of the situation (art. 4).”⁴⁸

⁴⁴ UN doc. CCPR/C/79/Add.93, *Concluding observations of the Human Rights Committee – Israel*, para. 11.

⁴⁵ UN doc. CCPR/C/ISR/2001/2, *Second Periodic Report – Israel*, §72.

⁴⁶ UN doc. CCPR/CO/78/ISR, *Concluding observations of the Human Rights Committee – Israel*, § 12.

⁴⁷ *Ibid.*, *loc. cit.*; emphasis added.

⁴⁸ *Ibid.* It was only on January 2007, that is, about three and a half years after the Committee adopted its observations, that the Government of Israel submitted its comments thereon (see UN doc. CCPR/CO/78/ISR/Add.1). Those comments did not address the question of the state of emergency.

As of December 2007, this review had not, apparently, been completed and the state of emergency remained in force. Likewise, there was no indication that the modalities of the administrative detention had been improved so as to conform to article 9 of the ICCPR. At the time of the consultant's visit to Israel, and although the figures given vary somewhat, it would appear that between 800 to 900 Palestinians were held in such extraordinary conditions of detention.⁴⁹

The fact that the state of emergency has been in force since the establishment of the State of Israel has resulted in a complex legal system that has been built upon it and which cannot easily be undone. *This also means that, contrary to the intentions of the drafters of article 4 of the ICCPR, the exceptional has become the normal, and the temporary the permanent.* In its General comment No. 29, the Human Rights Committee emphasises the exceptional and temporary nature of derogations under article 4, the "predominant objective" of which must be "[t]he restoration of a state of normalcy where full respect for the Covenant can again be secured".⁵⁰

It is in this context particularly important also to highlight the following statement made by the Human Rights Committee with regard to the application of the ICCPR, notably in the West Bank and Gaza, where, in the view of the State Party, the Covenant was not applicable:

"The Committee reiterates the view, previously spelled out in paragraph 10 of its concluding observations on Israel's initial report (...), that the applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of the Covenant, including article 4 which covers situations of public emergency which threaten the life of the nation. Nor does the applicability of the regime of international humanitarian law preclude accountability of States parties under article 2, paragraph 1, of the Covenant for the actions of their authorities outside their own territories, including in occupied territories. The Committee therefore reiterates that, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the Occupied Territories, for all conduct by the State party's authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law."⁵¹

This opinion is an important confirmation of the complementary nature of international human rights law and international humanitarian law in times of armed conflict. A similar view has been expressed by the Committee on Economic, Social and

⁴⁹ According to the statistics by B'Tselem, the Israeli Prison Service held 858 Palestinians at the end of November 2007; see http://www.btselem.org/english/Administrative_Detention/Statistics.asp.

⁵⁰ For the text of General comment No. 29 on article 4, see, e.g. UN doc. HRI/GEN/1/Rev.7, *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, pp. 184-185, §§ 1-2. For more information on states of emergency, see also Chapter 17 of *Human Rights in the Administration of Justice - A Manual on Human Rights for Judges, Prosecutors and Lawyers*, New York/Geneva, OHCHR and IBA, 2003.

⁵¹ UN doc. CCPR/CO/78/ISR, *Concluding observations of the Human Rights Committee – Israel*, § 11.

Cultural Rights with regard to the application of the ICESCR to the OPT.⁵² The Committee against Torture has furthermore rejected an argument by the United States to the effect that in the context of armed conflicts, the law of armed conflicts is “the exclusive *lex specialis* applicable”, and that the application of the CAT “would result in an overlap of the different treaties which would undermine the objective of eradicating torture”.⁵³ In the view of the Committee, therefore:

“The State party should recognize and ensure that the Convention applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction and that the application of the Convention’s provisions are without prejudice to the provisions of any other international instrument, pursuant to paragraph 2 of its articles 1 and 16.”⁵⁴

Furthermore, the Committee regretted the State party’s view that the provisions of CAT “are geographically limited to its own *de jure* territory” and reiterated its view that the CAT is applicable also to “all areas under the *de facto* effective control of the State party, by whichever military or civil authorities such control is exercised”.⁵⁵

In its 1997 conclusions and recommendations following its consideration of the special report of Israel, the Committee against Torture also stated that as a State party to the CAT, Israel was precluded from raising before it “exceptional circumstances as justification for acts prohibited by article 1 of the Convention”, which contains the definition of torture.⁵⁶

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Summing-up: The point of departure is that the right to be free from torture and other forms of ill-treatment or punishment may not be violated under any circumstances and that states of emergency may not be invoked to justify violations of this fundamental right. Furthermore, emergency measures taken to restrict the exercise of other rights, such as the right to liberty and security, may in no circumstances adversely impact on the *effective* exercise of the right not to be tortured or subjected to other forms of ill-treatment. Derogations under international human rights law, if at all permitted, must be temporary and may only justify such limitations on the exercise of human rights that are strictly required by the exigencies of the situation. If there are indications that such extraordinary measures lead to a deterioration rather than an improvement of the crisis or

⁵² UN doc. E/C.12/1/Add.90, *Concluding observations of the Committee on Economic, Social and Cultural Rights – Israel*, § 31.

⁵³ UN doc. CAT/C/USA/CO/2, *Conclusions and recommendations of the Committee against Torture – United States of America*, § 14.

⁵⁴ *Ibid.*, *loc. cit.*

⁵⁵ *Ibid.*, § 15.

⁵⁶ G.A.O.R., A/52/44, *Report of the Committee against Torture*, para. 258.

conflict, this is a useful sign that they are *not* “strictly” required in order to restore “a state of normalcy” in the country concerned.

In the next place, the States Parties to the two International Covenants and the CAT are legally bound to respect the terms of these treaties also in times of armed conflict and occupation, and this concomitantly with the additional possible application of international humanitarian law. Finally, whenever a State Party is in *de jure* or *de facto* control of an area, it is legally responsible for acts or omissions of its authorities that violate their legal obligations ensuing under international law. There are, in other words, a very dense network of legal principles binding states in times of emergency, a network which, in so far as it concerns international human rights law, was never intended to provide an blank check to the relevant states, but rather to ensure that, by imposing strict safeguards, the states concerned will only take such measures as are necessary to restore or preserve a constitutional order wherein human rights can be enjoyed by all, without discrimination. It also follows that it is not a legally accepted option to use the security argument to undermine the effective protection of human rights.

It is in the light of these basic principles, among others, that the conformity with international law of the Israeli Basic Law as well as the conclusions of the Supreme Court in its 1999 decision must be examined, although that is a task that goes beyond the framework of this study.

3.3 The Occupied Palestinian Territories

According to article 13(1) of the Amended Basic Law adopted by the Palestinian Legislative Council (PLC) in 2003, “[n]o person shall be subject to any duress or torture” and people who are indicted or deprived of their freedom “shall receive proper treatment”. Article 13(2) then provides that all statements or confessions obtained through violation of the preceding paragraph “shall be considered null and void”. Torture and other forms of ill-treatment have not been penalised under the criminal law. A draft law to do so was however prepared a couple of years ago by *inter alia* the Gaza Community Mental Health Program and the OHCHR in Ramallah. The draft was submitted to the PLC for adoption, but no action was taken on the proposal.

States of emergency have also been declared by the Palestinian Authority. In June 2007, President Mahmoud Abbas thus declared a state of emergency dissolving the Fatah-Hamas coalition government after Hamas took control of Gaza. The state of emergency was still in force in the beginning of December 2007.

4 Torture and Ill-Treatment in Israel and the Occupied Palestinian Territories

The present report is not aimed at providing an assessment of the many serious political, human rights and humanitarian problems, as such, in Israel and the OPT. Nor is it intended to investigate and assess the existence of torture and ill-treatment, *per se*, in this region, since the use of such treatment has been extensively documented by several non-governmental and inter-governmental organisations, in particular in so far as it takes place in Israel.⁵⁷ That the region is living a human and political crisis of a grave nature is a fact. So it is that both Israel and the OPT have problems with torture and ill-treatment. The much more limited objective of this report is therefore to provide an overview of how the EU and its Member States contribute to the prevention and eradication of torture and other forms of ill-treatment in both Israel and the OPT. Yet, given the subject matter of the study and the purpose to try to suggest recommendations to the EU and other relevant stakeholders to promote the prevention and eradication of torture and ill-treatment in both Israel and the OPT, it will be necessary to highlight some of the major problems that exist in this respect, without being in any way exhaustive. The following synopsis is based on the various reports cited in footnote 57, extensive interviews held in Israel and the OPT with various stakeholders, and the conclusions and recommendations adopted by some of the United Nations treaty bodies with regard to Israel's undisputed legal international obligations under the human rights treaties that it has ratified.

The situation is, of course, different with the OPT, since it is not an independent state and cannot therefore accede to or ratify international treaties. The question whether, and to what extent, the PA may be bound by international norms prohibiting torture and ill-treatment was considered in the UAT First Annual Report, and will not be further dealt with in this context.⁵⁸ Suffice it to add that the PA is, as a *strict minimum*, legally

⁵⁷ Among recent reports are: "Ticking Bombs" – *Testimonies of Torture Victims in Israel*, PCATI – Public Committee against Torture in Israel, May 2007, 99 pp. (hereinafter referred to as PCATI, "Ticking Bombs"); *ABSOLUTE PROHIBITION – The Torture and Ill-Treatment of Palestinian Detainees*, May 2007, HaMoked Center for the Defence of the Individual and B'Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, May 2007, 104 pp. (hereinafter referred to as HaMoked & B'Tselem, *ABSOLUTE PROHIBITION*); *Getting around the International Prohibition of Torture – Responsibilities of the Israeli Government and the Palestinian National Authority*, UAT, 2006, 37 pp.; *Violence against Palestinian Women – Alternative Country Report to the United Nations Committee on the Elimination of Discrimination against Women*, 2005, PCATI (a project coordinated by OMCT), 2005, 64 pp.; *Amnesty International Report 2007*, pp. 147-150; *Israel and the Occupied Territories - Road to nowhere*, December 2006, Amnesty International, 38 pp.; *Enduring Occupation – Palestinians under siege in the West Bank*, June 2007, Amnesty International, 47 pp.; *Annual Report 2006*, TRC – Treatment & Rehabilitation Center for Victims of Torture, 60 pp.; *Barred from Contact – Violation of the Right to Visit Palestinians Held in Israeli Prisons*, Information Sheet, September 2006, B'Tselem, 50 pp.; *Global inquiry concludes assessment of counter-terrorism laws, policies and practices in Israel and the Occupied Palestinian Territories*, ICJ press release of 27 August 2007; *A Question of Security – Violence against Palestinian Women and Girls*, November 2006, Vol. 18, No. 7(E), HRW, 99 pp.; *Israel and the Occupied Territories: Conflict, occupation and patriarchy – Women carry the burden*, 2005, Amnesty International, 36 pp.

⁵⁸ See UAT, *Getting around the International Prohibition of Torture*, referred to in note 15.

bound to respect its own Amended Basic Law of 2003, which outlaws duress and torture (art. 13), and the terms of the Universal Declaration of Human Rights, which constitute an essential element of the Interim Association Agreement concluded between the European Community and the PLO for the benefit of the PA (see further s. 5.4 *infra*).

4.1 The existence of torture and ill-treatment in Israel

Torture and other forms of ill-treatment in Israel are most prevalent in the context of the arrest and interrogation of persons suspected of being security threats. Particularly harsh interrogation methods are used by the Israel Security Agency (ISA, formerly the General Security Services, the GSS) for purposes of obtaining information and/or confessions. Such methods involve sleep deprivation, beatings; the painful tightening of hand cuffs; the sudden pull of the body, causing pain in arms, wrists and hands, which are tied to the chair; the sharp twisting of the head sideways or backwards; the “frog” crouch; and the “banana” position.⁵⁹ At a more general level of ISA interrogation, other forms of ill-treatment documented include isolation from the outside world, cuffing in the “shabah” position, cursing and humiliation, threats, intimidation and the use of collaborators to get information. The use of informers is done in a particularly sophisticated way, with changing scenarios. For instance, the person interrogated may be told that the questioning is over and then put in a different cell with other people. The conditions improve and the persons surrounding the detainee appear to show understanding and empathy for him. The detainee develops confidence and starts speaking, just to subsequently learn that the persons in whom he had confided were “actors”. During the active part of the interrogation the detainees are not allowed access to any lawyer.

Ill-treatment also occurs in connection with arrests carried out by the Israel Defence Forces (IDF). According to one source, this kind of ill-treatment is more frequent but milder than the treatment meted out during interrogation by the ISA. However, according to another source, there is evidence to show that abuses carried out by the IDF, or the accumulated effects thereof, can be so serious as to constitute torture. Finally, there is also occasional ill-treatment during detention in general.

The prison conditions in Israel have been the subject of considerable criticism by NGOs. The problems concern primarily, but not exclusively, the about 11.000 Palestinian detainees arrested in the OPT and then brought to Israel for detention. In view of the difficulties for the Palestinian members to visit their detained family members, the ICRC transports about 22,000 persons every month to and from the prisons. However, restrictions on the right to visit exist, and Palestinian detainees can thus only be visited by first-degree relatives. Male visitors between 16 and 35 years of age are subject to a

⁵⁹ See HaMoked & B’Tselem, *ABSOLUTE PROHIBITION*), pp. 67-77. See also the testimonies of torture victims in PCATI, “*Ticking Bombs*”.

specific restriction in that brothers are only entitled to one visit per year and sons to only two yearly visits.

Every year, NGOs bring numerous complaints to the authorities concerning torture and ill-treatment, but these complaints rarely meet with any success. As pointed out in one recent study by HaMoked and B'Tselem, between January 2001 and October 2006, the State Attorney's Office received over 500 complaints of ill-treatment by ISA interrogators, "yet has not found cause to order a single criminal investigation."⁶⁰ Also PCATI has consistently reported that the procedures to investigate complaints of torture and ill-treatment are inherently flawed and ineffective.⁶¹ Without going into the details of the relevant procedures, problems stem from, for instance, the apparent lack of independence of the authority investigating complaints against security agents. Suffice it in this respect to highlight some of the most recent concluding observations of the Human Rights Committee and the Committee against Torture, which provide an overview of the problems concerning, in particular, torture, ill-treatment, arrest, detention, conditions of detention and house demolitions. The concerns and views expressed are, in particular:

The Human Rights Committee (2003):

- *that* interrogation techniques incompatible with article 7 of the ICCPR were still reported to be "frequently" resorted to;
- *that* the "'necessity defence' argument, which is not recognized under the Covenant, is often invoked and retained as a justification for ISA actions in the course of investigations";
- *that* the use of prolonged detention without any access to a lawyer or other persons outside the place of detention violates articles 7, 9, 10 and 14(3)(b) of the ICCPR;⁶²

The Committee against Torture (2002)

- *that* the 1999 Supreme Court ruling did not contain "a definite prohibition of torture" and did not outlaw sleep deprivation if it was merely "incidental" to interrogation but only if used for the purpose of breaking the detainee; in practice, "in cases of prolonged interrogation it is impossible to distinguish between the two conditions";
- *that* in the same decision the Supreme Court "indicated that ISA interrogators who use physical pressure in extreme circumstances ('ticking bombs cases') might not be criminally liable as they may be able to rely on the 'defence of necessity'";

⁶⁰ HaMoked & B'Tselem, *ABSOLUTE PROHIBITION*, pp. 7 and 79.

