



## The Role of the EU in the Israel/Palestine Conflict in Context

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### 1. Introduction

In May 2011, the world witnessed the sixty-third anniversary of both the Declaration of Independence of the State of Israel and the displacement of Palestinians from their homes during the 'Nakba' or 'Catastrophe', amid clashes that led to a number of deaths and casualties.<sup>1</sup> These events provided a stark reminder of the history of an ongoing conflict, one which has caused untold suffering right up to the present day. With direct negotiations stalled at the time of writing, the Palestinian Authority is pushing for the international recognition of a Palestinian State at the United Nations General Assembly, expected in September 2011. In the meantime the Israeli Government continues to place responsibility for the conflict on the refusal of Palestinian groups, notably Hamas, to accept the State of Israel, and emphasises the threat the Iranian regime poses to Israeli and regional security. In this context, this briefing paper assesses the role of the European Union in the potential resolution of the conflict, and seeks to evaluate how this role can be strengthened. Firstly, the paper sets out the official positions of the EU on the conflict, and then gives examples of recent regional and global efforts towards a comprehensive peace settlement. It follows with the contemporary stances of the Government of Israel and the Palestinian Authority respectively, and assesses how these accord or not with such efforts. The conclusion provides some recommendations on steps the European Union could take to further its contribution, in this context, to a just and lasting peace. These recommendations draw on the findings of previous QCEA briefing papers.<sup>2</sup> Finally, an annex seeks to broadly trace the history of the present impasse.

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<sup>1</sup> See two examples 'On its 63<sup>rd</sup> birthday, Israel is a shining beacon in the Middle East' - 9 May 2011: <http://www.haaretz.com/news/national/on-its-63rd-birthday-israel-is-a-shining-beacon-in-the-middle-east-1.360780> and 'Palestinians killed in 'Nakba' clashes' - 15 May 2011: <http://english.aljazeera.net/news/middleeast/2011/05/2011515649440342.html>

<sup>2</sup> All available to download from this page: <http://www.quaker.org/qcea/middle%20east/>

## 2. The Positions of the European Union

As a member of the Quartet (along with the United States, Russia and the United Nations), the EU seeks to play an active role in the contemporary negotiations, dubbed the 'Middle East Peace Process'.<sup>3</sup> Its work in this regard has been taken forward since the start of 2010 by Catherine Ashton, the High Representative for Foreign Affairs and Security Policy and head of the European External Action Service (EEAS). The EU's positions on the key 'final status' issues of the conflict are formulated through the Foreign Affairs Council in line with its Quartet membership.<sup>4</sup> Its positions on the five key issues are as follows:

### **Borders**

The official position on the webpage of the EEAS is that *"the EU considers that the future Palestinian state will require secure and recognised borders. These should be based on a withdrawal from the territory occupied in 1967 with minor modifications mutually agreed, if necessary, in accordance with UNSC Resolutions 242, 338, 1397, 1402 and 1515 and the principles of the Madrid Process."*<sup>5</sup>

UNSC Resolution 1515 of 19 November 2003 formally endorsed the Quartet 'Roadmap', released in Washington D.C. in April 2003.<sup>6</sup> The Madrid Process began with the Madrid Conference of October-November 1991 hosted by the Government of Spain and co-sponsored by the United States and the (soon to be dissolved) Soviet Union. This led to the Oslo Accords and Israel-Jordan Peace Treaty of 1994 (see Annex page 19 for further details).

In the Council Conclusions on the Middle East Peace Process of 13 December 2010, the EU reiterated that it "will not recognize any changes to the pre-1967 borders, including with regard to Jerusalem, other than those agreed by the parties."<sup>7</sup>

### **Settlements**

On 9 January 2011 High Representative Ashton reiterated the EU's position that "settlements are illegal under international law, undermine trust between the parties and constitute an obstacle to peace."<sup>8</sup>

### **Jerusalem**

In this same statement, Ashton recalled that "East Jerusalem is part of occupied Palestinian territory; the EU does not recognize the annexation by Israel".<sup>9</sup> The Council

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<sup>3</sup> See further details on the Quartet in Annex pp.23-24

<sup>4</sup> 'EU positions on the Middle East peace process': [http://eeas.europa.eu/mepp/eu-positions/eu\\_positions\\_en.htm](http://eeas.europa.eu/mepp/eu-positions/eu_positions_en.htm)

<sup>5</sup> See 'Borders' on above webpage

<sup>6</sup> See full text 'A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict' - 30 April 2003: <http://news.bbc.co.uk/2/hi/2989783.stm> and further details in Annex pp.23-24

<sup>7</sup> 'Council Conclusions on the Middle East Peace Process' - 13 December 2010, under Point 4: <http://register.consilium.europa.eu/pdf/en/10/st17/st17738.en10.pdf>

<sup>8</sup> 'Statement by EU High Representative Catherine Ashton on demolition and settlements in East Jerusalem' - 9 January 2011: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/118727.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/118727.pdf)

<sup>9</sup> See link above

Conclusions cited above said in addition that, "A way must be found through negotiations to resolve the status of Jerusalem as the future capital of two states."<sup>10</sup>

### **Security**

The same conclusions read, "*A negotiated settlement must allow the two States to live side by side in peace and security.*"<sup>11</sup>

### **Refugees**

The Council Conclusions of 13 December 2010 read, "*The EU calls for an agreed, just, fair and realistic solution to the refugee question.*"

The Council reaffirmed these above positions, in light of recent events across the Arab world, on 23 May 2011 and reiterated the EU's "readiness to recognize a Palestinian State when appropriate."<sup>12</sup>

## **3. Proposals from Regional and Global Actors**

### **The 'Clinton Parameters' and Taba talks - 2000 and 2001**

Following the failure of the Middle East Peace Summit at Camp David in July 2000, and the outbreak of the Second Intifada in September that year, United States President Bill Clinton made a final proposal on the terms of a settlement in December, shortly before leaving office. The details of this proposal were named the 'Clinton Parameters' and were outlined at the White House on 23 December 2000 in the presence of senior Israeli and Palestinian negotiators. The positions on the key issues were as follows:<sup>13</sup>

#### **Borders**

Between 94-96% of the West Bank territory would become part of a Palestinian State. Israel would annex land that would be compensated through a swap of 1-3%.

#### **Settlements**

Any remaining Israeli presence in the West Bank should minimise the annexed areas and minimise the number of Palestinians affected. A map should be developed between the parties to meet these requirements.

#### **Jerusalem**

A divided Jerusalem based on population, with measures taken to ensure fair access to religious sites.

#### **Security**

An international presence will monitor the implementation of the agreement between both sides. Israel should maintain three facilities in the West Bank with a Palestinian

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<sup>10</sup> 'Council Conclusions on the Middle East Peace Process' - 13 December 2010, under Point 4:

<http://register.consilium.europa.eu/pdf/en/10/st17/st17738.en10.pdf>

<sup>11</sup> See above

<sup>12</sup> 'Council conclusions on Middle East Peace Process' - 23 May 2011, under Point 2:

[http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/EN/foraff/122165.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/122165.pdf)

<sup>13</sup> 'Clinton Proposal on Israeli-Palestinian Peace' - 23 December 2000:

[http://www.peacelobby.org/clinton\\_parameters.htm](http://www.peacelobby.org/clinton_parameters.htm)

liaison presence. Palestine will be a “non-militarized state” with an international force for border security and deterrence purposes.

### **Refugees**

Israel will acknowledge the suffering caused to the Palestinian people as a result of the 1948 war. The solution will be consistent with the two-state approach that both sides accept as a resolution to the conflict. This will prioritise Palestinian refugees in Lebanon and involve free movement to the new State of Palestine. Rehabilitation in host countries, resettlement in third countries or admission to Israel will be possible, but remain dependent upon the policies of those countries. The parties would agree that this implements UN General Assembly Resolution 194.<sup>14</sup>

This proposal was incorporated into the permanent status talks at Taba in the Sinai Peninsula from 21 to 27 January 2001. Coming at a time when George W. Bush began his Presidency of the United States, the talks proved unsuccessful. Soon after, the Israeli Government of Ehud Barak fell and elections were held for Prime Minister in February. When Ariel Sharon of the Likud party defeated Barak in the election, the momentum of the Taba talks at the governmental level was lost.

### **The Arab Peace Initiative - 2002 and 2007**

The League of Arab States (or ‘Arab League’) met for its fourteenth summit meeting in March 2002 in Beirut, Lebanon. The leaders present at the summit endorsed a comprehensive peace initiative on the Arab-Israeli conflict on 27 March. The text from the Initiative is taken here from the website of the Madrid Coalition, formed of Palestinian, Israeli and European civil society organisations working towards a politically negotiated resolution of the Arab-Israeli conflict inspired by the principles of the Arab Peace Initiative.<sup>15</sup> The positions on the key issues were as follows:

#### **Borders**

The acceptance of the establishment of a sovereign independent Palestinian state on the Palestinian territories occupied since 4 June 1967 in the West Bank and Gaza Strip.

