

## **Letter to the President of the European Council**

**TO:** Herman van Rompuy, President of the European Council (dated 2 December 2010)

Lady Catherine Ashton, High Representative for Foreign Affairs and Security Policy/First Vice-President of the European Commission (dated 2 December 2010)

**CC:** EU Heads of Government (dated 6 December 2010)

EU Ministers of Foreign Affairs (dated 6 December 2010)

**FROM:** European Former Leaders Group (EFLG)

**RE:** Application of Council Conclusions on the Middle East Peace Process

The year 2011 will be of critical importance in determining the fate of the Middle East, perhaps for many years to come.

On 8 December 2009 the Foreign Affairs Council of the European Union adopted a set of twelve 'Council conclusions on the Middle East peace process'. The resulting document, essentially a collective European blueprint for resolution of the Arab-Israeli conflict, set out the requirements for a comprehensive peace, inclusive of 'a two-state solution to the Israeli-Palestinian conflict', in a clear and concise manner. It also identified a number of benchmarks. The Council further recognized that Middle East peace 'is a fundamental interest' of not only the parties in the region, but also of the European Union itself. With this statement, the EU attracted considerable interest and raised expectations about its ability to advance the peace process. It formulated in effect what the overall international community, including the current administration of the United States, apparently believes is right.

It is now one year on and we appear to be no closer to a resolution of this conflict. To the contrary, developments on the ground, primarily Israel's continuation of settlement activity in the Occupied Palestinian Territory (OPT) including in East Jerusalem, pose an existential threat to the prospects of establishing a sovereign, contiguous and viable Palestinian state also embracing Gaza, and therefore pose a commensurate threat to a two-state solution to the conflict.

Given this situation and the urgent need for action, we consider it a matter of fundamental credibility that the Council revisit the principles and requirements it enunciated in December 2009 and establish the next steps forward at its meeting scheduled for 13 December 2010. In addition to reconfirming the framework and principles it collectively adopted in December 2009, we consider it vital that the Council should also identify concrete measures to operationalize its agreed policy and thence move to implementation of the agreed objectives. Europe cannot afford that the application of these policy principles be neglected and delayed yet again. Time to secure a sustainable peace is fast running out.

Taking in turn the Conclusions reached by the Council in December 2009, we articulate below ways and means to translate these into actual policy.

1. As stated by the Council in December 2009:

*The Council of the European Union is seriously concerned about the lack of progress in the Middle East peace process. The European Union calls for the urgent resumption of negotiations that will lead, within an agreed time-frame, to a two-state solution with the State of Israel and an independent, democratic, contiguous and viable State of Palestine, living side by side in peace and security. A comprehensive peace, which is a fundamental interest of the parties in the region and the EU, must be achieved on the basis of the relevant UN Security Council Resolutions, the Madrid principles including land for peace, the Roadmap, the agreements previously reached by the parties and the Arab Peace Initiative.*

We welcomed the resumption of bilateral negotiations under American auspices in September 2010. Only a negotiated two-state solution will allow the security needs of both sides to be met. It gives us great concern however that the current talks lack a clear framework or terms of reference, and stalled almost as soon as they commenced, primarily on account of continued settlement construction by Israel.

Even if inducements to Israel to resume a partial settlement freeze for a limited period of time (such as the supply of sophisticated military equipment) enable talks to proceed, there is no guarantee that these will produce a substantive agreement resolving the conflict within the next year. Moreover these inducements include measures that Palestinians may well believe would limit their sovereignty in any final agreement.

It is eminently clear that without a rapid and dramatic move to halt the ongoing deterioration of the situation on the ground, a two-state solution, which forms the one and only available option for a peaceful resolution of this conflict, will be increasingly difficult to attain.

We believe this is a matter of utmost concern. We therefore recommend that the EU, in cooperation with the United States, United Nations, Russian Federation, League of Arab States and other interested parties, should put forward a concrete and comprehensive proposal for the resolution of this conflict, that includes a clear time frame for the successful conclusion of these negotiations on the basis of longstanding principles agreed by the above parties and the international community as a whole.