⁶¹ See, for instance, the following PCATI reports: *Flawed Defence: Torture and Ill-Treatment in GSS Interrogations Following the Supreme Court Ruling, 6 September 1999 – 6 September 2001*, p. 52 and *Back to a Routine of Torture: Torture and Ill-treatment of Palestinian Detainees during Arrest Detention and Interrogation*, pp. 81-85 and 93.

⁶² UN doc. CCPR/CO/78/ISR, *Concluding observations of the Human Rights Committee – Israel*, §§ 18 and 13 (in that order).

- *that* the definition of torture contained in CAT has not yet been incorporated into domestic legislation;
- *that* the administrative detention does not conform to article 16 of the CAT;
- *that incommunicado* detention continued to be used even in the case of children, and this was “a matter of grave concern to the Committee”;
- *that* “very few” prosecutions had been initiated against alleged perpetrators of torture and ill-treatment in spite of numerous allegations;
- *that* “the Department for the Investigation of Police Misconduct (DIPM) may decide that a police officer or ISA investigator should only be subject to disciplinary action, in lieu of criminal proceedings”; such action may amount to a violation of article 7(1) of the CAT;
- *that* there is a “judicial practice of admitting objective evidence derived from an inadmissible confession”.⁶³

With regard to house demolitions, it is the opinion of the Human Rights Committee that “the demolition of property and houses of families some of whose members were or are suspected of involvement in terrorist activities or suicide bombings contravenes the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one’s home (art. 17), freedom to choose one’s residence (art. 12), equality of all persons before the law and equal protection of the law (art. 26) *and not to be subject to torture or cruel and inhuman treatment (art. 7).*”⁶⁴ For its part, the Committee against Torture has stated that Israeli policies on both closure and house demolitions “may, in certain instances, amount to cruel, inhuman or degrading treatment or punishment” contrary to article 16 of the CAT.⁶⁵

Both Committees addressed various recommendations to the Government of Israel for purposes of remedying the abovementioned problems, among others.

4.2 The existence of torture and ill-treatment in the OPT

Due to the particularly unstable and to some extent chaotic situation in the OPT, it is difficult to assess the exact extent of torture and ill-treatment in the territories, but according to concordant and reliable information, torture and other forms of ill-treatment are common and even on the rise. The levels of abuse are also believed to be about the same in the two areas of the OPT, that is, the West Bank and the Gaza Strip. The perhaps most tragic development in the OPT is however that, according to reliable sources, former Palestinians who have suffered abuse while in Israeli detention, now in turn

⁶³ G.A.O.R., A/57/44, *Report of the Committee against Torture*, § 6 of the Conclusions as published on the OHCHR website: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/A.57.44.pparas.47-53.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.57.44.pparas.47-53.En?Opendocument)

⁶⁴ UN doc. CCPR/CO/78/ISR, *Concluding observations of the Human Rights Committee – Israel*, § 16; emphasis added.

⁶⁵ G.A.O.R., A/57/44, *Report of the Committee against Torture*, § 6(i) and (j) of the version of the conclusions published by OHCHR; for the link, see footnote 62, *supra*.

perpetrate the same kind of treatment on their fellow Palestinians. There are also reports of increased domestic violence, including in families of former detainees ill-treated in Israeli prisons.

The rivalry between Hamas and Fatah in the Gaza Strip has seriously added to the difficulties of the population in this area. It is sufficient for our purposes to note that, apart from unlawful killings, abductions and arbitrary detentions committed by both Fatah and Hamas, attacks to exact revenge or instil fear were particularly widespread between late 2006 and June 2007; persons held hostage or survivors of armed clashes would for instance be shot in the knee or leg at close range, a practice commonly used by gunmen from both sides.⁶⁶ Reports of torture and ill-treatment in Gaza indicate that detainees are *inter alia* subjected to severe beatings, tied in painful positions, and threatened by death or by being shot in the leg.⁶⁷ After having received further affidavits from Palestinians having been subjected to beatings and other forms of ill-treatment while in detention by the Palestinian police in the Gaza Strip, the Palestinian Centre for Human Rights (PCHR), an organisation working in Gaza, recently called for an investigation into the practices of torture as well as legal action against the suspected perpetrators.⁶⁸ - Torture and ill-treatment have reportedly also increased during the last months in the West Bank.⁶⁹ There appears to be some confusion as to what prisons are in fact controlled by the PA.

Amnesty International has concluded that the lawlessness in the West Bank and Gaza Strip

“is to a large extent the result of the prolonged and systematic failure of the PA to uphold and enforce the law, to curb the proliferation of unlicensed weapons in the hands of private individuals and groups, and to hold both armed groups and members of the PA security forces who commit human rights abuses accountable for their crimes. Lawlessness has been stimulated by an increasingly entrenched climate of impunity, which has served only to fuel abuses and to bring the PA’s law enforcement and judicial institutions and mechanisms into disrepute within the wider Palestinian community they are supposed to serve.”⁷⁰

For accountability to be ensured, the administration of justice must however be able to function effectively and this is not the case in the OPT for the time being, where the legal system suffers from major deficiencies and practical challenges, such as the impossibility for the judges to move freely between the West Bank and Gaza. It is therefore urgent for the international community to do its utmost to promote stability in

⁶⁶ *Occupied Palestinian Territories: Torn apart by factional strife*, London, Amnesty International, October 2007, p. 29.

⁶⁷ *Ibid.*, p. 37.

⁶⁸ See press release of 19 November 2007 at <http://www.pchrgaza.org/files/PressR/English/2007/164-2007.html>

⁶⁹ *Occupied Palestinian Territories: Torn apart by factional strife*, London, Amnesty International, October 2007, *ibid.*, p. 48.

⁷⁰ *Ibid.*, p. 52.

the territories for purposes, *inter alia*, of strengthening the judiciary and reorganising the various security agencies, since many abuses are perpetrated by security groups having no authorisation to carry out detentions, for instance.⁷¹

As a result of the political situation in the region, and the fact that the UN is part of the Quartet, which tries to promote peace-talks between Israel and the PA, the political sector of the UN cuts across the human rights field, thereby negatively affecting the UN's human rights work. In general, the UN is able to deal with armed groups in control of a territory, but because of its participation in the Quartet, and the embargo imposed on the Hamas authorities in the Gaza Strip, the UN, including its Office of the High Commissioner for Human Rights, can only deal with private organisations, such as NGOs, in that particular territory. This situation is of great concern to officials in the field, who see the living conditions in Gaza deteriorate rapidly, without being able to work effectively to provide help.

The volatile situation in the OPT and the Fatah-Hamas clash make it moreover particularly difficult for the NGOs to carry out their work. As pointed out by one UN official: "The situation for human right defenders is bad. They are walking on eggshells."

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Having generally outlined the background to the problems at the heart of this report, it is now opportune to revert to the EU foreign policy and the role that human rights play, or ideally should play, in the EU-Israel and EU-PA relations. Again, however, the framework of this report is too narrow to make an in depth analysis of these relations. Yet, on the basis of the research carried out, it will be possible to discern certain trends and identify a number of recommendations to the EU and local NGOs.

5 EU Relations with Israel and the Palestinian Authority

5.1 EU, human rights, democracy and its Mediterranean partners

In 2001, the EC adopted a Communication on the "The European Union's role in promoting human rights and democratisation in third countries", in which it *inter alia* invited the Council and the European Parliament to support its approach to promote human rights and democratisation. The Commission had defined the following three areas in which it could play a more "effective role in the pursuit of the EU's human rights and democratisation objectives":

⁷¹ Cf. e.g. *ibid.*, p. 48 with regard to the West Bank,

- “through the promotion of **coherence and consistency** across EU and EC policies”;
- “through placing a higher priority on, and **‘mainstreaming’**, human rights and democratisation objectives in the European Union’s relations with third countries, in particular through political dialogue and strategic use of its external assistance programmes”; and
- “through adopting a more focussed and **strategic approach** to the European Initiative for Democracy and Human Rights (EIDHR)”.⁷²

In the subsequent Council Conclusions on “The European Union’s Role in Promoting Human Rights and Democratisation in Third Countries”, adopted on 25 June 2001, the Council welcomed the Commission’s Communication “as a valuable contribution towards reinforcing the coherence and consistency of EU policy in the field of human rights and democratisation”.⁷³ It thereafter reaffirmed both its “determination to promote stable, democratic environments, founded on the full enjoyment of human rights” as well as its commitment to the following principles:

- “coherence and consistency between Community action and the Common Foreign and Security Policy (CFSP) as well as development policy through close co-operation and co-ordination between its competent bodies and with the Commission”;
- “‘mainstreaming’ of human rights and democratisation into EU policies and actions”;
- “openness of the EU’s human rights and democratisation policy through a strengthened dialogue with the European Parliament and the civil society”; and
- “regular identification and review of priority actions in the implementation of its human rights and democratisation policy.”⁷⁴

In 2003, the EC next adopted a Communication containing “Strategic guidelines” for “Reinvigorating EU actions on Human Rights and democratisation with Mediterranean partners”. As now explained by the Commission, human rights and fundamental freedoms

“form an integral and essential part of the framework governing relations between the European Union and its Mediterranean partners, both within the regional context of the Barcelona process/Euro-Mediterranean partnership, and through the bilateral Association Agreements concluded or under negotiation with all the Mediterranean partner countries. ...

⁷² EU doc. COM(2001) 252 final, Communication from the Commission to the Council and the European Parliament: *The European Union’s role in promoting human rights and democratisation in third countries*, p. 21; bold in original text.

⁷³ EU doc. 10228/01 (Presse 250), 2362nd Council meeting GENERAL AFFAIRS, Luxembourg 25 June 2001, p. 2.

⁷⁴ *Ibid.*, loc. cit.; underlining in original text.

Building on joint commitments, the present Communication outlines guidelines for the best use of the instruments that are at the disposal of the EU and its Mediterranean partners to effectively implement their common goal of the promotion of democratisation and the promotion and protection of universal Human Rights and fundamental freedoms.”⁷⁵

Dealing with the main human rights and democratisation issues for the region, the Commission was particularly explicit with regard to the conflict between Israel and Palestine:

“Compared to the other MEDA partners, Israel presents distinct characteristics. It functions as a well established parliamentary democracy, with an effective separation of powers, a functioning system of governance, and active participation of NGOs and civil society in all internal aspects of political and social life. However, Israel’s compliance with internationally accepted standards of Human Rights is not satisfactory. Two important specific areas need to be tackled. Firstly, the issue of reconciling the declared Jewish nature of the State of Israel with the rights of Israel’s non-Jewish minorities. Secondly, the violation of Human Rights in the context of the occupation of Palestinian territories. There is an urgent need to place compliance with universal human rights standards and humanitarian law by all parties involved in the Israeli/Palestinian conflict as a central factor in the efforts to put the Middle East peace process back on track. This will require a special effort by the EU and the setting up of an appropriate strategy.”⁷⁶

With regard to the *bilateral dialogues* between the EU and its Mediterranean partners, a human rights dialogue “should”, in the view of the Commission,

“be pursued in a coherent and consistent way, based on internationally agreed standards and instruments, and in particular those of the UN. It should aim inter alia at examining the respect of international conventions and treaties to which partners have agreed and the pertinence of current reservations to these treaties and conventions. The EU reserves the right to raise individual cases of concern. At the request of the partners the EU should equally be ready to discuss Human Rights issues within the European Union, for example the situation of immigrants in the EU.”⁷⁷

More particularly, as noted by the Commission, the “essential element” clause in the Association Agreements, which will be further dealt with below:

“gives an additional basis for structured bilateral dialogue on Human Rights and democracy for those countries where Association Agreements are in force. This ‘essential element’ clause, along with an additional Article on action to be taken in the event of non-compliance with the obligation of the Agreement and a joint Declaration on this subject, allows for either Party to take measures in response to a failure on the part of the other to respect democratic principles and Human Rights. However, ‘essential element’ clauses do not necessarily suggest a negative or punitive approach – they can be used to promote dialogue and co-operation between partners through encouraging joint actions for democratisation and Human Rights, including the effective

⁷⁵ EU doc. COM(2003) 294 final, Communication from the Commission to the Council and the European Parliament: *Reinvigorating EU Actions on Human Rights and democratisation with Mediterranean partners – Strategic guidelines*, pp. 2-3.

⁷⁶ *Ibid.*, p. 5; footnote omitted.

⁷⁷ *Ibid.*, p. 10.

implementation of international Human Rights instruments and the prevention of crises through the establishment of a consistent and long-term co-operative relationship.

In addition, Article 3 of the Association Agreements provide the legal basis for the establishment of regular institutionalised political dialogue between the EU and the partner countries. The EU should continue efforts to deepen the substance of this dialogue on Human Rights and democratisation issues, not only in general terms or related to individual cases, but by focusing on specific operational issues.”⁷⁸

Among the ten specific recommendations made by the Commission were the following four, which are of particular interest for purposes of this report:

- that the EU should “ensure systematic inclusion of Human Rights and democracy issues in all dialogues taking place on an institutionalised basis”, such as within the Association Councils and Association Committees;
- that an in depth dialogue on human rights and democratisation needed “increased institutional knowledge and documentation on the situation and key issues in each partner country”;
- that the Commission “should aim to ensure coherence and consistency inter alia through strengthening co-ordination between Commission Delegations and Member States’ embassies”;
- that, at the national level, “the Commission Delegations should organise with Member States regular workshops with civil society, seeking as conditions allow a constructive involvement of national authorities. As much as possible, efforts should be made for this dialogue not to be limited to the national civil society but to reach out to civil society organisations working at the regional level.”⁷⁹

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The EC communications quoted above, and also the Council conclusions, provide some fundamentally important components of an EU policy on human rights and democracy which could have an interesting potential for success. However, as will be shown below, this policy needs to be substantially strengthened and maintained with firm consistency if it is going to yield even modest results in the field of human rights and democracy in particularly complex situations, such as in the Middle East.

5.2 The European Neighbourhood Policy: Basic information

The European Neighbourhood Policy (ENP) was developed by the EU in 2004 “with the objective of avoiding the emergence of new dividing lines between the enlarged EU and [its] neighbours and instead strengthening the prosperity, stability and security of

⁷⁸ *Ibid.*, p. 11; footnote omitted.

⁷⁹ *Ibid.*, pp. 11-13. For the remaining six recommendations, see pp. 14-18.

all concerned”.⁸⁰ Through the ENP, the EU offers its neighbours “a privileged relationship, building upon a mutual commitment to common values”, these values being: democracy and human rights, the rule of law, good governance, market economy principles and sustainable development.⁸¹ The purpose of the ENP is thus to go “beyond existing relationships to offer a deeper political relationship and economic integration”, although the level of ambition “will depend on the extent to which these values are effectively shared”.⁸² The ENP applies both to Israel and the PA, and the mutually agreed Action Plans provide “an agenda of political and economic reforms with short and medium-term priorities”.⁸³ Indeed, the Action Plans for Israel and the PA were among the first to be agreed upon in 2005.

5.3 EU-Israel: The Association Agreement and the ENP Action Plan

The Association Agreement between the EU and Israel was signed on 20 November 1995 and entered into force on 1 June 2000. The third preambular paragraph to the Agreement emphasises “the importance which the Parties attach to the principle of economic freedom and to the principles of the United Nations Charter, particularly the observance of human rights and democracy, which form the very basis of the Association”. The reference to human rights is again to be found in the “essential element” clause contained in article 2 of the treaty, and according to which

“Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect for human rights and democratic principles, which guides their internal and international policy and constitutes an essential element of this Agreement.”

