

## **Moving Beyond the MEPP: How a New European Neighbourhood Policy can Save the Two State Solution**

Nov 28, 2016 by [Hugh Lovatt](#)

The EU's European Neighbourhood Policy (ENP) was designed to support a Middle East Peace Process (MEPP) that has now broken down. With the political horizons for a peace agreement having disappeared and Israel's occupation entering its fiftieth year, the current ENP model looks to be at best outdated, at worst counter-productive. In the context of a vanishing two state solution, the ENP has ceased to be a transformative tool for conflict resolution. Instead, it has become a means of perpetuating what would otherwise be an unsustainable status quo resulting from Israel's prolonged occupation.

The absence of a viable diplomatic route at present and a potential US policy break under President Trump does not necessarily mean the two state solution is dead and buried, or that the EU should abdicate the political role it plays in supporting Israeli-Palestinian peace making efforts. Quite the opposite. A new ENP must be geared towards preserving the viability of two states as a future solution by countering Israel's creeping annexation of Palestinian Territories, containing potentially negative actions emanating from the Trump White House that undermine long-held international policy positions, and defending Palestinian rights.

In responding to Donald Trump's election on a platform of 'America First', HR/VP Federica Mogherini described how 'an increasing demand of Europe from our neighbours and from our partners worldwide' was turning the EU into a superpower.<sup>1</sup> If this is the role that the EU aspires to, then it will have to demonstrate its willingness to effectively deploy the leverage at its disposal through the ENP to advance its foreign policy objectives. In doing so, it should remember that its main strength stems above all from its soft/normative power, rather than as a provider of security. The EU will have to decide whether it is prepared to actively defend its values and beliefs, even if this means being at odds with the US. The Israeli/Palestinian conflict is one area where the EU will be most tested in this regard under a Trump presidency.

### **Responding to today's challenges**

The ENP has increased political association and economic integration between the EU and partner countries along the southern Mediterranean. In the Israeli-Palestinian case, the ENP promised both sides deepening political and economic ties in return for progress towards a negotiated agreement based on a two state solution.

Launched in 2004 at the height of the Oslo Peace Process, the ENP offered the EU increased political weight as a diplomatic actor within the conflict, providing it a unique and potential powerful instrument in support of international peace-making efforts. Within this context, the ENP was shaped by the three following considerations:

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<sup>1</sup> "Mogherini calls EU a peace 'superpower', in wake of Trump win", EurActiv, 10 November 2016, available at <https://www.euractiv.com/section/security/news/mogherini-calls-eu-a-peace-superpower-in-wake-of-trump-win/>

- That a two state solution based on the establishment of a sovereign Palestinian state on the 1967 Green Line remains the desired outcome shared by both Israelis and Palestinians, as well as the international community;
- That the US will continue to play a central role in shepherding the MEPP towards a two state solution;
- That Member States will empower the EEAS/European Commission and EU instruments to promote joint action on the Israeli-Palestinian file.

Within the context of a functioning MEPP, this approach made sense – even if its results proved mixed. While the ENP has done much to prepare Palestinian institutions for statehood, it did little to incentives de-occupation by Israel. It also accentuated the power asymmetry that exists between the two parties, by offering a full Association Agreement to Israel, and only an Interim Association Agreement on Trade and Cooperation to the PLO. Today, though, the three primary considerations upon which the ENP is based (shared commitment to a two state solution by the parties; US engagement and EU unity of action) may hold less true.

The government of Israeli Prime Minister Benjamin Netanyahu and the increasingly annexationist discourse within Israeli politics continue to cast doubt on Israel's commitment to a two state solution in line with international expectations. At the same time, the strengthening of Israeli settlements in occupied Palestinian territory is undermining the viability of a two state solution. All of this calls into question the basis for the EU's relation with Israel. Namely, whether the EU's relationship with Israel can still be justified based on integration in exchange for nonexistence progress toward a currently unattainable two state solution.

The election of Donald Trump will pose further challenges for the EU and its ENP. While it is too early to tell how a Trump Administration will approach the Israeli-Palestinian file, it is possible that it will place less of an emphasis on the peace process in favour of a more transactional relationship with Israel. A new US government could also turn a blind eye to greater Israeli settlement building, undermine long held international policy positions, and give effect to Congressional legislation countering European measures on Israeli settlements.<sup>2</sup> While Donald Trump may be tempted to make 'the deal that can't be made' before he leaves the White House, the short term at least is more likely to be marked by US regression.

