FRIENDS OF ISRAEL INITIATIVE

The Challenge of the EU Guideliness

Friends of Israel Initiative

Paper No. 17
November 1, 2013

The Challenge of the EU Guidelines

In order to represent the shared values of its member states that are prominently featured in its constitution, the EU must always endeavor to be at the forefront of international efforts to advance a more equitable, just, and peaceful world order. These include respect for the rule of law and non-discrimination. Unfortunately, the latest effort of the European Commission to issue strict restrictive guidelines on cooperation with Israel actually brings it further from those goals.

For the guidelines issued this past June, plainly state that this cooperation, which may also take the form of grants or prizes, must not geographically extend beyond Israel's pre-1967 line. Their purpose, according to the guidelines document, is to ensure respect for EU positions like "the non-recognition by the EU of Israel's sovereignty over the territories occupied by Israel since June 1967." [1]

The guidelines are chiefly expected to affect Israel's involvement in EU research programs, like the EU's Seventh Framework Program (FP7) in which Israel is the only non-European participant. These programs are based on the idea that both Israel and Europe contribute funds to their joint scientific research—it is not just a European handout. In the last FP 7 program, for example, Israel put it 534 million Euros, but it will have gained by the end of 2013 close to 634 million Euros. [2]

Starting in 2014, the FP7 program is being replaced by the Horizon 2020 program, which will be structured in a similar way. Under Horizon 2020, Israel is expected to invest 600 million Euros and receive back a total of 900 million Euros. Thus the new guidelines of the European Commission are trying to influence not only where European funds are used, but also Israeli funds that are being put into this program. It should be added that the guidelines do not apply to bilateral agreements between Israel and individual European states.

The new EU guidelines did not receive universal support. Secretary of State John Kerry, during a visit to Paris in early September 2013, told a press conference that he had asked the EU to suspend their implementation and in doing so demonstrate to the Israeli public that in exchange for entering the peace negotiations, Europe would improve its political relations with Israel. But the EU was not prepared to adopt Kerry's suggestion. [3]

There is one central flaw in what the European Commission has proposed. It is free to insist on how EU resources are used and where they are invested. It can be understood that Brussels may want to make sure that EU economic cooperation with partners abroad not get mired in contentious territorial disputes. But the question then arises if these new restrictions in the case of Israel represent a broader policy that is being applied universally by the EU with respect to the dozens of territorial disputes, some of which are on Europe's doorstep.

Frankly, it appears that the European Commission has no unified policy for handling these many cases, and as a result it appears to have singled-out Israel. Moreover many observers believe that the Guidelines document is only the beginning of a more general trend to introduce territorial clauses into multiple areas of Israeli-European economic cooperation, which will apply to Israel but not to Europe's relationships with other countries with territorial disputes. This kind of discriminatory behavior is not appropriate for a body like the EU that is supposed to represent Western political norms that are common to all its members.

Take for example, Europe's relationship with Morocco. In 1975, the International Court of Justice (ICJ) in the Hague ruled that Morocco, did not have sovereignty over the territory of the Western Sahara, which it invaded and occupied during the previous year. Significantly, the EU did not recognize Moroccan sovereignty over the Western Sahara either.

In 2005, the EU signed an important fisheries agreement with Morocco governing the activities of European fishermen in Moroccan waters. Did the European Commission issue a statement restricting the geographic scope of the agreement to Moroccan waters, thereby excluding the Atlantic coastline of the Western Sahara, much like its policy pronouncements in the Israeli case?

Actually, the EU allowed European fisherman to apply the agreement to the waters of the Western Sahara. The European Commission moreover resisted efforts to brand this European activity as illegal. In a 2010 letter to the coordinator for an organization called "Resource Watch," the head of the Directorate-General for Maritime Affairs and Fisheries in the European Commission paraphrased Hans Corell, the legal adviser to the UN, by saying that economic activity of an administering power in the territory of a non-self-governing territory was illegal only if the needs and interests of its people are disregarded.