We believe the EU should at the December 2010 Council meeting set a date at which it will take further action. It could for example say that if there is no progress by its next meeting scheduled for April 2011, this will leave the Council with no alternative but to refer the matter to the international community to enable the latter to lead efforts to define a vision and strategy for a resolution of this conflict.

2. As stated by the Council in December 2009:

*The Council reconfirms its support for the United States' efforts to resume negotiations on all final status issues, including borders, Jerusalem, refugees, security and water, respecting previous agreements and understandings. The European Union will not recognise any changes to the pre-1967 borders including with regard to Jerusalem, other than those agreed by the parties. The Council*

*reiterates the EU's readiness to contribute substantially to post-conflict arrangements, aimed at ensuring the sustainability of peace agreements, and will continue the work undertaken on EU contributions on state-building, regional issues, refugees, security and Jerusalem. The Council underlines the need for a reinvigorated Quartet engagement and notes the crucial importance of an active Arab contribution building on the Arab Peace Initiative.*

As indicated here the EU is committed to contributing substantially to peace-building and reinforcement once the parties are agreed on the details. However, the Government of Israel continues to undertake unilateral measures on the ground that will prejudge the outcome if not prevent the possibility of substantive negotiations on many of the final status issues identified above.

In response to these measures, we recommend that the EU reiterate its position that it will not recognize any changes to the June 1967 boundaries, and clarify that a Palestinian state should be in sovereign control over territory equivalent to 100% of the territory occupied in 1967, including its capital in East Jerusalem. Only minor and reciprocal amendments as may be agreed between the parties themselves could legitimately be recognised.

3. As stated by the Council in December 2009:

*The EU stands ready to further develop its bilateral relations with the Palestinian Authority reflecting shared interests, including in the framework of the European Neighbourhood Policy. Recalling the Berlin declaration, the Council also reiterates its support for negotiations leading to Palestinian statehood, all efforts and steps to that end and its readiness, when appropriate, to recognise a Palestinian state. It will continue to assist Palestinian state-building, including through its CSDP missions and within the Quartet. The EU fully supports the implementation of the Palestinian Authority's Government Plan "Palestine, Ending the Occupation, Establishing the State" as an important contribution to this end and will work for enhanced international support for this plan.*

The Palestinian Authority has made impressive progress in the implementation of its Government Plan and the development of the infrastructure of a Palestinian state. EU support and assistance has been vital to this success. To date, the EU and member states have invested some EUR 8 billion in the peace process, primarily in the form of assistance to the Palestinian Authority, Palestinian institutions, and the development of infrastructure in the OPT. By continuing to be the primary donor to this work, the EU underlines the vital European interest in the establishment of a Palestinian state and the implementation of a two-state solution.

Because the Palestinian Authority exists and operates under Israeli military occupation, the Palestinians cannot be expected to establish their state without further international assistance, political as well as economic.

It is therefore our strong belief that the EU needs to act more pro-actively in its relations with the US, Israel and others to promote the fulfillment of this objective.

4. As stated by the Council in December 2009:

*Recalling the EU's position as expressed at the Association Council in June 2009, the Council reaffirms its readiness to further develop its bilateral relations with Israel within the framework of the ENP. The EU reiterates its commitment towards the security of Israel and its full integration into the region, which is best guaranteed through peace between Israel and its neighbours.*

During the past twelve months, the EU has continued to develop its bilateral relations with Israel within the framework of the ENP, with additional support provided in other fora, such as Israel's accession to the OECD. Yet Israel has continued with settlement construction in the OPT, including East Jerusalem, and refused to negotiate seriously on terminating occupation and the establishment of an independent and sovereign Palestinian state.

The EU has always maintained that settlements are illegal, but has not attached any consequences for continued and systematic Israeli settlement expansion in the OPT, including East Jerusalem.