These are the only references to human rights in the Agreement, which is, according to article 1 thereof, *inter alia* aimed at providing “an appropriate framework for political dialogue”, promoting “the harmonious development of economic relations”, between the parties, encouraging “regional cooperation with a view to the consolidation of peaceful coexistence and economic and political stability” and promoting “cooperation in other areas which are of reciprocal interest”. According to article 3(1), the political dialogue between the parties “shall strengthen their relations, contribute to the development of a lasting partnership and increase mutual understanding and solidarity”. One of the aims of the political dialogue is also to “enhance regional security and stability” (art. 3(2)). An examination of the terms of the Agreement clearly shows, however, that it is primarily a free trade agreement, although the European Commission has emphasised that it is “much more” than that and also “enables continuing dialogue and co-operation between Israel and the EU in a wide variety of fields”.⁸⁴

⁸⁰ See the ENP website of the European Commission at http://ec.europa.eu/world/enp/policy_en.htm.

⁸¹ *Ibid.*, *loc. cit.*

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ EU doc. SEC(2004) 568, Commission staff working paper, European Neighbourhood Policy, Country Report, *Israel*, {COM(2004)373 final}, p. 3.

5.3.1 EU, Israel and human rights

Human rights are at the heart of the Middle East conflict and it is consequently understandable that they constitute a profoundly sensitive subject in the political dialogue between the EU and Israel. The research carried out for this study also shows beyond doubt, that this is a subject on which it is therefore difficult to make any significant progress, although such progress could hold the key to a solution of the Middle East conflict, thereby increasing also Israel's own stability and security.

There is a corresponding concern that Israel's reluctance to discuss human rights issues may be reinforced by the fact that it enjoys a "special status" in its relationship with the EU. Already in its 1994 Conclusions, after having noted that the Mediterranean represents "a priority area of strategic importance for the European Union", the Council stated that it considers that "Israel, on account of its high level of economic development, should enjoy special status in its relations with the European Union on the basis of reciprocity and common interests"; in the process, it was believed, regional economic development in the Middle East including in the Palestinian areas, will also be boosted."⁸⁵ This reference to the "special status" of Israel in its relations with the EU has since been included both in the EU/Israel Action Plan as well as in the 2006 ENP Progress Report, but without the reference to the Palestinian areas.

How then have human rights been incorporated in the work based on the Association Agreement?

As a point of departure it is clear that the EU and its Member States are fully aware of, and profoundly concerned about, the urgency of the human rights problems in the region. The question is, however, how high human rights rank on the list of all other political problems which must also be solved, one by one, on the road to peace. In this respect, there is reason to be concerned, since human rights have never figured prominently in any peace project. However, at this stage the report will be limited to an overview of the references to torture and ill-treatment that may be found in the EC country report on Israel, the mutually adopted Action Plan and the ENP Progress Report.

With regard to torture and other forms of ill-treatment, the country report referred to the 1999 judgment of the Supreme Court which "invalidated the former governmental guidelines governing the use of 'moderate physical pressure' during interrogations and held that the Israeli Security Services have no authority under Israeli law to use physical force during interrogations"; it was further noted, however, that since the outbreak of the second Intifada, there had been "renewed allegations of torture".⁸⁶ The report also

⁸⁵ See European Council Meeting on 9 and 10 December 1994 in Essen: Presidency Conclusions; for the text see: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/00300-1.EN4.htm, pp. 8-9.

⁸⁶ EU doc. SEC(2004) 568, Commission staff working paper, European Neighbourhood Policy, Country Report, *Israel*, {COM(2004)373 final}, p. 9.

referred to the difficulties of the UN Special Rapporteur on torture and other forms of ill-treatment in assessing the situation in the country, “given that he was not granted permission to visit Israeli prisons or detention centres or to meet governmental officials who might assist in assessing the validity of these allegations”.⁸⁷ There was furthermore a problem with regard to access to justice for activities in the occupied territories. In case of house demolition and injury, for instance, the courts in Israel provided the only remedy for Palestinians. However given the complexity of the law of torts, the prohibition on Palestinians to enter Israel and the inability of Israeli lawyers to reach them, their access to courts was “severely” limited.⁸⁸

The mutually agreed Action Plan, adopted in 2005, covers a period of three years and defines priorities which are primarily based on the Association Agreement. It specifies *inter alia* the reinforcement of the political and economic interdependence of the EU and Israel as well as the fact that they “share the common values of democracy, respect for human rights and the rule of law and basic freedoms”; the Parties also express their commitment “to the struggle against all forms of anti-Semitism, racism and xenophobia”.⁸⁹ However, it is also stated therein that “[t]he level of ambition of the EU/Israel relationship will depend on the degree of commitment to common values as well as the mutual interests and the capacity of each party to implement jointly agreed priorities”.⁹⁰

While the Parties agree in general terms to work together “to promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law”,⁹¹ *the Action Plan contains no reference whatever to planned initiatives in the field of torture or other forms of ill-treatment. Contrary to some other Action Plans, there is not even any mention of prison conditions.* The Action Plan consequently shows no apparent concern for the treatment of detainees, although this contrasts sharply with the conclusions of the abovementioned UN treaty bodies and reliable reports from national and international NGOs.

On the other hand, the parties have agreed to “[e]xplore the possibility to join the optional protocols related to international conventions on human rights”, and this could mean both the optional protocols to the CAT and the ICCPR, among other treaties.⁹² However, there is no evidence of any dialogue in this respect.

It should finally be noted that in the Action Plan the parties also agree to “[e]ncourage development of exchanges among experts in appropriate fora on best practices and experiences in law enforcement and education”, but the cooperation in the

⁸⁷ *Ibid.*, loc. cit.

⁸⁸ *Ibid.*, p. 10.

⁸⁹ For the Action Plan, see http://ec.europa.eu/world/enp/pdf/action_plans/israel_enp_ap_final_en.pdf, p.

1.

⁹⁰ *Ibid.*, loc. cit.

⁹¹ *Ibid.*, p. 4.

⁹² *Ibid.*, loc. cit.

field of Justice and Home Affairs is limited to migration issues, asylum, the fight against terrorism, organised crime, including trafficking in human beings, drugs, money laundering, financial and economic crime and, finally, police and judicial co-operation.⁹³ With regard to Justice and Home Affairs, the cooperation between the EU and Israel has “substantially increased through a number of initiatives” and it is particularly noteworthy that *on February 2005, the Justice and Home Affairs Council agreed to grant a mandate to Europol to negotiate an agreement with Israel.*⁹⁴ Europol is the European Law Enforcement Organisation which aims at improving the effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international organised crime, and an agreement with Europol is one of the issues which is known to be of considerable interest to Israel. At the time of the publication of the 2006 ENP Progress Report, Europol was assessing Israel’s Data Protection Legislation.⁹⁵

In this respect the serious question arises, however, how Europol, in case it concludes an agreement with Israel, would ensure, on the one hand, that no information will be transmitted to Israel and used in connection with interrogations that violate human rights and, on the other hand, that information submitted by Israel to Europol and stored in its database, will not have been obtained by means that constitute such violations.

It is noteworthy in this respect, that the Council Act of 3 November 1998 laying down rules concerning the receipt of information by Europol from third countries provides as follows in article 4(4):

“Without prejudice to Article 20 of the Europol Convention, information which has clearly been obtained by a third State in obvious violation of human rights shall not be stored in the Europol information system or analysis files.”⁹⁶

Suffice it in this respect to stress that the wording of article 4(4) could be criticised in its own right, since terms like “clearly” and “obvious” would seem to indicate that information could be accepted and stored in the Europol database if there is “only” a suspicion, however well-founded, that it has been obtained in violation of human rights. This prospect raises serious concerns about the integrity of the information system.

⁹³ *Ibid.*, pp. 5 and 14-17.

⁹⁴ EU doc. SEC(2006) 1507/2, *Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy – ENP Progress Report: Israel* {COM(2006) 726 final}, p. 8.

⁹⁵ *Ibid.*, loc. cit.

⁹⁶ See Official Journal of the European Communities, 1999/C26/03, to be found at: <http://europa.eu.int/eur-lex/lex/JOHtml.do?uri=OJ:C:1999:026:SOM:EN:HTML>; Article 20 of the Europol Convention concerns Correction and Deletion of Data; for the text see: <http://www.europol.europa.eu/index.asp?page=legalconv#ARTICLE%2020>

Given the degree of ill-treatment in Israeli detention centres and other human rights abuses of which primarily Palestinians are the victims, it will be fundamentally important that any potential agreement concluded between Israel and Europol will in clear terms ensure, *firstly*, that Israel will be legally bound not to submit any information to Europol where there is evidence, or a reasonable suspicion, that such information has been obtained by means that are contrary to its national and international legal obligations effectively to respect human rights and fundamental freedoms. *Secondly*, any treaty should moreover include an express reference to the legal obligation of Europol to strictly apply article 4(4) of the aforementioned Council Act of 1998.

5.3.2 The political dialogue and implementation of the Association Agreement

The political dialogue between the EU and Israel takes place in the Association Council, which meets at the ministerial level once a year or at the initiative of the Chairman when the circumstances require such meeting (art. 67 of the Agreement). Subject to the powers of the Association Council, an Association Committee, which meets at the level of senior officials, is responsible for the implementation of the Agreement (art. 70(1)). Finally, the council “may decide to set up any working group or body necessary for the implementation of the Agreement” (art. 73). A *Sub-Committee on Political Dialogue and Co-operation* has thus been created to deal with political issues, and in this framework also questions concerning human rights and democracy can be raised. The most recent meeting of the Sub-Committee took place on 22 October 2007, but it was reported to last for only half a day. It is evident, that in such limited meeting, the agenda must be succinct.

An *Informal Working Group on Human Rights* (IWGHR) was created in 2006 but, contrary to similar working groups in Morocco and Egypt, the EU-Israel working group on human rights has not been formalised due to apparent resistance from the Government of Israel. The IWGHR has reportedly met twice and a new meeting is scheduled for the end of February 2008. An *Informal Working Group on International Organisations* has also been created, and it is discussing subjects such as the UN Human Rights Council and the UN treaty bodies.

According to the European Commission ENP Progress Report of November 2006, the IWGHR had “provided an opportunity for discussing issues inter alia on the enhancement of the rights of **minorities**, **international humanitarian law**, relevant international conventions and protocols as well as the newly established **UN Human Rights Council**, thereby establishing a closer dialogue on these issues”.⁹⁷ Given that three of the issues are in bold in the original text, it might be surmised that these were the

⁹⁷ EU doc. SEC(2006) 1507/2, *Commission Staff Working Document Accompanying the Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy – ENP Progress Report: Israel* {COM(2006) 726 final}, pp. 4-5; bold in the original text.

issues that were primarily addressed in this dialogue, which moreover covered “the impact of the separation barrier and the restrictions of movement within the Palestinian territories, the difficulties faced by humanitarian NGOs to access to the Palestinian territories, the extra-judicial killings, and administrative detentions on the one side and on the other the impact of Palestinian Qassam rockets targeting Israel’s inhabited areas causing civilian casualties”.⁹⁸ No further details were contained in this progress report with regard to the problem of administration detentions. Nor is there any indication that the question of ill-treatment was raised.

In case of non-fulfilment by a Party of an obligation under the Agreement, the other Party “may take appropriate measures”, although before doing so, “except in cases of special urgency, it shall supply the Association Council with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties”; in selecting measures, priority shall however “be given to those which least disturb the functioning of the Agreement (art. 79(2)).

It is understood that sanctions under Association Agreements are considered to be an extreme measure and that in the human rights field the EU preference is to prefer dialogue to punishment. However, for the EU to remain a credible actor in the human rights field, such dialogue must reasonably lead to visible progress of third countries’ human rights record within a realistic time-frame. In spite of serious and persistent human rights problems that might be said to violate the letter and spirit of the “essential elements” clause, sanctions against Israel have reportedly never been a realistic option.

5.4 EU-PA: The Interim Association Agreement and the ENP Action Plan

5.4.1 The Interim Association Agreement

The Euro-Mediterranean Interim Association Agreement on Trade and Cooperation between the European Community and the PLO for the benefit of the Palestinian Authority entered into force on 1 July 1997. Among the principal objectives of the Agreement are “to provide an appropriate framework for a comprehensive dialogue, allowing the development of close relations between the Parties” and “to establish the conditions for the progressive liberalization of trade” (article 1(2)). According to the traditional “essential element” clause in article 2:

“Relations between the Parties, as well as all the provisions of the Agreement itself, shall be based on respect of democratic principles and fundamental human rights as set out in the universal declaration on human rights, which guides their internal and international policy and constitutes an essential element of this Agreement.”

⁹⁸ *Ibid.*, p. 5.

The Agreement provides no further references to human rights. Moreover, in contrast with the EU-Israel Agreement, it contains no provisions on political dialogue. Its “primary objective” is thus “to establish the conditions for increased liberalisation of trade and to provide an appropriate framework for a comprehensive dialogue between the EU and the PA”, measures that are aimed at “integrating the Palestinians into the Euro-Mediterranean Process”.⁹⁹

5.4.2 The EU, the PA and human rights

A reading of the country report shows that the EU attaches a number of conditions to its financial support with the aim of advancing Palestinian reform efforts including *administrative and judicial reform*, as well as *financial accountability*; during the years 2002-2004, West Bank/Gaza was also one of the “focus countries” for the European Initiative for Democracy and Human Rights (EIDHR) and in this respect benefited from support of 2.5 million euros.¹⁰⁰

With regard to human rights and fundamental freedoms, the report notes that the Palestinian Basic Law “**prohibits torture, force against detainees and illegal arrests**”, although adding that “there have been numerous reports of cases of torture and ill-treatment in PA detention centres, namely those operated by the security services”; further, according to human rights organisations, “security services arbitrarily detain persons and use excessive force”; although there have been PA declarations condemning such practices, “the security services do not appear to have clear procedures for investigating complaints effectively and impartially and there is limited control over their interrogation methods”.¹⁰¹

The court infrastructure is also “extremely poor”, and has the following problems, among others: (1) the courts are unable to hold sessions most days, resulting in an increasing backlog of cases; (2) the judiciary has insufficient resources for training; (3) judges and court personnel suffer from a lack of communication between the courts; (4) they have ineffective procedures and poor management of records; (5) the problems are compounded by restrictions on movement between the West Bank and Gaza.¹⁰²

While the Oslo Accords provided for the creation of a PA police force, there were at least “ten largely autonomous police and security forces” operating in the PA, “including civil police, criminal investigation, preventive security, general intelligence, and military intelligence”, and efforts to unify these various services had been

⁹⁹ EU doc. SEC(2004) 565, *Commission Staff Working Paper, ENP Country Report, Palestinian Authority of the West Bank and Gaza Strip* {COM(2004) 373 final}, p. 3.

¹⁰⁰ *Ibid.*, p. 4.

¹⁰¹ *Ibid.*, p. 10; bold in original text.

¹⁰² *Ibid.* p. 9.

unsuccessful.¹⁰³ The detention system adds to the problems, in that prisons, which are known as “reform and rehabilitation centres”, come under the police directorate, with the various security forces operating their own detention and interrogation centres “access to which have often been denied to outside bodies or international human rights organisations.”¹⁰⁴ In such a chaotic situation, without central civilian structures to control the security agencies, places of detention and the law enforcement in general, abuses are likely to be commonplace, as is impunity for unlawful activities, including human rights violations.