#### **Settlements**

Israel should fully withdraw from all territories occupied since 1967, including the Syrian Golan Heights and the remaining occupied territories in the south of Lebanon. (There is no direct mention of the settlements here, but presumably they would either be evacuated or fall under Palestinian sovereignty).

#### **Jerusalem**

East Jerusalem should be the capital of the future Palestinian state.

#### **Security**

The Arab countries would establish normal relations with Israel, consider the Arab-Israeli conflict ended and enter into a peace agreement with Israel.

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<sup>14</sup> This refers particularly to the matter of refugees in article 11. For Resolution 194 see:

<http://www.un.org/depts/dhl/resguide/r3.htm> and scroll down to A/RES/194(III)

<sup>15</sup> See Madrid Coalition: <http://madridcoalition.org/Overview/Vision-Missions-Values.html>

## Refugees

A just solution should be agreed upon in accordance with UN General Assembly Resolution 194.<sup>16</sup>

Significantly, this includes the normalisation of relations between the Arab States and the State of Israel, a key aspect to a resolution of the conflict from the Israeli side. It affirms the vision of a two-State solution, in line with the position of the European Union. The Initiative was reaffirmed in the Riyadh Declaration of the 19<sup>th</sup> Summit of the Arab League Council 28-29 March 2007, Riyadh, Saudi Arabia.<sup>17</sup>

## The Geneva Accord - 2003

Following the Taba talks of January 2001, positions and approaches at the top governmental level changed course, as the Second Intifada brought an escalation of violence and deaths on both sides. Despite this, the groundwork had been laid for Israeli and Palestinian negotiators to put forward a model permanent status agreement in the form of the 'Geneva Accord' of December 2003. It was led on the Israeli side by Yossi Beilin, former Member of the Knesset and Minister of Justice from 1999 to 2001, and on the Palestinian side by former Palestinian Authority minister Yasser Abed Rabbo.<sup>18</sup> This accord would be taken forward in the form of the 'Geneva Initiative' with corresponding Israeli and Palestinian sections led by Beilin and Rabbo respectively.<sup>19</sup> A summary of the positions of the Accord/Initiative on final status issues are as follows:<sup>20</sup>

### Borders

Israel will annex certain Jewish settlements in the West Bank and Jewish areas of East Jerusalem in return for an equal land swap.

### Settlements

Major settlement blocks will be annexed to Israel, and others will be evacuated, in a detailed proposal.<sup>21</sup>

### Jerusalem

A divided Jerusalem based on population, with measures taken to ensure fair access to religious sites.

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<sup>16</sup> See Madrid Coalition: <http://madridcoalition.org/Overview/The-Arab-Peace-Initiative.html>

<sup>17</sup> See The Riyadh Declaration - 29 March 2007:

<http://www.mofa.gov.sa/sites/mofaen/RelatedLinks/ArabSummitConference/Pages/RiyadhSummit62682.asp> x and 'Arab leaders unanimously approve Saudi peace initiative at Riyadh summit' - 29 March 2007:

<http://www.haaretz.com/print-edition/news/arab-leaders-unanimously-approve-saudi-peace-initiative-at-riyadh-summit-1.216921>

<sup>18</sup> See: <http://www.geneva-accord.org/mainmenu/dr-yossi-beilin> and <http://www.geneva-accord.org/mainmenu/Yasser-Abed-Rabbo>

<sup>19</sup> See the Israeli section Heskem: <http://www.heskem.org.il/> and Palestinian section the Palestinian Peace Coalition: <http://www.ppc.org.ps/>

<sup>20</sup> Taken from: <http://www.geneva-accord.org/mainmenu/english>

<sup>21</sup> For detail of plans for the settlements, see: <http://www.geneva-accord.org/mainmenu/settlements>

## Security

Both sides recognise each other's right to live in peace and security. Palestine will be a non-militarised state with a strong security force.

## Refugees

Refugees will be entitled to compensation and have the right to return to the State of Palestine. They could instead remain in their present host countries, or relocate to third countries, among them Israel, at the sovereign discretion of third countries.

This broadly follows the two-State consensus shown above, but contains substantial adjustment to the borders, where certain Jewish settlements in the West Bank become part of Israel, and land is exchanged to form part of the State of Palestine. The Initiative continues to be promoted ahead of the recognition efforts at the UN in September 2011, and a public conference was held under its auspices in Tel Aviv on 16 May 2011.<sup>22</sup>

## 4. The Israeli and the Palestinian Positions - Where we are now

### The Government of Israel

Following the announcement of the 'Roadmap' in 2003 (cited above on page 2 and in Annex page 23), the Government of Israel issued a fourteen-point response on 25 May 2003. This response included several key elements that could be interpreted as a rejection of primary aspects of the Roadmap.<sup>23</sup>

This included the following:

- o *"As in the other mutual frameworks, the Roadmap will not state that Israel must cease violence and incitement against the Palestinians"* (in Point 1)
- o *"In connection to both the introductory statements and the final settlement, declared references must be made to Israel's right to exist as a Jewish state and to the waiver of any right of return for Palestinian refugees to the State of Israel."* (Point 6)
- o *"There will be no involvement with issues pertaining to the final settlement. Among issues not to be discussed: settlement in Judea, Samaria and Gaza (excluding a settlement freeze and illegal outposts), the status of the Palestinian Authority and its institutions in Jerusalem, and all other matters whose substance relates to the final settlement."* (Point 9)
- o *"The removal of references other than 242 and 338 (1397, the Saudi Initiative and the Arab Initiative adopted in Beirut)."* (in Point 10)
- o *"No link will be established between the Palestinian track and other tracks (Syrian-Lebanese)."* (in Point 14)

Under the current coalition government of Benjamin Netanyahu, the positions on key issues are as follows:

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<sup>22</sup> 'The Road to September: Geneva Initiative Conference' - 16 May 2011: <http://www.geneva-accord.org/mainmenu/the-road-to-september-geneva-initiative-conference>

<sup>23</sup> 'Israel's Response to the Roadmap' - 25 May 2003: <http://www.mfa.gov.il/MFA/Peace+Process/Reference+Documents/Israel+Response+to+the+Roadmap+25-May-2003.htm>

## **Borders**

Firstly, it is claimed that Israel is not required to withdraw to the 1967 lines. This position makes reference to UN Security Council Resolution 242, and Clause 1(i) which stated that a settlement should include the "Withdrawal of Israel armed forces from territories occupied in the recent conflict".<sup>24</sup> Israel stresses the wording of 'withdrawal from territories occupied in the recent conflict' to mean not 'all territories' or even 'the territories'. The relevant section of an FAQ on the peace process with the Palestinians on the Israel Ministry of Foreign Affairs website states the following:

*"There are no provisions in any of the agreements signed between Israel and the Palestinians that require a withdrawal to the 1967 boundaries. There are no geographic imperatives that sanctify the 1967 lines... A rational assessment of a realistic and durable peace process must take into account the Jewish presence in the West Bank. To date, all negotiations for a two-state solution have been based on that premise. A final settlement will have to reflect the new reality of the West Bank and will require compromise by both sides."*<sup>25</sup>

The insistence on a continued Israeli presence in the West Bank, even following a negotiated settlement, was underscored by Prime Minister Netanyahu in a speech on 8 March 2011 to Israel Defense Forces (IDF) units in the Jordan Valley:

*"Our security border is here, on the Jordan River, and our line of defense is here... There is no alternative to the IDF's line of defense. Therefore, in any future situation, and I say in any future arrangement as well, the IDF must stay here, i.e. along the Jordan River."*<sup>26</sup>

## **Settlements**

As such, the view here is that settlements will only be subject to the outcome of final status agreements between the two parties, and that Israel will retain full control over substantial parts of the West Bank following such agreements.

## **Jerusalem**

On 30 July 1980 the Knesset passed the 'Basic Law - Jerusalem, Capital of Israel' stating unambiguously in the first clause that "Jerusalem, complete and united, is the capital of Israel."<sup>27</sup> This institutionalised into Israeli law the annexation of East Jerusalem, following its occupation (along with the rest of the West Bank) in June 1967. On 20 August 1980, the UN Security Council adopted Resolution 478 which censured in the strongest terms the enactment of this law and decided not to recognise it (see Annex page 20 for details).