Closer to home, the crisis of legitimacy facing the EU has seen its powers flowing away from Brussels to Member State capitals who are increasingly promoting their own political and economic ties with Israel in parallel to – or sometimes even divergent from – those of the EU. Far from having one common EU foreign policy toward the conflict, it seems like there are at times 29 competing foreign policies (that is, those of the 28 member states and the EEAS/European Commission). Trump's description of a more transactional approach to foreign policy may also serve as a model for some, eroding still further the power of EU institutions to forge a more robust and assertive common policy.

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<sup>2</sup> For a flavour of what measures the US government could take in support of the settlements, and against EU actions, see Lara Friedman's round-up of Congressional legislation in support of the settlements, available at <https://peacenow.org/issue.php?cat=legislative-round-ups#.WBHc4i0rK01>

Any discussion on revising the ENP towards Israel/Palestine will consequently have to address the following additional points:

- How EU policy and bilateral engagement should interact with those of member states, and how to confront the challenge of less European cohesiveness;
- How the ENP should relate to the EU's other policy positions and instruments toward the Israeli-Palestinian conflict, and its obligations under international law;
- The kind of future relation that the EU wants to have with both sides, the values that it wishes to promote, and how to avoid a gap between discourse and practice; and
- The political role and added value that the EU sees itself contributing within international efforts to solve the long-running conflict, and how to harness the ENP as an effective foreign policy instruments.

### **Resisting an 'ENP Lite' for Israel**

Indication of what possible direction future EU-Israel relations could take can be found in the 2015 ENP Review which called for continued economic integration of partner countries into the EU internal market with the goal of creating an economic area between the EU and ENP partners. The review also set stability as a political priority and expressed EU readiness 'to discuss the possibility to jointly set new partnership priorities, which would focus each relationship more clearly on commonly identified shared interests'.<sup>3</sup> In the context of the EU-Egypt Action Plan, for example, this is leading to the marginalisation of human rights in favour of socio-economic development.

In the context of a dysfunctional Middle East Peace Process in which positive US leadership is absent, the EU impulse could be to prioritise bilateral relations with Israel while attempting to maintain an even keel in the Palestinian territories during the interregnum – effectively parking the Palestinian issue until further notice. More narrowly defining EU-Israel interests would also be Israel's clear preference, vindicating its efforts to cherry-pick the beneficial aspects of its relations with the EU (such as trade and R&D) while freezing those parts that it finds less appealing, such as dialogue on human rights within the OPTs and the peace process. A more isolationist approach that puts economics ahead of politics may also not be that dissimilar from US policy under President Trump, as well as that of a post-Brexit UK.

A decision by the EU to similarly prioritise its economic relations with Israel at the expense of political engagement on the Palestinian file would cost what leverage it currently has through its current ENP. It would also remove one of the last brakes on a more full throttled Israeli settlement activity in the West Bank and East Jerusalem, represent the abandonment of the EU's quest for a two state solution, and further jeopardise Palestinian rights.

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<sup>3</sup> "Joint Communication to the European Parliament, the Council, The European Economic and Social Committee and the Committee for the Regions", p.8, European Commission, 18 November 2015, available at [https://eeas.europa.eu/enp/documents/2015/151118\\_joint-communication\\_review-of-the-enp\\_en.pdf](https://eeas.europa.eu/enp/documents/2015/151118_joint-communication_review-of-the-enp_en.pdf)

Reducing the EU's political involvement on this issue would also risk greater instability in the OPTs. The occupied territories may look relatively stable at the moment when compared to the violence shaking Israel's neighbours. But given domestic and regional dynamics it would be wrong to assume that stability can be sustained over the long term absent a genuine political track. Nor can EU-Israel relations be fully ring-fenced from violent spill over relating to the latter's conflict with the Palestinians, whether in Gaza, the West Bank or East Jerusalem.

Moreover, Israel's creeping annexation of Palestinian territory and its erasing of the 1967 Green Line has meant that it is increasingly indistinguishable from its settlements. As a result, deepening EU-Israel economic relations will be ever more exposed to the potential illegalities arising from Israel's internationally wrongful practices in the OPTs, including its settlement activities and violation of Palestinian rights in Area C.

