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# The EU's Statements about the Israel-Palestine «11-Days Crisis»: On the Side of the Oppressor

MAURO GATTI\*

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ABSTRACT: In May 2021, Israel launched a series of airstrikes against Gaza, killing 245 Palestinians, mostly civilians, including 63 children. Several international actors energetically condemned Israel's actions. The Union issued tepid statements in response to the crisis, ignoring the violence perpetrated by Israeli authorities. This article suggests that the EU's silence does not sit well with its alleged 'values' but is consistent with the positions of the Member States and its established policy.

KEYWORDS: foreign policy – statements – Palestine – Israel – values – indiscriminate attacks

## 1. Introduction

On 6 May 2021, Israeli authorities violently repressed protests against the displacement of Palestinians from the East Jerusalem neighbourhood of Sheikh Jarrah<sup>1</sup>. The Israeli police also fired teargas and stun grenades into the Haram al-Sharif compound, site of the al-Aqsa mosque, one of the most significant sites in Islam<sup>2</sup>. Hamas responded on 10 May, by firing rockets from the Gaza strip, (Hamas' rockets eventually killed 13 people)<sup>3</sup>. Israel, on the other hand, launched a

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<sup>1</sup> S. FARRELL, R. AYYUB, *Israeli police, Palestinians clash at Jerusalem's Al-Aqsa, scores injured*, in *Reuters*, 7 May 2021, [www.reuters.com](http://www.reuters.com).

<sup>2</sup> O. HOLMES, *Israeli police storm al-Aqsa mosque ahead of Jerusalem Day march*, in *The Guardian*, 10 May 2021, [www.theguardian.com](http://www.theguardian.com).

<sup>3</sup> T. STAFF, *73-year-old Israeli woman who fell in rocket shelter dies of injuries*, in *Times of Israel*, 23 May 2021, [www.timesofisrael.com](http://www.timesofisrael.com).

series of airstrikes against Gaza, killing 245 Palestinians, most of them civilians, including 63 children<sup>4</sup>. Hamas and the Israeli government agreed upon a ceasefire on 21 May 2021, thus ending the «11-days crisis»<sup>5</sup>. Afterwards, the Israeli authorities continued with the displacement of Palestinians from Sheikh Jarrah: for instance, on 19 January 2022, the Israeli forces raided the house of a Palestinian family in the middle of the night and destroyed it<sup>6</sup>.

The 2021 crisis in Palestine has sparked reactions across the globe. Some actors energetically condemned Israel's actions; before the ceasefire, the Tunisian foreign minister «called on ending the savage Israeli aggression on the occupied Palestinian territories and the besieged Gaza Strip»<sup>7</sup>. Others have sided with Israel; the US, as usual, stressed its «strong support for Israel's right to defend itself»<sup>8</sup>. Despite its perfunctory support for a «two-state solution», the European Union *de facto* endorsed the US position. The EU issued tepid statements in response to the crisis, ignoring the violence perpetrated by Israeli authorities. This article suggests that the EU's silence does not sit well with its alleged «values» but is consistent with the positions of the Member States and its established policy: because of its decision-making rules (and its political interests), the Union is unlikely to depart from its traditional support for Israel.

The statements of EU leaders stigmatised the violence perpetrated by Hamas but not the abuses conducted, on a larger scale, by Israeli authorities (see below, section 2). The silence of EU institutions is unsurprising, since it is consistent with the priorities of its Member States (section 3), the EU's established policy (section 4) and the pragmatic character of the EU's external relations: the Union often preaches its «values» but seldom practices them (section 5).

<sup>4</sup> OCHA, Response to the escalation in the oPt | Situation Report No. 1, 21-27 May 2021, [www.ochaopt.org](http://www.ochaopt.org).

<sup>5</sup> *Israel-Gaza cease-fire takes hold*, in *Deutsche Welle*, 21 May 2021, [www.dw.com](http://www.dw.com).

<sup>6</sup> Z. AL TAHHAN, *Israeli forces demolish Palestinian home in Sheikh Jarrah*, in *Al Jazeera*, 19 January 2022, [www.aljazeera.com](http://www.aljazeera.com).

<sup>7</sup> O. JERANDI, cit. in the tweet of the Tunisian Ministry of Foreign Affairs of 16 May 2021, [twitter.com](https://twitter.com).

<sup>8</sup> US Department of State, Secretary Blinken's Call with Israeli Prime Minister Netanyahu, 12 May 2021, [www.state.gov](http://www.state.gov).

