EU's Israel Grants Guidelines: A Legal and Policy Analysis

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EXECUTIVE SUMMARY

- **The Israel Grants Guidelines adopted by the European Commission are singularly discriminatory against Israel. They contradict international law as established in U.N. documents and leading court cases, as well as the European Union's own interpretations of international law.**
- **The EU provides aid and financial cooperation to numerous countries that maintain settlements in what Europe considers occupied territory, such as Morocco, Turkey, and Russia. In none of these cases has the Commission imposed limitations on the aid akin to the Guidelines for Israel.**
- **The Commission's position that the Guidelines are mandated by international law are further belied by EU programs that provide grants specifically for settlers in belligerently occupied territory, such as the EU's programs in Turkish-occupied Northern Cyprus.**
- **Under international law, there are no prohibitions regarding organizations engaging in "activities" in occupied territories, yet the Guidelines bar funding solely on the basis of such "activities."**
- **In pretending that the Guidelines fulfill the requirements of international law, the Commission exposes the EU to legal challenge for EU funding of parallel activity in belligerently occupied territories around the world, such as Northern Cyprus, Abkhazia and Western Sahara, and exposes its businesses operating in such places to liability.**
- **The Guidelines have no precedent in similar arrangements between the U.S. and Israel.**
- **The Guidelines seek to undermine territorial arrangements that are established by existing Israeli-PLO agreements and foreclose issues that are preserved for negotiations.**
- **The Guidelines do not advance the EU position on sovereignty because they do not relate to activities that legally establish sovereignty or constitute recognition of sovereignty.**
- **The Guidelines are unlikely to be accepted by Israel in their present form. Non-discriminatory alternatives include borrowing language from scientific cooperation agreements with the U.S. and extending the Guidelines to all occupied territories with funding relationships with the EU.**

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BACKGROUND

On June 30, 2013, the European Commission adopted (and officially published on July 19, 2013) a notice with Guidelines forbidding the allocation of European Union grants, prizes and financial instruments to any Israeli "entity" that has an address in the West Bank, Golan Heights, "east Jerusalem" or Gaza Strip.[1] The Guidelines also prohibit giving such grants, prizes and financial instruments to any activity carried out by an Israeli "entity" in those areas unless the activity is "aim[ed] at benefiting protected persons under the terms of international humanitarian law who live in these territories" or "aim[ed] at ... promoting the Middle East peace process in line with EU policy."

The Guidelines apply to:

- EU monies granted after December 31, 2013.
- EU money, and not to money granted by individual EU states.
- Israeli organizations (including local governments) but not to the national government of Israel and not to individual people.
- Israelis and not Palestinians.

The Guidelines appear to have been the work of Catherine Ashton, the High Representative of the Union for Foreign Affairs and Security Policy, produced within the European External Action Service, without indication of a broader European consensus. For instance, on the day the Guidelines were published, a spokesperson for the German Foreign Ministry stated that the European Commission "developed the guidelines on their own prerogative." At the same time, Ashton expressed her pleasure with the Guidelines and promised new unilateral EU steps against Israel (in the form of discriminatory labeling requirements for goods imported from Israel) to follow up on the Guidelines.[2]

Proponents of the Guidelines claim that they are mandated by international law. Supporters of the measure have uniformly echoed this justification: because the EU regards the territories as occupied by Israel, international law obligates it to ensure its monies do not support Israeli activities there.[3] (At the same time, the Guidelines openly offer money to Israelis to undertake activities in the territories if they promote European foreign policy, suggesting that the European interpretation of international law leaves room for funding, depending on how the activities relate to EU foreign policy.)

Reactions within Israel have been almost uniformly negative. Supporters of a negotiated peace with the Palestinians have noted that the Guidelines will undermine the peace process. The Guidelines both contradict the existing agreements between Israel and the Palestinians, and grant the Palestinians an additional incentive for continuing to attack Israel's legitimacy while bypassing talks and ignoring their prior solemn commitments.

1 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:205:0009:0011:EN:PDF.

2 Letter dated July 8, 2013 to European Commission President Jose Manuel Barroso.

3 See MEP Elmer Costello, *EU's moment of truth on Israeli settlements*, http://euobserver.com/opinion/121415; Barak Ravid, *Former EU leaders to Ashton: Stand firm on settlement guidelines*, avaialble at http://www.haaretz.com/news/diplomacy-defense/.premium-1.547188

Other Israeli critics of the EU action have observed that the Guidelines impose upon the Jewish state of Israel a uniquely restrictive interpretation of international law, and that this interpretation has the functional aim of rendering large areas of disputed territory empty of all Jewish residents. These critics note that, in so doing, the Guidelines fall within the European Union's own definition of antisemitism.