### **Dispelling the myth of unconditional incentives**

The EU-Israel Action Plan – which builds on their 1995 Association Agreement – is an important instrument in the EU's ENP toolbox. Although it is meant to be updated at regular intervals this process has been frozen since Israel's 2008-2009 war with Hamas in Gaza. The high loss of life at that time amongst Palestinian civilians caused considerable consternation amongst European publics and led the EU to declare, during the 9th EU-Israel Association Council in June 2009, that henceforward any 'upgrade must be based on shared values, and particularly on [...] the respect of international humanitarian law; the upgrade needs also to be seen in the context of common [...] objectives, including the resolution of the Israeli-Palestinian conflict through the implementation of the two-state solution.'<sup>4</sup> Despite a continued commitment by Member States to maintain this freeze, the EEAS has announced its intention of resuming talks with Israel to update the ENP Action Plan. A first step in this direction is set to take place during the next EU-Israel Association Council meeting, tentatively scheduled for January 2017, which will explore future partnership priorities, in line with the recommendations of the 2015 ENP review.

On one level, the impulse behind continued efforts to develop EU-Israel bilateral relations stems from shared economic interests. On another though, EU calculations are anchored in an unshaken belief that incentives can moderate Israeli actions in the OPTs and move it down the path of peace with its Palestinians neighbours. In return for diplomatic progress towards a two state solution, the ENP offered Israel 'the perspective of moving beyond cooperation to a significant degree of integration through a stake in the EU's Internal Market and the possibility for Israel to participate progressively in key aspects of EU policies and programmes.'<sup>5</sup>

These carrots were meant to be conditioned on Israeli diplomatic progress with the Palestinians. But in reality there has been a gap between EU discourse and practice. In June 2008, for example, the EU offered an unconditional upgrade in relations with Israel despite

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<sup>4</sup>'Eleventh Meeting of the EU-Israel Association Council', p.2, Council of the European Union, 24 July 2012, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/132046.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132046.pdf)

<sup>5</sup> Delegation of the European Union to Israel website, last accessed 11 November 2016, available at [http://eeas.europa.eu/delegations/israel/eu\\_israel/political\\_relations/political\\_framework/index\\_en.htm](http://eeas.europa.eu/delegations/israel/eu_israel/political_relations/political_framework/index_en.htm)

its deep concerns over accelerated settlement expansion. And despite the formal freeze in upgrades to the Action Plan put in place in 2009, the EU-Israel Association Council continues to get as much juice as possible out of the current 2005 Action Plan. In July 2012, for instance, the EU-Israel Association Council identified a list of 60 areas where bilateral relations could be unconditionally strengthened.<sup>6</sup> This has not only consolidated Israel's position as one of the most integrated countries outside of Europe, but also removed the last trace of conditionality in its relations with the EU.

### **Stopping incentives for prolonged occupation**

Allowing for an unconditional deepening of relations with Israel has not translated into a less maximalist Israeli position towards the Palestinians and the occupied territories. As the EU itself has recognised, Israel has made limited progress on implementing the 2005 Action Plan, particularly when it comes to respect for human rights in the occupied territories and in relation to minorities. During its dialogue with the EU, Israel continues to push back against the applicability of international humanitarian law (IHL) and international human rights (IHR) in relation to the OPTs.<sup>7</sup>

Unconditional incentives has only rewarded Israeli intransigence towards the Palestinians and nurtured its belief that the conflict can be managed and the settlement enterprise expanded without incurring any tangible cost to its relations with the EU. Throwing more unconditional incentives on Israel's table would represent a doubling down on a model that has been unable to deliver political progress, replacing the EU's 'more for more' with 'more for less'.

The proliferation of unconditional incentives has taught Israelis that they need not make concessions in order to obtain upgrades that they will in any case receive within the current scope of their bilateral relations with the EU. More fundamentally, a commitment to unconditional incentives, despite any evidence that these have worked, has been used by the EU as a means of avoiding a serious discussion on conditionality, disincentives, and the need to spend political capital in creating the conditions necessary for a meaningful peace process.