The EU-Palestinian Authority Action Plan was adopted on 4 May 2005 and covers a period of three to five years. It defines “priority objectives” to be achieved, which have been jointly agreed upon by the EU and the PA.¹⁰⁵ Both parties thus *inter alia* attach “particular importance to” (1) enhancing “political dialogue and cooperation, based on shared values, including issues such as strengthening the fight against terrorism and incitement to violence, promoting the protection of human rights and the rights of minorities, improving the dialogue between cultures and religions...”; (2) making progress on “establishing a functioning judiciary and effective enforcement of legislation; strengthening the rule of law and respect for human rights”; and (3) organising elections in the West Bank and Gaza Strip “in accordance with international standards”.¹⁰⁶ With regard to ill-treatment more specifically, it was agreed to “[s]trengthen and ensure effective enforcement of legal provisions against torture” and to provide “training for the relevant Palestinian authorities on human rights issues and civil liberties”.¹⁰⁷ The question of torture had thus been accepted by both parties as a serious issue that needed to be addressed. The Parties also agreed to strengthen “possibilities for legal redress against violations of human rights and civil liberties and access to information on citizen’s rights”.¹⁰⁸

However, the 2006 ENP Progress Report provides sombre reading in that, following the victory of Hamas in the January 2006 elections, the EU “suspended political contacts and cooperation with the Government of PA, pending its acceptance of the Quartet principles”; there was a serious deterioration in the security and financial situation and the Israeli-imposed restrictions on movement and access “severely” hampered private sector activities.¹⁰⁹ This contrasts sharply with the report’s later

¹⁰³ *Ibid.*, loc. cit.

¹⁰⁴ *Ibid.*

¹⁰⁵ *EU/Palestinian Authority Action Plan*, pp. 1-2; document to be found at : http://ec.europa.eu/world/enp/pdf/action_plans/pa_enp_ap_final_en.pdf. It is noted that although the Interim Association Agreement contains no reference to political dialogue, such dialogue is part of the Action Plan.

¹⁰⁶ *Ibid.*, p. 3.

¹⁰⁷ *Ibid.*, p. 6.

¹⁰⁸ *Ibid.*, loc. cit.

¹⁰⁹ EU doc. SEC(2006) 1509/2, *Commission Staff Working Document Accompanying the: Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy - ENP Progress Report: Palestinian Authority* {COM(2006) 726 final}, p. 2.

description of the “reinforcement of the **democratic process** in the Palestinian territories”, which was the area where “most progress could be registered”; proof of this was the January 2006 elections to the PLC, which were open and fair and monitored by the EU Electoral Observation Mission.¹¹⁰

There is a noticeable dismay among Palestinians with regard to Europe’s turnabout following the fair and free elections and little understanding for the subsequent sanctions imposed on a democratically elected Government, sanctions which have caused a widespread humanitarian crisis in the Gaza strip and further isolated Hamas. Reports from persons recently visiting Gaza tell a story of despair, with a population that feels abandoned and even betrayed by the international community. The trust being lost, the road to peace may turn out to be particularly fraught with danger.

With regard finally to the question of human rights, as such, the ENP Progress Report reads:

“Human rights for Palestinians continue to be subject to grave violations. This is true of the right to life and personal security and the right to personal freedom and safety (especially as regards arrest, detention, search procedures, torture and ill-treatment during interrogation). In general, both Palestinian and Israeli authorities are responsible for violations. Due to the deterioration of the security situation in the territories and occupation by Israel, the promotion of basic human rights in the territories suffered particular setbacks in 2006. The European Commission has continued supporting human rights organisations working on issues such as women’s and children’s rights, civil society empowerment as well as fighting torture and the death penalty”.¹¹¹

5.4.3 The implementation of the Interim Association Agreement

A Joint Committee for European Community-Palestinian Authority trade and cooperation is established according to article 63 of the Agreement, and it “shall meet once a year and when circumstances require, on the initiative of its Chairman” (art. 65(2)). The Committee has the power to take decisions in the cases provided for in the Agreement as well as in other cases necessary for the purpose of attaining the objectives set out therein (art. 63(1)). Article 66(1) finally provides that “[t]he Joint Committee may decide to set up any other committee that can assist it in carrying out its duties”. There is no information to the effect that any other committees have been established.

According to article 70(2), either Party to the agreement “may take appropriate measures” in case it considers that the other Party “has failed to fulfil an obligation under

¹¹⁰ *Ibid.*, p. 3; bold in original text. For the report of the EU Electoral Observation Missions, see http://ec.europa.eu/external_relations/human_rights/eu_election_ass_observ/westbank/legislative/final_statement_0106.pdf

¹¹¹ EU doc. SEC(2006) 1509/2, *Commission Staff Working Document Accompanying the: Communication from the Commission to the Council and the European Parliament on Strengthening the European Neighbourhood Policy - ENP Progress Report: Palestinian Authority* {COM(2006) 726 final}, pp. 4-5.

the Agreement”. Before doing so, “except in cases of special urgency, it shall however supply the Joint Committee with all relevant information required for a thorough examination of the situation with a view to seeking a solution acceptable to the Parties.”

The implementation of the Interim Association Agreement has however proven “extremely difficult” following the outbreak of the second Intifada in late September 2000 and the closure and curfews in the West Bank and Gaza.¹¹² The Joint Committee meetings also have been rare, with one meeting held on 23 May 2000 and a second in Ramallah in June 2003.¹¹³ There is no information that any further meetings have been held.

The implementation of the Action Plan will hopefully be resumed soon, but much will depend on the evolution of the political situation. At the time of the consultant’s visit to the region, the EC had evident problems developing its activities in the West Bank and in particular in the Gaza Strip, although it has normalised its relations with the PA Government, thereby allowing it to provide emergency assistance. As previously noted, this report does not consider the changes that have taken place subsequent to the consultant’s visit to the region, such as the Annapolis meeting and in particular the Paris Conference in December 2007, during which donors, including the EU and its Member States, pledged a total of 7.4 billion dollars to help build a Palestinian state.

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Following this overview of the human rights situation in Israel and the OPT, the treaty obligations between the EU and its Middle East partners and their fulfilment with regard to human rights, the remaining part of this report will specifically focus on the EU guidelines to prevent and eliminate torture and ill-treatment and the manner and extent to which they are being implemented in the EU policies towards Israel and Palestine.

6 Knowledge and Use of the EU Guidelines

For purposes of this study, it has not been possible to provide a complete picture of the knowledge and use of the guidelines by all relevant EU actors in Israel, the OPT and Brussels, but thanks to the cooperation of some diplomats and officials, the information collected can be considered to reflect relatively well the extent of such knowledge and use. As previously noted, the question of torture and ill-treatment must also be examined in the overall context of the situation in the Middle East, which makes the work of the diplomats in the EU Missions and the officials in the international

¹¹² EU doc. SEC(2004)565, *Commission Staff Working Paper, European Neighbourhood Policy Country Report: Palestinian Authority of the West Bank and Gaza Strip* {COM(2003) 373 final}, p. 3, see also http://www.delwbg.ec.europa.eu/en/eu_and_palestine/ec_plo.htm

¹¹³ *Ibid.*, loc. cit.

organisations particularly difficult. Israel's sensitivity to dealing with questions of human rights in general, and the problem of torture and ill-treatment in particular, makes any dialogue on these matters particularly slow and complex, with the result that the EU and its Member States may become overly reluctant to raise such issues systematically, consistently and firmly, notwithstanding their legal and political duty to put human rights in the centre of their foreign and security policy. As one person said, overcome by pessimism: "The situation is Kafkaesque."

With regard to the implementation of the guidelines in the OPT, the dramatic situation obtaining there, which is, for instance, characterised by a high degree of community violence, the split between Fatah and Hamas, the lack of an effective judiciary, the lack of central civilian control over the various security forces, the harsh Israeli security measures and international sanctions, make any progress in the short and medium term particularly problematic and possibly even illusory.¹¹⁴

This being said, some steps are being taken by the EU and they will be highlighted below together with the replies of the NGOs contacted.

6.1 EU representations (Embassies, Consulates General, Representative Offices)

Awareness and use of the guidelines: All the EU actors contacted appeared to be aware of the existence of the guidelines, but this does not mean that they use them in their daily work. While the EU representations replying to the questionnaire had not designated any person that should specifically ensure the effective implementation of the guidelines, they all had at least one person responsible for dealing with human rights issues. In one case there was even an additional person working half-time on the subject. In general, there appears to have been no specific instructions coming either from the Headquarters in Brussels or the Member States' capitals to assist the officials in the field in implementing the guidelines. Consequently, it would seem to be very much up to the individual persons in the Missions, Representative Offices and General Consulates to try to promote any such implementation. However, there is reason to believe that this work must not, in the circumstances, risk harming the dialogue that the EU is developing with Israel and the PA.

Overall, the EU Missions do not appear to have set any priorities on the basis of the guidelines either for purposes of improving the situation in Israel or in the OPT, and there appears to be only little to moderate support or interest in *formally* upgrading human rights issues on the agenda of the discussions with Israel and the OPT. Yet, in particular some EU Member States have a clear interest in human rights, and an *informal* working group has thus been established in Ramallah to discuss different human rights

¹¹⁴ For a recent report on the alarming humanitarian situation in the OPT, see the ICRC report *Dignity Denied in the Occupied Palestinian Territories*, November 2007, 9 pp.; the text can be found at: <http://www.icrc.org/eng/palestine-report>.

issues in the OPT, including the EU guidelines. The group meets about every four to six weeks and NGOs are sometimes invited to make a presentation on a subject of particular concern. Apart from the EU Member States and ECTAO, also Norway, Switzerland and Canada participate in this informal working group, as does the UN OHCHR field office in Ramallah. Likewise, in Tel Aviv, one EU Member State is facilitating an EU discussion group on human rights, to which also the aforementioned non-EU states are invited. The group meets four to six times a year to discuss various subjects of interest, and sometimes a guest or guest organisation is invited to make a presentation on a particular issue. It is not possible to know whether these informal working or discussion groups have so far had any impact on the EU policy vis-à-vis Israel and the PA, but theoretically the potential is there.

Usefulness and implementation of the guidelines: The view was expressed that the guidelines constitute a useful tool in that they provide information on EU policy. With regard to Israel, more particularly, they were considered to open up new possibilities, although there was room for improvement in their implementation. It was also considered useful to look at the guidelines prior to meeting with local NGOs, for instance. Overall, the guidelines do not appear to have been to any greater help in the consultations between EU Missions. According to one opinion expressed, they had however been helpful and were regularly referred to in related discussions in human rights or political working groups; the guidelines were also used in discussions with civil society actors to illustrate the EU's ownership and interest in this matter alongside with the UN. One Member State believed that the guidelines are useful and help take action when torture cases are disclosed, while another Member State considered that the guidelines on human rights defenders are more important than the torture prevention guidelines because the human rights defenders are unable to leave the West Bank and Gaza. A couple of Member States also preferred to refer to international law rather than to the guidelines in their discussions with the authorities, such as with regard to the question of administrative detention, and this is, of course, exactly what they should do, since the guidelines constitute an EU work-tool and not a legal document binding third states. It was finally also submitted in this context that political priorities sometimes prevent the EU from implementing the guidelines.

Contact with civil society: Most EU actors contacted in Tel Aviv, Jerusalem and Ramallah have regular to frequent contacts with NGOs and sometimes invite them to meetings and conferences to present their work. They also generally praise their serious and very professional work. Some, but not all, of the EU Members contact the NGOs when they draft their human rights reports and the information provided by the local organisations is generally considered accurate and useful. However, according to one answer the NGOs provide information that is *not* accurate/useful and the question of accuracy of the information on torture and ill-treatment "is at the heart of the matter". The information provided can only be used if the EU can have a certain degree of confidence in the sources and the methodology of the research the NGOs conduct. Consequently, the degree of usefulness "varies with the information received". - The

NGOs were also said to submit information to the Missions of their own initiative. According to one answer, meetings for discussion with NGOs are organised whenever there is new data or they need an update on the situation; sometimes these meetings are organised jointly with the EU Member States and often within the framework of the IWGHR.

6.2 Local stakeholders

Awareness and priorities: About half of the NGOs questioned were aware of the guidelines, but the other half had never heard of them. Three of the organisations believed that the guidelines had helped them better define their relations and communications with the EU and some Member States. They had also been useful when they write proposals and implement their projects. Without providing details, one organisation replied that it had set specific priorities for trying to work with the EU in order to promote the implementation of the guidelines. None of the organisations knew the names of the persons responsible for human rights in the ECD or EU Missions, although one NGO said that it has an officer who works with EU advocacy and a second officer who has contacts with the ECD in Tel Aviv and the Embassies of several EU Member States. Local NGOs appear consequently to lack considerable knowledge of both the guidelines and the EU Missions in Tel Aviv, the Representative Offices in Ramallah and the General Consulates in Jerusalem.

Contacts with the EU: There was some discrepancy – and also inconsistencies - in the replies of the NGOs with regard to the contacts, exchanges of information and meetings that they have with the EU in Israel and the OPT. Some thus replied that there was *no* information sharing with the EU in the field of torture and ill-treatment and, according to all of them, the EU actors either do not contact them for purposes of drafting their reports, or they are unaware of such contacts. Most of the NGOs further replied that they do not send (regular) information to the EU of their own initiative. Further, according to most organisations, there were no – or they were not aware of any - meetings between NGOs and the EU. However, two organisations replied that there are occasional or rare meetings between the EU and NGOs. One of these latter NGOs has otherwise frequent contacts with the EU Member States and the ECD for coordination and information sharing and the second organisation is in contact with the EU throughout the year.

One of the organisations appears clearly to have much more frequent contacts with the EU than its colleagues. It thus happens that either EU Missions request meetings or the organisation itself organises informal briefings with them on major legal developments. The ECD also asks this NGO for information about various Supreme Court cases or governmental plans and the NGO provides the EU with information on the cases it is dealing with. According to this organisation, furthermore, the ECD invites human rights organisations to various meetings with parliamentarians and staff from the

EC Secretariat in Brussels. The organisation also took the initiative of organising a well-attended briefing for Embassy representatives in 2006 in order to “round up” the activities of the year. Finally, it distributes a monthly newsletter in English, Arabic and Hebrew, and the feedback it gets is that it constitutes a credible and responsible source of information.

Most NGOs replied that there had been no change in the nature or frequency of the contacts with the EU since the adoption of the guidelines. One Palestinian organisation had however started to use some of the guidelines and contacted relevant people in the EU. Finally, one organisation, which was running a project financed by the EU, replied that their contacts with the EU had increased since the beginning of the implementation of that project.

On the basis of the replies received, it would seem that the NGOs in Israel are at an advantage as compared to their colleagues in particular in Gaza, and to some extent also in the West Bank, in terms of the frequency and intensity of the contacts with the various EU representations.

7 Prevention of Torture and Ill-Treatment: Specific EU actions

7.1 Political dialogue

It is recalled that the guidelines foresee political dialogue as one of the main actions for the EU to promote the prevention of torture and other forms of ill-treatment in third countries. The question is thus how this subject has been dealt with in the political dialogue between the EU and Israel as well as the EU and the PA.

The EU-Israel dialogue: As previously noted, the EU-Israel dialogue on human rights takes place in both the Sub-Committee on Political Dialogue and Co-Operation and the IWGHR set up under the Association Agreement. It is the ECD and Embassies of the EU Member States in Tel Aviv that are competent to liaise with Israel in this respect. Because of the confidentiality of the dialogue, it is difficult to have a clear idea of the extent, usefulness and effectiveness of the discussions carried out on human rights issues, but in the mid- and long-term, concrete results will have to ensue for this dialogue to be credible. What is known is that questions relating to administrative detention, the settlements and the separation barrier have been dealt with in the context of this political dialogue, but apparently not the subject of torture and ill-treatment as such. There are contradictory opinions as to whether the conditions of detention in Israeli prisons have been formally dealt with.

