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IMPOSING MIDDLE EAST PEACE: WHY EU MEMBER STATES SHOULD RECOGNISE PALESTINE

*Dimitris Bouris and Daniela Huber**

In late 2017, US President Donald Trump broke long-standing US policy on the Israeli-Palestinian conflict when he recognized Jerusalem as the capital of Israel in contravention to international consensus and law. His "ultimate deal" has in the meantime become infamous in international media, setting an alarming context for more violence on the ground, while the US role as a broker has come to an end. The EU has so far appeared hesitant to scale up its own role which is of the essence now to uphold international law. Today's Foreign Affairs Council, where the Middle East Peace Process features on the agenda, and the meeting between the HR/VP and President Mahmoud Abbas in Brussels is an opportunity for the EU Ministers to take stock of the situation and to contemplate the next moves to make.

In light of fifty years of occupation – "the longest-running military occupation in the modern world"[1] – and given the reconciliation deal between Fatah and Hamas, Israel's expanding settlement construction as well as the US' inability to bring anything meaningful on the table, the EU should indeed take bold steps forward in the Middle East Peace Process. Following the example of the Venice Declaration in 1980, a clear paradigm shift and visionary policy from the EU is needed; EU Member states that have not already done so should recognise the state of Palestine.

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1. Michael Lynk, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied Since 1967* (A/72/556), 23 October 2017, p. 6, http://undocs.org/A/72/556.

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In 1980, the European Community acted as a paradigm setter when it came forward with the Venice Declaration, recognizing the Palestinian right to self-determination, demanding the inclusion of the PLO in negotiations, stressing the need for Israel to end the occupation and underscored the illegality of Israeli settlements.[2] While the Venice Declaration has been a norm-setter in many respects, it was nonetheless a far cry from the position of the United Nations General Assembly (UNGA) which in the same year affirmed Palestine's right to establish an independent state of its own.[3]

Europe's framing of Palestine's right to statehood has been rather ambiguous ever since. In the late 1970s and 1980s, the European Community spoke about the Palestinians' right "to self-determination with all that this implies" and the "legitimate right of the Palestinian people to give effective expression to its national identity".[4] In the late 1990s, when Arafat threatened to unilaterally declare Palestinian statehood, the EU came up with the Berlin Declaration, expressing "its readiness to consider the recognition of a Palestinian State in due course".[5] A decade later, this was replaced with "when appropriate".[6]

Needless to say, the timeframe of "due course" and specific parameters of "when appropriate" were never defined. These promises were made because of fear that Palestinians would take steps in the framework of international law and multilateral institutions such as the International Criminal Court (ICC) and the UN, challenging the prevailing belief that direct bilateral negotiations were the sole mode to resolve the conflict.

EU Council and Parliament resolutions make recognition implicitly conditional on negotiations. This approach is close to the US position, which since the early 2000s advocates a Palestinian state not as a right but as the result of direct negotiations between an occupied people and their occupying power. As Valentina Azarova has pointed out, under the law of occupation, to "protect a people's right to self-determination, the resolution of any 'final status' issues […] is deferred until the end of occupation. Relegating this process to the end of the occupation is meant to prevent the occupier from coercing local authorities into ceding territorial or other sovereign rights while under the gun."[7]

2. European Council, *Venice Declaration*, 13 June 1980, https://eeas.europa.eu/mepp/docs/venice_declaration_1980_en.pdf.
3. United Nations General Assembly, *Resolution 35/207. The Situation in the Middle East* (A/RES/35/207), 16 December 1980, http://undocs.org/A/RES/35/207.
4. European Council, *Council Conclusions*, Brussels, 28-29 June 1982, http://aei.pitt.edu/1429; European Council, *Council Conclusions*, London, 29-30 June 1977, http://aei.pitt.edu/1410.
5. European Council, *Presidency Conclusions*, Berlin, 24-25 March 1999, http://www.europarl.europa.eu/summits/ber2_en.htm#partIV.
6. Council of the European Union, *Conclusions on the Middle East Peace Process*, 3058th Foreign Affairs Council meeting, 13 December 2010, p. 14, http://data.consilium.europa.eu/doc/document/ST-17835-2010-INIT/en/pdf.