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<sup>24</sup> See: <http://www.un.org/documents/sc/res/1967/scres67.htm> and click on 'Resolution 242'

<sup>25</sup> 'FAQ: The Peace process with the Palestinians' - 30 Dec 2009:

[http://www.mfa.gov.il/MFA/FAQ/FAQ\\_Peace\\_process\\_with\\_Palestinians\\_Dec\\_2009#Settlements2](http://www.mfa.gov.il/MFA/FAQ/FAQ_Peace_process_with_Palestinians_Dec_2009#Settlements2)

<sup>26</sup> 'PM Netanyahu's Remarks in the Jordan Valley' - 8 March 2011:

[http://www.mfa.gov.il/MFA/Government/Communiques/2011/PM+Netanyahu\\_remarks\\_Jordan\\_Valley\\_8-Mar-2011.htm](http://www.mfa.gov.il/MFA/Government/Communiques/2011/PM+Netanyahu_remarks_Jordan_Valley_8-Mar-2011.htm)

<sup>27</sup> See: [http://www.mfa.gov.il/MFA/MFArchive/1980\\_1989/Basic+Law-+Jerusalem-+Capital+of+Israel.htm](http://www.mfa.gov.il/MFA/MFArchive/1980_1989/Basic+Law-+Jerusalem-+Capital+of+Israel.htm)

## Security

This is a key aspect of the Israeli position, whereby they insist that the Palestinians must recognise Israel as the nation-state of the Jewish people and that any future Palestinian state must be demilitarised.<sup>28</sup>

## Refugees

The stance on Palestinian refugees is that the issue should be resolved within the context of the Palestinian nation-state. Israel reiterates that it cannot allow a large number of refugees and their descendents into its borders, as it would undermine its 'basic identity' as the 'world's only Jewish state.'<sup>29</sup>

The remarks by Prime Minister Netanyahu after a meeting with US President Barack Obama in the White House on 20 May 2011 reiterated the above positions:

*"I think for there to be peace, the Palestinians will have to accept some basic realities. The first is that while Israel is prepared to make generous compromises for peace, it cannot go back to the 1967 lines - because these lines are indefensible; because they don't take into account certain changes that have taken place on the ground, demographic changes that have taken place over the last 44 years... So we can't go back to those indefensible lines, and we're going to have to have a long-term military presence along the Jordan.*

*The third reality is that the Palestinian refugee problem will have to be resolved in the context of a Palestinian state, but certainly not in the borders of Israel... And I think it's time to tell the Palestinians forthrightly it's not going to happen. The Palestinian refugee problem has to be resolved. It can be resolved, and it will be resolved if the Palestinians choose to do so in a Palestinian state. So that's a real possibility. But it's not going to be resolved within the Jewish state."<sup>30</sup>*

## The Palestinian Authority

On 15 November 1988, the Palestinian National Council (the legislative body of the Palestine Liberation Organization, PLO) made the Palestinian Declaration of Independence, of the State of Palestine within the 1967 borders. Following this Declaration, Yasser Arafat made a speech at the UN General Assembly on 13 December reiterating the PLO's position. A key section on the terms of a resolution to the conflict reads as follows:

*"[In the Declaration of Independence] Our PNC reasserted the need for Israel's withdrawal from all the Palestinian and Arab territories it occupied in 1967, including Arab Jerusalem; the establishment of the Palestinian state; the annulment of all expropriation and annexation measures; and the dismantling of the settlements*

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<sup>28</sup> See: [http://www.mfa.gov.il/MFA/FAQ/FAQ\\_Peace\\_process\\_with\\_Palestinians\\_Dec\\_2009#Peace2](http://www.mfa.gov.il/MFA/FAQ/FAQ_Peace_process_with_Palestinians_Dec_2009#Peace2) principles 1) and 4)

<sup>29</sup> See: [http://www.mfa.gov.il/MFA/FAQ/FAQ\\_Peace\\_process\\_with\\_Palestinians\\_Dec\\_2009#Peace2](http://www.mfa.gov.il/MFA/FAQ/FAQ_Peace_process_with_Palestinians_Dec_2009#Peace2) principle 2)

<sup>30</sup> 'Remarks by PM Netanyahu and President Obama following their meeting at The Oval Office' - 20 May 2011: <http://www.pmo.gov.il/PMOEng/Communication/EventsDiary/eventobama200511.htm>

*established by Israel in the Palestinian and Arab territories since 1967, as called for in the Arab summit resolutions of Fez and Algiers.*”<sup>31</sup>

He went on to outline the steps the PLO supported, and would participate in, to move towards a just and lasting peace in the region:

*“The United Nations, the permanent members of the Security Council, and all International blocs and bodies have a vital role to play at this stage. In my capacity as chairman of the PLO Executive Committee, presently assuming the functions of the provisional government of the State of Palestine, I therefore present the following Palestinian peace initiative:*

*First: That a serious effort be made to convene, under the supervision of the secretary-general of the United Nations, the preparatory committee of the international conference for peace in the Middle East—in accordance with the initiative of President Gorbachev and president Mitterand, which President Mitterand presented to your assembly toward the end of last September and which was supported by many states—to pave the way for the convening of the international conference, which commands universal support except from the government of Israel.*

*Second. In view of our belief in international legitimacy and the vital role of the United Nations, that actions be undertaken to place our occupied Palestinian land under temporary United Nations supervision, and that international forces be deployed there to protect our people and, at the same time, to supervise the withdrawal of the Israeli forces from our country.*

*Third: The PLO will seek a comprehensive settlement among the parties concerned in the Arab-Israeli conflict, including the State of Palestine, Israel, and other neighbors, within the framework of the international conference for peace in the Middle East on the basis of resolutions 242 and 338 and so as to guarantee equality and the balance of interests, especially our people’s rights, in freedom, national independence, and respect the right to exist in peace and security for all.*

*If these principles are endorsed at the international conference, we will have come a long way toward a just settlement, and this will enable us to reach agreement on all security and peace arrangements.*”<sup>32</sup>

This crucially included an acceptance of the right of all states in the region to exist in peace and security, including Israel. The position of the PLO has remained consistent since this time, when a reconciliation agreement between Fatah and Hamas (potentially allowing Hamas into the PLO) is in the course of being implemented.

Regarding Hamas specifically, a key argument from the Israeli position is that the refusal of this group to accept Israel’s right to exist is the principal barrier to the achievement of a resolution to the conflict. This acceptance, along with two other conditions, have been codified in the ‘Quartet Principles’ placed on all members of a future Palestinian

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<sup>31</sup> ‘Yasser Arafat, Speech at UN General Assembly’ - 13 December 1988:

<http://mondediplo.com/focus/mideast/arafat88-en>

<sup>32</sup> See above

Government. Following the elections to the Palestinian Legislative Council in January 2006, the Quartet issued a statement, including these principles in the following form:

*“Second, the Quartet concluded that it was inevitable that future assistance to any new Government would be reviewed by donors against that Government’s commitment to the principles of non-violence, recognition of Israel, and acceptance of previous agreements and obligations, including the Road Map. The Quartet calls upon the newly elected Palestinian Legislative Council (PLC) to support the formation of a Government committed to these principles, as well as the rule of law, tolerance, reform and sound fiscal management.”<sup>33</sup>*

Aside from the issue of the effectiveness of these conditions in moving towards a just peace, it is evident that the position of Hamas has shifted in recent years. Following the Hamas victory in the January 2006 Palestinian legislative elections, Ismail Haniyeh was nominated as Prime Minister, and sworn in by Palestinian President Mahmoud Abbas on 29 March 2006.<sup>34</sup> Despite the dismissal of the Hamas-led government by President Abbas in June 2007<sup>35</sup>, following Fatah-Hamas clashes, Haniyeh has continue to exercise prime ministerial authority in the Gaza Strip up until the reconciliation agreement signed on 27 April 2011.<sup>36</sup> In an interview with the Washington Post in February 2006, Haniyeh responded to the Quartet conditions with the following:

*“We are surprised that such conditions are imposed on us. Why don't they direct such conditions and questions to Israel? Has Israel respected agreements? Israel has bypassed practically all agreements. We say: Let Israel recognize the legitimate rights of the Palestinians first and then we will have a position regarding this. Which Israel should we recognize? The Israel of 1917; the Israel of 1936; the Israel of 1948; the Israel of 1956; or the Israel of 1967? Which borders and which Israel? Israel has to recognize first the Palestinian state and its borders and then we will know what we are talking about.”<sup>37</sup>*

In December 2010, Haniyeh addressed a news conference in Gaza City saying, “We accept a Palestinian state on the borders of 1967, with Jerusalem as its capital, the release of Palestinian prisoners, and the resolution of the issue of refugees.”<sup>38</sup> Following the reconciliation agreement of April 2011, Chairman of the Hamas Political Bureau Khaled Meshal defined the national political programme of the Palestinians as “a Palestinian state in the 1967 lines with Jerusalem as its capital, without any settlements or settlers, not an inch of land swaps and respecting the right of return.”<sup>39</sup>

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<sup>33</sup> ‘Statement by the Middle East Quartet’ - 30 January 2006:

<http://unispal.un.org/UNISPAL.NSF/0/354568CCE5E38E5585257106007A0834>

<sup>34</sup> ‘Hamas cabinet sworn in; U.S. bans contact with ministries’ - 29 March 2006:

<http://www.haaretz.com/news/hamas-cabinet-sworn-in-u-s-bans-contact-with-ministries-1.184023>

<sup>35</sup> ‘Abbas sacks Hamas-led government’ - 15 June 2007:

[http://news.bbc.co.uk/2/hi/middle\\_east/6754499.stm](http://news.bbc.co.uk/2/hi/middle_east/6754499.stm)

<sup>36</sup> ‘Fatah and Hamas sign reconciliation deal’ - 27 April 2011:

<http://english.aljazeera.net/news/middleeast/2011/04/2011427152119845721.html>

<sup>37</sup> ‘We Do Not Wish to Throw Them Into the Sea’ - 26 February 2006: [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2006/02/24/AR2006022402317.html)

[dyn/content/article/2006/02/24/AR2006022402317.html](http://www.washingtonpost.com/wp-dyn/content/article/2006/02/24/AR2006022402317.html)

<sup>38</sup> ‘Hamas vows to honor Palestinian referendum on peace with Israel’ - 1 December 2010:

<http://www.haaretz.com/news/diplomacy-defense/hamas-vows-to-honor-palestinian-referendum-on-peace-with-israel-1.328234>

<sup>39</sup> ‘Hamas Leader Calls for Two-State Solution, but Refuses to Renounce Violence’ - 5 May 2011:

[http://www.nytimes.com/2011/05/06/world/middleeast/06palestinians.html?\\_r=2](http://www.nytimes.com/2011/05/06/world/middleeast/06palestinians.html?_r=2)

Now that the agreement has been established, the Negotiations Affairs Department (NAD) of the PLO has reiterated its positions in the run-up to the September recognition efforts:

### **Borders**

The first point to emphasise is the acceptance of a Palestinian State on the June 1967 borders, whilst being willing to discuss “minor, equitable, and mutually-agreed territorial exchanges”.<sup>40</sup>

### **Settlements**

The position stresses that settlements are illegal and that “Israel is to withdraw from the territories it occupied in 1967 in exchange for full peace and recognition from its neighbors.”<sup>41</sup>

### **Jerusalem**

Following on from this, the NAD maintains that all of Jerusalem is subject to permanent status negotiations in line with international law and the Declaration of Principles (of the Oslo Accords, cited above). Crucially for the Palestinians, “there can be no Palestinian state without East Jerusalem, in particular the Old City and the surrounding area, as its capital.”<sup>42</sup> Negotiations would then determine the status of Jerusalem in a way that guarantees freedom of worship and access to religious sites, and viability for all those living in and around the city.

### **Security**

On security, the position reads that, “The Palestinian state needs also to be able to govern and exercise authority effectively, and maintain a responsible self-defence capability with no interest in establishing an offensive military threat to its neighbours. The main aim, after all, is to establish a national homeland for the Palestinians living in peace and security with all of its neighbours.”<sup>43</sup>

### **Refugees**

Finally, a solution to the refugee problem must, according to this position, be based on the right of return and reparations and accord with UN General Assembly Resolution 194.<sup>44</sup> The refugees should be given the options of: “return to Israel, return/resettlement to a future Palestinian state, integration in host states, or resettlement in third-party states” according to their own choice. Alternatively, reparations would involve Israel’s recognition of its role in the creation and perpetuation of the Palestinian refugee upheaval, and either restitution or compensation.<sup>45</sup>

On the issues of borders, settlements and Jerusalem this stands broadly in accord with the position of the European Union. The blockage seems to be on the first movement necessary towards the internationally recognised settlement of the conflict. Whilst the Quartet Principles remain unchanged, and Hamas is unwilling to accept them, a movement towards the direct implementation of a resolution looks unlikely. It remains to

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<sup>40</sup> Under ‘4. Our Position’ in ‘Borders’: <http://www.nad-plo.org/etemplate.php?id=10&more=1#4>

<sup>41</sup> Under ‘4. Our Position’ in ‘Settlements’: <http://www.nad-plo.org/etemplate.php?id=11&more=1#4>

<sup>42</sup> Under ‘4. Our Position’ in ‘Jerusalem’: <http://www.nad-plo.org/etemplate.php?id=59&more=1#4>

<sup>43</sup> ‘Security’: <http://www.nad-plo.org/etemplate.php?id=181>

<sup>44</sup> See under ‘4. Our Position’ in ‘Refugees’: <http://www.nad-plo.org/etemplate.php?id=12&more=1#4> and UNGA Resolution 194 cited in fn. 14

<sup>45</sup> See above

be seen what impact the Palestinian reconciliation process and the efforts for the UN recognition of a Palestinian State will have on this issue.

## 5. Conclusion and Recommendations

The above analysis shows that the positions of the European Union now lie broadly in line with those of the Arab League and the Palestinian Authority (PA). Where the Arab League and the PA insist that Israel should withdraw from all the territories occupied in 1967 and that these territories should form a Palestinian State, the EU sees this as a basis of the future borders with minor modifications mutually agreed. Both assert that settlements are illegal under international law and that the status of Jerusalem should be negotiated to ensure that all those living in and around the city can access its religious sites, and that their culture and economy can flourish. Both agree that a solution to the refugee problem must be just, and that arrangements should ensure the security of both states.

By contrast, the Government of Israel insists that Jerusalem will remain the united capital of Israel and that the refugee problem will be resolved wholly outside the State of Israel in any peace agreement. It maintains the view that Israel will not withdraw to the 1967 borders, and will continue operating a long-term military presence along the Jordan Valley. This stands sharply against the positions of the European Union.

In light of the above, and given the response of the EU to the recent situations in Syria and Libya, the European Union should:

- o Impose sanctions on the Government of Israel until it complies with the following international resolutions:
  - UN Security Council Resolutions determining that Israel's policy and practices of settling parts of its population in the territories it occupied in June 1967 (including East Jerusalem) are a flagrant violation of the Fourth Geneva Convention and must be ended along with the occupation itself<sup>46</sup>
  - International Court of Justice Advisory Opinion of 9 July 2004, concluding that Israel is under an obligation to dismantle the wall it has constructed in the West Bank and make reparations for the damage it has caused, including in and around East Jerusalem<sup>47</sup>

Sanction measures could include:

- Temporary exclusion from EU programmes
- Travel bans on members of the Government

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<sup>46</sup> See Resolutions 446 and 452 of 1979: <http://www.un.org/Docs/scres/1979/scres79.htm>. See also Resolutions 465, 471, 476 and 478 of 1980: <http://www.un.org/documents/sc/res/1980/scres80.htm> and for details of the Fourth Geneva Convention (Geneva Convention relative to the Protection of Civilian Persons in Time of War) and the relevant article 49 see: <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>. Further details are given in Annex, pp.19-21

<sup>47</sup> For details of the Advisory Proceeding 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory' see: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=5>. See further details in Annex pp.21-22

They should include a complete ban on:

- Military exports to Israel
  - Purchases of military supplies from Israel
  - Any military and security cooperation with Israel<sup>48</sup>
- o Close the European Union Border Assistance Mission at the Rafah Crossing Point (EUBAM Rafah) and recall all mission staff immediately<sup>49</sup>
  - o Ensure the strict implementation of the EU-Israel Association Agreement and the technical arrangement regarding products originating from Israeli settlements in the West Bank
  - o Reiterate its position on all final status issues throughout its contact with the Government of Israel and the Palestinian Authority and assert that any solution must be in line with principles of international humanitarian law and universal human rights

EU Member States should:

- o Provide active support to the EU in pursuing the above approaches, including through the implementation of the aforementioned conditional sanctions

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<sup>48</sup> For background details see QCEA briefing papers relating to arms trade: <http://www.quaker.org/qcea/middle%20east/Arms%20Trade%20EU%20Israelv2.pdf> and security research: <http://www.quaker.org/qcea/middle%20east/bp-mideast-secresearch-en-mar-2011.pdf>

<sup>49</sup> For background and rationale for this recommendation see QCEA briefing paper on the EU's crisis management missions in the occupied Palestinian Territories: <http://www.quaker.org/qcea/middle%20east/bp-mideast-csdpv2-en-may-2011.pdf>

## 6. Annex - The History and the Background to the Peace Process

### **The End of the British Mandate and the creation of the State of Israel**

Following the Second World War, the British Mandate of Palestine (which included Transjordan, to the east of the River Jordan) was heading towards its end. The Treaty of London of 1946 granted independence to Transjordan, which became the Hashemite Kingdom of Transjordan (later the Hashemite Kingdom of Jordan in April 1949). This left the area of Palestine, which by that time consisted of both Arab Palestinians and a substantial Jewish community, the Yishuv. The proposed British solution, involving the termination of their mandate, was to partition the land into two independent states - one Jewish and one Arab, and with a Special International Regime for the City of Jerusalem. This 'Partition Plan' was put before the United Nations General Assembly in November 1947 and Resolution 181(II) 'Future government of Palestine' was adopted on 29 November by 33 in favour to 13 against, with 10 abstentions.<sup>50</sup> Violence broke out shortly after between Jewish and Arab communities, whilst British forces nominally maintained control prior to the termination of the mandate. Fighting continued, and on the day that Britain declared its mandate would end (14 May 1948), the Yishuv, led by David Ben-Gurion, published a Declaration of Independence announcing the creation of the State of Israel.<sup>51</sup> The following day, the remaining British troops withdrew and Arab armies moved into Palestine from Transjordan, Egypt, Lebanon and Syria, marking the start of the Arab-Israeli War of 1948-1949.