## 2. The EU's Statements on the Crisis in Palestine

In response to the crisis, the leaders of EU institutions adopted several statements. The statements differed in terms of their author, the moment of adoption, and their degree of formality (some are formal statements, others mere tweets), but they conveyed similar messages.

In the first place, the statements generically called for an end to violence, apparently placing the Union in an intermediate position between pro-Palestine and pro-Israel actors. For instance, on 12 May the High Representative (HR) stated that «the grave escalation in Israel and the Occupied Palestinian Territory, including the major upsurge in violence in and around Gaza, must stop»; the EU, therefore, called «for an immediate end to the ongoing violence» and to prevent a broader «conflict», which would affect the civilian populations on «both sides»<sup>9</sup>. Later, the EU «welcome[d] the announced ceasefire bringing to an end *the violence* in and around Gaza»<sup>10</sup>. The message was clear: the priority was to protect «civilians» from a «conflict» involving «two sides».

Secondly, the EU's statements stigmatised the conduct of Hamas. According to the EU, «the indiscriminate launching of rockets from Hamas and other groups towards Israeli civilians is unacceptable»<sup>11</sup>. The High Representative further «reaffirmed the EU's support to Israel's security & condemned Hamas indiscriminate firing of rockets»<sup>12</sup>. The President of the European Commission also condemned the «indiscriminate attacks by Hamas on Israel»<sup>13</sup>. Such a criticism for Hamas seems reasonable, as Hamas targeted civilians (killing 12 persons<sup>14</sup>) and the EU considers it as a terrorist organisation<sup>15</sup>, but it appears remarkable in light of the EU's «softer» approach towards Israel.

<sup>9</sup> EU High Representative, Israel/Palestine: Statement by the High Representative on the escalation of confrontations, 12 May 2021, [ec.europa.eu](https://ec.europa.eu/external-affairs/press-releases/2021/05/12-statement-high-representative-escalation-confrontations); see also, *inter alia*, the tweet of the President of the European Council of 12 May, [twitter.com](https://twitter.com/EUCouncil); and the tweet of the President of the European Commission of 13 May, [twitter.com](https://twitter.com/EuropeanComm).

<sup>10</sup> EU High Representative, Israel/Palestine: Statement by the High Representative Josep Borrell on the ceasefire, 21 May 2021, [ec.europa.eu](https://ec.europa.eu/external-affairs/press-releases/2021/05/21-statement-high-representative-ceasefire), emphasis added.

<sup>11</sup> EU High Representative, Israel/Palestine: Statement by the High Representative on the escalation of confrontations, cit.

<sup>12</sup> Tweet of the EU High Representative of 13 May 2021, [twitter.com](https://twitter.com/EUHighRep); see also EU High Representative, Israel/Palestine: High Representative/Vice-President Josep Borrell in intense efforts to contribute to de-escalation of violence, 15 May 2021, [ec.europa.eu](https://ec.europa.eu/external-affairs/press-releases/2021/05/15-high-representative-vice-president-josep-borrell-intense-efforts-contribute-de-escalation-violence).

<sup>13</sup> Tweet of the President of the European Commission of 14 May 2021, [twitter.com](https://twitter.com/EuropeanComm).

<sup>14</sup> *Gaza-Israel conflict in pictures: 11 days of destruction*, in BBC, [www.bbc.com](https://www.bbc.com/news/world-middle-east-56844444).

<sup>15</sup> Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism; CJEU, judgment of 10 September 2020, C-122/19 P, *Hamas*.

Thirdly, while the EU's criticism for Hamas was explicit, the criticism for Israel was mostly implicit. Only one EU statement expressed the EU's «strong opposition to *Israel's* settlement policy»<sup>16</sup> but the others systematically avoided express criticisms of Israel. For instance, the EU «reiterate[d] its position that all settlements in the occupied Palestinian territory are illegal under international law»<sup>17</sup>. Consequently, «the evictions of Palestinian families in Sheikh Jarrah and other areas of East Jerusalem (...) are illegal under international humanitarian law»<sup>18</sup>. «It is vital that Israel does not *allow them to be carried out*»<sup>19</sup> – as if Israel were not carrying them out itself. Moreover, the Union stressed that «the *status quo* of the holy sites needs to be respected and any acts of incitement around them avoided»<sup>20</sup>. In other words, the Union identified a conduct but not its author: whereas the Union unequivocally criticised «Hamas» for attacking civilians, it did not identify the subject that is evicting Palestinians from Sheikh Jarrah, creating illegal settlements in Palestinian territory, or violating the «*status quo*» related to the «holy sites». Of course, the reader can easily identify the responsible subject – the Israeli government – but it is certainly not by chance that the Union generally avoided placing the blame on Israel in an explicit manner.