The ill-considered Guidelines expose the European Union to considerable legal risk. The legal theory underlying the Guidelines, as promoted by European officials, is that Israeli "settlements" are illegal and that the EU must cut off grants that "support" settlement activity lest the EU be implicated in the illegality.[4] However, the EU currently and openly supports similar "settlement" activity elsewhere in the world. For instance, the EU has a grant program specifically aimed at funding Turkish "settlers" of Northern Cyprus. If the EU is serious about the legal theory it is using to promote the Guidelines, it means that the EU violates international law with its grant programs in Northern Cyprus. Future challengers to EU policy in Northern Cyprus, as well as other occupied territories like Western Sahara, will use EU arguments regarding the Guidelines to convince courts to rule that EU policy violates international law.

4 See, for example, http://www.haaretz.co.il/st/inter/Hheb/images/2013-09-16%20EEPG%20Letter%20on%20EU%20funding%20guidelines. pdf.

THE GUIDELINES DISCRIMINATE AGAINST ISRAEL

The Guidelines discriminate against Israel and contradict international law and the EU's interpretation of such law.

There are roughly 200 territorial disputes worldwide, many involving countries exerting control or occupying territory over which they have no sovereignty. In many of these cases, the EU does not accept sovereignty claims of the states which administer the territory in question. For instance, the EU does not recognize Morocco's claim to sovereignty over the belligerently occupied Western Sahara. Similarly, the EU does not recognize the sovereignty claim of the Turkish puppet state Northern Cyprus, which is a belligerently occupied part of an EU member state, Cyprus. But while the EU directly acknowledges the existence of many other belligerent occupations, the Commission does not impose rules similar to the Guidelines on the EU's funding relationships with any of these other occupying powers. The Commission sets such restrictions on EU grant-giving on only one country in the world: Israel. In other words, in adopting the Guidelines, the Commission has set a double standard: it has one rule for the Jewish state, and a different one for the rest of the world.

Israeli entities do not have a monopoly on conducting activities in what the EU regards as occupied territory. For instance, numerous European businesses and universities maintain considerable operations in Western Sahara and Northern Cyprus. In no other case but Israel has the Commission adopted guidelines that adversely affect funding based on the status of the territory. Nor has the Commission conditioned EU aid to any EU member states or European businesses and organizations on their vow not to undertake activities in the territories.

1. The EU does not claim in any other place in the world that it is forbidden to provide grants to "settlements" in "occupied territory." Indeed, in Northern Cyprus and elsewhere it is EU policy to provide grants specifically for settlers of such territory.

The Guidelines forbid grantees to engage in activities - or be located in - the disputed areas. EU officials falsely argue that this is required by international law, a policy which falls in line with its opposition to potential Israeli claims of sovereignty in the disputed areas. Yet, in Turkish occupied Northern Cyprus, the EU operates a grant program aimed at Turkish Cypriot settlers who were transferred there by the Turkish government. (See the "Case Study" below for more detail on this program). The existence of such programs makes it clear that even according to the EU's view of the law, such Guidelines are not actually mandated by international law, and that the EU does not generally believe them to be required by international law.

The North Cyprus program is only the most blatant of numerous EU programs that provide funds to occupation and settler regimes. In another example, in a recent fisheries agreement with Morocco, the EU pledged financial grants to develop the Moroccan fishery industry as compensation for access to

Moroccan waters.[5] Yet the Agreement defined the "Moroccan" fishery and waters as including Western Sahara. Thus the EU directly funds Morocco's exploitation of resources in the occupied territory, and it recognizes the application of EU-Morocco treaties to territory occupied by Morocco. All of this is in addition to direct aid to Morocco, none of which requires recipients to make declarations akin to the Israel Grant directive. Similarly, the EU provides direct aid to the Russian-occupied Abkhazia region of Georgia, and is indeed the largest donor there. The funding documents note that funding programs require "a pragmatic and flexible programme approach" given the occupied status of the region.[6]

The double standard further carries over when it comes to the obligation of all Israeli grantees to sign a declaration that they are located within the Green line, and none of their activities take place over the line, simply by virtue of their nationality. Needless to say, this policy is applied towards Israel only and not to any other countries with EU- recognized disputed territories.

