

Equal Rights as a Basis for Just Peace: a European Paradigm Shift for Israel/Palestine

by Daniela Huber

Historically speaking, the European Community and then the European Union have always reacted with paradigm changes in their foreign policies to watershed moments in the Middle East. In response to the two Arab-Israeli wars in 1967 and 1973, the European Community actually set up its own foreign policy in the first place and initiated the Euro-Arab Dialogue. After the Camp David Accords, the nine foreign ministers came out with the Venice Declaration in 1980 which reminded its partners in Washington and Tel Aviv that the Palestine question had been ignored and set the parameters for diplomacy in the 1990s. After the Cold War, however, the European Union became absorbed into the so-called Middle East Peace Process (MEPP), resulting in less independent EU agency on Israel/Palestine.

This trend has become particularly obvious over the past four years of the Trump presidency, during which time

the EU seemed almost paralyzed. While Europeans are now counting on the incoming Biden administration, during the election campaign Joe Biden stated that he will leave the US embassy in Jerusalem and that he is also favourable of the normalization deals between Israel and certain Arab states which President Trump had pushed for. At the same time, the Biden team seems hesitant to return to negotiations.

Seen from this perspective, a paradigm shift in the EU would be even more important as Europeans have often set the ground for paradigmatic foreign policy changes in the US. Examples include the Venice declaration, the 1999 Berlin Declaration which locked-in the two-state formula as the end goal of negotiations (Oslo had been ambiguous on that point), and, more recently, the Joint and Comprehensive Plan of Action (JCPOA), commonly known as the Iran nuclear deal.

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Why is a paradigm change necessary now?

The MEPP has reached a dead end. Under its umbrella, the occupation of Palestinian territory by Israel has neither been temporary, nor has it been static, but it has been an ever expanding legal and territorial structure whereby the Palestinian people has been territorially fractured into enclaves while Israeli settlers have taken hold of much of the land and natural resources in the Occupied Palestinian Territories.¹ Over the course of the MEPP, a one-state reality has become entrenched in which one power has been controlling and ruling over Israel/Palestine for more than 50 years,² half a decade in which it has applied discriminatory legal regimes in the areas under its control and during which the occupied population had their individual and collective rights systematically denied.

A recent report by the leading Israeli human rights organisation B'tselem has pointed out that there is one regime governing all of Israel/Palestine, rejecting the perception – also embraced by the EU – of Israel as a democracy (inside the Green Line) that simultaneously upholds a temporary occupation (beyond the Green Line). The report describes the entire regime as Apartheid (as defined in the Rome Statute of the International Criminal

¹ Daniela Huber, "The EU and 50 Years of Occupation: Resistant to or Complicit with Normalization?", in *Middle East Critique*, Vol. 27, No. 4 (2018), p. 351-164.

² Nathan Thrall, "The Separate Regimes Delusion", in *London Review of Books*, Vol. 43, No. 2 (21 January 2021), <https://www.lrb.co.uk/the-paper/v43/n02/nathan-thrall/the-separate-regimes-delusion>.

Court).³

This situation has evolved thanks to the cover of the Middle East Peace Process. If the European Union and its partners do not change their paradigm now, the situation will become even more dystopian.⁴ Tareq Baconi has recently described this future as a Gazafication of Palestine, meaning that we can already see in Gaza how this situation will evolve, namely that enclaves in the West Bank will be further isolated and de-developed into miniature Gazas controlled by local strongmen instead of one Palestinian political community, while being surrounded by Israel or Israeli-controlled territory.⁵

Equal rights as a basis for negotiations

How has the MEPP provided an umbrella for this? The key point has been the "negotiations" paradigm whereby an occupied people had to negotiate the end of occupation and its right to self-determination with the occupying power, providing the latter with a de-facto veto over this process. Palestinian individual and collective rights, which are enshrined in international law and successive UN resolutions, were to be realised – according to this paradigm –

³ B'tselem, *A Regime of Jewish Supremacy from the Jordan River to the Mediterranean Sea: This Is Apartheid*, 12 January 2021, <http://www.btselem.org/node/213260>; *Rome Statute of the International Criminal Court*, done on 17 July 1998, in force on 1 July 2002, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

⁴ Muriel Asseburg, *Palestine 2030: A Dystopia*, Rosa-Luxemburg-Stiftung, 3 December 2020, <https://www.rosalux.de/en/news/id/43213>.

⁵ Tareq Baconi, "Gaza and the One-State Reality", in *Journal of Palestine Studies*, 17 December 2020, <https://www.tandfonline.com/doi/full/10.1080/0377919X.2020.1842002>.

only after a solution to the conflict was found, instead of seeing them, firstly, as inalienable rights and, secondly, as the basic condition to actually find a just solution to the conflict.