Fourthly, the EU's (implicit) criticism for Israel was very bland. The Union failed to stigmatise the acts of violence by Israeli citizens and authorities against person and property in the Al-Aqsa mosque, which were among the direct causes of the escalation<sup>21</sup>. The EU omitted to mention the Israeli mobs that lynched Palestinians<sup>22</sup>, with the apparent support or tolerance of the Israeli authorities<sup>23</sup>. Moreover, the EU could have used harsher words regarding the displacement of Palestinians in East Jerusalem, since such a displacement is illegal under interna-

<sup>16</sup> EU Delegation at UN, statement, 16 May 2021, [ec.europa.eu](https://ec.europa.eu/development/external-action/eu-development-policy/eu-development-policy-statement-16-may-2021), emphasis added.

<sup>17</sup> EU High Representative spokesperson, statement, 5 May 2021, [ec.europa.eu](https://ec.europa.eu/development/external-action/eu-development-policy/eu-development-policy-statement-5-may-2021).

<sup>18</sup> EU High Representative spokesperson, statement, 8 May 2021, [ec.europa.eu](https://ec.europa.eu/development/external-action/eu-development-policy/eu-development-policy-statement-8-may-2021); see also EU High Representative, statement, 10 May, [ec.europa.eu](https://ec.europa.eu/development/external-action/eu-development-policy/eu-development-policy-statement-10-may-2021).

<sup>19</sup> Statement on behalf of the High Representative, 19 May 2021, [ec.europa.eu](https://ec.europa.eu/development/external-action/eu-development-policy/eu-development-policy-statement-19-may-2021), emphasis added.

<sup>20</sup> EU High Representative, statement, 15 May 2021, [ec.europa.eu](https://ec.europa.eu/development/external-action/eu-development-policy/eu-development-policy-statement-15-may-2021); statement on behalf of the High Representative, 19 May 2021, [ec.europa.eu](https://ec.europa.eu/development/external-action/eu-development-policy/eu-development-policy-statement-19-may-2021); see also High Representative spokesperson statement, 8 May 2021, [ec.europa.eu](https://ec.europa.eu/development/external-action/eu-development-policy/eu-development-policy-statement-8-may-2021).

<sup>21</sup> See, e.g., International Crisis Group, *The Israel-Palestine Crisis: Causes, Consequences, Portents*, 14 May 2021, [www.crisisgroup.org](https://www.crisisgroup.org).

<sup>22</sup> See e.g. The Guardian, *Live TV shows Israeli mob attack motorist they believed to be an Arab*, 13 May 2021, [www.theguardian.com](https://www.theguardian.com).

<sup>23</sup> See e.g. *Israel-Palestine: Lynching, crackdowns and deaths - here's what happened last night*, in *Middle East Eye*, 13 May 2021, [www.middleeasteye.net](https://www.middleeasteye.net).

tional law, as it occurs in a territory illegally occupied by Israel<sup>24</sup> and constitutes a violation of humanitarian law<sup>25</sup>. One might note, in particular, that the displacement of Palestinians in Jerusalem is part of the Israeli government's policy to ensure a Jewish majority in the city<sup>26</sup>. In other words, a strategy aimed at «rendering an area ethnically homogeneous by using force or intimidation to remove persons of given groups from the area», something that in other contexts might have been termed as «ethnic cleansing»<sup>27</sup>.

The blandness of the EU's language is particularly evident with respect to the Israeli's bombing of Gaza. In its statements, the EU repeatedly recognised «Israel's legitimate need to protect its civilian population» and affirmed that «this response needs to be proportionate and with maximum restraint in the use of force»<sup>28</sup>. The EU's statements contained only a vague criticism of Israel, as they indirectly imply that its response could perhaps be disproportionate; the criticism was further tempered by the systematic reference to Israel's right to self-defence. Despite the EU's cautious remarks, the Israeli bombing of Gaza appears hardly proportionate. It is sufficient to note that Israel's airstrikes resulted in 245 victims, including 63 children, the wounding of about 2000 Palestinians, including over 600 children, and the displacement of 8500 people<sup>29</sup>. Such loss of civilian life might well be excessive in relation to the concrete military advantage anti-

<sup>24</sup> see ICJ, Advisory Opinion of 9 July 2004, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

<sup>25</sup> See e.g. Art. 49 of the Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949. See, further, Avocats sans frontières, *Enforcing Housing Rights: the Case of Sheikh Jarrah*, 2011, [www.asf.be](http://www.asf.be).