The uniquely restrictive standard the Guidelines apply to Israel is notable in light of the working EU definition of anti-semitism, as adopted by the EU Monitoring Centre on Racism and Xenophobia in 2004, which includes among its examples of anti-semitism "applying double standards [to Israel] by requiring of it a behavior not expected or demanded of any other democratic nation."

2. Under international law, there is no prohibition on organizations engaging in "activities" in occupied territories, yet the Guidelines bar funding precisely on the basis of such "activities."

The international law of belligerent occupation regulates the exercise of sovereign power by an occupying state. It does not regulate activities of private entities conducting business or academic programs in occupied territories. This is amply demonstrated in both formal sources of international law (legal texts and opinions) and extensive state practice, including the EU's own official activities. It is interesting to note that the EU directly funds the activities of the Turkish and Moroccan occupiers of Northern Cyprus and Western Sahara. In fact, the EU maintains an entire office devoted to the supporting the Turkish settlers in occupied Northern Cyprus.

The legality of foreign companies conducting business in occupied territory was recently strongly reaffirmed by the 2013 ruling of the Court of Appeal of Versailles in France in the Alstom case.[7] The Court held that a company doing business or establishing infrastructure in East Jerusalem in no way violates international law (the case concerned a firm that worked on the Jerusalem light rail system). The Court affirmed that an occupying power is bound by certain restrictions, but private entities are not, even when they are in contractual arrangements with occupation authorities.

5 Morocco-EU fishing accord signed after 18-month hiatus (July 24, 2013). The agreements were opposed by representatives of the Western Saharan population. See Western Saharan Resource Watch, New EU-Morocco Fisheries Protocol signed today, http://www.wsrw.org/a105x2631.

6 EURAID 2011 Georgia Annual Action Program, Annex 1: Action Fiche, pg. 44.

7 France-Palestine Solidarite v. Alstom, (Cour d'Appel de Versailles, March 22, 2013), R.G. N° 11/05331.

Similarly, in a 2002 legal opinion, the U.N. Security Council's Legal Advisor concluded that foreign companies taking Moroccan contracts to do business in Western Sahara do not violate international law, even when such plans are opposed by the "protected persons" (i.e., people who are not citizens of the occupying country), so long as the business in question does not "disregard" the interests of those protected persons.[8] The opinion considered the fact that the contracts create economic opportunity for Moroccans and Western Saharans, and it concluded that this is sufficient "regard" for the interests of protected persons. The EU has relied on this opinion in allowing its business to operate in Western Sahara.

The matter of the Moroccan-EU agreements generated a fair amount of controversy in the European Parliament and elsewhere, with some claiming that an extension of such agreements to Western Sahara would violate the duty of non-recognition, or otherwise be inconsistent with international law. The EU continues to reject these views; just last year, the EU renewed a trade agreement with Morocco, and this summer it renewed a fisheries agreement. In each case, the EU has relied in its reasoning on the Security Council opinion above.

Further evidence that the Guidelines are not motivated by international law is provided by the broad exemption contained in article 15 for Israeli organizations that operate across the Green Line but happen to promote EU foreign policy. Obviously international law does not contain a rule forbidding activities except where they concord with EU foreign policy interests. The exception underscores that the directives are a purely discretionary — and discriminatory — foreign policy exercise.

3. The Guidelines do not advance the EU position on sovereignty because they do not relate to activities that legally establish sovereignty or constitute recognition of sovereignty.

In international law, only national governments can assert legal claims of sovereignty, and they can do so only through sovereign acts such as formal claims of annexation or through the extension of domestic law to territory. Yet, the Guidelines explicitly exclude the national government of Israel from the scope of the Guidelines. The Guidelines concern the addresses of organizations and non-national governments, and commercial, residential and other activities by those actors. None of these can possibly constitute potential sovereign acts. The Commission recognizes this in its dealings with the authorities in Turkish-occupied and Russian-occupied territories. For example, the funding program for Abkhazia simply notes that "it should not be considered a form of recognition."[9]

There is no way that any of the grants excluded by the Guidelines, or that would be permitted in the absence of the Guidelines, can have anything to do with a potential claim of sovereignty by Israel. Moreover, it is clear, as noted above, that there is no connection between giving grants and recognizing sovereignty. Finally, Israel has not even claimed sovereignty over much of the territory in question, and thus it is not clear what sovereignty claims the Guidelines seek to not recognize.