The United Nations Conciliation Commission for Palestine was established by UN General Assembly Resolution 194(III) of 11 December 1948, and was to be composed of France, Turkey and the United States.<sup>52</sup> The Commission produced a report to the General Assembly on 23 October 1950, in which it estimated that approximately 711,000 Palestinians fled or were expelled from their homes during the course of the war, and in the immediate years beforehand.<sup>53</sup> Responding to this refugee crisis, the Quaker organisation American Friends Service Committee (AFSC) was asked by the United Nations to organise relief efforts in the Gaza Strip, following its experience in resettling refugees and displaced persons after World War II.<sup>54</sup> This work continued until the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) began operations on 1 May 1950, having been established by United Nations General Assembly

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<sup>50</sup> See: <http://www.un.org/depts/dhl/resguide/r2.htm> - A/RES/181(II) A 'Future government of Palestine' 29 Nov. 1947

<sup>51</sup> 'The Declaration of the Establishment of the State of Israel' - 14 May 1948:

<http://www.mfa.gov.il/MFA/Peace%20Process/Guide%20to%20the%20Peace%20Process/Declaration%20of%20Establishment%20of%20State%20of%20Israel>

<sup>52</sup> See UNGA Resolution 194: <http://www.un.org/depts/dhl/resguide/r3.htm> and scroll down to A/RES/194(III) 'Palestine - Progress report of the United Nations mediator' 11 Dec. 1948. See article 2 for the establishment of the Conciliation Commission

<sup>53</sup> UN General Progress Report and Supplementary Report of the United Nations Conciliation Commission for Palestine, Covering the period from 11 December 1949 to 23 October 1950, Appendix 4 - Report of the Technical Committee on Refugees Point 15. accessible here:

<http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/93037e3b939746de8525610200567883?OpenDocument>

<sup>54</sup> See: <http://www.afsc.org/office/palestine> for background to AFSC's work in Palestine

resolution 302 (IV) of 8 December 1949.<sup>55</sup> Upon commencing its operations, UNRWA was 'responding to the needs of about 750,000 Palestine refugees' in Gaza and the West Bank but also in Jordan, Syria and Lebanon.<sup>56</sup> The precise nature and reason for the refugee problem is a subject of intense and ongoing political and academic debate.<sup>57</sup> It remains a core aspect to the resolution of the conflict for all sides.

A truce was achieved on 7 January 1949, and Armistice Agreements signed between Israel and Egypt, Lebanon, Jordan and Syria in subsequent months. The Armistice Demarcation Lines, as set by the agreements, resulted in the territory under Israeli control encompassing approximately three-quarters of Mandate Palestine. The rest of the territory of Palestine fell under the rule of Jordan (which occupied the West Bank of the River Jordan, or 'Cis-Jordan' in the Romance languages) and Egypt (which occupied the Gaza Strip).

### **Further Arab-Israeli wars and UN diplomacy**

The Suez Crisis of 1956-7 was the next major confrontation between parties to the 1948 war. On 26 July 1956, Egyptian President Nasser nationalised the Suez Canal. Israel invaded the Sinai in October that year, with pre-approval from the UK and France, who subsequently joined the hostilities. A ceasefire was announced by British Prime Minister Eden of 6 November, and after a UN Emergency Force was established, Israel withdrew from the Sinai in March 1957. By April 1957 the canal and the Straits of Tiran were fully reopened for shipping, including in and out of Israel.<sup>58</sup>

Moving forward to 1967, Israel launched three consecutive pre-emptive attacks on the armies of Egypt, Jordan and Syria in what became known as the Six-Day War of 5-10 June 1967. In the aftermath of the war, the Israel Defense Forces (IDF) occupied the West Bank, the Gaza Strip, the Golan Heights and the Sinai Peninsula. Following the war, on 22 November 1967, the United Nations Security Council unanimously adopted Resolution 242 that sought to lay the foundation for a peaceful settlement of the conflict. Clause 1(i) stated that such a settlement should include the: "Withdrawal of Israel armed forces from territories occupied in the recent conflict".<sup>59</sup> Clause 1(ii) added the requirement of: "Termination of all claims or states of belligerency and respect for and acknowledgement of the sovereignty, territorial integrity and political independence of every State in the area and their right to live in peace within secure and recognized boundaries free from threats or acts of force". It also requested the UN Secretary-General (a position held by U Thant at that time) to designate a Special Representative for the Middle East to "establish

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<sup>55</sup> UNRWA: <http://unrwa.org/etemplate.php?id=85> and UNGA Resolution 302: <http://www.un.org/depts/dhl/resguide/r4.htm> and scroll down to A/RES/302(IV) 'Assistance to Palestine refugees' 8 Dec. 1949

<sup>56</sup> UNRWA: <http://unrwa.org/etemplate.php?id=86>

<sup>57</sup> For an important but not exhaustive selection, see: Morris, B. (1988) *The Birth of the Palestinian Refugee Problem, 1947-1949*, Cambridge University Press; (2004) *The Birth of the Palestinian Refugee Problem Revisited*, Cambridge University Press; Finkelstein, N.G. (2003) *Image and Reality of the Israel-Palestine Conflict* (2<sup>nd</sup> ed.) London, Verso pp.51-87; Pappé, I. (2006) *The Ethnic Cleansing of Palestine*, London: Oneworld

<sup>58</sup> For details see 'Middle East - UNEF I, Background':

<http://www.un.org/en/peacekeeping/missions/past/unef1backgr2.html>

<sup>59</sup> See: <http://www.un.org/documents/sc/res/1967/scres67.htm> and click on 'Resolution 242'

and maintain contacts with the States concerned in order to promote agreement and assist efforts to achieve a peaceful and accepted settlement in accordance with the provisions and principles of this resolution".<sup>60</sup>

This Special Representative was to be the Swedish diplomat Gunnar Jarring<sup>61</sup>, who was to deliver his initiative on 8 February 1971 to the Governments of Israel and Egypt (at that time still known as the 'United Arab Republic') following negotiations between these parties. During the period when the report was being compiled, US Secretary of State William P. Rogers issued a statement in Washington outlining the US position on a resolution of the conflict, on 9 December 1969. This included the following:

*"Therefore, our policy is to encourage the Arabs to accept a permanent peace based on a binding agreement and to urge the Israelis to withdraw from occupied territory when their territorial integrity is assured as envisaged by the Security Council Resolution...We believe that while recognized political boundaries must be established, and agreed upon by the parties, any change in the pre-existing lines should not reflect the weight of conquest and should be confined to insubstantial alterations required for mutual security. We do not support expansionism. We believe troops must be withdrawn as the Resolution provides. We support Israel's security and the security of the Arab States as well. We are for a lasting peace that requires security for both."*<sup>62</sup>

The Israeli Cabinet responded with a firm reject of the plan laid out in this statement. The statement said that these proposals:

*"Prejudice the chances of establishing peace;*

*Disregard the essential need to determine secure and agreed borders through the signing of peace treaties by direct negotiation;*

*Affect Israel's sovereign rights and security in the drafting of the resolutions concerning refugees and the status of Jerusalem, and contain no actual obligation of the Arab States to put a stop to the hostile activities of the sabotage and terror organizations.*

*If these proposals were to be carried out, Israel's security and peace would be in very grave danger. Israel will not be sacrificed by any Power policy, and will reject any attempt to impose a forced solution upon it."*<sup>63</sup>

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<sup>60</sup> See fn. 59

<sup>61</sup> Finkelstein, N.G. (2003) p.151

<sup>62</sup> 'Statement by Secretary of State Rogers' - 9 December 1969:

<http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/9+Statement+by+Secretary+of+State+Rogers+-+9+Decemb.htm>

<sup>63</sup> 'Israel Rejects the Rogers Plan - Cabinet Statement' - 22 December 1969:

<http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/10+Israel+Rejects+the+Rogers+Plan+-+Cabinet+Stateme.htm>

