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TOWARD A PROGRESSIVE EU AGENDA FOR A TWO-STATE SOLUTION

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Given that the U.S. government is not prepared to advance peace in the Middle East, it is crucial that the EU step into a leadership role in the effort.

1. Introduction

Federica Mogherini's first trip as the European Union's High Representative for Foreign Affairs and Security Policy brought her to Israel and Palestine. Speaking to Israeli Prime Minister Binyamin Netanyahu on Nov. 7, 2014, she stressed that "it's also in European interests to have stability and security and peace in this part of the region, and we are convinced that European Union can have a major role in supporting a solution."¹

I could not agree more. Since becoming a member of the European Parliament in June 2014, I have been actively engaging representatives from political parties, civil society and policy experts in Israel and the Occupied Palestinian Territories (OPT) in order to identify and understand the main impediments to peace in the Middle East. Only a few months into my new position I took an active part in the negotiations over a European Parliament resolution on the recognition of Palestinian statehood. The text, while supporting "in principle" the recognition of Palestinian statehood and the two-state solution also makes clear that such recognition "should go hand in hand with the development of peace talks."² At the same time, the resolution urges Hamas and other Palestinian factions to re-

cognize the right of existence of the State of Israel and to overcome intra-Palestinian division.

Up to this day, all of those calls for action have gone unanswered. Hamas and the Fateh-dominated Palestinian Authority (PA) remain divided, and there seems to be no political will on the part of the Israeli government or the PA to begin direct negotiations. Quite notably, under the current right-wing government, we have seen an extension and intensification of settlement activity. This deliberate policy has culminated in the recent adoption by the Knesset of a law allowing Israeli settlers to confiscate, under certain conditions, land in Area C of the West Bank owned by Palestinians. Should the Constitutional Court of Israel rule that the law is constitutional, we might enter a new phase of "legal" annexation of Area C.

In reaction to Israel's sustained push to build and legalize settlements, the United Nations Security Council on Dec. 23, 2016 adopted Resolution 2334. The resolution, which could only be adopted thanks to the United States' abstention in the vote, reaffirmed that Israeli settlements in the OPT "had no legal validity, constituting a flagrant violation under international law and a major obstacle to the vision of two States living side-by-side in peace and security, within internationally recognized borders."³

A Changed International Context

It is doubtful whether the new U.S. administration will be ready to condemn settlement activity in such a clear manner at the UN level. By appointing his son-in-law Jared Kushner, an Orthodox Jew and open supporter of Israeli settlements, to the position of special advisor for the Middle

CHECK.punkt

East, President Trump has antagonized the Palestinian leadership and EU decision-makers alike. More worrying still, during his election campaign Donald J. Trump announced that he would move the U.S. embassy to Jerusalem — an announcement that has, however, not seen any concrete follow-up so far. Trump also voiced understanding, if not outright support, for the Israeli government's push to build new settlements, thereby seemingly reversing a decades-old U.S. policy on the issue that consisted of condemning settlements as illegal according to international law. He even publicly put the two-state solution into question.

Given that the U.S. government is not prepared to advance peace in the Middle East, it is crucial that the EU readies itself to fill the void. I will briefly outline the current EU policy framework for Israel and the Palestinians, and the approach that the EU is currently taking in its bilateral relations with both sides. I will then outline elements of a more coherent and progressive EU approach toward Israel and Palestine — an approach that can actively contribute to ending the occupation.

2. EU Policy Framework

The EU is ideally placed to play a positive role in helping Israel and the Palestinians to find a peaceful solution to the conflict. As the main international donor to the Palestinians and the main trading partner for Israel, the EU has leverage over both actors. Since signing an Association Agreement in 2000, the EU and Israel have deepened their political and economic relations considerably. In the framework of the European Neighbourhood Policy (ENP), in 2005 the two parties agreed upon an Action Plan, which aims to integrate Israel into European policies and programs. Ho-

wever, due to Israel's Operation Cast Lead against Hamas in Gaza in December 2008, as well as Israel's continued pro-settlement policy, the EU froze negotiations aimed at upgrading the Action Plan.

The EU's relations with Palestine follow a similar institutional pattern, including an Interim Association Agreement and an ENP Action Plan, adopted in 2013. One of the main objectives is to support the PA in building up the institutions of a future democratic, independent and viable Palestinian state. Another key objective is to alleviate the negative consequences of the Israeli occupation for the socioeconomic development in the OPT. The EU is the most important donor for Palestinians living in the OPT and neighboring countries, and, together with bilateral contributions by EU member states, by far the largest contributor. EU financial assistance includes budget support for the PA, humanitarian aid and development programs, mainly channeled through UN organizations (i.e., OCHA, WFP, UNDP, UNICEF), the International Committee of the Red Cross, NGOs (i.e., CARE, NRC) and civil society. In addition, the EU also funds the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) with its exclusive regional mandate to support Palestinian refugees.