Fishing was not the only economic activity in the Western Sahara that was influenced by European-Moroccan agreements. There was a new European agricultural agreement with Morocco in January 2012, which was intended to ease restrictions on trade in fruits and vegetables. The agreement did not exclude agricultural products from the Western Sahara, that were grown by Moroccan "settlers" who have moved into the area many of whom work in its fruit and vegetable plantations. [4]

The European Commission's acceptance of what Morocco was doing in the Western Sahara was very different than the blanket rejection of Israeli activities in the West Bank beyond the 1949 armistice lines. It seemed there were two standards being applied by the European Commission---one for Morocco and one for Israel.

The Moroccan case is not the only example of how the EU treated territorial disputes differently from how it has handled Israel's dispute over the West Bank. Turkey invaded Cyprus in 1974 leading to the establishment of a separate state for the Turkish population of Northern Cyprus. Has the EU imposed restrictions on European funds for Northern Cyprus, while it is under Turkish occupation?

In fact, the opposite is true. According to the European Commission, since 2006, the EU has directed 259 million Euros in funds to the Turkish community of Northern Cyprus with the stated goal of promoting social and economic development among the Turks as well as preparing them for the future re-unification of the island. The Turkish community of Northern Cyprus also contains many mainland Turks who have come to reside there and are not excluded from the EU grant program because they are Turkish "settlers." [5]

It is striking how this EU aid program for Northern Cyprus has been kept under the radar screen. Two international lawyers from Europe, Willem-Gert Aldershoff and Michel Waelbroeck, recently wrote in *Haaretz* a defense of the European Commission guidelines in which they stated: "There is no significant difference in the way the EU treats northern Cyprus and Israeli settlements in Palestine." But the previous analysis demonstrated that there is difference, which creates a double standard in the way the EU is treating both situations. [6]

Furthermore there is yet another difference between the two territories. Europeans have been involved in a brisk real estate market for vacation homes

in Northern Cyprus, which the EU has not tried to halt; EU member states have only warned their citizens that if they purchase refugee properties, they might face lawsuits by the original owners in European courts.

There was the famous case of Meletis Apostolides, a Greek Cypriot architect, who had been displaced from his property in Northern Cyprus as a result of the Turkish military intervention. Years later in 2002, David Charles and Linda Elizabeth Orams of Sussex, England, invested their retirement fund to acquire Apostolides' land from a third party and to construct a villa with a swimming pool. Apostolides took the case to a Nicosia District Court, which backed his claim against the Orams, who ignored the judgment against them since it was unenforceable in Northern Cyprus.

Cognizant of the fact that Cyprus was an EU member, Apostolides then took his case to the High Court of England, in accordance with a special procedure for the enforcement of court judgments among EU member states. The UK Court backed the British couple, yet the case then went to the European Court of Justice which ruled in favor of Apostolides. Thus while the European Court of Justice ultimately decided against the European settlement activity on Northern Cyprus, the EU and European governments did not rule that this activity was prohibited or that it might have violated international law. [7]

Yet a Northern Cyprus is a far more severe case of military occupation than the West Bank; the original Turkish invasion of 1974 involved the seizure of territory by the Turkish Army which was indisputably under Cypriot sovereignty. In the West Bank, the sovereignty of the previous occupant prior to 1967, the Hashemite Kingdom of Jordan, was not recognized by the international community with the notable exception of Britain and Pakistan. International jurists argued after the 1967 Six-Day War that Israel entered the West Bank in a war of self-defense in the aftermath of a Jordanian artillery barrage on Israeli cities. It would be hard for Turkey to argue that it invaded Cyprus in self-defense; there was no direct threat to the Turkish mainland.

What emerges from an examination of its actual behavior in other cases is that the EU generally prefers not to mix its international trade relations with questions of sovereignty in the territorial disputes of its economic partners, even if its courts can sometimes get involved. Some of these territorial disputes are in fact potentially more explosive than the Israeli-Palestinian struggle over the West Bank, where an effect at diplomacy has been actively underway since 1993.

The question of who has sovereignty over Kashmir involves two nuclear powers in South Asia, namely India and Pakistan, in a combustible mix with radical Islamic groups. True, past EU-India trade agreements have urged that dialogue on Kashmir be held. But the EU did not suggest what are to be the results of any future agreement over this disputed territory.