8 Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, S/2002/161.

9 See Action Fiche, supra, pg. 32 n. 26.

4. The Guidelines' capacious definition of settlements to include all "activity" by Israeli entities has no basis in international law and contradicts the EU's own theory on the "illegality" of settlements.

The argument that "Israeli settlements are illegal," as endorsed by the EU and by the ICJ, posits that although no international treaty talks about "settlements" per se, article 49 of the Fourth Geneva Convention forbids an occupying power to "deport or transfer" parts of its "civilian population" to occupied territory, and Israel illegally "transfers" civilians when it permits Israeli citizens to move to the disputed areas. However, although EU officials justify the Guidelines as being related to settlements, the Guidelines themselves have nothing to do with any Israeli transfer of civilian population. The Guidelines explicitly blacklist only organizations that have no legal responsibility for "transfer." The Guidelines disqualify organizations simply for being located in or engaging in "activities" in the disputed territories. Thus, the Guidelines act only against actions that have nothing to do with any state "transfer" of civilian population.

5. The EU Directive finds no precedent in U.S. Grant Guidelines.

Some apologists for the Grant Directive claim it is little different than the requirements of the U.S.-Israel Binational Science Foundation (BSF).[10] Yet the European Directive goes far beyond the U.S. regulations, and is indeed notable in how much further it reaches.

For one, the BSF rules were reached through an "agreement" with the Israeli government, while the EU effort is unilateral.

More substantively, the BSF rules apply to projects, not entities, and thus would permit funding for entities based across the Green Line. It would also not bar funding to entities simply because some of their activities are across the Green Line. The EU Directive, by contrast blacklists any organization with a "bad" address, regardless of the project involved, and any organization that "operates" across the Green Line. Finally, the BSF rules do not have self-serving exceptions for groups involved in foreign policy activities sympathetic to the U.S.; indeed, they tend to rule out political projects. The EU Directive gives a free pass to projects designed to undermine Israeli policy interests.

6. The EU exposes itself and its business to legal action.

The Guidelines propose what is in effect a new rule of international law inconsistent with much current EU practice. The Guidelines can thus be invoked by litigants challenging EU direct funding or suing EU companies either in national courts or the European Court for Human Rights. The targets of such suits could be EU funding for Moroccan activities in Western Sahara and for Turkish activities in Northern Cyprus, as well as activities by EU companies doing business in those areas.

10 Applicants for grants from the Foundation are informed that "According to the agreement between the U.S. and Israeli governments, projects sponsored by the Foundation may not be conducted in geographic areas which came under the administration of the Government of Israel after June 5, 1967 and may not relate to subjects primarily pertinent to such areas."

Case Study: The EU directly and indirectly funds Turkish occupation of Northern Cyprus, despite regarding it as illegal.

The EU knowingly and purposefully gives direct grants, funding, etc. to Turkish-occupied Northern Cyprus. The EU does so even though the EU regards Northern Cyprus as occupied (indeed, it is an occupation of an EU member state). The EU's official policy is that Turkey must end its occupation, and the Turkish invasion was condemned by every international institution from the Security Council on down. Nonetheless, the EU maintains an entire program to direct funds to Turks in Northern Cyprus. They even put out a nice colorful brochure last year.[11]

The grants are pursuant to a 2006 Regulation adopted by the EU to "end the isolation of the Turkish Cypriot community," and allocated 259 million Euros over five years.[12] The program now operates on a 28 million Euro a year allocation (even this small sum is roughly 0.8 percent of Northern Cyprus's GDP).[13]

EU-funded projects include study abroad scholarships; grants to small and medium-sized businesses for the purpose of developing and diversifying the private sector; various kinds of infrastructure improvements (iterate and telecom improvements, traffic safety, waste disposal, technical assistance to farmers); "community development grants"; funding to upgrade "cultural heritage" sites, etc. The EU program even puts on a musical concert.

Importantly, the vast majority of the Northern Cyprus inhabitants are Turkish settlers who arrived subsequent to the invasion in 1974 and who do not have EU citizenship. Yet, none of the Commission's grant or contracting documents limit eligibility or participation to EU citizens.