The EU policy framework for relations with Israel and Palestine is generally in line with UN resolutions. The EU supported the Oslo peace process that was aimed at achieving a peace treaty based on UNSC Resolutions 242 and 338. At present, the EU remains engaged in the Middle East peace process as a member of the Middle East Quartet, working toward a two-state solution based on the 2003 Roadmap for Peace. Equally in line with UN resolutions, the EU regards Israel as an occupying power with certain obligations vis-à-vis the occupied people.

3. EU Approach Toward the Occupation

The EU differentiates between the State of Israel within its internationally recognized borders, and Israeli settlements in the OPT. In practice, this means that the EU excludes entities located in settlements from bilateral agreements such as its HORIZON 2020 research program and its free trade agreement with Israel. With regard to the latter, in July 2013 the EU issued new regulations under which no Israeli body that operates or has links beyond the Green Line can receive EU funding or have any cooperation with the EU.

Furthermore, in November 2015 the European Commission issued an interpretative notice on the correct labelling of Israeli settlement products. According to those guidelines, certain types of products originating from settlements must be labelled accordingly, e.g., as “product from the West Bank (Israeli settlement).” The aim of this policy of “differentiation” between Israel and the OPT is to ensure that settlement products do not receive preferential access to the European market in the same way as do products from Israel.

In reaction to the European Commission’s attempt at clarifying the existing EU legislation on the settlements, the Israeli government launched a campaign that branded EU policy anti-Semitic, conjuring historic images of boycotts of Jews and Jewish products. It took a face-to-face meeting between Netanyahu and Mogherini, in which the high representative assured the prime minister that the EU is not in any way “boycotting” products from Israel and the OPT, to end the diplomatic crisis.

Humanitarian aid is another contentious area of EU-Israel relations. Israel claims responsibility for issuing building permits

to Palestinians and international donors such as the EU. The problem is that Israel rarely provides building permits at all, including for urgently needed humanitarian structures. As such, reportedly only one permit for Palestinian housing construction in Area C was approved in 2014 and seven in 2015. In the first half of 2016, only two construction permits were issued in response to applications by Palestinians.⁴

To ensure that humanitarian aid reaches Palestinians in the OPT, the EU provides funding for humanitarian structures for which there are no building permits. The result is a cat-and-mouse game, where the EU builds structures while warning its Israeli counterparts not to destroy them, and the Israeli government periodically confiscates or destroys those same structures, often seemingly in response to EU actions it considers to be hostile. In 2016, the Israeli government demolished twice the number of Palestinian structures as it did in 2015 (1,092 vs. 547), a record since the UN Office for the Coordination of Humanitarian Affairs (OCHA) began collecting this information. Seventeen percent of the structures demolished in 2016 were funded by the EU or its member states, amounting to approximately €550,000.

4. Building a Progressive Agenda for Ending the Occupation

Ending the occupation means ending the conflict between Israelis and Palestinians. Eventually, only the parties to the conflict themselves can achieve this objective. Nevertheless, external actors can incentivize Israelis and Palestinians to come to the negotiating table or facilitate discussions once they have started. Unlike its predecessors, the Trump administration seems neither willing nor able to play that role.

Russia has recently demonstrated that it has sufficient influence to convene the PA and Hamas in an effort to overcome intra-Palestinian division, but Israelis do not entirely trust the country. To date, all announcements of a possible unity government, most recently in Moscow in January 2017, have led to few visible results.

A More Prominent Role for the EU in International Peace Initiatives

Therefore, the EU remains a key international actor, with leverage over the parties to the conflict and the diplomatic capacity and experience to broker successful agreements, as demonstrated by its leading role in international negotiations with Iran over its nuclear program. I think it is time that the EU, represented by High Representative Mogherini, assumed a leading role in the Middle East Quartet, if Israel and the Palestinians agree. This way it could fill the void left by the U.S., while working to keep the U.S. on board. The objective should be to turn the Quartet into the central platform for discussing initiatives by all relevant stakeholders in the conflict.

For instance, the EU should take up the recommendations that emanated from the Paris Peace Conference of January 15, 2017, and discuss them with Quartet members and regional stakeholders. Only by actively engaging the major regional powers can the Quartet become a useful vehicle for finding an inclusive and sustainable solution to the conflict. In this respect, the Arab League's Arab Peace Initiative, although rejected by Israel in its current form, remains a valid framework for negotiations, as it has the buy-in of the great majority of Arab leaders. The EU, through the Quartet, should make an effort to revitalize this initiative and try to reconcile it with Israel's and the PA's interests and positions.

We should not be naïve, however. It is unlikely that the current generation of politicians in Israel and Palestine will agree any time soon on a peaceful solution to the Israeli-Palestinian conflict and an end to the occupation — at least not if we continue to engage them in the same way as in the past, by offering positive incentives to Israeli and the PA without reducing those incentives when there are negative developments.