One diplomat explained that they are promoting human rights and that they have a continuous dialogue with Israel on a number of questions. However, in order for them to be a reliable partner, it was important to talk to Israel also about issues other than just

Palestine. It was stressed in this respect that, although Israel wants to cooperate with the EU, this does not happen at the cost of human rights. Israel has realised that Europe has something to give and this also means that the EU can now allow itself to say things that are more uncomfortable. On the other hand, no room for further action was perceptible; Europe had done what it could.

This point of view was contradicted by other EU actors, who agreed with the fact that there had been a shift in the EU-Israeli dialogue during the last two to three years in that it is now somewhat easier to work with Israel. They are thus closer to having a dialogue with Israel, which is “relatively cooperative”. However, this development has taken place concomitantly with a “policy differentiation” on the European side. What this means is that Israel now is prepared to discuss issues that it was unwilling to discuss three to four years ago. On the other hand, there was no indication that this relative openness on the part of Israel has evolved to cover human rights issues more extensively.

With regard to the EU work on human rights issues in Israel it was pointed out that the EU is not very well organised and that there is a lack of continuity in the work. On the other hand, the Israelis are very impressive and knowledgeable, but also very defensive and sensitive, and see themselves as being under a threat. Moreover, there appears to be general agreement on the fact that Israel wants to be assessed in accordance with international and European standards rather than with their neighbours’ level of development.

The EU-PA dialogue: ECTAO and the General Consulates in Jerusalem as well as the Representative Offices in Ramallah are in charge of the political dialogue with the PA, to the extent that they are allowed to have such a dialogue. One EU Member State noted that, due to the “contact policy”, they try to raise the question of torture and ill-treatment indirectly through actors such as the Palestinian Independent Commission for Citizens Rights (PICCR). In the past they had however also been able to raise issues with the Judicial Council, the Ministry of Justice, the Ministry of Social Affairs and with the police, when specific issues necessitated the attention of these authorities. – Another EU Member State emphasised that the promotion and respect for human rights and the rule of law is, explicitly, an integral part of its strategy for development cooperation with the West Bank and Gaza; it is therefore a regular subject in consultations at all levels with the PA. Moreover, its Ministry for Foreign Affairs publishes annual reports on the perceived human rights situation in almost every part of the world, including the OPT. – The EC has not raised the question of torture and ill-treatment with the PA during the last two years. It is not known whether there had been any earlier discussions on the matter.

It appears clear that, in spite of the deteriorating human rights situation in the OPT, human rights are not always on the agenda with regard to the PA. The question was thus asked by one diplomat “whether it now has become an issue that should be raised?” According to another viewpoint, however, there is a growing European interest in what is

happening in Gaza and the West Bank, and increased help is given to Prime Minister Fayyad to help him deal with the manifold problems that his Government is facing.

7.2 Démarches and public statements

In addition to political dialogue, the EU guidelines to prevent torture and ill-treatment also emphasise démarches and public statements as means of action to achieve the objectives defined therein. However, no information has been received on any démarches or public statements with regard to torture and ill-treatment in Israel. In so far as the PA is concerned, but without submitting any details, one Member State replied in general terms that it had made démarches and/or public statements concerning torture and ill-treatment. However, another Member State was not aware of any démarches having been made during the last two years, since they basically cannot have any political contacts with the Government. - Among the NGOs, only one organisation said that it was aware of a public statement or démarche made by the EU, but it could not recall the details.

With respect to the *usefulness of démarches and public statements* in general, the opinion of one EU actor was that public statements by the EU can be good and useful and that they are sometimes inevitable, because they constitute a reminder to the authorities that the problems concerned have not been solved. On the other hand, it was also stated that it is sometimes better to act confidentially. It would therefore be an error to only focus on public statements, since confidential statements may provide a basis for a more constructive discussion.

7.3 Intervention in individual cases

The guidelines provide that, in “well documented individual cases of torture and ill-treatment the EU will urge (by confidential or public démarche) the authorities in the country concerned to ensure physical safety, prevent abuses, provide information and apply relevant safeguards. Actions on individual cases will be determined on a case-by-case basis and may form part of a general démarche.” The question is therefore to what extent the EU has intervened on behalf of individuals in Israel and the OPT.

Following the request of local NGOs, the EU had in the months preceding the research carried out for this study intervened in three different cases of persons detained in *Israel*, and who were subsequently released. While it is not possible to know with any certainty that the EU action was instrumental in this respect, it may have been a contributing factor. Another similar case was apparently recently raised. - With regard to the *OPT*, one EU Member State noted that at least some trials had been attended by the

EU, and that they also support NGOs whose mandate is to carry out such work. This was said to mean that the EU indirectly supports interventions in individual cases.

In reply to the specific questions whether they had ever asked the EU to intervene in individual cases concerning persons at risk of torture and ill-treatment, or whether they knew about the EU intervening in such cases, *all* NGOs answered in the negative. This answer is contradicted by the fact that two of the NGOs had submitted the aforementioned cases to the EU for consideration in the political dialogue.

Visits to places of detention: According to a couple of EU Member States, visits to PA/OPT places of detention had taken place. In addition, several prison visits were conducted in connection with a prison audit carried out by an expert in the OPT in 2005. It is not known what was the outcome of this prison audit, nor to what extent it was followed up. Further, several NGOs funded by one of the EU Member States visit prisons and detention centres in the OPT. - No organisation was aware that the EU visits places of detention, and it appears clear that this is in any event a task that the EU Missions prefer to leave to the ICRC, which has privileged access to detainees both in the OPT and Israel.

7.4 EU actions to promote effective domestic remedies

As explained in section 2.1 of this report, the guidelines also *inter alia* provide that the EU will urge third states to take various measures to establish effective domestic remedies in order to address complaints and reports of torture and ill-treatment. This subsection will consider actions taken by the EU to this effect in Israel and the OPT.

PA draft law on torture: One EU Member State pointed out in this respect that, thanks to its support, the PICCR had published a complaints manual and that other organisations funded by it were active in producing and advocating for the draft law against torture. However, this draft law was not adopted by the PLC, which now, in any event, is not functioning due *inter alia* to the fact that several of its members (one third according to some sources) are detained in Israeli prisons.

Effective domestic remedies, including compensation: The NGOs contacted did not know of any technical or financial assistance by the EU to Israel and/or the PA in order to establish and operate effective domestic legal procedures for investigating complaints and suspected cases of torture and ill-treatment; one organisation replied that it was not certain in this respect.

Most organisations also replied negatively to the questions whether the authorities in Israel and the OPT pay damages awarded to victims of ill-treatment by the competent courts, and, if not, whether they had approached the EU for purposes of getting help to convince the authorities to pay the victims concerned. Two organisations did, however,

reply that Israel does pay such damages. One of them noted that it had won a big case of compensation before the Israeli Supreme Court in December 2006. The decision followed on their petition, submitted jointly with two other organisations on their own behalf, as well as on behalf of six other Israeli and Palestinian NGOs, concerning the amendments to the Civil Wrongs Law, adopted by the Knesset in the end of July 2005. According to this law, as amended, Israel would be exempt from paying compensation claims to Palestinians harmed by their security forces in areas designated as “conflict zones”, that is, most of the West Bank and Gaza. In a decision of 12 December 2006, the Supreme Court ruled unanimously that the State of Israel cannot exempt itself from paying compensation to Palestinians in the West Bank and Gaza who have been harmed by the Israeli Military.¹¹⁵ - It was pointed out by EU representatives that the authorities in the OPT do not pay damages awarded to victims of torture and ill-treatment. Most Palestinian NGOs were of the same opinion, although one replied that it was not sure.

The adoption and implementation of international legal safeguards for persons deprived of their liberty: One EU Member State had tried to persuade the Palestinian authorities to adopt and implement international safeguards through its assistance to the EU Coordinating Office for Palestinian Police Support (EU COPPS) in the form of training and judicial reform interventions. However, this was stopped because of the boycott of the Hamas Government. A second Member State stressed in this context that the promotion and respect for human rights and the rule of law is an integral part of its strategy for development cooperation with the West Bank and Gaza and is therefore also a regular subject in consultations at all levels with the PA.

No organisation had any information about EU efforts to have the authorities in Israel and/or the OPT adopt and implement legal safeguards for persons deprived of their liberty, and it is not known to what extent, if at all, this issue has been raised in the IWGHR set up under the Association Agreement with Israel. Similarly, the NGOs were unaware of EU efforts to assist the authorities in Israel and the OPT in creating an independent visiting mechanism to all places of detention. As pointed out by one organisation, about 10.000 Palestinians are classified as “security prisoners” by the Israeli authorities and rarely receive visits by their family members due to closures, curfews and the denial of permits.¹¹⁶ When they do receive visits that are coordinated by the ICRC, they are limited to the immediate family members. Moreover, the consultant was informed during her mission that men within a certain age-bracket are not allowed to participate in these visits.

The creation of an independent prison visiting mechanism could play an important role in preventing and eradication torture and ill-treatment in Israel. It would therefore be both relevant and important to discuss this issue with the Israeli authorities.

¹¹⁵ For more information on this case, see <http://www.adalah.org/eng/complaw.php>.

¹¹⁶ According to another source, there is a very high turnover of detainees, but the total number oscillates between 11.000 to 12.000. It is noteworthy that the ICRC considers that *all* Palestinians detained by Israel are protected by the Fourth Geneva Convention.

It would in this respect be particularly opportune to try to convince Israel to join the Optional Protocols to the relevant international treaties on human rights, a possibility that the Parties have agreed to explore, according to the Action Plan. – The importance of independent visiting mechanisms is, of course, equally important for the PA, but there the PICCR has already the authority to monitor the situation in prisons and in 2006, for instance, it made more than 360 visits to reform and rehabilitation centres, security agencies' detention centres and to care and shelter centres.¹¹⁷

7.5 Financial assistance

Consistently with the guidelines, the EU provides a considerable amount of funding to civil society activities around the world through the European Initiative for Democracy and Human Rights - EIDHR – including so called micro projects, which will in the future be called *country-based support schemes*. For purposes of simplicity it has been decided to retain the old terminology in this study. In addition to EIDHR funding, also some of the individual EU Member States, often through their development agencies, provide financial assistance to NGO projects in the human rights field. In this section, some of these projects will be mentioned to the extent that they are directly or indirectly relevant to torture and other forms of ill-treatment.

EC assistance to NGOs in Israel and the OPT: With regard to Israel, for instance, the EIDHR funded during 2005 and 2006 15 micro projects for a total of 1.248.451 euros, and from 2002 onwards, 15 macro projects amounting to 7.712.941 euros.¹¹⁸ The grant contracts awarded during December 2007 for the OPT totalled about 790.350 euros,¹¹⁹ while 14 micro projects were financed in 2006 for 1.265.619 euros.¹²⁰ Among other OPT grants should be mentioned two co-financed projects, which received 1.663.038 euros in 2006.¹²¹ Further projects will be detailed below. According to one EC official they work at a very local level by raising awareness, because you need to *prevent* although also to *cure* when necessary. A number of the grants awarded went to projects relating to the rights of the child, domestic violence and the promotion of peace.

ECTAO reported that the following three projects relevant to torture and ill-treatment had recently been financed under the EIDHR: (1) “*Post trauma rehabilitation for Palestinians physically disabled due to torture*”, DANCHURCHAID, 649.383 euros; (2) “*Strengthening Rehabilitation Services to Victims of Torture in North and South West Bank*”, Treatment & Rehabilitation Centre for Victims of Torture (TRC), West Bank and

¹¹⁷ See the PICCR *Annual Report 2006*, p. 248, which can be found at:

<http://www.piccr.org/dmdocuments/AnnualReports/2006/eng/part3chapter1.pdf>

¹¹⁸ For the projects, see http://www.delisr.ec.europa.eu/english/content/cooperation_and_funding/4.asp.

¹¹⁹ See http://www.delwbg.ec.europa.eu/en/funding/grant/publication_awarded_eidhr_grants2.doc.

¹²⁰ For the complete list of EIDHR projects for the years 2003-2006, see http://ec.europa.eu/europeaid/where/worldwide/eidhr/documents/070515_eidhr_contracts_signed_2003-2006.xls.

¹²¹ See http://www.delwbg.ec.europa.eu/en/funding/pvd_projects2006.doc.

Gaza Strip, a 36 months project grant of 966.701 euros; and (3) “*Prisoners’ rights and democratic development*”, Palestinian Centre for Human Rights, Gaza, a 12-months project grant of 293.225 euros.

In the opinion of ECTAO, the first two projects directly contributed to the objective of providing reparation and rehabilitation for victims of torture and ill-treatment by aiming at strengthening the social and economic reintegration of Palestinians physically disabled due to torture in their community, or by striving to assist comprehensive psychiatric and psycho-social support for the rehabilitation of torture victims. The third project contributed to the implementation of several objectives of the guidelines through broad actions aimed both at strengthening PA institutions and civil society by ensuring increased access to justice for victims of human rights violations as well as for Palestinian prisoners in Israeli custody; at providing free legal services; and at scrutinising Palestinian legislative proposals, consultation and lobbying for best practice in accordance with international standards.

EIDHR funded micro and macro projects to civil society actors in Israel can be found at the ECD’s in Tel Aviv website,¹²² and among the macro projects directly relevant to this report are: (1) “*Coalition against Torture – Preventing Torture in Israel and the Occupied Territories*”; ICS; a 36 months project of 357.268 euros aimed at the progressive eradication of torture in Israel and the OPT, and of which this report is a component; (2) “*Capacity Building Project to Combat the Legitimization of Torture in Israel*”; PCATI; a 24 months project of 230.287 euros; and (3) “*Human Rights in Custody*”; Physicians for Human Rights (PHR); a 45 months project amounting to 665.967 euros to promote a humane prison system through direct intervention, advocacy, fact-finding etc.

These three projects can be considered to provide evidence of EU’ basic concern about the situation with regard to torture and ill-treatment in both Israel and the OPT.

Financial assistance provided by EU Member States: The Dutch Representative Office in Ramallah provides support to two rehabilitation centres for victims of torture, the TRC in Ramallah (with three other offices in the West Bank) and the Gaza Community Mental Health Programme (GCMHP). It also provides assistance to other NGOs that document and/or offer legal aid to victims, such as the Women’s Center for Legal Aid and Counselling (WCLAC). The Dutch Embassy in Tel Aviv provides assistance to the following projects, among others, which directly or indirectly can have a potentially positive effect on the prevention of torture and ill-treatment: (1) “*Detention Monitoring Project*”, Defence for Children International Israel; the purpose of the project is to improve the conditions of detention for minors in Israeli detention centres, and also to provide legal assistance; (2) “*West Bank Law Enforcement*”, Yesh Din in collaboration with Israeli Human Rights Attorney Michael Sfard; the purpose of the project is to improve the legal protection for Palestinians under the responsibility of Israeli police and

¹²² See: http://www.delisr.ec.europa.eu/english/content/cooperation_and_funding/4.asp

justice system; and (3) “*Court Watch*”, Machsom Watch; this is a professional development programme for Palestinian defence lawyers. The amount of the Dutch contribution is not known.

In the OPT, Sweden helps funding the GCMHP, the PICCR and an additional 30 local organisations. The size of the Swedish assistance is not known.

Four of the organisations that returned the questionnaire replied that they had never received any funds from the EU for their work. According to the answers provided by the other four organisations, they had received the following financial help from the EU: (1) The GCMHP, had received funding in 2003 for a women empowerment project to combat domestic violence; (2) PCATI was in the midst of a two-year EIDHR-funded grant for their legal fight against torture; (3) Adalah had received a grant for 2006-2008, which is partly aimed at litigation for particularly vulnerable groups, such as women, children, Arab Bedouins and prisoners; it is not specifically for torture prevention activities but concerns litigation relating to conditions of confinement or the challenging of arbitrary laws and regulations; and (4) the TRC in Ramallah, which was carrying out a three-year EU financed project which ends in 2008 and which had allowed it to open three branches in the West Bank.