Even if the EU were to once again condition upgrades on political deliverables from Israel, the offer of incentives in exchange for progress on the Palestinian file can work only if Israelis believe they will gain more through an agreement with the Palestinians and an end of conflict than through continuation of the status quo. European officials have struggled to identify big ticket items capable of moving Israelis towards an end to occupation – short of EU membership. The EU has tried to make de-occupation more appetizing for Israelis offering them a Special Privileged Partnership (SPP) in December 2013, predicated on a peace agreement. This was followed by the Council's June 2016 call for an additional interim package of incentives to act as stepping-stones towards an agreement.

The EU's failure to unpack its incentive packages and engage with Israeli opinion makers to sell these has led to a deafening silence from Israel. For example, few within the Knesset had heard about the SPP after it was first proposed, and those that did thought it was European

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<sup>6</sup> 'Eleventh Meeting of the EU-Israel Association Council', Council of the European Union, 24 July 2012, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/132046.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132046.pdf)

<sup>7</sup> "Implementation of the European Neighbourhood Policy in Israel: Progress in 2014 and recommendations for actions", 25 April 2015, available at [https://eeas.europa.eu/enp/pdf/2015/israel-enp-report-2015\\_en.pdf](https://eeas.europa.eu/enp/pdf/2015/israel-enp-report-2015_en.pdf)

bribe to give up the settlements.<sup>8</sup> These trends are reflected at the public level, as ECFR polling in March 2014 found, a majority of Israeli Jews said that the SPP offer would not affect their readiness to support a peace agreement with the Palestinians.<sup>9</sup>

### Getting the incentives/disincentive structure right

The EU needs to show that it is willing to play a political role by developing a comprehensive package that shows the incentives linked to a peace deal and the disincentives of maintaining the status quo. Whether a new Action Plan for Israel increases or decreases the chances of sustaining the viability of a two state solution depends on the incentives/disincentive structure and enforcement mechanisms that are put in place. In doing so, the EU must ensure that its relations with Israel do not undermine its policy positions or domestic legislation.

- **Performance driven upgrades:** In order to generate the most political return on EU investments incentives should be conditioned on Israel demonstrating genuine progress toward a two state solution. The EU should link their provision to clear benchmarks on progress on the Palestinian file that cannot be rolled back at a later date, including furthering Palestinian economic sovereignty, transferring territory in Area C to Palestinian control, and ending Israel's siege on Gaza.<sup>10</sup> The effectiveness of such a mechanism will largely depend on EU member state buy-in and their willingness not to undermine the ENP through their own bilateral relations with Israel. The EEAS will also have to show that it is willing to enforce these conditions.
- **Insulating bilateral relations from Israel's occupation:** According to the United Nations, through its Office of the High Commissioner of Human Rights, Israeli settlements are understood 'to encompass all physical and non-physical structures and processes that constitute, enable and support the establishment, expansion and maintenance of Israeli residential communities beyond the Green Line of 1949 in the Occupied Palestinian Territory.'<sup>11</sup> In order to ensure that the EU does not facilitate illegal Israeli activities in the occupied territories that undermine the viability of a two state solution, it must continue to ensure that its agreements with Israel exclude settlement-related entities and activities.
- **Ensuring respect for international law:** The EU must ensure that its relations with Israel comply with their obligations under international law and domestic European legislation, and do not undermine the rights of Palestinians. The EU should also do more to raise awareness of the legal, financial and reputational risks for European businesses involved in settlement related activities. To this end, EU delegations in Jerusalem and Member States' embassies should be empowered to work effectively on business and human rights issues, including supporting human rights defenders and those working on corporate accountability.

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<sup>8</sup> Interviews conducted by the author with Israeli Knesset Members, Jerusalem, March 2014.

<sup>9</sup> Survey of Israeli public opinion by the Israeli Democracy Index commissioned by ECFR, 30-31 March 2014.

<sup>10</sup> c.f. "EU Consultation: 'Towards a new European Neighbourhood Policy', p. 22, Heinrich-Böll-Stiftung [https://eu.boell.org/sites/default/files/towards\\_a\\_new\\_european\\_neighbourhood\\_policy\\_fin.pdf](https://eu.boell.org/sites/default/files/towards_a_new_european_neighbourhood_policy_fin.pdf)

<sup>11</sup> "Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory", UN Human Rights Office of the High Commissioner, 6 June 2014, available at <http://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>