More Coherence in EU Policy Toward Israel and Palestine

What would a new EU approach look like? I believe that it is important for the EU to be seen as a credible partner and facilitator of dialogue by both sides. A coherent policy of differentiation between Israel and the settlements, if applied in all aspects of EU-Israel relations, would send a clear sign to Israel and the international community that the occupation has concrete economic and political costs. So far, however, the EU's labelling requirements have not been applied equally across the EU. The reason is not a lack of clarity but a lack of will on the part of the member states.

One way to address this problem is for member states to formally agree, through EU Council Conclusions, that they must "distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967,"⁵ a formula to which they have already signed up in UNSC Resolution 2334 of December 2016.

The EU must also insist vis-à-vis the Israeli government that its representatives have access to the Gaza Strip, including all members of the European Parliament. This is crucial, for without access, how are MEPs like myself supposed to scrutinize how EU taxpayers' money is spent on the ground?

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Furthermore, the member states should be coherent when it comes to decisions about further integrating Israel into the EU. In my opinion, without a revocation of the above-mentioned "regularization law", a freeze in settlement activity and access to Gaza for EU representatives, it would be unwise for the EU to hold an EU-Israel Association Council. Equally important, the EU should make further integration conditional on human rights and democracy benchmarks. In this regard, the EU must monitor closely the implementation of the so-called 'NGO Law' adopted by the Knesset in July 2016, which imposes on Israeli NGOs reporting requirements that, according to the European External Action Service, "go beyond the legitimate need for transparency and seem aimed at constraining the activities of these civil society organizations working in Israel."⁶

Enhanced EU Democracy Assistance

The EU should invest more in identifying and boosting the capacity of future generations of Israeli and Palestinian decision-makers. It can do so by focusing more attention and financial resources on democracy assistance and peace-building programs in Israel and Palestine. Especially in the current political climate, which is characterized by a high degree of political polarization (in Israel) and authoritarian tendencies (both in Gaza and the West Bank), there is an urgent need for trust-building initiatives.

The focus of EU financial assistance should shift from giving unconditional subsidies to the PA, which has made little progress in terms of guaranteeing its "citizens" democratic freedoms and human rights, to strengthening civil and political society in Gaza and the West Bank. For instance, if member states agree, the European Com-

mission could boost existing civic education and de-radicalization programs and fund more initiatives aimed at facilitating people-to-people contacts in the political, cultural and economic sectors among Palestinians as well as between Israelis and Palestinians.

Moreover, the EU should launch a new generation of policy dialogue processes involving economic, political and civil society stakeholders from Israel and the OPT in an effort to find joint solutions to common challenges. Where international peace talks are not likely to produce a breakthrough in the near future, "sectoral" dialogue focusing on day-to-day issues may produce concrete results for all parties involved. The EU via its delegation and representation in Israel and the OPT can provide a platform for such policy-level dialogues. This approach is not only cheaper than traditional development assistance, it also has the additional benefit of providing the EU representatives on the ground with better insight into who does what in both societies.

While not following this approach to the letter, the Jordan River Peace Park is a good example of an effective trust-building exercise that has led to concrete results on the ground. The project was initiated by Friends of the Earth Middle East, a trilateral organization that brings together Jordanian, Palestinian and Israeli environmentalists promoting cooperative efforts to protect their countries' environmental heritage. It was endorsed by the mayors and communities on both sides of the Jordan River who work together toward rehabilitating the Jordan River. The Group of Socialists and Democrats (S&D) in the European Parliament have been promoting this project actively in 2016, following up on a European Parliament resolution of Sept. 9, 2010.

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Finally, the EU should invest more in strengthening progressive political forces in Israel and Palestine. Thanks to its facilitating role in the aforementioned policy processes, the EU local offices could better identify those public institutions, civil society actors and business associations that want to play a constructive role, and support those actors more actively. In doing so, the EU should stick to the two-state solution as the only viable framework for overcoming the occupation. The Friedrich-Ebert-Stiftung and other democracy-support organizations present in the region stand ready to assist the EU in building the capacities of progressive and constructive forces advocating a peaceful solution to the Middle East conflict.

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Endnotes

- ¹ https://eeas.europa.eu/delegations/world-trade-organization-wto/363/remarks-by-eu-highrepresentative-federica-mogherini-ahead-of-her-meeting-with-prime-minister-of-israel-benjaminnetanyahu_en
- ² <http://www.europarl.europa.eu/sides/get-Doc.do?type=TA&reference=P8-TA-2014-0103&language=EN&ring=P8-RC-2014-0277>
- ³ <https://www.un.org/press/en/2016/sc12657.doc.htm>
- ⁴ Out of a total number of 37 approved requests that also included permits issued at the request of the Israeli Civil Administration for lots in the al-Jabal West site, where it plans to forcibly move Bedouin communities currently living east of Maale Adumim.
- ⁵ <https://www.un.org/webcast/pdfs/SRES2334-2016.pdf>
- ⁶ https://eeas.europa.eu/headquarters/headquarters-homepage/7228/statement-spokesperson-passage-new-ngo-law-israeli-knesset_en

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