Following the report<sup>64</sup> of Jarring's activities by the Secretary-General on 4 January 1971, the Special Representative informed the Governments of Israel and Egypt of what he believed the necessary steps were to achieve a peaceful and accepted settlement in accordance with Resolution 242. The Israeli and Egyptian responses were submitted on 15 February and 26 February respectively.<sup>65</sup> Jarring's communication requested of Israel to "give a commitment to withdraw its forces from occupied United Arab Republic territory to the former international boundary between Egypt and the British Mandate of Palestine" provided that arrangements were made to establish demilitarised zones, practical security arrangements in the Sharm el Sheikh area and freedom of navigation through the Suez Canal. Of the United Arab Republic (UAR) he requested a "commitment to enter into a peace agreement with Israel" along with the explicit acknowledgement on the part of both parties of "Respect for and acknowledgement of each other's sovereignty, territorial integrity and political independence" and "Respect for and acknowledgement of each other's right to live in peace within secure and recognized boundaries".<sup>66</sup>

The response of the UAR accepted all of these requests, and agreed to enter into a peace agreement with Israel if it committed to withdrawing its armed forces from the Sinai and the Gaza Strip and achieving "a just settlement for the refugee problem in accordance with United Nations resolutions", in addition to the other commitments set out by Jarring. Israel responded emphasising meaningful negotiations leading to a peace agreement and asserted that it would withdraw "from the Israel-United Arab Republic cease-fire line to the secure, recognized and agreed boundaries to be established in the peace agreement. Israel will not withdraw to the pre-5 June 1967 lines." This marked the beginning of the Israeli policy, continuing to this day (see pages 20 to 22) that it will not withdraw to these lines, and is not required under any law or previous agreement to do so. On the issue of refugees, Israel said that:

*"In the matter of the refugees and the claims of both parties in this connection, Israel is prepared to negotiate with the Governments directly involved on:*

- (a) The payment of compensation for abandoned lands and property;*
- (b) Participation in the planning of the rehabilitation of the refugees in the region.*

*Once the obligation of the parties towards the settlement of the refugee issue has been agreed, neither party shall be under claims from the other inconsistent with its sovereignty."*<sup>67</sup>

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<sup>64</sup> 'Report by the Secretary-General on the activities of the Special Representative to the Middle East' - S/10070

4 January 1971:

<http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/9c1564a379bc943d0525654f005d71cc?OpenDocument>

<sup>65</sup> See Jarring's communication and the two responses (Annexes I, II and III) in 'Report of the Secretary-General on the activities of his Special Representative to the Middle East' - S/10403 30 November 1971:

<http://unispal.un.org/unispal.nsf/9a798adbf322aff38525617b006d88d7/ab4e84c20927cc8185256a780064642f?OpenDocument> and 'The Jarring initiative and the response' - 8 February 1971:

<http://www.mfa.gov.il/MFA/Foreign+Relations/Israels+Foreign+Relations+since+1947/1947-1974/28+The+Jarring+initiative+and+the+response+-+8+Febr.htm>

<sup>66</sup> For quotations see above

<sup>67</sup> See above

This has also been a consistent position, whereby Israel views the refugee issue as one to be resolved outside of its borders (later within the context of the Palestinian nation-state). The position of the Government of Israel on withdrawal was a key aspect of the background to the October 1973 war. As Norman Finkelstein says, "Israel's refusal to join Egypt in acceptance of the international consensus killed any prospects for a diplomatic settlement. It also made war all but inevitable."<sup>68</sup> Israeli Prime Minister Golda Meir made several statements in the subsequent months reiterating their position, which included insistence on a continued Israeli presence in the Sinai short of a full peace treaty. Part of a statement to the Knesset on 16 March 1971 read as follows:

*"(1) Jerusalem shall remain unified and part of Israel.*

*(2) Israel will not come down from the Golan Heights, which dominate the Hula Valley.*

*(3) The Jordan River must not be open for Arab troops to cross.*

*(4) I said I was opposed to an independent Palestinian State on the West Bank.*

*(5) Secure and recognized frontiers, to be determined by negotiations, are necessary to prevent another war. International guarantees cannot replace such borders.*

*(6) Israel is prepared to negotiate with the Arabs on all issues, but will not be dictated to."<sup>69</sup>*

Faced with either unconditional surrender or war, Egypt and Syria began preparations in summer 1972 for a conventional attack to recover the Israeli-occupied territories. Citing statements from the then Israeli Minister of Foreign Affairs Abba Eban, Finkelstein concludes that "The *singular* obstacle to a diplomatic settlement - and cause of the October war - was Israel's refusal to evacuate the Sinai".<sup>70</sup> The 1973 'Yom Kippur War' (beginning on Yom Kippur, the Day of Atonement in Judaism) was fought between 6 and 25 October. After early advances by Egypt and Syria, the IDF counterattacked, before a UN Security Council Resolution was passed on 22 October. Following further fighting, additional resolutions were passed on 23 October and finally on 25 October<sup>71</sup>, establishing a secure ceasefire and setting up a UN Emergency Force to oversee moves to a diplomatic resolution.

## **The Camp David Accords and the beginning of the Peace Process**

The aftermath of the war and its ramifications led to the Camp David Accords, signed by Egyptian President Anwar Sadat and Israeli Prime Minister Menachem Begin on 17 September 1978. These were followed by the Egypt-Israel Peace Treaty, signed in

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<sup>68</sup> Finkelstein, N.G. (2003) p.158

<sup>69</sup> 'Statement to the Knesset by Prime Minister Meir' - 16 March 1971:

<http://www.mfa.gov.il/MFA/ForeignRelations/Israels+Foreign+Relations+since+1947/1947-1974/31+Statement+to+the+Knesset+by+Prime+Minister+Meir.htm>

<sup>70</sup> Finkelstein, N.G. (2003) p.165

<sup>71</sup> See Resolutions 338, 339 and 340 here: <http://www.un.org/documents/sc/res/1973/scres73.htm>

Washington D.C. on 26 March 1979.<sup>72</sup> The result of this treaty was Israeli withdrawal from the Sinai in exchange for full normalisation of relations between the two countries.

The second of the Camp David Accords dealt with the question of the establishment of an autonomy regime in the West Bank and the Gaza Strip. This was to involve negotiations between Egypt, Israel, Jordan and representatives of the Palestinian people towards establishing an elected self-governing authority in these territories. This would be followed by a transitional period, and then negotiations "to determine the final status of the West Bank and Gaza and its relationship with its neighbors".<sup>73</sup> This led to the Oslo Accords (as interim agreements) between 1993 and 1995, and the Israel-Jordan Peace Treaty of 1994.<sup>74</sup>

During the period following 1979 however, Israel continued to expand its presence in both the West Bank and Gaza. This involved the de-facto annexation of East Jerusalem, and codification in the 'Basic Law: Jerusalem - Capital of Israel' signed on 30 July 1980.<sup>75</sup> This occurred against the background of several Resolutions at the UN Security Council issuing condemnation of this activity. The first of these passed *four days before* the signing of the Egypt-Israel Peace Treaty, on 22 March 1979. Resolution 446 affirmed once more that "the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem" and then included:

*"1. Determines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East*

*3. Calls once more upon Israel, as the occupying Power, to abide scrupulously by the 1949 Fourth Geneva Convention, to rescind its previous measures and to desist from taking any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories."*<sup>76</sup>

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<sup>72</sup> See 'Camp David Accords' - 17 September 1978:

<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Camp+David+Accords.htm> and

'Israel-Egypt Peace Treaty - 26 March 1979:

<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israel-Egypt+Peace+Treaty.htm>

<sup>73</sup> See: <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Camp+David+Accords.htm>

under 'A. West Bank and Gaza'

<sup>74</sup> For the Oslo Accords see 'Declaration of Principles on Interim Self-Government Arrangements' - 13 September 1993:

<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Principles.htm> and

'Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip' - 28 September 1995:

<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/THE+ISRAELI-PALESTINIAN+INTERIM+AGREEMENT.htm> and for the Israel-Jordan Peace Treaty see 'Treaty of Peace between

the State of Israel and the Hashemite Kingdom of Jordan' - 26 October 1994:

<http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israel-Jordan+Peace+Treaty.htm>

<sup>75</sup> 'Basic Law - Jerusalem - Capital of Israel' - 30 July 1980:

[http://www.mfa.gov.il/MFA/MFAArchive/1980\\_1989/Basic+Law-+Jerusalem-+Capital+of+Israel.htm](http://www.mfa.gov.il/MFA/MFAArchive/1980_1989/Basic+Law-+Jerusalem-+Capital+of+Israel.htm)

<sup>76</sup> See: <http://www.un.org/Docs/scres/1979/scres79.htm> for Resolution 446

This was followed by a similar Resolution 452 later that year, Resolution 465 of 1 March 1980, 471 of 5 June 1980, and Resolution 476 and 478 specifically on Jerusalem. Resolution 478 of 20 August 1980 responded to the 'Basic Law' cited above by saying that the Security Council:

*"1. Censures in the strongest terms the enactment by Israel of the "basic law" on Jerusalem and the refusal to comply with relevant Security Council resolutions;*

*2. Affirms that the enactment of the "basic law" by Israel constitutes a violation of international law and does not affect the continued application of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian and other Arab territories occupied since June 1967, including Jerusalem;*

*3. Determines that all legislative and administrative measures and actions taken by Israel, the occupying Power, which have altered or purport to alter the character and status of the Holy City of Jerusalem, and in particular the recent "basic law" on Jerusalem, are null and void and must be rescinded forthwith."<sup>77</sup>*

On all of the above resolutions except 465, the United States of America abstained. Out of the current EU Member States, the UK (as a permanent Security Council member) abstained from Resolution 446 and voted in favour of the others. France voted in favour of all of the above, as did Portugal as a non-permanent member (and not at that time an EU Member State).