<sup>26</sup> See, *inter alia*, OCHA, *The Planning Crisis in East Jerusalem: Understanding Phenomenon of 'Illegal' Construction*, 2009, [www.refworld.org](http://www.refworld.org); Palestinian Human Rights Organisation Council, *Joint Urgent Appeal to the United Nations Special Procedures on Forced Evictions in East Jerusalem*, 10 March 2021, [www.alhaq.org](http://www.alhaq.org).

<sup>27</sup> See Interim Report of the Commission of Experts Established Pursuant to Security Council Resolution 780 (1992), para. 55, [undocs.org](http://undocs.org); Cf. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) of 2009, Art. IV; on the problematic definition of ethnic cleansing in international law see *inter alia* C. PEGORIER, *Ethnic Cleansing: A Legal Qualification*, Londra, 2013.

<sup>28</sup> EU High Representative, Israel/Palestine: Statement by the High Representative on the escalation of confrontations, [eeas.europa.eu](http://eeas.europa.eu); see also EU High Representative, Israel/Palestine: High Representative/Vice-President Josep Borrell in intense efforts to contribute to de-escalation of violence, 15 May 2021, [eeas.europa.eu](http://eeas.europa.eu); EU High Representative Spokesperson, Tweet of 12 May 2021, [twitter.com](https://twitter.com); EU Delegation at the UN, EU Statement – United Nations Security Council: “The situation in the Middle East, including the Palestinian question”, 16 May 2021, [eeas.europa.eu](http://eeas.europa.eu).

<sup>29</sup> OCHA, *Response to the escalation in the oPt*, cit.



pated<sup>30</sup>. The indiscriminate character of Israel's bombing is confirmed by the destruction, among others, of medical facilities and the building hosting the Associated Press and Al Jazeera<sup>31</sup>. Needless to say, the EU did not feel the urge to address these events in its statements.

### 3. The EU's Statements are Consistent with the Policies of its Member States...

To explain the EU's silence about Israeli violence, one must look at the procedure for the adoption of EU statements. Unlike national governments, EU representatives (e.g. the High Representative or the European Commission, see Art. 17(1) and 27(2) TEU) have limited margin of manoeuvre when it comes to making international statements. Before making any statement, EU representatives «must always ascertain what the EU position is and, if it does not exist, take the necessary steps to obtain a decision in that respect»<sup>32</sup>. All decisions regarding the EU's position must be taken by the Council or its preparatory bodies, i.e., by organs composed of the representatives of the Member States. In the field of foreign policy *stricto sensu* – which is the case of the Statements on Palestine – the EU position must be approved by unanimity (Art. 24 TEU). In other words, each Member State has a *de facto* veto power on the definition of the EU's position.

Since it is difficult to draft a statement that satisfies each of the 27 EU Member States, the EU representatives often respond to international events by repeating the established position of the Union. For instance, the EU frequently «reiterates its position that all settlements in the occupied Palestinian territory are

<sup>30</sup> See Protocol additional to the Geneva Convention of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, Art. 51(5)(b); on proportionality in customary law, see *inter alia* J. CROWE, *Ensuring respect for IHL in the international community: Navigating expectations for humanitarian law diplomacy by third States not party to an armed conflict*, in E. MASSINGHAM, A. MCCONNACHIE (eds), *Ensuring Respect for International Humanitarian Law*, London, 2020, p. 48 ff.

<sup>31</sup> F. AKRAM, L. KEATH, *Israel strikes Gaza home of Hamas leader, destroys AP office*, 16 May 2021, apnews.com.

<sup>32</sup> European Commission, *Vademecum on The External Action of the European Union*, SEC(2011)881, on file with the author, p. 18; see also, to that effect, Council, *EU Statements in Multilateral Organisations: General Arrangements*, Council doc. 15901/11, 24 October 2011, para. 3; CJEU, Judgment of 28 July 2016, C-660/13, *Swiss Memorandum*.

illegal under international law»<sup>33</sup>. Similarly, the EU was able to affirm that «the evictions of Palestinian families in Sheikh Jarrah (...) are illegal under international humanitarian law»<sup>34</sup> because the EU has a well-established position regarding the illegality of Israeli colonies<sup>35</sup>.