- **Pushing back against attempts to conflate Israel and its settlements:** Since the EU does not recognize the legality of Israeli settlements in the occupied territories it must continue to make the necessary provisions in its agreements with Israel to explicitly and unequivocally exclude Israeli settlement-based entities and activities in order to protect the EU legal order from the harmful effects of Israel's unlawful international actions. The next Association Council should be an opportunity for the EU to explicitly indicate the full non-recognition of Israeli settlements and respect for international obligations vis-vis the occupied territories. This should not be treated as conditionality, but rather legal necessity.
- **Leveraging the EU's normative power:** Holding fast to the legal necessity that requires Israel to enforce its own internal differentiation between Green Line Israel and the settlements can translate into EU normative power. Since the ENP requires the approximating of Israeli legislation to that of the EU as a way of opening up the EU's Internal Market, Israel can only be integrated with and have access to Europe if it complies with EU regulations, values, and policies (including respect for the 1967 Green Line and non-recognition of the settlements). Failure to do so would risk Israel losing access to those aspects of its relations with the EU that it values.
- **Creating a moment of choice for Israel:** The prospect of losing incentives as a result of the Israeli government's ideological commitment to the settlement enterprise can in itself become a disincentive. As ECFR's recent report on "EU differentiation and the push for peace in Israel-Palestine" described, ensuring the correct functioning of EU law "helps to reveal the contradiction, and indeed the difficulty, of maintaining the settlements and deepening (or simply continuing) relations with Europe."<sup>12</sup> This happened for instance in its Horizon 2020 agreement with Israel that excluded settlements entities and activities, and fed an important conversation within Israel on the costs that continued occupation will have on its bilateral relations.

### Value for money?

While EU-Israel trade ties have prospered, the thrust of the EU's financial engagement with the Palestinians has been limited to aid given the restrictions on developing EU-Palestinian economic ties under Israeli occupation. As a means of furthering Palestinian state building in an interim period leading to a final peace agreement, this approach made sense. In the current diplomatic vacuum though, there is a legitimate question as to the continued effectiveness (and wisdom) of sustaining such high levels of commitment in what has essentially become an exercise in perpetuating Israel's occupation, or simply buying Palestinian calm while the EU grows its economic interests with Israel.

This is not to say EU aid has not benefitted Palestinians. Between 2007 and 2013, the EU and its Member States contributed some €3 billion in support for vulnerable families, as well as

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<sup>12</sup> Hugh Lovatt, "EU differentiation and the push for peace in Israel-Palestine", European Council on Foreign Relations, 31 October 2016, available at [www.ecfr.eu/publications/summary/eu\\_differentiation\\_and\\_the\\_push\\_for\\_peace\\_in\\_israel\\_palestine7163](http://www.ecfr.eu/publications/summary/eu_differentiation_and_the_push_for_peace_in_israel_palestine7163)

health and education services in Palestinian areas.<sup>13</sup> In co-operation with the European Commission's institution-building programmes the EU's EUPOL COPPS mission has contributed to strengthening Palestinian law and order.<sup>14</sup> Most significantly, the EU has provided significant amounts of financial aid to the Palestinian Authority in order to build up the institutions of a future democratic, independent and viable Palestinian State.<sup>15</sup> Thanks to this, the IMF and World Bank have both declared Palestinian institutions to be 'above the threshold for a functioning state'.<sup>16</sup>

What progress EU aid has delivered is, however, in danger of being undone. As the World Bank has warned, Israel's prolonged occupation 'risks putting in jeopardy the substantial progress made in building institutions'.<sup>17</sup> The West Bank's Area C is already a microcosm of this, where an intensifying coercive environment for Palestinians has caused the destruction or confiscation of approximately 180 EU funded humanitarian structures worth €329,000 between 2009 and 2015.<sup>18</sup> If the EU is not prepared to defend its own investments, Palestinians can legitimately ask how Brussels could ever defend their rights.

The 2015 review conducted by the European Commission placed stabilisation as the main political priority in a new ENP.<sup>19</sup> But in the OPTs, promoting stability has come at the expense of change. In the current diplomatic vacuum with no prospect of reaching a two state solution, it is particularly difficult to see how EU financial contributions can amount to anything more than subsidising an occupation that remains relatively cost free for Israel. In the absence of a realistic political objective to push for, this raises the real question as to whether the EU can continue to justify such large sums of political and financial investment in Palestinian state building when it is neither prepared to recognise this state, nor use its leverage with Israel to promote Palestinian sovereignty.