According to one organisation, the EU has also provided assistance to the Ministry of Detainees (in the OPT) for the detainees’ rehabilitation programme.

7.6 EU actions in favour of vulnerable groups

According to the torture prevention guidelines, the EU will urge third countries *inter alia* to take actions to “establish and implement standards and measures relating to women, children, refugees, asylum-seekers, internally displaced persons, migrants and other groups requiring special protection against torture and ill-treatment.” In view of the limited framework of this study, it has not been possible to make an in depth examination of the problems concerning vulnerable groups. It was however clear from the discussions held with diplomats, that the political situation in the OPT had recently impeded a *démarche* on the rights of women. A senior diplomat of one Member State was however reported to have on “repeated occasions” discussed the question of in particular children in detention with both Israeli and PA officials.

As previously indicated, the EU and Member States also provide *financial support* to various vulnerable groups, including women, children and refugees, and in spite of the political situation, such support fortunately continues. According to ECTAO, several projects targeting particularly vulnerable groups are thus ongoing and women and

children are the target groups of the following EIDHR projects in the OPT, among others: (1) *“Advocacy and Training on Children’s Rights”*; Early Childhood Resource Centre; a 12 months micro project grant of 83.379,32 euros (West Bank); (2) *“Awareness Raising Campaigns on the Dangers of Early Marriage and the Rights of the Female Child”*; Women Studies Centre Association; a 14 months micro project grant of 68.924,50 euros (West Bank); (3) *“A Life without Violence and Discrimination is Possible! Regional Campaign to Protect Women from Domestic Violence”*; Heinrich Böll Foundation; a 30 months project grant of 661.867 euros (West Bank & Gaza Strip, Jordan and Egypt).

Yet another EIDHR supported project is entitled *“Facilitate women’s empowerment in the Occupied territories: increasing personal and collective agency for ending violence against women and for ensuring women’s rights”*; Stichting Oxfam Novib is the beneficiary of this grant for the West Bank amounting to 736.463.00 euros. Numerous other projects relating to issues such as the rights of the child, domestic violence, peace-building, the right to freedom of movement and the equal rights of Arabs in Israel have been or are being funded by the EIDHR, which is thus an important contributor to the lively civil society in both Israel and the OPT.¹²³

In so far as the EC is funding NGOs in Israel that work for vulnerable groups, the following two projects can be mentioned, among others: (1) *“Accessibility to the Israeli Legal System for Palestinian Victims of Human Rights Violations”*: HaMoked Centre for the Defence of the Individual; a micro project of 93,696 euros to facilitate accessibility of the Israeli judicial system to Palestinian victims of human rights violations, specifically victims of violence towards body and/or property etc.; and (2) *“Promoting Access to the Israeli Legal System for Arab Citizens of Israel”*; Adalah; a 36 months macro project of 513.684 euros.

For its part, the Dutch Embassy in Tel Aviv sponsors the following three projects for vulnerable groups: (1) *“Refugee Rights Clinic”*; Tel Aviv University Law School; the purpose of the project is to provide legal assistance to asylum seekers and prepare legal instruction for Israeli Attorney-General on Darfur refugees; (2) *“Assisting Women Wishing to Leave the Sex Industry – Assisting Detained and Trafficked Migrant Workers”*; Hotline for Migrant Workers; the purpose is to provide shelter and legal assistance to women forced into prostitution; and (3) *“When family violence is the cultural norm – Is social change possible?”*; Liali; the purpose is to prevent domestic violence in the Bedouin community; both men and women participate in this project.

In the next place, Sweden supports various organisations working *inter alia* for vulnerable groups, although the amount of the Swedish contribution is unknown.

Surprisingly, most NGOs were not aware of any EU actions in favour of vulnerable groups, such as women, children and religious or ethical minorities. One

¹²³ For more information on EIDHR funded projects, see the following EIDHR website:
http://ec.europa.eu/europeaid/where/worldwide/eidhr/index_en.htm

organisation mentioned however in this respect the EU support for the Women Empowerment Project of the GCMHP in Gaza, which aims at combating domestic violence. Another organisation noted that the EU provides financial support in the form of micro projects to many Arab NGOs in Israel on women, children, human rights and so on. However, it was also pointed out that the EU's budget for civil society initiatives in Israel had been "substantially cut in the last couple of years".¹²⁴ What has happened appears however to be that macro projects will no longer be granted under the EIDHR to NGOs in Israel, and the organisations will therefore be limited to applying for micro financing up to an amount of 100.000 euros for each project.

7.7 Other EU supported activities

This sub-section will briefly focus on two other kinds of activities supported by the EU, namely training and the work of national human rights institutions, which are both covered by the guidelines.

According to various EU actors, *training in the OPT* has, with the exception of the military/army, been organised for various professional groups, such as law enforcement officials, health professionals, public officials and NGOs. There was agreement that the training succeeded *in transmitting knowledge and that is also raised awareness*, as was evident from the increase in the number of complaints people filed against security officers. One Member State noted however that it was more difficult to measure *the effective change in behaviour* resulting from the training. On the other hand, according to another Member State, there was a reduction in the number of torture cases in certain security centres. One of the shortcomings of the training was that it had only targeted samples of security officers and not all of them, and this failure explained the fact that torture was still perpetrated. Much of the result of the training has also been unravelled by the recent political problems in the OPT and the collapse of many of the Palestinian law enforcement institutions.

Most NGOs were not aware of any EU support to training, although a couple of them knew about some training for law enforcement officials and EU sponsored training by NGOs for NGOs.

With regard to *national human rights institutions*, the EU supports the work of the PICCR in the OPT. The EU donors are the Netherlands, Denmark, Sweden and ECTAO. Other European contributing countries are Norway and Switzerland.

¹²⁴ For details on the EIDHR funded programmes in Israel since 2005, see http://www.delisr.ec.europa.eu/english/content/cooperation_and_funding/4.asp

7.8 Successes and failures of EU actions to prevent and eradicate torture and ill-treatment

Given the political realities in Israel and the OPT, progress in preventing and eradicating torture and ill-treatment must be regarded as a mid- and long-term goal, although it is heartening to be able to note that the consistent, persistent and serious legal work carried out by NGOs in Israel, have met with some success. In spite of this, much work remains to be done. With regard to the outcome of EU supported programmes, one Member State pointed out that its work with the PICCR had led to the firing of two police officers involved in torture. After the release in May 2007 of a report on human rights violations that occurred in 2006, the President of the PA also reportedly decided to establish a committee to follow up some of the trends, and especially the use of torture. However, it is not known to what extent this follow-up has taken place. – As an example of a successful EU-funded project, ECTAO referred to the TRC abovementioned project on rehabilitation of victims of torture and ill-treatment.

Not much feedback was received in reply to the question as to whether the NGOs could provide examples of a successful EU action in the area of torture and ill-treatment in Israel and the OPT. The TRC stated however that via its current funding of their three branches across the West Bank, they had increased their access to, and treatment of, primary and secondary victims of torture, where it would have been impossible to do so without this grant. Adalah also knew of a successful action carried out by PCATI and Al Haq regarding the release from administrative detention of 2-3 human rights defenders working with these organisations in Israel and the West Bank.

As examples of EU actions that have *not* been successful, one EU Member State pointed out with regard to the PA that in the past most of the training of security officers had not targeted those that commit torture, such as the preventive security and intelligence officers. – In reply to the same question, one organisation stated that most of the time they find that the EU is unwilling to make any public statements concerning Israel's discriminatory laws and policies regarding Arab citizens of Israel. Yet, they had learnt that the EU had recently raised two issues of concern in the political dialogue concerning Arab citizens, namely the Citizenship and Entry into Israel Law, which bans family reunification in Israel between Palestinians from the OPT married to Israeli citizens, and the lack of the Government's implementation of the recommendations of the official Or Commission of Inquiry, which dealt with the killings of Arab youth in connection with unprecedented riots in the Arab sector of Israel in the beginning of October 2000.¹²⁵

¹²⁵ For a summary in English of the Or Commission's report, see <http://www.adalah.org/features/commission/orreport-en.pdf>; for a summary in English of Adalah's 2006 "The Accused" report concerning the criminal and public responsibility for the killing of these youths, see <http://www.adalah.org/features/october2000/accused-s-en.pdf>.

8 Challenges to Preventing Torture and Ill-Treatment in Israel and the OPT

The challenges to eradicating torture and other form of ill-treatment are numerous in many countries and with regard to the situation in Israel and the OPT, the *political obstacles* may at the general level be regarded as the most serious. It was thus stressed, for instance, that “there is never a good moment” to raise human rights questions, including torture and ill-treatment; “there is always a reason for not doing something”, such as the present peace-process. That the political tension in the Middle East complicates the work for the EU and the EU Member States is a fact, but this complex situation is not an excuse in itself for Europe not to strongly and consistently promote *full* compliance with basic and absolute legal obligations to protect the individuals’ most fundamental rights. Improvement in this field should be seen as an opportunity and not an impediment to the easing of tension and peace-building in the region.

Below is a list of the principal challenges and obstacles to an effective implementation of the prohibition of torture and ill-treatment, as well as the EU guidelines, in Israel and the OPT that were invoked by the various stakeholders contacted. This list should not, however, be considered to express a general agreement within the UAT coalition on the question of challenges and obstacles:

- *State sensitivity:* Israel’s extreme sensitivity to criticism of its human rights record;
- *The security argument:* Israel’s security argument to justify human rights violations, and which is basically accepted by the EU; it was noted however that the separation wall had lowered the number of suicide attacks;
- *Lack of political priority of the PA:* The fact that it is not deemed to be a political priority of the PA to deal with human rights in general and torture and ill-treatment in particular; it was believed that the situation might change when the security sector is more stable; PA’s interest in discussing human rights was however also mentioned;
- *Lack of rule of law in the OPT:* The lack of rule of law in the OPT with people solving problems between themselves; there are thus all kinds of violence in the territories;
- *The occupation I:* The occupation as well as the lack of any apparent political will of Israel to effectively end this occupation and of the EU to more vigorously promote its termination; the withholding by Israel of Palestinian tax funds;
- *The occupation II:* The PA says that it is under occupation and that it cannot therefore do anything for the moment; it was stressed however that the Palestinian authorities have to come to realise that they have responsibilities too;

- *Impunity:* The lack of accountability at the political level in both Israel and the OPT; the impunity in Israel for torture and ill-treatment was believed to mean that the secret services consider that they can do whatever they want in cases of “necessity”;
- *Advance approval of torture and ill-treatment:* The appearance that there is advance approval by the authorities in Israel for torture and ill-treatment in connection with security cases (the “necessity” argument);
- *Conditions of detention:* As regards conditions of detention, the following challenges were mentioned: (1) the lack of access to a lawyer during interrogation for Palestinians detained in Israel for security reasons; (2) the interrogation methods in Israel and the OPT; (3) policy brutality in general; (4) sub-standard prison conditions; (5) the inadequate role played by medical doctors in connection with detention and in particular during interrogations; (6) irregular prison visits, mainly due to restrictions imposed by the Israeli authorities;
- *Corruption:* Widespread corruption in the OPT, which does not provide a sound basis for the rule of law, which is indispensable in order to eliminate torture and ill-treatment effectively;
- *Role of NGOs:* Lack of contact/dialogue between NGOs and the authorities; limited capacity of NGOs to influence the Israeli Government; there are difficulties even in providing support to NGOs because people are very sensitive, very defensive; the problems of NGOs functioning in the OPT following, in particular, the adoption on 20 June 2006 by President Abbas of a decree regarding the registration of civil institutions and organisations, which was seen as a first step in the PA’s strategy to crack down on independent civil society organisations; over 100 NGOs were reportedly closed down by virtue of this decree;
- *The EU, Israel and human rights:* There is a lack of political will on the part of the EU to “interfere” too heavily in Israel’s “affairs”; the EU is too sensitive when dealing with human rights and will not take any severe action; doubts expressed as to what is the *real* power of the EU to influence policies; the EU’s very quiet approach to human rights with confidential bi-lateral meetings with Israel; the EU capitals do not want to do anything; they have given up, because it is not worth having a fight with Israel;
- *The EU and the Association Agreements:* Reluctance at EU Headquarters to raise issues in connection with the EU-Israel and EU-PA association meetings or the meetings of the IWGHR in Tel Aviv;

- *EU-Israel economic ties:* The upgrading of Israel's economic ties with the EU appears to convey the message that human rights and economic cooperation are completely separate matters; in theory, the EU is human rights friendly, but the cooperation with Israel increases and this is a paradox; the EU disregards its own human rights clauses, which are simply not applied; Europeans provide a lot of money to Israeli and Palestinian organisations in various fields, *but politically there is nothing*; this was considered strange;
- *EU-PA ties:* The main impediment has been the contact policy whereby the EU and its Member States have not been able to have direct contacts with the PA in the OPT due to the election of Hamas; Europe was cornered with regard to the PA, although the various European actors could support NGOs;
- *EU Middle East policy:* The EU has made a cardinal mistake by following the US Middle East policy (rather than defining and pursuing a policy of its own);
- *EU internal situation:* The heavy workload of the various diplomatic representations, which does not allow one person to work only with one particular human rights issue; the poor coordination and cooperation on the question of torture and ill-treatment because of lack of regular channels of communication between the Embassies in Tel Aviv and the General Consulates in Jerusalem and Representative Offices in Ramallah; any such communication must be carried out via the capitals;
- *The EU and its guidelines:* The EU diplomats do not know about the guidelines and have sometimes a low level of knowledge of human rights in general and EU human rights policy in particular; the absence of a political will within the EU to implement the guidelines when dealing with Israel.

It is finally noteworthy that several organisations appear to have lost faith in the international community, including both the EU and the UN. There is a feeling, both among Israeli and Palestinian organisations, that there is really no help to get at the international level and that they are better off trying to solve their problems by making use of domestic legal procedures, which have proved to be of some help in particular in Israel. For instance, it was asked, you go to the Committee against Torture, but then, what happens with its recommendations? It cannot be excluded, however, that some of this pessimism is due to the fact that the NGOs are not aware of how they could best draw advantage from UN procedures in order to promote their work at home.

9 Suggestions from the Field for Future Action

While the view was expressed among the different stakeholders contacted that a further improvement of the human rights situation in Israel and the OPT would be very

difficult due to the present security situation, others suggested recommendations in the belief that there *is* room for improvement and that the EU *has* a role to play in this respect.