We therefore strongly believe that the EU must make absolutely clear that enhancement or upgrading of the EU-Israel Association Agreement and other bilateral agreements and programs will not occur unless settlements are frozen.

We furthermore recommend in the strongest possible terms that the EU examine the legal implications for the EU of the continued application of bilateral agreements by Israel to Israelis and Israeli entities in the OPT, i.e. to areas outside the internationally recognized boundaries of the State of Israel. We consider it necessary that the EU add safeguard clauses to these agreements which rule out their application to Occupied Territories, to ensure that entities prohibited by international law and considered unlawful by EU policy, such as settlements, are excluded from European privileges and will not be promoted and legitimized by their provision. We consider it necessary that the EU bring an end to the import of settlement products which are, in contradiction with EU labeling regulations, marketed as originating in Israel. We consider it simply inexplicable that such products still enjoy benefits under preferential trade agreements between the EU and Israel.

5. As stated by the Council in December 2009:

*Encouraging further concrete confidence building measures, the Council takes positive note of the recent decision of the Government of Israel on a partial and temporary settlement freeze as a first step in the right direction and hopes that it will contribute towards a resumption of meaningful negotiations.*

The partial and temporary suspension of settlement construction by the Government of Israel expired in September 2010, and Israel has since then either resumed or announced construction of approximately 2,000 new settlement units, particularly in East Jerusalem and its environs.

The EU has stated unequivocally for decades that the settlements in the OPT are illegal, but Israel continues to build them. Like any other state, Israel should be held accountable for its actions. It is the credibility of the EU that is at stake.

6. As stated by the Council in December 2009:  
*Developments on the ground play a crucial part in creating the context for successful negotiations. The Council reiterates that settlements, the separation barrier where built on occupied land, demolition of homes and evictions are illegal under international law, constitute an obstacle to peace and threaten to make a two-state solution impossible. The Council urges the government of Israel to immediately end all settlement activities, in East Jerusalem and the rest of the West Bank and including natural growth, and to dismantle all outposts erected since March 2001.*

The EU position could not be clearer, but – as we have argued above – failure to act accordingly, in the face of contraventions and disregard by Israel, undermines the EU and its credibility in upholding international law.

7. As stated by the Council in December 2009:  
*The EU welcomes Israel's steps to ease restrictions of movement in the West Bank which have made a contribution to economic growth. The Council calls for further and sustained improvements of movement and access, noting that many check points and road blocks remain in place. The Council also calls on the Palestinian Authority to build on its efforts to improve law and order.*

In respect of this Conclusion, the Council should indicate the extent to which it deems the parties to have met or fallen short of meeting their respective roles in enabling development of the Palestinian economy and the maintenance of law and order within the OPT.

8. As stated by the Council in December 2009:  
*The Council is deeply concerned about the situation in East Jerusalem. In view of recent incidents, it calls on all parties to refrain from provocative actions. The Council recalls that it has never recognised the annexation of East Jerusalem. If there is to be a genuine peace, a way must be found through negotiations to resolve the status of Jerusalem as the future capital of two states. The Council calls for the reopening of Palestinian institutions in Jerusalem in accordance with the Roadmap. It also calls on the Israeli government to cease all discriminatory treatment of Palestinians in East Jerusalem.*

The situation in East Jerusalem has continued to deteriorate during the past year with, for example, forced evictions of Palestinian families from their homes, and today represents the most critical flashpoint and greatest threat to a resolution of the Israeli-Palestinian conflict.

We therefore believe that a high-level EU delegation led by the High Representative for Foreign and Security Policy and including EU foreign ministers should visit East Jerusalem as a matter of urgency to draw attention to the erosion of the Palestinian presence there, and report back to the EU with an agenda of proposals to arrest and reverse the deterioration of the situation on the ground.