By contrast, if EU representatives intend to take a stance on questions that do not reflect an established position of the Union, a preliminary approval by the Member States is required. This procedural restraint might contribute to explaining, e.g., why the Union has not adopted any formal statement that stigmatises the disproportionate character of Israel's attack against Gaza.

The EU's failure to formulate a common message became evident on 18 May 2021, during a virtual meeting of EU foreign ministers. Since the meeting was informal, it did not lead to the adoption of any act (not even statements or conclusions). Nonetheless, in the press conference following the virtual meeting, the High Representative noted that 26 out of 27 Member States supported a common position on the crisis in Palestine (the exception being Hungary)<sup>36</sup>. This common position is as vague as the statements previously made by EU representatives (see above, section 2), with one exception: during the press conference, the High Representative noted that, according to 26 Member States, «we support Israel's right to self-defence, fully. We remind that this has to be done in a proportionate manner and respecting International Humanitarian Law. And the number of civilians dead and injured – among them a high number of children and women – *is unacceptable*»<sup>37</sup>. For the first time, an EU leader suggested that Israel's «self-defence» is disproportionate. While the High Representative can say this informally during a press conference, he cannot affirm it formally, through the adoption of a statement, because at least one Member State (Hungary) disagrees with this position.

In fact, Hungary seems to oppose any criticism of Israel. A few days before the informal meeting of EU foreign ministers, Hungary prevented the EU delega-

<sup>33</sup> EU High Representative Spokesperson, Israel/Palestine: Statement by the Spokesperson on settlement expansion and the situation in East Jerusalem, 5 May 2021, [ec.europa.eu](https://ec.europa.eu/eeas/eu-foreign-affairs/eu-foreign-affairs-statement-by-the-spokesperson-on-settlement-expansion-and-the-situation-in-east-jerusalem-2021-05-05).

<sup>34</sup> EU High Representative Spokesperson, Israel/Palestine: Statement by the Spokesperson on the rise in tensions and violence, 8 May 2021, [ec.europa.eu](https://ec.europa.eu/eeas/eu-foreign-affairs/eu-foreign-affairs-statement-by-the-spokesperson-on-the-rise-in-tensions-and-violence-2021-05-08).

<sup>35</sup> See e.g. Eleventh Meeting of the EU-Israel Association Council, Statement of the European Union, 24 July 2012, [www.consilium.europa.eu](https://www.consilium.europa.eu).

<sup>36</sup> See Informal video conference of foreign affairs ministers - Press conference, 18 May 2021, [ec.europa.eu](https://ec.europa.eu/eeas/eu-foreign-affairs/eu-foreign-affairs-statement-by-the-spokesperson-on-the-18-may-2021-press-conference).

<sup>37</sup> EU High Representative, Informal videoconference of Foreign Affairs Ministers on Israel/Palestine: Press remarks by High Representative Josep Borrell, 18 May 2021, [ec.europa.eu](https://ec.europa.eu/eeas/eu-foreign-affairs/eu-foreign-affairs-statement-by-the-spokesperson-on-the-18-may-2021-press-conference), emphasis added.

tion to the UN from delivering a statement at the UN Security Council on behalf of «the EU and its Member States»<sup>38</sup>. Eventually, the delegation delivered the statement on behalf of «the European Union», presumably because this statement reflects the established EU position – and is indeed quite vague<sup>39</sup>. While the approval of the representatives of «the Member States» is always necessary to issue a statement in their name, it is not indispensable to make a statement on behalf of «the EU» only, as long as that statement corresponds to an established position of the EU<sup>40</sup>. The incident at the UN Security Council probably had limited consequences from a practical viewpoint, but shows the limits of the EU's decision-making, as well as the unabashedly pro-Israel stance of the Hungarian government.

Hungary, at any rate, is not entirely isolated: several Member States have a strongly pro-Israel position. For example, the Austrian government expressed solidarity with Israel by flying the Israeli flag on its chancellery and foreign ministry<sup>41</sup>. The Dutch Prime Minister tweeted (14 May): «very concerned about ongoing violence in Israel and Gaza. Hamas firing rockets indiscriminately at civilians is unacceptable. The Netherlands respects Israel's right to proportionate self-defence, within the limits of international law»<sup>42</sup>. A similar message was reportedly conveyed by the German chancellor to the Israeli prime minister<sup>43</sup>. Similarly, the Italian Minister of Foreign Affairs «strongly condemn[ed] the rocket attacks from Gaza towards Israel's territory», which «cannot be justified under any circumstances» (11 May)<sup>44</sup>. The party leaders of the Italian parliamentary majority (ranging from the nominally leftist Democratic party to the far-right Lega) even participated in a pro-Israel demonstration (12 May 2021)<sup>45</sup>. France was slightly more balanced, as it reiterated its «firm opposition to settlement activity in all forms», but nonetheless focused its attention on the «attacks carried out against

<sup>38</sup> D. M. HERSZENHORN, R. MOMTAZ, EU divisions over Israel-Palestine leave Brussels powerless as conflict worsens, in *Politico*, 17 May 2021, [www.politico.eu](http://www.politico.eu).