Various EU representatives made in particular the following suggestions on how to improve the implementation of the guidelines and the EU actions in general to promote the prevention and eradication of torture and ill-treatment in both Israel and the OPT:

- *The guidelines:* Clear instructions should be sent annually to the Missions in Israel and the OPT to stress the importance of the guidelines; it might be useful to have a manual with practical steps to take in a politically sensitive region; the guidelines should also be brought down to a more pragmatic level, perhaps through workshops to introduce them on a context-based approach with practical examples of application; as with the other guidelines, such as the Guidelines on Children and Armed Conflict and Human Rights Defenders, there was a need for financial support to improve the implementation, but such support was not forthcoming for the moment; the EU could have field staff to monitor and follow-up the implementation of the guidelines and coordinate actions with other donors and also provide a forum for actors in this arena to meet and shape strategies;
- *Intra-EU communication:* The wish was expressed for closer communication between the Embassies in Tel Aviv and the General Consulates in Jerusalem and Representative Offices in Ramallah on the question of torture and ill-treatment and other matters of mutual importance for purposes of defining a more cohesive strategy for cooperation; as with all similar matters, greater coordination of the efforts of the EU Member States and the European Commission would be helpful;
- *EU-Israel and EU-PA relations:* While some things are done, more could be done, and the EU should be more assertive with regard to both Israel and the PA in order to eradicate torture and ill-treatment; the EU should in this respect provide a venue for dialogue with both Israel and the PA;
- *The OPT:* There is a need within the OPT for continued capacity building in the judicial and other relevant sectors and this need should be addressed; a main objective should be an awareness raising campaign concerning the right to be free from torture and ill-treatment among policy makers and the general public; there is a need to systematise the information and get access to the victims; it is a question of credibility to raise issues of torture on both sides; the best way forwards would be to begin with the analysis made by the local authorities themselves of the problem they are facing; they may need forensic skills, training or better knowledge on alternative investigation techniques, for instance; in other words, issues should be raised in a way that does not alienate people or make them defensive;

- *EU-Israel Association Agreement/Cooperation:* There should be greater transparency in the work of the IWGHR even with regard to the various EU Consulates in Jerusalem and Representative Offices in Ramallah;
- *Advice to NGOs:* The NGOs should more consistently lobby the higher authorities in both Israel and the PA; they should be systematic and have a more long-term goal and comprehensive strategy with a step-by-step process and part goals; it is necessary to lobby ministers and other higher authorities in Ramallah and Tel Aviv; to this end, local NGOs could also try to get help from international NGOs; their work should be coordinated and, to the extent possible, the same message should be sent at the same time.

The major recommendations made by the local NGOs and other actors may in turn be summarised as follows. It is noted that, depending on their respective concerns, not all of the organisations may agree with all of the recommendations made, or the way they are worded:

- *The guidelines:* Information about the guidelines should be better disseminated; there had been no publicity about the guidelines and the EU had not conducted any training or introductory sessions with human rights organisations on any of the EU human rights guidelines; they needed to be better aware of the guidelines and their implementation in the OPT and the EU should be more involved in their work; the guidelines should be better enforced;
- *The EU-Israel Association Agreement/Cooperation:* The EU should suspend its Association Agreement with Israel while torture occurs at the hands of the Israeli authorities and the occupation endures; there is a need for clear agendas for the meetings of the working groups and more transparency in the way the working groups function; human rights should be a full-fledged part of the agenda of the Sub-Committee on Political Dialogue and Co-Operation; the EU should condition its relations with Israel on respect for the criteria mentioned in the guidelines, since they are based on the same criteria found in international agreements; the EU should be asked to comply with its own law in its cooperation with Israel; the EU should use conditionality more extensively; persuasion is not enough, and has not yielded the expected results; Israel should not get preferential treatment, but should be treated like any other country; it should be required to abide by its legal obligations;
- *EU-PA dialogue:* There is room for more human rights components in the dialogue with the PA; the EU should condition its financial assistance to the PA to improvement in the rule of law, the effective protection of human rights in general and the prevention and eradication of torture and ill-treatment, in particular;

- *Impunity:* There is an urgent need to deal with the question of impunity both in Israel and the OPT; Israel must consequently ensure effective and independent investigations into allegations of torture and ill-treatment; with regard to the OPT, the EU should urgently try to promote the rebuilding of the court structure, the rule of law and the effective and independent investigation of all alleged or suspected cases of torture and ill-treatment for purposes of prosecution and trial; basing themselves on the principle of universal jurisdiction, the EU Member States should also call on their national prosecuting authorities to begin prosecuting *any* individual suspected of having committed torture, and it should exert pressure on the US and the UN to do the same;
- *Preventive measures:* The authorities in Israel should introduce mandatory videotaping of interrogations carried out by security services; it should also be mandatory to produce them in court, if the court so requires; there should be improved access to lawyers for all persons deprived of their liberty; it should be mandatory to have persons deprived of their liberty sign confessions only in a language which they fully understand;
- *The notion of torture and ill-treatment:* It is too restricted to talk about “torture and ill-treatment” and the EU should therefore expand the scope of its work to cover also the rights of prisoners/detainees and the brutality of law enforcement and military officials in general;
- *EU support to NGOs:* The EU should continue to support organisations and projects on a long-term basis and even increase its cooperation with NGOs on torture and any other relevant field; the EU should simplify the process of submission of proposals as well as the reporting requirements in the course of the implementation of the projects, thereby giving the organisations more time to carry out their projects; the current methods are huge burdens on the NGOs and a computerised management system for their support would be of considerable help to the recipients; the number of micro projects should be increased;
- *Accountability for financial support:* the EU needs to demand accountability for money given to governments, such as when it finances prison buildings etc.;
- *Coherence:* There is a need for the EU to be coherent in the work carried out; it should also speak with one voice;
- *Awareness and accountability:* Since torture is happening at a person to person level, Europe can provide help to make people aware of the fact that they *do* have rights; the next level of work is to make Governments accountable for what they do, or do not do.

10 Author's Conclusions

The following main conclusions can be drawn from the research carried out, the result of which has been described above:

Firstly, most *EU actors* appear to know about the existence of the guidelines, although it is impossible to determine the extent of their knowledge. While the guidelines were said to be useful, they are not commonly used by the EU Member States. – About half of the *local NGOs* consulted ignored the existence of the guidelines prior to this study, and only a couple of the organisations believed that the guidelines had helped them better define their relations with the EU. There is consequently a considerable need to provide both the EU actors and NGOs with more information on the guidelines and how they can be used to promote the eradication of torture and ill-treatment.

Secondly, although the information submitted by the EU and the NGOs differed with regard to the contacts they are having, it can be concluded that both the ECD in Tel Aviv, ECTAO in Jerusalem and at least some of the EU Member States have, in one way or another, regular contacts with local NGOs and sometimes also meet them. Generally, the NGOs are highly respected and the information they submit is considered accurate and useful. However, some organisations seem to have more frequent contacts with the EU than others, which may be due to that fact that they are running EU-financed projects which oblige them to have more and regular interaction with the EC offices.

Thirdly, given the confidentiality of the political dialogue between the EU and Israel, in particular, it is risky to try to make an even tentative assessment of the impact that EU political initiatives might have had on Israeli practices that are contrary to its international legal obligations. However, on the basis of the material collected, it is nevertheless possible to conclude that human rights in general, and the question of torture and ill-treatment in particular, cause considerable discomfort to the EU actors in their dealings with Israel. It is further beyond doubt that, for Israel, these questions constitute a highly sensitive area, even existential. In the very last two to three years, a dialogue appears however to have evolved between the EU and Israel, at the same time as the EU policy seems to have become more cautious, a fact that may, at least partly, be due to the following three factors: (1) the enlargement of the EU and the ensuing difficulty of reaching consensus on foreign policy issues, such as the Middle East conflict; (2) the wish of the EU to be part of the Middle East peace process (although without being a main player); and (3) the fact that there is an increasing desire both in the EU and in Israel for tighter trade relations and cooperation in other areas, such as research and law enforcement.

It is none the less to the credit of the EU that it has succeeded in having some of the serious subjects included in the political agenda, namely, administrative detention, the separation barrier and the settlements. In order to assess the effectiveness of the political

dialogue in this respect, the question must however be asked, *whether there are any signs that Israel has delivered in a positive and substantive way on these issues?* Can any improvement be perceived? The research has shown no indications to this effect, with the exception that three individuals in administrative detention were released after their cases had been raised in the course of the political dialogue. However, there is no evidence that there has been any change in the general *policy* of administration detention, and the way it is applied to Palestinians. Yet, the fact that the EU is prepared to raise individual cases in the course of the political dialogue is welcome and should be encouraged.

On the other hand, it also appears safe to conclude that the EU does not address the question of torture and ill-treatment *per se* in the course of its political dialogue with Israel. In other words, what the EU seems to have been doing in the last years is something of a balancing act, meaning that, in order to improve its dialogue with the Israeli Government, the EU and Member States have – as is normal in any such dialogue – had to weigh in all relevant factors and the potential reactions, positive and negative, of their particularly firm partner. In so doing, the question of torture and ill-treatment appears to have been given lesser priority than some other likewise grave problems in the region.

The situation is somewhat different in the OPT, where the context is particularly volatile and the Interim Association Agreement has been *de facto* frozen due *inter alia* to the sanctions, which may prove to be a grave miscalculation of the international community. On the basis of the information available, it is not possible to conclude to what extent any earlier contacts with the PA had any tangible positive impact on the eradication of torture and ill-treatment in areas under the control of the PA, although there were signs in the Action Plan that the EU was prepared to be more proactive in this respect. In the present context of the peace-process, it is however uncertain how much pressure will be put on the PA to try to ensure control of the various security services and their methods of work.

Fourthly, one of the undeniably major contributions of the EU and its Member States in the human rights field, including the elimination of torture and ill-treatment, lies in the significant financial assistance to civil society actors in both Israel and the OPT. Such support may to some extent be considered to compensate for the lack of progress in the discussions held at the official levels, but it is also important to stress that financial assistance cannot, and should not, be a justification for not using the political dialogue more consistently in order to obtain progress in the human rights field. Political pressure would also provide some important backing to the civil society activities.

For the following reasons, it is however, impossible to make a complete assessment of EU *financial assistance* to prevent and eradicate torture and other forms of ill-treatment in Israel and the OPT: *Firstly*, not all EU Member States agreed to cooperate in the carrying out of this study, and this limited response reduces the extent of knowledge of the real EU contributions in this important field. *Secondly*, it was not

possible, within the framework of this limited study, to assess the effectiveness of the EU-sponsored projects carried out by civil society actors. However, with this caveat, it is beyond doubt that through the EIDHR, the European Commission provides considerable support to civil society actors in both Israel and the OPT. In the long run, this important help will hopefully pay off in terms of, for instance, greater awareness of rights and freedoms, improved law enforcement methods and accountability, and changed mindsets in general. The same holds true with the projects sponsored by Sweden and the Netherlands, to which it is likely that one could add projects sponsored also by some other European countries. All this financial help contributes to strengthening the civil society, from which lasting changes eventually have to spring. It is important that this assistance be maintained as long as there is a need for it.

Finally, the EU has also been involved in what appear in most cases to be rather sporadic activities in the OPT, such as visits to places of detention, the observance of trials and, possibly more systematically, the training of law enforcement officials and other key professionals. However, the result of the training of the law enforcement officials has to a large extent been undone in view of the recent political turmoil in the OPT and will need to be re-launched as soon as the situation allows it.

11 Author's Recommendations for Future Strategies

The final section of this report will provide a set of recommendations to both the EU and its Member States, as well as to the local NGOs, aimed at strengthening their work to effectively promote the prevention and eradication of torture and other forms of ill-treatment in Israel and the OPT.

11.1 General recommendations

The problems of torture and ill-treatment must be considered in the wider human rights framework as well as within the context of the conflict in the region, which has an immense cost for the peoples involved. As stressed by several stakeholders, there will have to be a change of hearts and minds in both Israel, the OPT and the surrounding countries for the situation to improve.

With the US no longer a serious contender for moral leadership in the world (although the US-Israel relations remain strong), there might be space for the EU to play a stronger and more constructive role of being both a genuine friend and simultaneous critic of its Middle East partners.

However, for this to happen, the EU *and* its Member States need in the first place to adhere more consistently, systematically and confidently to their own legal, political and ethical principles. Furthermore, this consistency between principles, policy and

action must begin at home, meaning that only when the EU and its Member States are acting consistently with their own legal principles at the internal level, will their policies and actions with regard to third countries be fully credible and have a maximum impact.¹²⁶ Finally, to make progress in this field, the EU actors need to overcome their own political dissensions and act as *one entity*, failing which the potential of any human rights oriented policy risks being seriously undermined.

With regard to Israel, two particular reasons favour a stronger capacity for the EU to have a more significant impact than it has had so far on Israeli human rights policies: *Firstly*, Israel prides itself of being a democratic country respectful of human rights; this is how Israel wants to be perceived. Yet, it has some serious human rights problems for which it is responsible both internally and in its relations with the OPT. *Secondly*, Israel reportedly has discovered the advantages of strong economic and other ties with Europe, with which it also wants to be further integrated. However, such closer cooperation or even integration should not be regarded as self-evident. Such ties come with both rights and obligations, which must apply equally to Israel. The mutual trade-off must be there, and this can possibly be seen as the central problem of the present EU-Israel relations. Although the EU's bargaining power should not be exaggerated, there is likely to be some room for increased pressure and consequential improvement in Israel's human rights record, including with regard to torture and ill-treatment. This potential should be further explored without delay, since it is likely to have a beneficial effect on the mindset of the peoples concerned and it could thus possibly help the peace process before it is too late to avoid further major bloodshed.

Paradoxically, the situation may simultaneously be both easier and more difficult for the EU to have a significant impact in its relations with the PA. Easier because the PA is in dire need of both financial and technical assistance that the EU could, and should, tie to progress in building a democratic constitutional order where human rights can be effectively protected. On the other hand, the situation appears more difficult because of the internal divisions in Palestine, which may, sadly, be regarded as a considerable impediment to progress both in the West Bank and Gaza Strip as well as in the relations with Israel. The EU will therefore have to provide careful advice and assistance to the Palestinian authorities over a period of time, since the situation is not likely to improve drastically in the short term, at least not without concerted efforts by the international community in close cooperation with the various Palestinian groups.

A key question that was raised by one official was what to do with a country that consistently and repeatedly violates international human rights law and international humanitarian law? It would go beyond the framework of this study to try answer this important question and it will therefore be limited to raising the following questions, which are of fundamental significance for Europe in its relations with *any* third country:

¹²⁶ For fuller arguments on the question of consistency, see the EP report *The implementation of the EU guidelines*, pp. 108-109.

Are there any tangible signs that the cooperation with the country concerned has led to improvement in the human rights situation? If not, will Europe's human rights policy, which is a cornerstone of its Common Foreign and Security Policy, be credible if it maintains and even intensifies its cooperation with a State that so violates international law?