Can one imagine a similar EU project in the West Bank funding Israeli traffic safety, or providing grants to Jewish West Bank residents for study abroad and grants to Jewish-owned small and medium-sized businesses. Could one imagine one funding Jewish cultural events in the West Bank?

The relevant EU resolutions and reports on the EU's Northern Cyprus program make no mention of the international legal issues arising from this policy, though they do note the "difficult" or "unique" political context.[14] One reason the EU gives for the funding is that it is preparing for reunification of an island that is technically in the EU. Yet, it is important to note that funding goes far beyond particular reunification projects, and gives grants to Turkish private business entities, and builds the infrastructure of the occupying government.

The EU's own reports make clear that preparing for possible reunification is only one goal of the

11 http://ec.europa.eu/cyprus/documents/2012/eu_assistance_to_tcc_brochure.pdf.

12 Council Reg. (EC) No 389/2006 of 27 February 2006.

13 Aid Program for the Turkish Cypriot Community: Background, available at http://ec.europa.eu/enlargement/tenders/aid-programme-tcc/index_en.htm

14 Seventh Annual Report 2012 on the implementation of Community assistance under Council regulation (EC) No 389/2006,, pg. 2..

program, and general welfare-improvement goals dominate the considerations behind funding. The EU is doing exactly what it claims that international law prohibits when it comes to Israel.

The contradiction between the Northern Cyprus policy and the Israel policy is much starker. The Guidelines on Israel aim to regulate groups based in Israel proper and they go out of their way to make sure no money might be incidentally spent on "occupation." Yet no such territorial restrictions are placed on EU funding to Turkey itself, despite the fact that Northern Cyprus's economy is dominated by Turkish mainland-based entities and direct subsidies from Ankara. The EU funding of Northern Cyprus goes even further than that: it is a specific project entirely dedicated to funding occupation activities.

Indeed, the EU maintains an office in Northern Cyprus to oversee its over "1000 grant contracts… to NGOs, SMEs, farmers, rural communities, schools, and students."[15] This office liaises directly with the Turkish occupation regime in the territory (which styles itself as an independent republic, but neither the EU nor any other nation recognize it as such).

The Northern Cyprus program is more flagrant in another way. The Israel-related Guidelines make an exception for activities "aimed" at helping "protected persons," i.e. Palestinians. The Northern Cyprus funding can not (and does not attempt) to claim this excuse, as i) the majority of the territory's population is composed of mainland Turkish settlers; ii) the ethnic Greeks present at the time of occupation have all fled or been expelled.

The EU justification of the Guidelines is that it has no choice - the EU doesn't recognize the disputed territories as part of Israel, and so no money can go there, and moreover, the EU has some affirmative duty to prevent money going there. The Cyprus program gives lie to this position. The Israel-related Guidelines are neither the legal nor logical consequence of Israeli activities, but a discretionary European political decision to impose a double standard on Israel.

15 Id. at pg. 3..

THE GUIDELINES UNDERMINE THE PEACE PROCESS

The Guidelines undermine the peace process and international agreements by seeking to impose a particular outcome regarding disputed territory, in disregard of negotiated formulations.

1. The Guidelines seek to foreclose issues that are preserved for negotiations by existing Israeli-PLO agreements.

The Oslo Accords explicitly preserve the positions of the parties without resolving the question of territorial sovereignty. Rather, the Oslo Accords assign to direct bilateral negotiations any questions about borders demarcating the separation between Israel's sovereign territory and the territory assigned to any agreed-upon Palestinian entity. Pending such a "final status" agreement, both sides legitimately maintain their positions. None of the agreements deny Israel the right to assert sovereign claims in such negotiations. And, of course, none of the agreements empower a third party like the EU to override the negotiations and impose its own views of sovereignty over the disputed territory. It is a violation of the spirit of international law for the EU to seek to impose its position on Israel and Israeli entities unilaterally.

2. The Guidelines seek to undermine territorial arrangements that are established by existing Israeli-PLO agreements

Although they do not resolve the issue of territorial sovereignty, the Oslo Accords explicitly lay out the powers and responsibilities of Israel and the Palestinian Authority in the West Bank (as well as the Gaza Strip, though neither Israel nor the Palestinian Authority exercises effective control there). They also allude to some powers and responsibilities in Jerusalem. The agreements oblige Israel and the Palestinians to engage in negotiations regarding settlements (and the Roadmap discusses Israeli concessions regarding construction in settlements), but none of the agreements place any restrictions on the actions of private Israeli entities in the territories. By contrast, the Israeli-PLO agreements do place geographical restrictions on public actions of various Palestinian authorities in several locations; for instance, Palestinian authorities may not lawfully maintain their offices within Jerusalem.