<sup>39</sup> EU Delegation to the UN, EU Statement – United Nations Security Council: “The situation in the Middle East, including the Palestinian question”, 16 May 2021, [ceas.europa.eu](http://ceas.europa.eu).

<sup>40</sup> Council, EU Statements in Multilateral Organisations: General Arrangements, cit., para. 4

<sup>41</sup> *Austria flies flag of Israel in solidarity*, in *France 24*, 14 May 2021, [www.france24.com](http://www.france24.com).

<sup>42</sup> M. RUTTE, tweet of 14 May 2021, [twitter.com](https://twitter.com).

<sup>43</sup> *The Merkel stresses 'solidarity' with Israel in call with Netanyahu*, in *Times of Israel*, 17 May 2021, [www.timesofisrael.com](http://www.timesofisrael.com).

<sup>44</sup> See *Attacchi a Israele: Farnesina, "tutte le parti adottino immediatamente misure di de-escalation, prioritario prevenire ulteriori vittime civili"*, in *SIR*, [www.agensir.it](http://www.agensir.it).

<sup>45</sup> *Il Fatto Quotidiano, Manifestazione pro-Israele a Roma, anche Enrico Letta sul palco con Salvini, Tajani e Boschi*, 12 May 2021, [www.ilfattoquotidiano.it](http://www.ilfattoquotidiano.it).

much of Israeli territory» (13 May)<sup>46</sup>. Among the few critical voices, one might mention the Irish foreign minister, who expressly called out the disproportionate character of the Israeli bombing, recalling the «legal obligation to protect children in conflict» (15 May)<sup>47</sup>.

In light of the positions of some Member States, and the EU's decision-making procedures, the EU's silence on the violence recently perpetrated by Israeli authorities was probably inevitable. The established policies of EU Member States might also contribute to explain the constancy of the EU's «soft» reactions to Israeli abuses in the past.

#### 4. ... and the Union's established policy towards Israel

EU and Israel have always had a close relationship. They concluded a trade agreement already in 1964<sup>48</sup>. Currently, the Association Agreement of 1995 ensures free movement of goods between Israel and the EU (while agriculture is subject to special rules)<sup>49</sup>. The Association Agreement also regulates scientific and technological cooperation; for instance, Israel participates in the Horizon 2020 programme of the EU (though Israeli entities established in occupied territories are excluded from EU financing)<sup>50</sup>.

<sup>46</sup> Communiqué issued by the Ministry for Europe and Foreign Affairs - Israel / Palestinian territories, 12 May 2021, [www.diplomatie.gouv.fr](http://www.diplomatie.gouv.fr).

<sup>47</sup> S. COVENEY, tweet of 15 May 2021, [twitter.com](https://twitter.com).

<sup>48</sup> Decision 64/357 on the conclusion of the Commercial Agreement between the European Economic Community and the State of Israel.

<sup>49</sup> Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, of 20 November 1995; see also Agreement in the form of an Exchange of Letters between the European Community and the State of Israel concerning reciprocal liberalisation measures on agricultural products, processed agricultural products and fish and fishery products, the replacement of protocols 1 and 2 and their annexes and amendments to the Euro-Mediterranean Agreement establishing an Association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, of 4 November 2009.

<sup>50</sup> Agreement between the European Union and the State of Israel on the participation of the State of Israel in the Union programme 'Horizon 2020 — the Framework Programme for Research and Innovation, of 8 June 2014; see also European Commission, Guidelines on the eligibility of Israeli entities and their activities in the territories occupied by Israel since June 1967 for grants, prizes and financial instruments funded by the EU from 2014 onwards, 2013.