11.2 Specific recommendations to the EU

- *Knowledge of international human rights law:* A pre-condition for enabling EU representatives to effectively promote human rights in general, and the EU guidelines in particular, presupposes that they have a solid basic knowledge in, and understanding of, international human rights law and its intrinsic link to peace, justice and security; international human rights law should therefore consistently form part of the education given to diplomatic personnel within the EU; diplomatic staff, even of the young generation, appears sometimes to have a surprising lack of knowledge in this respect;
- *Knowledge of EU foreign policy:* The EU Headquarters in Brussels and the 27 EU capitals should ensure that all diplomatic personnel be informed about the basic tenets of EU foreign policy, including the fact that human rights feature among the key objectives thereof;
- *Knowledge and use of the EU guidelines I:* Both the Headquarters and the EU capitals should ensure that information about the EU guidelines be sent out to all Heads of Delegation, Heads of Mission and other relevant diplomatic personnel as soon as possible; the guidelines also need to be better circulated within the EC Secretariat so that all officials concerned, including those working in the geographical units, will be fully aware of them;
- *Knowledge and use of the EU guidelines II:* More in-house training is needed in order to improve the capacity of EU personnel, including the desk officers, to work more effectively to promote the implementation of the EU guidelines;
- *Knowledge and use of EU guidelines III:* In order to improve the implementation of the guidelines, it is recommended that EU officials from the geographical and thematic units in Brussels regularly visit countries so as to get a first hand view of the human rights situation in general and the situation with regard to torture and ill-treatment in particular;

- *Instructions from Headquarters and capitals:* It is further recommended that the ECDs and the EU Missions promptly be given specific information and guidance to assist them in their complex work to promote the eradication of torture and ill-treatment; updated information and instructions should also be sent out at regular intervals, or whenever required by the situation;
- *Continuity of work:* The EU should ensure continuity in its work; to the extent possible it would be useful that the same staff from the different Missions participate in the relevant human rights meetings and consistently follow up the work carried out;
- *EU-Israel; the political dialogue - I:* The EU should include the question of the *permanent state of emergency* in the political dialogue and strongly encourage Israel to lift it at the earliest possible date so as to put an end to an exceptional situation that has become the norm contrary to international law; it is recommended in this respect that the EU be inspired in its work by the conclusions and recommendations adopted by the UN Human Rights Committee;
- *EU/Israel; the political dialogue - II:* The Informal Working Group on Human Rights should be swiftly formalised;
- *EU/Israel; the political dialogue - III:* Pending the formalisation of the Working Group on Human Rights, the EU should continue to bring up the subjects of administrative detention, the separation barrier and the settlements, and should insist on having the human rights agenda widened to include also other urgent issues, such as: (1) the impunity for torture and ill-treatment, including questions concerning the lack of effective remedies and the lack of independent and effective investigations; (2) the interrogation methods; and (3) the conditions of detention and imprisonment, including issues relating to detained and imprisoned persons' right of access to lawyers and doctors of their own choice as well as family members;
- *EU/Israel; the political dialogue - IV:* It is strongly recommended that, as agreed in the Action Plan, the parties "[e]xplore the possibility to join the optional protocols related to the international conventions on human rights"; in this respect it is essential that *both* all EU Member States *and* Israel ratify, as soon as possible, the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and that Israel make the declaration recognising the competence of the Committee against Torture to receive communications from or on behalf of individuals under article 22 of the said Convention; Israel should also be strongly encouraged to ratify the Optional Protocol to the International Covenant on Civil and Political Rights as

well as the Optional Protocol to the Convention on the Elimination of Discrimination against Women, which acknowledge the right to individual petition;

- *EU/Israel; the political dialogue - V:* To facilitate the dialogue on human rights issues, it might help to illustrate the questions discussed with well documented individual cases submitted by NGOs;
- *Publicity versus confidentiality:* Confidential procedures, statements and démarches can be used as long as they provide tangible, consistent and lasting results within the expected time-frame; failing such results, the EU should make public the lack of progress and indicate the precise areas concerned;
- *Policy instructions:* It is recommended that a more active policy input in the human rights field be developed from both the Headquarters in Brussels and the capitals of the EU Member States; such input could strengthen the task of the Missions in the field;
- *Relevant international human rights law:* The EU should be guided in its human rights work by the conclusions and recommendations of the UN treaty bodies with regard to *Israel*; it should thus consistently encourage the Government to implement its international legal obligations as interpreted by, in particular, the Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women; in encouraging the PA to improve the human rights situation in the OPT, the EU should base itself on the Universal Declaration of Human Rights, which “guides their internal and international policy”, as provided in the essential elements clause contained in article 2 of the Interim Association Agreement;
- *Meaning of torture and ill-treatment:* Torture, cruel, inhuman, or degrading treatment or punishment should be understood in a wide sense, so as also to include, in specific cases, unjustified house demolitions and the right to freedom of movement; such wide interpretation is consistent with the conclusions adopted by UN treaty bodies;
- *Independent prison visiting mechanism:* The EU should promote the creation of a strictly independent institution (ombudsman or human rights commission) in Israel that would have unrestricted access to *all* places of detention, including the specific interrogation centres; the EU should continue its support to, and promote the strengthening of, the PICCR in the OPT;

- *Medical records:* Medical records from all places of detention, including those belonging to the security services, should at all times be easily available to the victims, and with their permission, to family members, lawyers and relevant NGOs, who may represent them in legal procedures;
- *EU/PA – The political dialogue:* The political dialogue should be resumed in full with the PA and, although being part of the Quartet, the EU should urgently explore ways and means of dealing with Hamas for purposes of improving the human rights situation in the Gaza Strip;
- *Assistance to the PA - I:* Given that the public institutions in the OPT need to be virtually entirely rebuilt, it is recommended that the EU focus on promoting the re-building of the judiciary; technical assistance will be required for the setting up of the physical structure of the judiciary and the organisation of relevant training, including on basic human rights, for judges, prosecutors, lawyers and law enforcement personnel, members of security groups etc.; public awareness campaigns may also be needed for purposes of having the population learn to use the judicial structure;
- *Assistance to the PA - II:* It is recommended that EU assistance also urgently comprise help to deal with the following serious problems: (1) the impunity for torture and ill-treatment, including questions concerning the lack of effective remedies and the lack of independent and effective investigations; (2) the interrogation methods, and (3) conditions of detention;
- *Assistance to the PA - III:* It is recommended that the EU strongly encourage the PA to bring the multiple security services under a united civilian command, and that, in order to minimise the risk of torture and ill-treatment, it support training to the police and security services in human rights and alternative investigation techniques;
- *Rehabilitation:* It is recommended that Israel and the PA provide all necessary means and assistance both to victims of torture and other forms of ill-treatment as well as to victims of terrorist attacks. Rehabilitation is one of the crucial elements to the effective prevention and eradication of torture and ill-treatment.
- *Europol - conditioning cooperation:* It is recommended that in all agreements concerning cooperation between Europol and third states, the EU adopt a uniform policy of conditioning the cooperation so that, with regard to Israel, for instance, it would *in the first place* be legally bound not to submit any information to Europol where there is evidence, or a reasonable suspicion, that such information has been obtained by means that are contrary to its national and international legal obligations effectively to respect human rights and fundamental freedoms;

secondly, any treaty should moreover include an express reference to the legal obligation of Europol to strictly apply article 4(4) of Council Act of 3 November 1998 laying down rules concerning the receipt of information by Europol from third countries; it is recommended *finally*, that agreements concerning cooperation between Europol and third states only be concluded with countries that can ensure beyond any reasonable doubt that they do not subject persons deprived of liberty – even on security grounds - to torture or any other form of ill-treatment; consequently, any dialogue on such cooperation should be suspended until such date that the country concerned clearly complies with this condition;

- *Conditioning assistance:* It is recommended that the EU add conditionality to the financial support to the Palestinian authorities, which should also be held accountable for how they spend the money given to them;
- *Contacts with civil society:* It is recommended that the EU organise a yearly or biannual information session on the EU guidelines, their implementation, and the EU human rights work in general in the country concerned;
- *Financial assistance to civil society:* It is strongly recommended that the EU maintain its level of financial assistance to the civil society in Israel and the OPT and ensure that the cut in financing of macro projects for NGOs in Israel will not impact adversely on the work carried out and that, to the extent possible, it will be offset by a corresponding increase in the financing of micro projects;
- *Public awareness:* Both the EU and European civil society actors should begin actively to promote an improved public awareness in EU Member States of the EU's legal and ethical obligations in the field of human rights; public awareness campaigns should include information about the various EU guidelines and the fact that human rights constitute a corner stone of EU foreign policy.

11.3. Specific recommendations to NGOs

Civil society is crucial for changes to take place both in Israel and the OPT. It is therefore essential to support and possibly strengthen the civil society actors in this region, since it may well be primarily through their deliberate and consistent work that progress in the effective protection of human rights will occur over time. The following recommendations therefore specifically address the work of the NGOs in Israel and the OPT to promote the prevention and eradication of torture and ill-treatment:

- *Contacts between NGOs and the EU - I:* In order for the EU to raise questions of torture and ill-treatment with Israel in connection with the political dialogue,

NGOs need to provide the ECD in Tel Aviv and/or the various EU Member States with reliable and detailed information concerning individual cases of both physical and psychological torture and ill-treatment; since some of the techniques used leave no physical marks on the victims, particularly carefully detailed accounts of the ill-treatment must be made; the same recommendation holds true for human rights problems dealt with in any future dialogue between the EU and the PA, although NGOs then have to work with the EU representations in Jerusalem and Ramallah;

- *Contacts between NGOs and the EU - II:* It is recommended, in particular, that the NGOs prepare carefully for the meetings of the IWGHR and lobby both the EU and the Israeli Government on issues of cardinal importance; the work should be made well in advance so as to pre-empt any preparatory meeting held prior to the main meetings; in this respect it would be particularly helpful for the NGOs to provide solid individual cases to highlight the human rights subjects on the planned agenda, which are likely to remain administrative detention, the settlements and the separation barrier, which all may raise issues of ill-treatment as understood in a wide sense; these cases should be submitted to the ECD and/or the EU Embassies in Tel Aviv well ahead of the relevant meetings;
- *Contacts between NGOs and the EU - III:* It is recommended that the NGOs cooperate closely in order to lobby more effectively for the introduction of human rights components in aid packages to the PA and have this aid conditioned on visible progress to restore the rule of law and respect for human rights in the OPT;
- *Contacts between NGOs and the EU - IV:* It is recommended that the NGOs carefully and diplomatically take the initiative to consolidate and enhance their relations with the ECD and EU Embassies in Tel Aviv, ECTAO and the General Consulates in Jerusalem and the Representative Offices in Ramallah; visits should be planned with the interested Missions; such contacts between the civil society actors and the EU are not only important for financial reasons but also for purposes of lobbying and raising awareness;
- *Awareness raising:* Given the need in both Israel and the OPT to raise public awareness of human rights, including the right not to be tortured and ill-treated, it is recommended that the NGOs develop a comprehensive programme of education for the grass-root level as well as other educational programmes that could be implemented at the primary, secondary and academic levels;
- *NGO material:* NGOs both in Israel and the OPT provide very useful material of excellent quality, such as reports and legal analysis; much material is used for bringing claims to the courts, in particular in Israel; NGOs should intensify this part of their work;

- *Lobbying activities - I:* For purposes of sensitising and promoting legal and behavioural change, the NGOs are advised to considerably intensify their lobbying activities *at all levels*, that is, at the local, regional and central levels in Israel and the OPT; the lobbying should involve Members of Parliaments (Knesset and the PLC), the Israeli Government and the Palestinian Authority; the military, security groups, the police, prison authorities, journalists etc.;
- *Lobbying activities - II:* In order to bring further attention to the human rights problems in the region, it is recommended that the NGOs also increase their lobbying activities with international organisations and the EU Headquarters in Brussels, including the European Parliament;
- *Law against torture and ill-treatment:* It is suggested more specifically that a coalition of NGOs continue to lobby for the adoption of a law to penalise torture, cruel, inhuman or degrading treatment or punishment in both Israel and the OPT; to prepare the lobbying activities more effectively, a draft law could be elaborated and handed over to the relevant stakeholders as was recently done in the OPT, but without success; it is however strongly recommended that the relevant lobbying activities be resumed as soon as it is feasible; in the absence of a functioning legislature, a decree outlawing torture and any other form of ill-treatment could be issued by the PA;
- *Effective domestic remedies:* A coalition of NGOs should lobby systematically for the creation of effective domestic remedies in cases of torture and ill-treatment in both Israel and the OPT; the proposal should comprise the creation of a domestic investigative mechanism that should be independent, impartial and competent and which must be allowed to carry out its duties fully and effectively according to the requirements of international law; it should also be competent to make *ex officio* investigations whenever there is a well-founded suspicion that torture or other forms of ill-treatment have been committed;
- *Conditions of detention:* Issues relating to the conditions of detention that should be given particular continued attention by the NGOs are: (1) the right to prompt and regular access to a lawyer for *all* persons deprived of their liberty, even if detained on alleged security grounds; (2) the right of access to a medical doctor of one's own choice during detention, as well as unhindered access to one's medical records; (3) the right not to be subjected to torture or other forms of ill-treatment at any time, including in connection with detention on alleged security grounds (interrogation methods);
- *International human rights treaties:* NGOs should systematically lobby for the ratification of the OPCAT, the declaration recognising the right to submit individual communications under article 22 of the Convention against Torture, and for the ratification of the Optional Protocol to the International Covenant on

- Civil and Political Rights as well as the Optional Protocol to the Convention on the Elimination of Discrimination against Women which acknowledge the right to individual petitions;
- *UN treaty bodies:* It is strongly recommended that the NGOs make better and more systematic use of the conclusions and recommendations of the UN treaty bodies both internally in Israel and in their relations with the EU and possibly also with the UN itself; the domestic authorities, including the Knesset and the Government, should be *systematically* asked to explain the measures they have taken to comply with their international legal responsibilities and the recommendations of the treaty bodies;
 - *UN special procedures:* It is recommended that the NGOs improve their use of the United Nations special procedures within the framework of the Human Rights Council, such as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, by, for instance, sending him well-documented cases of torture and ill-treatment; other relevant procedures are: the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Representative of the Secretary-General on the situation of human rights defenders; the Special Rapporteur on the promotion and protection of human rights while countering terrorism; the Special Rapporteur on violence against women, its causes and consequences; and the Working Group on Arbitrary Detention;
 - *NGO collaboration:* In order to maximise their impact, NGOs should, to the greatest extent possible, try to work together for specific purposes, but without for that sake giving up their respective specificity;
 - *Effective strategies:* In order to maximise their impact, it is further recommended that the NGOs define effective strategies that be systematically implemented;
 - *Strengthening publicity of work:* It is recommended that the NGOs invest in good websites which should contain careful legal analyses of the situations in Israel and Palestine; such websites may be more useful for diplomats than reports they may not have the time to read;
 - *Training:* Training may be useful if focussed on the participants' specific needs and interests; it should therefore be based on an analysis of the real needs of the potential participants and oriented towards future action; the training should be followed up within a few weeks after it takes place for purposes of analysing whether the participants have been able to use the skills and knowledge received in connection with the training etc.; training could also be used to sensitise various professional groups, such as teachers and journalists; on the question of investigation and documentation of torture and ill-treatment, it is

particularly useful to have joint training with medical health and legal professionals.

12 Concluding Remarks

Who are the perpetrators of torture and ill-treatment and why do people commit such wilful and horrendous acts on other human beings? The questions are intriguing and may cause unease. Yet, they need to be raised and seriously pondered in a world, which appears to be faced with an increasing level of state and community sponsored violence.

Following her traumatic experience during the wars in the former Yugoslavia in the 1990s, Christina Doctare, a Swedish medical doctor, concluded that the perpetrators are ordinary people driven by a feeling of justice, convinced that they are doing what is right after having started to believe official propaganda.¹²⁷ Other times, however, *fear* may be what brings out violence in people, and it may well be a strong additional force at the root of the violence in the Middle East. As stressed by an Israeli citizen, fear in turn results in the absence of confidence, which is further undermined by the security approach, which in its turn thrives on fear and distrust...

There is no short-cut to break this spiral of violence. It will take considerable time to build up the confidence between the peoples concerned, a confidence that will hopefully finally liberate them from the fear that controls so much of their lives and the policies of their authorities and communities. A *first* important step would however be to recognise the intrinsic human nature of *the other person*, which shall not be intentionally violated at any time. This is what human rights are about, recognising the equal value of each and every human person and ensuring that this value, with its intrinsic rights and freedoms, be effectively respected. This respect starts with everybody's right to life and the right to full respect for every person's human dignity, including his or hers physical and mental integrity. At all times, including in emergency situations. When there is general agreement not to resort to violence, which is not a conflict resolution tool, the magic key to peace, justice and true security may have been found.

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¹²⁷ DOCTARE, Christina, *Skapa Andrum*, Stockholm, Runa Förlag, 2006, p. 95.