3. The Guidelines seek to establish the pre-1967 armistice lines (the Green Line) as borders of Israeli sovereignty, contrary to international law and the negotiated agreements between Israel and its neighbors.

The Guidelines explicitly and erroneously refer to the pre-1967 armistice lines as borders, and implicitly and incorrectly insist not only that the EU does not recognize potential Israeli claims to sovereignty in the disputed territories but that Israel is not entitled to assert those claims. Yet, numerous written agreements among parties to the peace process show that the EU's position is wrong. (The line between Israel and the Golan Heights, on the other hand, is an international border. It stems from the historical division between the Mandates in Palestine and Syria).

While the EU is certainly entitled to aspire to limit the ultimate sovereign territorial scope of Israel, its aspirations have no basis in any binding legal document. The peace agreement between Israel and Jordan establishes the international boundary between Israel and Jordan at the Jordan River (without prejudice to the status of the territories occupied by Jordan prior to 1967); it does not deny Israeli sovereignty over the "West Bank" or "east Jerusalem." All of Israel's peace agreements with bordering states – including the unratified agreement with Lebanon and the ratified peace treaties with Egypt and Jordan – have relied on the boundaries of the Palestine Mandate prior to Israel's independence to establish Israel's current boundaries, rather than the armistice lines of 1949-1967 (or any UN-proposed boundaries).

The non-binding advisory opinion of the ICJ on the Wall (non-binding by law) explicitly avoided ruling on the question of territorial sovereignty.[16] Indeed, the Court specifically criticized the route of the Israeli-built barrier because it could "prejudge the future frontier between Israel and Palestine."[17] Thus, in the view of Court, there was no recognized frontier between the two entities. If the Green Line were the recognized "frontier," the Wall would not prejudge it, but rather simply infringe upon it.

16 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (ICJ 2004), par. 52-54.

17 Id. at par. 121 (emphasis added).

RECOMMENDED ALTERNATIVES

The EU has better alternatives to achieve its policy aims: it can either negotiate a more modest understanding directly with Israel or it can adopt Guidelines that clarify EU policy without creating a double standard.

While the Guidelines contradict international law and EU practices, the EU does have alternative policy tools to clarify and amplify its policy stances on Israel and the status of the disputed territories.

The Commission can begin by rescinding the Guidelines in their entirety and issuing a clarification to the effect that it has further reviewed the matter and determined that the Guidelines are not required by international law. This clarification is important if the EU is to defend itself against future legal challenges against its policies in Northern Cyprus, Western Sahara and other disputed territories.

There is no difficult formal process required for the EU to rescind the Guidelines — the Commission can cancel them in exactly the same way it issued them; this is not a decision that requires unanimity among EU states.

If the Commission feels it is important to adopt measures to advance the purported policy goals of the Guidelines, there are several possible alternative means of doing so, either produced via negotiations with Israel or unilaterally by issuing less problematic language.

1. A Negotiated Alternative: A Memorandum of Understanding Concerning EU Policy

In order to ensure respect for EU policy regarding Israel and the peace process, the EU could issue together with Israel the following memorandum of understanding. It is likely that Israel would find this memorandum agreeable.

MEMORANDUM OF UNDERSTANDING

The EU affirms that no EU grants, prizes or financial instruments will support activities that violate existing agreements between Israel and the PLO regarding the geographic location of activities.

The EU affirms that the borders of Israel's territorial sovereignty with its neighbors are those previously determined by legally binding agreements produced through direct negotiations between the affected parties; where the borders are unresolved by agreement, the EU affirms that the borders will be those that are established through direct negotiations between the affected parties. No EU grants will be granted in support of activity that unilaterally establishes borders pending agreement or alters borders already agreed upon.

No assistance to Israeli entities located in or carrying out activities in areas under Israeli jurisdiction should be construed as EU recognition of Israeli sovereignty in those areas. No assistance to Israeli entities should be construed as altering the EU's long standing position on the illegality of Israeli settlements as the EU understands that term.