There is no doubt that channelling support through the PA has played an important part in promoting stability and security in the occupied territories. But security cooperation and financial support cannot indefinitely contain the instability produced by the negative dynamics arising from Israel's prolonged occupation nor forever buttress a Palestinian

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<sup>13</sup> "EU 'must stop paying Gaza officials' – auditors", BBC, 11 December 2013, available at <http://www.bbc.co.uk/news/world-europe-25330437>

<sup>14</sup> EUPOL COPPS website, last accessed on 11 November 2016, available at <http://eupolcops.eu/en/content/what-eupol-cops>

<sup>15</sup> Website of the Office of the European Union Representative (West Bank and Gaza Strip, UNRWA), 16 May 2016 available at [https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/1886/about-the-eu-delegation-to-west-bank-and-gaza-strip-unrwa\\_en](https://eeas.europa.eu/delegations/palestine-occupied-palestinian-territory-west-bank-and-gaza-strip/1886/about-the-eu-delegation-to-west-bank-and-gaza-strip-unrwa_en)

<sup>16</sup> "Palestinian Authority above threshold of functioning state" Norwegian Mission to the EU, 13 April 2011, available at <http://www.eu-norway.org/news1/Palestinian-Authority-above-threshold-of-functioning-state/#.WCcyLy2LRhE>.

<sup>17</sup> "The Underpinnings of the Future Palestinian State: Sustainable Growth and Institutions", World Bank, 21 September 2010, available at <http://siteresources.worldbank.org/INTWESTBANKGAZA/Resources/WorldBankSep2010AHLReport.pdf>

<sup>18</sup> "Answer given by Vice-President Mogherini on behalf of the Commission", the European Parliament, available at <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-002290&language=CS>.

<sup>19</sup> "Review of the European Neighbourhood Policy (ENP): stronger partnerships for a stronger neighbourhood", European Commission, 18 November 2015, available at [http://europa.eu/rapid/press-release\\_IP-15-6121\\_en.htm](http://europa.eu/rapid/press-release_IP-15-6121_en.htm)

Authority that is seen by half of Palestinians as a burden.<sup>20</sup> Continuing to promote an unsustainable stability through a new ENP would mean EU Member States will have ‘to choose between the diminishing returns of continuing to bail out a PA that has exhausted its historical purpose, with no political or developmental logic to such aid; or witnessing its collapse, with the unpredictable consequences this might entail.’<sup>21</sup>

### **Pushing Palestinian economic sovereignty**

Amidst the current diplomatic deadlock, the EU can promote Palestinian economic sovereignty. But action on the economic front cannot become a substitute for political peace. Rather, dealing with the economics of the conflict must be seen as part of its political solution by preventing the deterioration of the PA’s effectiveness and promoting a more vibrant Palestinian economy.<sup>22</sup>

The EU has long held the view that trade can offer a potential source of economic growth and stability for Palestine. However, so long as Israel’s occupation persists, prospects for furthering Palestinian integration will remain limited. The Paris Protocol, which has regulated Palestinian-Israeli economic ties since 1994, combined with Israeli restrictions in the occupied territories, has resulted in anaemic levels of Palestinian exports to the EU, which stood at €14 million in 2015.<sup>23</sup> This number is even starker when compared to over €13 billion worth of annual EU imports from Israel<sup>24</sup> and approximately €230 million from the settlements.<sup>25</sup> European Foreign Direct Investments flows into Palestine remain, likewise, virtually non-existent.

Within the current situation of occupation, a new ENP can promote Palestinian economic sovereignty by supporting enhanced Palestinian fiscal and economic independence. This will require shifting international aid from direct support for the PA budget towards economic development. Alongside this, the EU must use its leverage with Israel to ease restrictions on Palestinian access to Area C which inhibit Palestinian economic development. The EU could also explore prospects for reforming the Paris Protocol and step up its support for Palestinian accession to the WTO.

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<sup>20</sup> ‘Palestinian Public Opinion Poll No (61)’, Palestinian Center for Policy and Survey Research, 27 September 2016, available at <http://www.pcpsr.org/en/node/668>

<sup>21</sup> Mattia Toaldo, “Reforming Israeli-Palestinian Economic Relations: Pivoting to Palestinian Economic Sovereignty”, p.3, European Council on Foreign Relations, June 2013.