As Sam Bahour has recently argued, “the rights of Palestinians cannot remain at the mercy of the need to arrive at a two-state solution, as a type of prerequisite to the individual realizing his or her rights. [...] The fact of the matter is Palestinians want their rights to define the political end-game, not the other way round. The fulfilment of rights should lead to conflict resolution. Rights lead to peace. Rights lead to conflict resolution.”⁶

Realising equal rights for Palestinians does not contradict the two-state solution or the one state formula; in contrast, the realisation of equal rights actually prepares the ground for any solution in the future as it means that Israelis and Palestinians can decide on a *just* solution together in an *equal* format, instead of under the gun. As Hugh Lovatt has pointed out, “Europeans need to be clear-eyed about where things stand and begin pressing for equality for Palestinians in line with international law. Such a focus means prioritising equality in terms of civil rights and political agency. This position is absolutely intrinsic to any hope of reviving an eventual two-state solution.”⁷

⁶ Sam Bahour, “What Do the Palestinians Want?”, in *Journal of South Asian and Middle Eastern Studies*, Vol. 43, No. 3 (Spring 2020), p. 27 and 32, <https://www.jstor.org/stable/10.33428/jsoutasiamideas.43.3.0026>.

⁷ Hugh Lovatt, “The End of Oslo”, cit., p. 17-18.

The equal rights discourse is already slowly and incrementally entering the EU discourse, for example in declarations of the group of EU member states present or incoming to the UN Security Council,⁸ or in statements by Europe’s HRVP,⁹ and of European parliamentarians.¹⁰ However, in order to signal a clear message to Israel, it is necessary to make this a more explicit cornerstone of EU foreign policy. Such a message does not need to come from all EU member states together. It could, however, become a cornerstone of the group of main donors in Israel/Palestine, for example, whose tax payers have effectively been bankrolling the Israeli occupation since the Oslo Accords and thus have a clear interest in bringing Israel’s non-temporary occupation to an end.

De-occupation and differentiation

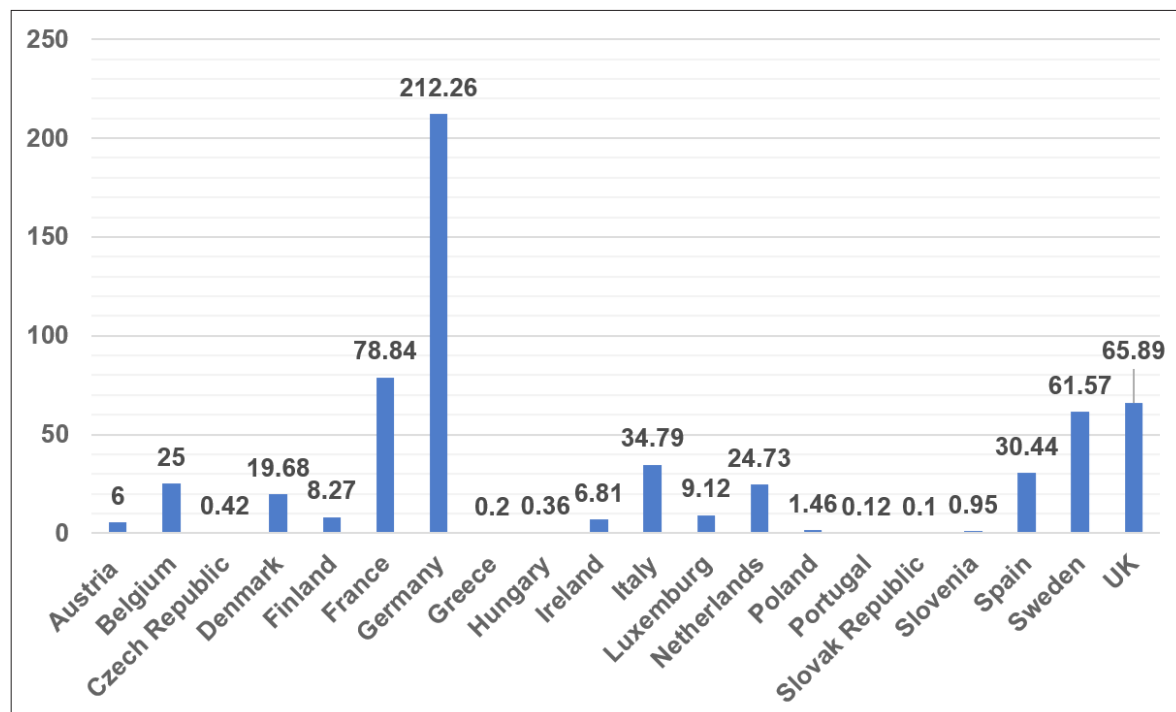
The occupation has indeed been running for more than 50 years which means that it clearly is a *non-temporary* occupation which the Israeli government has no intention

⁸ *Israel/Palestine: Joint Statement by Belgium, France, Germany, Estonia and Poland*, 11 February 2020, <https://onu.delegfrance.org/Israel-Palestine-Joint-statement-by-Belgium-France-Germany-Estonia-and-Poland>.