Resulting from its ambiguous position, the EU has ended up footing the bill of Palestinian state-building and Israel's occupation without advancing the prospect of Palestinian statehood. This may have proven relatively effective in terms of managing the conflict, but not resolving it and can no longer represent a sustainable approach.

Over the last three decades, the EU has failed to prevent the entrenchment of the occupation, which fragments Palestinian land and communities and makes a two-state solution increasingly unfeasible. After 50 years of unending occupation, it is time for a paradigm shift, a new Venice Declaration, in which the EU and its member states join a vast majority of the international community in recognizing Palestine as a state.

After Oslo, the EU provided over half of the funding that supported the setting up of the Palestinian Authority's (PA) quasi-state institutions and between 1994 and 1998, 40 percent of EU aid money was channelled to construction, infrastructure and natural resources management.[8] Much of this money was wasted because of Israel's destruction of this infrastructure during the second intifada.[9] The new phase of the state-building project started with the so-called Roadmap, which included three phases, the last of which envisioned the establishment and recognition of a Palestinian state by the end of 2005. Not only did the Roadmap fail to deliver a Palestinian state but it was also followed by Hamas' victory in the 2006 Palestinian elections, the subsequent split between the Fatah-run West Bank and the Hamas-run Gaza Strip and the adoption of the "West Bank First" strategy initiated by the US and supported by the EU.[10] Former Palestinian Prime Minister Salam Fayyad was supported by the EU in his ambitious state-building plan, "Ending the Occupation, Establishing the State". Although the plan never mentioned this explicitly, the idea was to build all necessary institutions of a Palestinian state within a 2-year period, then leaving it up to the international community to recognize such a state.

The limits of Fayyad's plan but also of the whole approach that "if you build it, the state will come" became clear during the PA's failed efforts to get UN Security Council recognition of statehood in 2011 and the subsequent 2012 UNGA decision to upgrade Palestine to "non-member observer state". The vote was a moment of truth.

7. Valentina Azarova, "Israel's Unlawfully Prolonged Occupation: Consequences under an Integrated Legal Framework", in *ECFR Policy Briefs*, June 2017, p. 3, http://www.ecfr.eu/publications/summary/israels_unlawfully_prolonged_occupation_7294.
8. Dimitris Bouris, *The European Union and Occupied Palestinian Territories. State-building without a State*, London and New York, Routledge, 2014, p. 76.
9. Dimitris Bouris and George Kyris, "Europeanisation, Sovereignty and Contested States: The EU in Northern Cyprus and Palestine", in *The British Journal of Politics and International Relations*, Vol. 19, No. 4 (2017), p. 765, https://doi.org/10.1177/1369148117727534.
10. Dimitris Bouris, "Riding the Shotgun. The EU's Role in the Israeli-Palestinian Conflict", in *Carnegie Regional Insights*, 17 September 2014, http://ceip.org/2kc99J2.

A three-way voting split among EU member states was observed with the Czech Republic being the only EU member state to vote against the upgrade alongside other eight countries: Canada, Israel, the US, the Marshall Islands, the Federated States of Micronesia, Nauru, Palau and Panama.

With the non-recognition of Palestine, the farce of the state-building process was exposed: while Fayyad proved Palestinian state capacity, the US and many EU member states still refused to recognize it. To many this seemed to confirm the hypothesis that the creation of the PA did not serve the goal of building a state, but rather to manage a population under occupation.[11]

The recent reconciliation deal between Fatah and Hamas, Israel's expanding settlement construction as well as the US' inability to bring anything meaningful to the table, all call for urgent and bold steps. What is needed from the EU is a clear paradigm shift, a real revision of EU policies and conventional wisdoms on the conflict.