Those who advocate that the EU move forward with the European Commission's guidelines on Israel almost always suggest that it is necessary because of Israeli settlement activity. Israeli settlements have admittedly been controversial. Israel's legal system, which is highly respected internationally, has made the argument that they are legal according to its understanding of the 1949 Geneva Convention. European foreign ministries interpret the Fourth Geneva Convention differently and say they are illegal. The U.S. has been critical of settlements as an "obstacle for peace," but it has not announced that they are illegal.

In any case, Israel and the Palestinians have found a way to deal with settlements in their negotiations between them. The 1993 Oslo Agreements did not prohibit Israel from providing support for its population in the settlements. The agreements made settlements into one of the issues that were to be negotiated as part of the final status of the disputed territories. [8]

In the course of subsequent negotiations, the Palestinians in fact agreed that some settlements would be retained by Israel in any final accord. Those settlements that would not be kept by Israel were proven not to be an obstacle for any withdrawal, since Israel proved twice--once in Sinai in 1982 and second in the Gaza Strip in 2005 that it was prepared to dismantle settlements when necessary. Thus the history of the peace process itself illustrates that it is possible to surmount the legal debate over settlements and find practical ways to address the issue.

By explicitly restricting EU cooperation with Israel to territory within the 1967 lines, the European Commission is not somehow saving the peace process. In many respects it is prejudging the question of Israel's future borders, and in doing so it is in fact undermining the delicate negotiations that are currently transpiring. Why should the Palestinians show any territorial flexibility at the negotiating table, if the EU is determining that the 1967 lines should be treated as Israel's border in its cooperation programs with the Jewish State?

Moreover in treating Israel differently than most other states, this policy only reinforces the impression among Israelis that Europe is basically

unfriendly to Israel and cannot be relied upon as it once was. All advanced legal systems are based on the principle of equality before the law. Europe should not put itself in the position that in adopting a discriminatory policy, it is denying the rights of the Jewish state to be treaty equally within the international community.

Finally, the joint research programs that Europe has undertaken with Israel are meant to contribute to Europe as well. R&D initiatives like Horizon 2020 were originally conceived to improve European competitiveness. It is an open secret that Israeli hi-tech firms have served as technological hot houses for some of the most successful US companies like Apple, Google, and others. Boycotting Israeli technology would be self-defeating, especially if the concerns raised by European diplomats are being addressed through the peace process.

There are also growing indications that other international players are seeking to enter into cooperative relations with Israel and gain access to its technological capabilities. Already China stands out as the No.1 partner with Israel in terms of the number of programs run through the office of Israel's Chief Scientist. There will undoubtedly be Israelis who look to Asia as their natural economic partner and will dismiss Europe because of its harsh policies on Israel. Diversifying Israel's economic partners is a positive idea, but it would be tragic if Israel reached the conclusion that it would be better to replace Europe with other international partners, given the strong ties the two sides between the two since Israel's independence in 1948.

Notes

1. "Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards" (2013/C 205/05) *Official Journal of the European Union*, C205/9.

2. Alison Abbott, "Israel in Deadlock on Horizon 2020," *Nature*, September 19, 2013.

3. John Reed and Hugh Carnegy, "EU Under Pressure over Funding in Israel," *Financial Times*, September 8, 2013.

4. Fiona Govan, "King of Morocco to be Biggest Benefactor of EU Trade Agreement," *Daily Telegraph*, January 29, 2012.

5. Eugene Kontorovich, "How the EU Directly Funds Settlements in Occupied Territory," *Jerusalem Post*, September 28, 2013

6. Willem-Gert Aldershoff and Mechel Waelbroeck, "EU Settlement Guidelines Do Not Vicitimize Israel or Endanger Peace," *Haaretz*, September, 22, 2013.

7. Murat Metin Hakki (2011): Property Wars in Cyprus: The Turkish Position According to the International Law, *Turkish Studies*, 12:1, 79-90. To link to this article: http://dx.doi.org/10.1080/14683849.2011.563501

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9. Inbal Orpaz, "China Seeking Technological Edge in Israel", *Haaretz*, July 8, 2013.

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