9. As stated by the Council in December 2009:

*Gravely concerned about the situation in Gaza, the Council urges the full implementation of UNSCR 1860 and the full respect of international humanitarian law. In this context, the continued policy of closure is unacceptable and politically counterproductive. It has devastated the private sector economy and damaged the natural environment, notably water and other natural resources. The EU again reiterates its calls for an immediate, sustained and unconditional opening of crossings for the flow of humanitarian aid, commercial goods and persons to and from Gaza. In this context, the Council calls for the full implementation of the Agreement on Movement and Access. While extremists stand to gain from the current situation, the civilian population, half of which are under the age of 18, suffers. Fully recognising Israel's legitimate security needs, the Council continues to call for a complete stop to all violence and arms smuggling into Gaza. The Council calls on those holding the abducted Israeli soldier Gilad Shalit to release him without delay.*

Having deemed the closure of the Gaza Strip 'unacceptable and counterproductive' and called for 'full implementation of the Agreement on Movement and Access' the EU should now find ways to open Gaza's borders for normal trade, including between the Gaza Strip and the West Bank. Nowhere in the Council Conclusions of 2009 does the Council make such steps conditional on resolution of internal Palestinian disagreements over border controls. The EU could therefore take the lead on finding a temporary solution, pending the formation of a Palestinian unity government or other form of Palestinian agreement on the management of internal administration in Gaza.

10. As stated by the Council in December 2009:

*The Council calls on all Palestinians to promote reconciliation behind President Mahmoud Abbas, support for the mediation efforts by Egypt and the Arab League and the prevention of a permanent division between the West Bank, including East Jerusalem, and Gaza. The Council would welcome the organisation of free and fair Palestinian elections when conditions permit.*

The EU could contribute to a resolution of Palestinian disagreements by stressing that it is keen to promote a democratic Palestinian society through a process of nation-building (rather than state and institution building only) and by spelling out positive ways in which the formation of a Palestinian unity government inclusive of all parties committed to a ceasefire would be greeted, with development assistance flowing equally to Gaza and the West Bank.

11. As stated by the Council in December 2009:

*A comprehensive peace must include a settlement between Israel and Syria and Israel and Lebanon. Concerning the Syrian track, the EU welcomes recent statements by Israel and Syria confirming their willingness to advance towards peace and supports all efforts aimed at the reactivation of the talks between the two countries.*

In addition to re-iterating the substance of this Conclusion, the EU could also warn of the potential for the current crisis in Lebanon to spiral out of control and identify ways to help avert this.

12. As stated by the Council in December 2009:

*The EU recalls that a comprehensive settlement of the Arab-Israeli conflict requires a regional approach and will continue its work on this in line with the June 2009 Council Conclusions using all its instruments to this effect. The EU also calls on all regional actors to take confidence building measures in order to stimulate mutual trust and encourages Arab countries to be forthcoming, both politically and financially, in assisting the Palestinian Authority and Palestinian refugees through UNRWA.*

In conclusion, our Group wishes to point out that EU investment in building the foundations for a two state solution over the past two decades was very substantial, not least in terms of EU tax-payers' money. The EU should take what measures it can to justify this investment and act in Europe's genuine interest, but if no political progress is made, further expenditure – apart from that on humanitarian purposes – would be nugatory. In these circumstances Israel should be required to shoulder its obligations as the occupying power. But wider issues matter more than wasted expenditure. At stake are not only EU relations with the parties directly involved in the conflict but also with the wider Arab community, with which the EU enjoys positive diplomatic and trade relations.

We believe that many Arabs and prominent Israelis would like the EU to take a more active role in resolving the conflict and put its stated position into effect. Senior figures in the United States are also signaling to us that the best way to help President Obama's efforts is to put a price tag on attitudes and policies that run counter to the positions that the US president himself has advocated. We see increased expectations everywhere that Europe will live up to its commitments and actively seek to share the responsibility with other members of the international community in working towards justice and peace at this critical moment.

*Signatories:*

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