In theory, the EU endorses a «two-state solution» for Israel and Palestine<sup>51</sup>. Consistently with this approach, the Union has concluded an Association Agreement with the Palestinian Liberation Organisation<sup>52</sup>. The EU also refuses to recognise the annexation of the territories illegally occupied by Israel since 1967. The EU does not treat goods produced by colonists in the occupied territories as Israeli products; such products, therefore, are not subject to the preferential treatment that applies to Israeli products<sup>53</sup>. Products originating from an Israeli settlement in occupied territories must be labelled as such, as the Court of Justice held in the *Psagot* judgment<sup>54</sup>. The EU's stance toward occupied territories has been vigorously opposed by Israeli authorities. The *Psagot* judgment, in particular, was labelled by the Israeli government as a «political and discriminating» ruling, whose «entire objective is to single out and apply a double standard against Israel»<sup>55</sup>.

Frictions over the Israeli-Palestinian conflict have occasionally «soured» EU-Israel relations<sup>56</sup> but never seriously affected them.

Since the EU is Israel's biggest trade partner<sup>57</sup>, the EU could exploit its economic power through the use of conditionality mechanisms in order to influence Israel's conduct and foster the attainment of the «two state solution».<sup>58</sup> For instance, the EU can suspend the application of the EU-Israel Association Agreement, claiming that Israel has violated an «essential element» of the Agreement, such as the «respect for human rights and democratic principles» (Art. 2). The EU itself certified the problematic character of certain Israeli policies, ranging

<sup>51</sup> See e.g. Council conclusions on the Middle East Peace Process, 17 November 2014, [www.consilium.europa.eu](http://www.consilium.europa.eu).

<sup>52</sup> Euro-Mediterranean Interim Association Agreement on trade and cooperation between the European Community, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, of 24 February 1997.

<sup>53</sup> See, further, CJEU, judgment of 25 February 2010, C-386/08, *Brita*, para. 64.

<sup>54</sup> CJEU, judgment of 12 November 2019, *Psagot*; see further E. KASSOTI, S. SALUZZO (eds), *Special Section – What's in a Name? The Psagot Judgment and Questions of Labelling of Settlement Products*, in *European Papers*, 2019, p. 753 ff.

<sup>55</sup> Israel Ministry of Foreign Affairs, Israel strongly rejects recent ECJ ruling, 12 November 2019, [mfa.gov.il](http://mfa.gov.il).

<sup>56</sup> See *inter alia* S. PARDO, J. PETERS, *Uneasy Neighbors: Israel and the European Union*, Lanham, 2010.

<sup>57</sup> See the statistics published in the website of the European Commission, [ec.europa.eu](http://ec.europa.eu).

<sup>58</sup> On conditionality, see, *ex multis*, A-C. PRICKARTZ, I. STAUDINGER, *Policy vs practice: The use, implementation and enforcement of human rights clauses in the European Union's international trade agreements*, in *Europe and the World: A Law Review*, 2019; S. POLI, *The principle of conditionality in the EU's relations with neighbours: its evolution and reconciliation with the principle of consistency*, in *Il Diritto dell'Unione europea*, 2018, p. 525 ff.

from the demolition of Palestinians' houses, the administrative detention of Palestinians without charges, or the worsening of their life conditions under occupation<sup>59</sup>. Given Israel's failure to respect the «essential elements» of the Association Agreement, the EU could have «take[n] appropriate measures», including the suspension or termination of the Agreement (Art. 79(2) of the EU-Israel Association Agreement).

However, the EU never suspended the application of the Association Agreement. On the contrary, the EU repeatedly offered «upgrades» of EU-Israel relations<sup>60</sup>. Allegedly, «even formal annexation of the West Bank would not be enough to persuade member-states to suspend the [EU-Israel] Association Agreement»<sup>61</sup>.

## 5. Irrelevance of the EU's Constitutional Commitment to the External Promotion of its 'Values'

Although the EU's silence on Israeli violence is in line with its policy, it is at odds with its alleged «values». According to EU constitutional law, the Union «is founded on the values of respect for human dignity (...) and respect for human rights» (Art. 2 TEU). In its relations with the wider world, the EU should uphold and promote its values, contributing to «the protection of human rights» and «the strict observance and the development of international law» (Art. 3(5) TEU). The EU's action on the international scene is indeed «guided by the principles which have inspired its own creation», including «the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity» (Art. 21(1) TEU).

EU institutions routinely stress the «value-based» character of the EU and its foreign policy. Executive bodies often describe the Union with emphatic expressions such as «a global force for human rights»<sup>62</sup>. The European Parliament also

<sup>59</sup> See e.g. Eleventh Meeting of the EU-Israel Association Council, Statement of the European Union, 24 July 2012, [www.consilium.europa.eu](http://www.consilium.europa.eu).