### **Israel's continued policies of occupation**

Regarding the legality of Israel's actions in the West Bank in particular, two more recent statements have issued unambiguous conclusions. In December 2001, the Conference of High Contracting Parties to the Fourth Geneva Convention met in Geneva. All EU Member States, the United States and Israel were parties to the convention at the time.<sup>78</sup> However the US and Israel, along with Australia boycotted the Conference.<sup>79</sup> The participating Parties issued a statement that included the following (emphases added):<sup>80</sup>

*"3. Taking into account art. 1 of the Fourth Geneva Convention of 1949 and bearing in mind the United Nations' General Assembly Resolution ES-10/7, **the participating High Contracting Parties reaffirm the applicability of the Convention to the Occupied Palestinian Territory, including East Jerusalem and reiterate the need for full respect for the provisions of the said Convention in that Territory.** Through the present Declaration, they recall in particular the respective obligations under the Convention of all High Contracting Parties (para 4-7), of the parties to the conflict (para 8-11) and of the State of Israel as the Occupying Power (para 12-15)..."*

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<sup>77</sup> See: <http://www.un.org/Docs/scres/1979/scres79.htm> for 452 and <http://www.un.org/documents/sc/res/1980/scres80.htm> for 465 and 471 and 476 and 478

<sup>78</sup> See list of State Parties: <http://www.icrc.org/ihl.nsf/WebSign?ReadForm&id=375&ps=P>

<sup>79</sup> See 'Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration' - Settlement Report, Vol.12 No.1, January-February 2002: <http://www.fmep.org/reports/archive/vol.-12/no.-1/conference-of-high-contracting-parties-to-the-fourth-geneva-convention-declaration>

<sup>80</sup> 'Conference of High Contracting Parties to the Fourth Geneva Convention: Declaration' - Geneva, 5 December 2001: <http://domino.un.org/UNISPAL.NSF/0/8fc4f064b9be5bad85256c1400722951?OpenDocument>

12. The participating High Contracting Parties call upon the Occupying Power to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem, and to refrain from perpetrating any violation of the Convention. **They reaffirm the illegality of the settlements in the said territories and of the extension thereof.** They recall the need to safeguard and guarantee the rights and access of all inhabitants to the Holy Places.

13. The participating High Contracting Parties call upon the Occupying Power to immediately refrain from committing grave breaches involving any of the acts mentioned in art. 147 of the Fourth Geneva Convention, such as wilful killing, torture, unlawful deportation, wilful depriving of the rights of fair and regular trial, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. The participating High Contracting Parties recall that according to art. 148 no High Contracting Party shall be allowed to absolve itself of any liability incurred by itself in respect to grave breaches. The participating High Contracting Parties also recall the responsibilities of the Occupying Power according to art. 29 of the Fourth Geneva Convention for the treatment of protected persons...

16. The participating High Contracting Parties stress that respect for the Fourth Geneva Convention and international humanitarian law in general is essential to improve the humanitarian situation in the field and to achieve a just and lasting peace. **The participating High Contracting Parties invite the parties concerned to bring the conflict to an end by means of negotiation and to settle their disputes in accordance with applicable international law."**

This reiterated the fact that the construction and maintenance of settlements in the West Bank is in violation of international humanitarian law under this Convention.

In addition, on 9 July 2004 the International Court of Justice issued an advisory opinion entitled 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory'. The Court resolved, by fourteen votes to one that:

*The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law;*

*Israel is under an obligation to terminate its breaches of international law; it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto, in accordance with paragraph 151 of this Opinion;*

*The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated régime, taking due account of the present Advisory Opinion.<sup>81</sup>*

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<sup>81</sup> See 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Request for Advisory Opinion) - Summary of the Advisory Opinion of 9 July 2004': <http://www.icj-cij.org/docket/files/131/1677.pdf> pp.15-16

The dissenting US Judge, Thomas Buergenthal explained his vote in a separate declaration, saying that the Court lacked sufficient evidence and information to render the opinion:

*"Since I believe that the Court should have exercised its discretion and declined to render the requested advisory opinion, I dissent from its decision to hear the case... However, I am compelled to vote against the Court's findings on the merits because the Court did not have before it the requisite factual bases for its sweeping findings; it should therefore have declined to hear the case."*<sup>82</sup>

However he went on to say the following (emphasis added):

*"9. Paragraph 6 of Article 49 of the Fourth Geneva Convention also does not admit for exceptions on grounds of military or security exigencies. It provides that "the Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies". I agree that this provision applies to the Israeli settlements in the West Bank and that their existence violates Article 49, paragraph 6. It follows that the segments of the wall being built by Israel to protect the settlements are ipso facto in violation of international humanitarian law. Moreover, given the demonstrable great hardship to which the affected Palestinian population is being subjected in and around the enclaves created by those segments of the wall, I seriously doubt that the wall would here satisfy the proportionality requirement to qualify as a legitimate measure of self-defence."*<sup>83</sup>

Thus, with regards to the settlements, all fifteen judges reaffirmed the position of the 2001 Conference that their existence violates the Fourth Geneva Convention.

## **The UN General Assembly and the moves towards a final status agreement**

As Israel continued these policies of settlement expansion and annexation of territory in the West Bank (particularly East Jerusalem) and Gaza through the 1980s and early 1990s, resolutions on a comprehensive settlement of the conflict at the UN level moved away from the Security Council. At the General Assembly, a resolution entitled 'Peaceful settlement of the question of Palestine' has been passed every year since 1993 (following the signing of the first element of the 'Oslo Accords', the 'Declaration of Principles on Interim Self-Government Arrangements' on 13 September 1993). This has called for Israeli withdrawal from territories occupied in 1967, as part of a two-State solution of Israel and Palestine living side-by-side in peace and security within recognised borders. The pattern of voting on this resolution has changed very little over the course of the eighteen years it has passed. In 1993 it stood at 92 in favour to 5 against, with 51 abstentions<sup>84</sup>. In 2010 the result was 165 in favour to 7 against (Australia, Israel, Marshall Islands, Micronesia, Nauru, Palau and United States), with 4 abstentions (Cameroon, Canada, Côte d'Ivoire, Tonga).<sup>85</sup>

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<sup>82</sup> See 'Declaration of Judge Buergenthal' p.1: <http://www.icj-cij.org/docket/files/131/1687.pdf> accessible from here: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>

<sup>83</sup> See 'Declaration of Judge Buergenthal' p.9: <http://www.icj-cij.org/docket/files/131/1687.pdf>

<sup>84</sup> See: <http://www.un.org/Depts/dhl/resguide/r48.htm> and scroll down page to A/RES/48/158D 'Peaceful settlement of the question of Palestine' 20 Dec. 1993

<sup>85</sup> See: <http://www.un.org/depts/dhl/resguide/r65.shtml> and scroll down page to A/RES/65/16 'Peaceful settlement of the question of Palestine' 30 Nov. 2010 and <http://www.un.org/News/Press/docs//2010/ga11027.doc.htm> for record of vote

Consistent opposition to the resolution has come from Israel and the United States, with additions from Australia, Canada and a number of South Sea Islands in certain years. All countries who were EU Member States at the time voted in favour each and every year apart from in 2001 when Denmark, Germany, the Netherlands and the United Kingdom abstained (in the midst of the Second Intifada).<sup>86</sup>

Following the outbreak of the Second (Al-Aqsa) Intifada in September 2000 and the ensuing Israeli military operations in the West Bank and Palestinian suicide attacks, the 'Quartet' was established in 2002. This was to consist of four major international actors who had a role to play in working towards a settlement of the conflict: the United States, the European Union, the United Nations and Russia.<sup>87</sup> The Quartet produced the 'Roadmap' in early 2003, formally called 'A performance-based roadmap to a permanent two-state solution to the Israeli-Palestinian conflict' that set out its approach, with an aim of a final and comprehensive settlement of the conflict by 2005.<sup>88</sup> Laying out three phases of progress towards a settlement, including the building of Palestinian institutions, the holding of an international conference to establish an independent Palestinian state and then a settlement:

*"negotiated between the parties based on UNSCR 242, 338, and 1397, that ends the occupation that began in 1967, and includes an agreed, just, fair, and realistic solution to the refugee issue, and a negotiated resolution on the status of Jerusalem that takes into account the political and religious concerns of both sides, and protects the religious interests of Jews, Christians, and Muslims worldwide, and fulfills the vision of two states, Israel and sovereign, independent, democratic and viable Palestine, living side-by-side in peace and security."<sup>89</sup>*

This process has yet to be implemented, for reasons ascribed to different factors by different parties. The Quartet continues to work within this framework, and its representative since 2007 is former UK Prime Minister Tony Blair.<sup>90</sup> Such a framework shapes the position taken by major actors and parties to the conflict and how they see its peaceful resolution.