<sup>22</sup> C.f. Mattia Toaldo, “Reforming Israeli-Palestinian Economic Relations: Pivoting to Palestinian Economic Sovereignty”, European Council on Foreign Relations, June 2013.

<sup>23</sup> “European Union, Trade in goods with Occupied Palestinian Territory”, European Commission, 4 November 2016, available at [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113382.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113382.pdf)

<sup>24</sup> “European Union, Trade in goods with Occupied Palestinian Territory”, European Commission, 4 November 2016, available at [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_113382.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113382.pdf)

<sup>25</sup> The only figures available on settlement trade exports are those provided by the World Bank for 2012.

Although the figure given is for Europe, it is likely to be similar to that of settlement trade to the EU block, see “Fiscal Crisis, Economic Prospects: The Imperative for Economic Cohesion in the Palestinian Territories, World Bank, 23 September 2012, available at

<http://documents.worldbank.org/curated/en/350371468141891355/pdf/760230WP0GZ0AH02Box374357B00PUBLIC0.pdf>

## **Tackling the political context**

As the then European Commissioner for Enlargement Stefan Füle remarked in 2011, the EU has tended to engage in ‘the kind of short termism that makes the longer term ever more difficult to build.’<sup>26</sup> In this instance, technical fixes cannot by themselves address the broader political context that fuels the cycles of violence and instability in the territories. But the EU’s preference has so far been to avoid tackling the political obstacles head on.

To achieve sustainable change, the EU will need to address the political roots of the current drivers of instability, even if this involves making politically unappealing choices in the short term. The EU has been clear that change among ENP partner countries must be home-grown and not imposed from the outside. Getting the Palestinian house in order must indeed be a discussion led by Palestinians. But it should be remembered that the Action Plan cuts both ways and requires supportive EU action, especially in a context of occupation in which Palestinian ability to act is often undermined by Israel.

The EU has continued to side-line questions of democracy in favour of state building and stability through maintenance of the status quo. When democratic processes have produced unexpected and unwanted outcomes, the shallowness of the EU’s support for democratic processes has quickly become apparent.<sup>27</sup> In the Palestinian context, such an approach has damaged Palestine’s democratic fabric, weakened its institutions, and stored up future instability to be unleashed during a post-Abbas leadership transition.

The EU’s refusal to recognise Hamas’ victory during the 2006 Palestinian legislative elections – widely viewed to have been free and fair – dealt a blow to Palestinian democracy from which it has yet to recover. The political fractures this created at all levels of Palestinian representation along with the ensuing crisis of legitimacy facing Palestinian institutions represent significant challenges in relaunching credible negotiations in the future, containing successive rounds of instability and violence in the present, and solving the crisis in Gaza.

A new European approach must make good on EU promises by providing real and active support for reconciliation, national elections and PLO reform. This should involve revising the Quartet’s pre-conditions by abandoning its demand that Hamas recognise Israel and abide by previous PLO agreements prior to an Israeli-Palestinian peace deal (while standing firm on the demand that it renounce violence); clear and unequivocal European support for a government of national unity that would include Hamas representatives; and pushing Israel to allow Palestinian national elections in East Jerusalem.

## **Broadening the EU Engagement**

Broadening the EU’s engagement should not be restricted to the Palestinian side. Although already contained within the 2005 Action Plan, speaking up for Israeli pluralism and civil

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<sup>26</sup> Stefan Füle quoted in Nathalie Tocci and Jean-Pierre Cassarino, “Rethinking the EU’s Mediterranean Policies”, Istituto Affari Internazionali, March 2011, available at <http://www.iai.it/en/pubblicazioni/rethinking-eus-mediterranean-policies-post-111>

<sup>27</sup> Cf. Nathalie Tocci and Jean-Pierre Cassarino, “Rethinking the EU’s Mediterranean Policies”, Istituto Affari Internazionali, March 2011, available at <http://www.iai.it/en/pubblicazioni/rethinking-eus-mediterranean-policies-post-111>

society (both Palestinian and Jewish) will have to be given greater priority given the increasingly hostile space for political minorities within Israel. Protecting those defending Palestinian rights will also have to extend to within the EU itself, where EU nationals and Palestinian NGOs working on this have been targeted in a campaign thought to be orchestrated by the Israeli government.<sup>28</sup>

But there is a broader point to be made with regards to the EU's engagement. Despite Israel being provided ever deepening ties and being shielded from the full weight of international accountability, political discourse often portrays the EU in a negative light. Although anti-EU sentiment has been cultivated within the ruling coalition as a result of European support for 'anti-occupation' NGOs, it can be found across the political spectrum.