2. A Negotiated Alternative: A Memorandum of Understanding Concerning EU Grants

The EU could negotiate with Israel for a narrower Memorandum of Understanding that does not clarify the EU's overall policy on Israel and borders, but does clarify the EU's policy on grants. This provision presented here is based upon similar language used by the Binational Science Foundation (between Israel and the US), as well as existing language contained in Commission funding programs for other occupied territories.

MEMORANDUM OF UNDERSTANDING

> *No projects sponsored by the EU grants may be conducted in geographic areas which came under the administration of the Government of Israel after June 5, 1967 nor may such projects relate to subjects primarily pertinent to such areas.*

3. A Unilateral Alternative: Broad but Universal Guidelines

If the EU is unwilling or unable to negotiate with Israel an agreement clarifying the application of EU policy to grants and the like, the Commission could issue alternative guidelines that use EU funds to promote EU policies without creating a double standard.

The simple means of doing this would be to reissue the current Guidelines but rephrase them so they are universal. The new guidelines would apply to all EU grants everywhere in the world. Specifically, they would apply to all entities organized under the laws of countries or organizations which are involved in EU frameworks. The new guidelines would forbid all grants, etc., to (1) entities with addresses in territories under administration of any country where the EU does not formally recognize the sovereignty of the country over the territory being administered or (2) any activities that take place in territories under administration of any country where the EU does not formally recognize the sovereignty of the country over the territory being administered.

These alternative guidelines would remove the taint of a double standard from the Guidelines on Israel. However, they would also make it impossible for the EU to continue its current funding practices in Northern Cyprus, Western Cyprus and in disputed territories elsewhere in the world.

תקציר מנהלים

- **ההנחיות שאומצו על ידי הנציבות האירופית בדבר מתן מענקים לישראל מהוות אפליה ייחודית נגד ישראל. הן סותרות את המשפט הבינלאומי כפי שנקבע במסמכי האו״ם ובתיקים משפטיים בולטים וכן את הפרשנות של האיחוד האירופי למשפט הבינלאומי.**
- **האיחוד האירופי מעניק סיוע כלכלי ומשתף פעולה עם מספר רב של מדינות המחזיקות בהתנחלויות בשטחים המוגדרים על ידי אירופה ככבושים, ביניהן מרוקו, טורקיה ורוסיה. באף אחד מהמקרים לא הוטלו מגבלות על הסיוע הדומות להנחיות בדבר מתן מענקים לישראל.**
- **עמדת האיחוד האירופי לפיה ההנחיות הן מתוקף המשפט הבינלאומי עומדת בסתירה ברורה לתכניות שמפעיל האיחוד בצפון קפריסין, הכבושה על ידי הטורקים, בהן נותן האיחוד מענקים באופן ספציפי למתנחלים בשטחים הכבושים בתפיסה לוחמתית.**
- **המשפט הבינלאומי אינו כולל איסורים באשר לארגונים הקשורים ל״פעילויות״ בשטחים כבושים.**
- **בהעמידו פנים כאילו ההנחיות נועדו למלא את דרישות המשפט הבינלאומי, האיחוד האירופי מסתכן בגל תביעות משפטיות נגדו ונגד עסקים אירופים, שכן האיחוד האירופי מממן פעילות מקבילה בשטחים כבושים בתפיסה לוחמתית ברחבי העולם, כמו בצפון קפריסין וסהרה המערבית.**
- **להנחיות אין תקדים בהסכמים דומים בין ארה״ב לישראל.**
- **הנחיות האיחוד מבקשות להסדיר סוגיות שאמורות להיקבע במסגרת המו״מ ומבקשות לחתור תחת ההסדרים הטריטוריאליים שנקבעו בהסכמים בין ישראל לאש״ף.**
- **ההנחיות לא מקדמות את עמדת האיחוד האירופי באשר לריבונות, שכן אין בהן התייחסות לפעילויות הקובעות באופן משפטי ריבונות או מהוות הכרה בריבונות.**
- **קיימות חלופות מדיניות להנחיות, המקדמות את המדיניות האירופית ללא הפליה כנגד המדינה היהודית. בין החלופות האפשריות ניתן למנות הנחיות מצומצמות יותר המבוססות על הסכמי שיתוף פעולה מדעי בין ישראל לבין ארה״ב, או הסכם ישראלי - אירופי המבהיר שאין במענקים הכרה בטענות ריבונות ישראליות.**