## **Recent setbacks on the road to a just peace**

In August and September 2005, the Israel Defense Forces withdrew from Gaza under the 'Disengagement Plan'. All Israeli settlers who did not leave voluntarily were evicted by the IDF and their homes demolished as part of this operation. On 15 November an 'Agreement on Movement and Access' was made between the Government of Israel and the Palestinian Authority, which regulated the use of the crossings between Gaza and Israel and Gaza and Egypt. The EU contributed to this framework by launching a border assistance mission at the Rafah crossing point between Gaza and Egypt, which began its

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<sup>86</sup> See <http://www.un.org/News/Press/docs/2001/qa9987.doc.htm> for record of vote

<sup>87</sup> See Office of the Quartet Representative website: <http://www.quartetrep.org/quartet/pages/about-oqr/>

<sup>88</sup> See full text: <http://news.bbc.co.uk/2/hi/2989783.stm> and further information: <http://www.cfr.org/middle-east/middle-east-road-map-peace/p7738#p1>

<sup>89</sup> See full text cited above under 'Phase III'

<sup>90</sup> 'Full text: Quartet statement': [http://news.bbc.co.uk/2/hi/middle\\_east/6247246.stm](http://news.bbc.co.uk/2/hi/middle_east/6247246.stm)

operations on 30 November 2005.<sup>91</sup> Elections to the Palestinian Legislative Council were held on 25 January 2006, in which Hamas claimed a decisive victory. As the new government was being formed, the Israeli authorities placed sanctions on the Palestinian Authority due to the result and the positions of Hamas in relation to Israel.<sup>92</sup> The Quartet also cut off financial support to the PA and diplomatic contacts with Hamas members of the government. It followed this by establishing a Temporary International Mechanism in June 2006 for channelling aid to the Palestinians in a way that bypassed the Hamas-led government.<sup>93</sup>

After a protracted conflict involving sustained violent clashes between Hamas and Fatah factions in both the West Bank and the Gaza Strip, in June 2007 PA President Abbas dismissed the unity government and Hamas forcefully took control of the Gaza Strip. Following this takeover, the Government of Israel placed a land, air and sea blockade on Gaza, supported by the Egyptian authorities on the Rafah side. As a result, the normal operations of the EU border assistance mission have been closed since this time.

During the subsequent period, an exchange of Hamas rocket attacks and IDF air strikes and ground operations took place.<sup>94</sup> A six-month cease-fire was agreed on 18 June 2008, brokered by Egyptian officials.<sup>95</sup> Reports give evidence that neither side fully respected the terms of the cease-fire.<sup>96</sup> A major shift occurred on 4 November when Israeli troops entered Gaza to destroy what was said to be a tunnel used to abduct IDF troops. The incursion killed at least six Palestinians and Hamas responded with renewed firing of rockets into southern Israel.<sup>97</sup> On 27 December 2008, Israeli forces launched a bombing campaign on the Gaza Strip codenamed Operation "Cast Lead". As Amnesty International documented, the 22-day campaign left 1,400 Palestinians dead and large areas of Gaza destroyed.<sup>98</sup>

In May 2010, a flotilla of boats carrying humanitarian aid and construction materials attempted to sail to Gaza to break the blockade. It was organised by the 'Free Gaza' movement and the Turkish NGO IHH (The Foundation for Human Rights and Freedoms and Humanitarian Relief). On 31 May, the Israeli Navy conducted a raid on the flotilla, leading to the death of nine flotilla participants, and the injury of dozens others along with seven

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<sup>91</sup> See EUBAM Rafah website: <http://www.eubam-rafah.eu/> and QCEA's briefing paper on the EU's crisis management missions in the Occupied Palestinian Territories (including EUBAM Rafah):

<http://www.quaker.org/qcea/middle%20east/bp-mideast-csdpv2-en-may-2011.pdf>

<sup>92</sup> 'Israel to impose Hamas sanctions' - 19 February 2006: <http://news.bbc.co.uk/2/hi/4650788.stm>

<sup>93</sup> See UK House of Commons Library briefing paper 'Hamas, Fatah and the Middle East Quartet principles' p.2 fn.1 - 17 May 2011: <http://www.parliament.uk/briefing-papers/SN05968>

<sup>94</sup> 'UN Demands End to Gaza Strip Violence as 72 Palestinians Killed' - 2 March 2008:

<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aLyZdF2fucGg&refer=home>

<sup>95</sup> 'Israel Agrees to Truce with Hamas on Gaza' - 18 June 2008:

[http://www.nytimes.com/2008/06/18/world/middleeast/18mideast.html?\\_r=2&fta=y](http://www.nytimes.com/2008/06/18/world/middleeast/18mideast.html?_r=2&fta=y)

<sup>96</sup> For two examples of potential violations see: 'Rockets hit Israel, breaking Hamas truce' - 25 June 2008:

<http://www.nytimes.com/2008/06/25/world/middleeast/25mideast.html> and 'Weekly Report on Israeli

Human Rights Violations in the Occupied Palestinian Territory - 25 June 2008:

[http://www.pchrgaza.org/portal/en/index.php?option=com\\_content&view=article&id=5866:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory&catid=80:weekly-2008&Itemid=236](http://www.pchrgaza.org/portal/en/index.php?option=com_content&view=article&id=5866:weekly-report-on-israeli-human-rights-violations-in-the-occupied-palestinian-territory&catid=80:weekly-2008&Itemid=236)

<sup>97</sup> 'Rockets fired after Gaza clashes' - 5 November 2008: <http://news.bbc.co.uk/2/hi/7709603.stm>

<sup>98</sup> 'Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction' - 2 July 2009:

<http://www.amnesty.org/en/library/info/MDE15/015/2009/en>

Israeli commandos. A widespread international outcry took place, and relations between Israel and Turkey were severely damaged. Less a month later, the Israeli government announced changes to the blockade amounting to a limited easing, in a move welcomed by the Quartet Representative.<sup>99</sup> When a 10-month freeze on Israeli settlement construction in the West Bank ended on 27 September 2010, direct talks under the guidance of the United States collapsed.<sup>100</sup> This situation has led to the efforts by the Palestinian Authority for the recognition of a Palestinian State at the United Nations, scheduled for September 2011.

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<sup>99</sup> 'Tony Blair welcomes new policy on Gaza' - 20 June 2010: <http://www.tonyblairoffice.org/quartet/news-entry/quartet-representative-tony-blair-welcomes-new-policy-on-gaza/>

<sup>100</sup> 'Netanyahu urges talks as Israel settlement freeze ends' - 27 September 2010: <http://www.bbc.co.uk/news/world-middle-east-11415719> and 'Middle East peace talks at a 'dead end' says Palestinian leadership' - 2 October 2010: <http://www.guardian.co.uk/world/2010/oct/02/middle-east-peace-dead-end>

## Useful Resources

United Nations - The Question of Palestine: <http://unispal.un.org/unispal.nsf/home.htm>

United Nations Office for the Coordination of Humanitarian Affairs - occupied Palestinian territory: <http://www.ochaopt.org/>

United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA): <http://www.unrwa.org/>

Office of the Quartet Representative: <http://www.quartetrep.org/quartet>

European External Action Service (EEAS) - The EU and the Middle East Peace Process: <http://eeas.europa.eu/mepp/>

EU Delegation to Israel: [http://eeas.europa.eu/delegations/israel/index\\_en.htm](http://eeas.europa.eu/delegations/israel/index_en.htm)

EU Delegation to the West Bank and Gaza Strip: [http://eeas.europa.eu/delegations/westbank/index\\_en.htm](http://eeas.europa.eu/delegations/westbank/index_en.htm)

Israel Ministry of Foreign Affairs: <http://www.mfa.gov.il/MFA/>

Negotiations Affairs Department - Palestine Liberation Organization: <http://nad-plo.org/>

The Geneva Initiative: <http://www.geneva-accord.org/>

The Madrid Coalition: <http://madridcoalition.org/>

Haaretz (Israel's oldest daily newspaper): <http://www.haaretz.com/>

Al Jazeera (leading Arab news network): <http://english.aljazeera.net/>