⁹ European External Action Service (EEAS), *MEPP: Statement by the High Representative/Vice-President Josep Borrell on the US Initiative*, 4 February 2020, <https://europa.eu/!YN36xM;Middle East: Remarks by HR/VP Josep Borrell in the EP Plenary on the Normalisation Agreements between Israel and UAE, Bahrain and Sudan>, 24 November 2020, <https://europa.eu/!YH63DX>.

¹⁰ Julie Elliott et al., *The USA, Europe, Israel and Palestine*, Letter from European Parliamentarians to President-Elect Joe Biden, 18 December 2020, <https://www.caabu.org/node/28654>.

Figure 1 | Aid by EU member states to West Bank and Gaza in million US dollars, 2018



Source: OECD, *QWIDS - Query Wizard for International Development Statistics*, <https://stats.oecd.org/qwids>.

to end. Rather, its practices have systematically infringed on the Fourth Geneva Convention over the past 50 years. Up until now, the EU treats single Israeli acts which are happening under this occupation as illegal – such as for example the building of settlements. However, after more than 50 years of prolonged occupation and continuing de facto annexation, the whole occupation has become illegal. As Valentina Azarova has pointed out, an “occupation in which force is used to fulfil the goal of permanently acquiring a territory is unlawful and attracts consequences under the international law on the use of force”.¹¹ The UN Special Rapporteur

on the situation of human rights in the Palestinian Territory occupied since 1967, Michael Lynk, has suggested that the international community should “seek an advisory opinion from the International Court of Justice on the legal obligation of Israel to end the occupation and the international community’s *legal obligations* and powers to ensure accountability and bring an end to impunity”.¹²

¹¹ Valentina Azarova, “Israel’s Unlawfully Prolonged Occupation: Consequences under

an Integrated Legal Framework”, in *ECFR Policy Briefs*, June 2017, p. 4, https://ecfr.eu/publication/israels_unlawfully_prolonged_occupation_7294.

¹² UN General Assembly, *Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (A/74/507)*, 21 October 2019, p. 24, <https://undocs.org/A/74/507> [emphasis added].

This is of particular relevance to the EU, since it is the most important trade partner of Israel. EU member states are not fully committed to implement their own differentiation policy,¹³ however, even though – as it is currently devised – it is the light version to comply with this obligation, given that trade between the EU and the settlements continues even if under non-preferential terms. The ongoing trade makes the settlements economically viable. This means that if member states are not implementing even this light version of the differentiation policy, they are in breach of their third-party obligations.

In light of this, it would be crucial that the European Commission begins to collect and publicise the specific amount of trade happening between the EU and Israeli settlements. While the European Parliament has repeatedly requested these numbers from the Commission, the latter claims it does not collect them. It should, however, have the technical abilities to do so, based on the postcode declarations which need to be given in line with the EU-Israel technical agreement. In addition, the EU could also devise a new form that importers must fill out where they should be obliged to indicate if a good is coming from an Israeli settlement. In light of the third-party obligations of member states, the request of the parliament should therefore be for the *collection and subsequent publication of these data* so that a proper public debate and informed parliamentary decisions can

take place on the matter.¹⁴

Why is it important for the EU to not continue business as usual?

European business-as-usual with Israel is a message to Tel Aviv to continue its business-as-usual, as well. What this leads to has been described above. A reconvening of the Association Council in light of unabated settlement growth and nationalist-ethnocentric practices in Israel¹⁵ would be particularly harmful now. The EU and its member states have full information and knowledge about what is happening in Israel/Palestine as this is documented by their own embassies as well as UN agencies and local civil society organisations.

In light of this, the larger question the EU needs to ask itself at this very point today is if this situation is really acceptable to the EU and how its silent consent to such a situation will eventually impact the EU itself? Does the EU want to be on the side of those who explicitly violate international law or does it want to stand up for it? Answering this question will eventually also shape the future of the European Union as a political project itself.

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¹³ Hugh Lovatt, *Differentiation Tracker*, ECFR, 1 October 2019, https://ecfr.eu/rome/publication/differentiation_tracker.

¹⁴ The author would like to thank Hugh Lovatt for providing input on this point.

¹⁵ Adalah, *Israel's Jewish Nation-State Law*, 20 December 2020, <https://www.adalah.org/en/content/view/9569>.

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