To push back against this, a new ENP should promote greater EU engagement with the leaders of the sub-communities that make up Israeli society and politics to better explain European positions. Establishing a good working relation with ultra-orthodox and national religious communities would also be an asset for the EU when it comes to future peace-making efforts. As one prominent ultra-orthodox commentator described, the ultra-orthodox community represents a potential swing constituency in favour of a final status peace deal: 'people see us as belonging to the right, but those who follow the Torah are pro-peace. There are edicts saying we must exchange territories'.<sup>29</sup>

### Where next?

In the past, the EU has been able to let the US do the heavy lifting, contenting itself to an outrider role. A Trump presidency means that the EU may not have this luxury in the future. Due to its geographical distance and the nature of its engagement, the US will be more able to disengage from the conflict and insulate its relations with Israel. The EU does not have this benefit given its triangular engagement with both sides through the ENP.

Irrespective of the future form they take, the EU's bilateral relations with Israel will continue to be subject to spill over from its conflict with the Palestinians. More constructive political engagement by the EU is therefore in its own interest. Within the context of a Trump presidency and Israeli efforts to win international recognition of the legitimacy of its settlement project, it will be even more important for the EU to stand up in defence of its values and beliefs.

As the 2015 Review reminded, 'the EU is more influential when united in a common approach and communicating a single message'.<sup>30</sup> While there not always a consensus on the Israeli-Palestinian issue, the illegality of Israeli settlements, respect for international law, and

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<sup>28</sup> For background, see for example: Thomas Escritt, "Dutch investigate death threats against Palestinian ICC activist", Reuters, 11 August 2016, available at: <http://uk.reuters.com/article/uk-warcrimes-icc-death-threats-idUKKCN10M1GF>; Amjad Iraqi, "Who's sending death threats to Palestinian advocates in The Hague?", +972, 17 November, 2016, available at <http://972mag.com/whos-sending-death-threats-to-palestinian-advocates-in-the-hague/121424/>; Amir Oren, Israel Setting Up 'Dirty Tricks' Unit To Find, Spread Dirt on BDS Groups, Haaretz, 20 June 2016, available at <http://www.haaretz.com/israel-news/.premium-1.725684>

<sup>29</sup> Exchanges during private workshop with Israeli and Palestinian opinion makers, Brussels, May 2014.

<sup>30</sup> "Joint Communication to the European Parliament, the Council, The European Economic and Social Committee and the Committee for the Regions", p.5, European Commission, 18 November 2015, available at [https://eeas.europa.eu/enp/documents/2015/151118\\_joint-communication\\_review-of-the-enp\\_en.pdf](https://eeas.europa.eu/enp/documents/2015/151118_joint-communication_review-of-the-enp_en.pdf)

supporting measures that sustain the viability of a two state solution are three areas in which the EU and its member states should remain united on. Reflecting these essential truths within a new ENP would be one way of demonstrating to member states its continued relevance and utility in promoting and defending a two state solution.

If the EU chooses not to actively defend the viability of a two state solution, then it will have to gear its ENP towards the one state reality that Israel's is slowly entrenching. Failure to act pro-actively now would confront the EU with a number of far reaching questions further down the road, such as how to relate to Israel's prolonged control over, and disenfranchisement of, 4.5 million Palestinians in an emerging one state reality; how this affects the basis of the EU's relations with Israel and the PLO; and what a situation of prolonged occupation means for third state responsibilities under international law. This moment could come sooner rather than later should the Israel move toward de jure annexation of the settlement blocks, and/or if the Palestinian liberation movement shifts to a rights based struggle within a one state reality.

Although this is the direction in which current trajectories are inexorably heading, such an outcome is not inevitable. In the absence of US leadership, the key determinant factor will be whether the EU is prepared to pick up the slack and play a more forward leaning role over the coming period in order to mitigate the potential for deterioration. Within the current diplomatic vacuum, the EU could find that a revitalised ENP with added political weight, and determination to use the leverage provided to it, can form an integral part of international efforts to resolve the conflict.