Such a review should follow the example of the Venice Declaration and those EU member states which have not already done so should come out and recognize the state of Palestine. While each member state will ultimately decide whether to recognize Palestine, a consensus in Brussels and pressure from big member states can help, acting as potential paradigm and norm setters while encouraging the bandwagoning of other states.

Such a consensus should be built around six core assumptions:

First, by recognizing the state of Palestine EU member states would be complying with a vast international consensus. Out of 193 UN states, 137 have already recognized the state of Palestine leaving only 56 states which have not done so. Out of the present 28 EU member states, eight (Bulgaria, Cyprus, Slovakia, Hungary, Malta, Poland, Sweden and Romania) have recognized Palestine. Having the other 20 EU member states join in on the recognition will not just add to the quantitative aspect but also the qualitative as this will leave only 30 states worldwide not recognizing Palestine, among them Fiji, Kiribati, Palau, Saint Kitts and Nevis, Samoa, Tonga and Tuvalu.

Second, by pursuing this step, the EU would in fact swing the pendulum. While the state of Palestine already enjoys an absolute majority in terms of recognition by all UN member states, none of the key Western powers has yet done so. A common EU stance for recognition would be a yardstick – as David Horovitz put it, the EU is the ba-

11. Neve Gordon, *Israel's Occupation*, Berkeley, University of California Press, 2008.
12. David Horovitz, "The Battle for Europe", in *The Jerusalem Post*, 3 June 2011, http://www.jpost.com/

rometer of international legitimacy.[12] That is why the EU matters and where it enjoys real normative power;[13] it would create new facts in terms of international consensus as the Palestinian right to statehood would become an almost unanimously shared objective. Such a move would also force the US into action under the weight of an overwhelming international consensus on the existence of two sovereign states.

Third, while Israel might react badly to this move, as it did to the Venice Declaration or the EU's 2014 differentiation policy, recognition would actually send a strong signal that the EU wishes to legitimize the state of Israel within the 1967 borders while clearly delegitimizing the occupation. In the long-term, recognition will help protect Israel from criticism as well as from the eventuality of a one-state approach which Abbas has again promised to endorse if the latest US peace plan is not successful.[14]

Fourth, just as the EU's differentiation policy has activated the Israeli research and economic community to put pressure on the government to resolve the dispute in order to allow them to receive EU grants and research funding, recognition might do the same with Israel's broader political landscape by sending a strong signal that there is a cost to Israel's continued occupation. Furthermore, it will also help to strengthen moderate elements within Palestinian factions and parties. As a result, recognition would trigger dynamics that could strengthen the motivation of all sides to enter into negotiations.

Fifth, recognizing the state of Palestine will be consistent with all EU state-building policies and declarations, helping to give EU aid policies a political objective and framework. Recognizing a Palestinian state is cheaper than maintaining (and paying for) the occupation. The EU spends around 500 million euro a year on Palestine.

Sixth, and finally, recognizing Palestine is a moral duty, not only in respect to the deep historical involvement of key European states in setting the context for the conflict, but also by approaching the conflict in the framework of justice, rights and international law.

Recognizing Palestine will not bring about an actual state the next day. But recognition is a necessary step to break the stalemate at the international diplomatic level, to offer a new strategy and format which will address the power imbalance of the two parties and treat them as equal and to prevent a discriminatory one-state reality which is closer than we think. Recognition will eventually bring everyone closer to the final goal of two states, living side by side in peace and security.

13. Dimitris Bouris and Nathan Brown, "Can the EU Revive the Cause of Middle East Peace?", in *Carnegie Articles*, 29 May 2014, http://ceip.org/2hEjCMY.
14. "Abbas: PA Could Move to Back One-State Solution If Two States Fail", in *The Times of Israel*, 11 November 2017, https://www.timesofisrael.com/?p=1727878.