<sup>60</sup> H. LOVATT, *Eu Differentiation and the Push For Peace In Israel-Palestine*, European Council on Foreign Relations, 2016, [ecfr.eu](http://ecfr.eu).

<sup>61</sup> B. OPPENHEIM, *Can Europe overcome its paralysis on Israel and Palestine?*, Centre for European Reform, 2020, [www.cer.eu](http://www.cer.eu).

<sup>62</sup> EU High Representative and European Commission, *Joint Communication to the European Parliament and the Council Human Rights and Democracy at the Heart of EU External Action – Towards a More Effective Approach*, COM(2011) 886 final, p. 5.

assumes that promoting the EU's «values», including the universality and indivisibility of human rights and respect for the principles of the United Nations Charter and international law, «is at the core of the EU's common foreign and security policy»<sup>63</sup>. Moreover, the Court of Justice repeatedly noted that EU «values» are essential to the EU<sup>64</sup>; compliance with the principles of «human rights, as well as respect for human dignity» is required, in particular, of all external actions of the EU<sup>65</sup>.

Several EU scholars enthusiastically endorsed these claims, by stating, e.g., that «the EU has a normatively different basis for its relations with the world» because it «is normatively different to other polities with its commitment to individual rights and principles in accordance with the ECHR and the UN»<sup>66</sup>. Although the Union might «occasionally» appear to act inconsistently with its values, its commitment to the respect for human rights by means of its foreign policy «is genuine and distinguishes its foreign policy from that of the traditional powers»<sup>67</sup>. Allegedly, «the human rights objective puts the EU as a self-declared shaper of international norms at the forefront of human rights advancement»<sup>68</sup>.

However, this optimism is increasingly at odds with reality: «values» are part of the rhetoric of EU foreign policy but are absent from its practice. For instance, despite the EU's abstract commitment to human rights and the rule of law, the EU cooperates with Libyan authorities in order to reduce migration, implicitly accepting the incarceration, torture and murder of migrants in Libyan camps<sup>69</sup>. Notwithstanding the EU's theoretical support for «solidarity and mutual respect among peoples» (Art. 3(5) TEU), the EU opposes the waiver of COVID-19 vaccine patents, which is indispensable in order to «save lives and advance us towards global herd immunity» (as noted by over 100 Nobel prize winners, see

<sup>63</sup> European Parliament, on human rights and democracy in the world and the European Union's policy on the matter – annual report 2019, (2020/2208(INI)), para. 30.

<sup>64</sup> See, e.g., CJEU, judgment of 20 April 2021, C-896/19, *Repubblika*, para. 63.

<sup>65</sup> CJEU, judgment of 14 June 2016, C-264/14, *Tanzania*, para. 47.

<sup>66</sup> I. MANNERS, *Normative Power Europe: A Contradiction in Terms?*, in *Journal of Common Market Studies*, 2002, p. 235 ff., at 241.

<sup>67</sup> B. DE WITTE, *The EU and the International Legal Order: The Case of Human Rights*, in Malcolm EVANS, Panos KOUTRAKOS (eds), *Beyond the Established Legal Orders: Policy Interconnections between the EU and the Rest of the World*, London, 2011, p. 127 ff., at p. 142.

<sup>68</sup> V. KUBE, *The European Union's External Human Rights Commitment: What is the Legal Value of Article 21 TEU?*, EUI Department of Law Research Paper No. 2016/10, p. 29.

<sup>69</sup> See e.g. Human Rights Watch, *No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya*, 2019, [www.hrw.org](http://www.hrw.org).

People's Vaccine Alliance<sup>70</sup>). The EU's silence about the Israeli violence against the Palestinians is just another example of the EU's «unprincipled» foreign policy.

In light of the EU's pragmatism in foreign policy, the EU's decision-making procedures, and the preferences of the Member States, the EU's reaction to the events in Palestine of April-May 2021 is regrettable but unsurprising. Despite its nominal equidistance from Israel and Palestine, the EU is hardly impartial: as noted by Desmond Tutu, «if you are neutral in a situation of injustice, you have chosen the side of the oppressor».<sup>71</sup>

<sup>70</sup> Open Letter: Former Heads of State and Nobel Laureates Call on President Biden To Waive Intellectual Property Rules for COVID Vaccines, 14 April 2021, [peoplesvaccinealliance.medium.com](https://peoplesvaccinealliance.medium.com).

<sup>71</sup> R. MCAFEE BROWN, *Unexpected News: Reading the Bible with Third World Eyes*, Louisville, 1984, p. 19.