

TOWARDS A TWO-STATE SOLUTION

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THE MIDDLE EAST PEACE PROCESS

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- Tensions and difficulties have emerged again in the Middle East together with the stalled peace process, which is a great concern for the EU.
- The EU has established two Civilian Crisis Management missions in the Occupied Palestinian Territory as instruments of the Common Security and Defence Policy to promote the objectives of the Middle East Peace Process.
- Both missions, EUPOL COPPS and EUBAM Rafah, have been successful in training, advising and mentoring the Palestinian security sector to combat terror and prevent it, and to operate with the Israeli security forces to maintain order.
- However, the full potential of the two missions has not been utilized as instruments to promote the peace process principles in terms of emphasizing democracy and accountability as being fundamental to an independent state.
- It is time for the EU to link its state-building initiatives in the Occupied Palestinian Territory with a clear political position at the “high-politics” level and to translate them into reality.
- If the focus of these two CSDP missions is not shifted away from polishing the already smooth-functioning Palestinian security apparatus and more towards reflecting the political aims of the peace process, it begs the question of whether these missions can continue to serve as useful instruments for the EU to promote the peace process.

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Introduction

Since the latest war in Gaza, tensions and terrorist attacks have rapidly resurfaced in Israel and the Occupied Palestinian Territory. This is of great concern to the EU in particular as it intends to push for ways to revive the stalled Middle East Peace Process (MEPP), which has been frozen since the latest attempt made by US State Secretary John Kerry failed in April 2014.

The EU's new engagement with the Middle East Peace Process was introduced by the new High Representative of the EU, Federica Mogherini, who started her five-year term in November 2014 by travelling to the Middle East. During her visit, she announced that the EU intends to play a more influential role in the Middle East than in the past. Further, she stated that, "we need a Palestinian State – which should actualize within the next five years – because the EU cannot eternally be a payer without playing a political role".

To mark this new juncture, the EU foreign ministers adopted Council Conclusions (17.11.2014) on the peace process by stating that, "the EU affirms its strategic interest to see an end to the conflict and is willing to play a major role and actively contribute to a negotiated solution of all final status issues and recalls earlier agreed parameters". However, the latest developments on the ground, particularly Israeli announcements of plans for a new settlement construction, threaten the two-state solution and jeopardize the possibility of Jerusalem serving as the capital of both states.

The peace process aims at building an independent, democratic, contiguous and viable State of Palestine which would co-exist peacefully side by side with Israel. Keeping that in mind, the EU has been focusing on supporting the Palestinians in establishing strong and effective state institutions since the signing of the Oslo Agreement in 1993. The EU's approach is based on the idea that security structures are the most important pillars of any modern state. Accordingly, the EU has adopted the concept of state-building as a framework in which concrete action should be reflected.

The EU has established two Civilian Crisis Management missions in the Occupied Palestinian

Territory as instruments of its Common Security and Defence Policy (CSDP). This paper analyses how well these missions have contributed to the EU's efforts towards the Middle East Peace Process and, further, whether they are still useful tools for the EU to promote the two-state solution if the Union assumes a more important role as the new High Representative has stated. The EU's state-building concept will serve as a source of inspiration for this analysis because it brings to the fore the fundamental purpose of the peace process, namely creating an independent State of Palestine.

This paper argues that these CSDP missions have not been utilized to their full potential as their focus has been on reforming the Palestinian security sector in a narrow sense, namely by combating and preventing terror, cooperating with the Israeli security forces and maintaining order. This focus has ignored the democratic elements of state-building, with the consequence that the missions have not promoted the MEPP principles as effectively as they might have done if the aim had been to follow the EU's guidelines and MEPP principles in full.

The EU's state-building ideology and the peace process

The EU has gradually developed ways to enhance peace and governance as its foreign policy goals. One of the main elements is the European Security Strategy (ESS) from 2003, which states that "spreading good governance by supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order".

The core principle in this strategy is that democracy provides the necessary political foundation to sustain all other dimensions of the security. An important part of this strategy is the concept of security sector reform (SSR) with the fundamental belief that "the reinforcement of the rule of law and respect for human rights is an indispensable element of peace-building".

This paper looks at how the EU's security strategy as an important tool for the peace process has been further translated into practice by the two civilian

crisis management missions in the Occupied Palestinian Territory.¹

The peace process and the implementation of the so-called “Road Map” principles in the Israel-Palestine conflict were the main factors behind the establishment of the EU’s two CSDP missions in the OPT. The Oslo Agreement from 1993 had already established the Palestinian Authority (PA) and its security forces. These forces were regarded as a ‘vehicle’ in the process that would eventually lead to the creation of a Palestinian state. However, these security forces had only limited competences in certain areas in the territory, were badly organized, and performed poorly. Prior to Oslo, the Government of Israel had been responsible for the police force and the justice system in the Occupied Territory.² Therefore it was only logical that the EU should concentrate its efforts on helping the PA to build strong and effective institutions with the help of its CSDP missions.

The concept of the “Road Map for peace” was developed in 2002, based partly on President George W. Bush’s vision and partly on German Foreign Minister Joschka Fischer’s ideas of achieving a peace settlement in the Israel-Palestine conflict. These visions were consolidated in the same year by the Danish EU presidency and had a great influence on the creation of the Road Map, which was further elaborated by the Quartet later in the same year. The Road Map clearly stated the steps to be taken in the Middle East Peace Process, with exact timeframes. Even though the Road Map has yet to be completed, as the final outcome should produce two independent states living side by side in peace, it still constitutes a valid

instrument for the peace process as well as a frame of reference for EU action.

CSDP missions producing local ownership and legitimacy

In order to analyse the role of the CSDP missions in the context of the EU’s peace process goals (i.e. establishing an independent, viable and democratic Palestinian state that would co-exist peacefully side by side with Israel), concepts such as legitimacy and local ownership have proved useful when trying to explain the success of the EU’s action in state-building efforts.³ Additionally, both Palestinian CSDP missions have referred to legitimacy and promoting local ownership as objectives of their work.

In the state-building context, legitimacy is most often characterized as both a process and an end-product for the target population. This raises questions as to whether the EU has been regarded as a legitimate player in its state-building efforts, whether it has used its different foreign policy tools wisely, and whether it has taken the right initiatives towards the local population of the state that it is aiming to build, so that they feel that the EU’s action is legitimate and worthy of their support.

Moreover, it is a widely shared view that without local ownership, the institutions will not work on a long-term basis.⁴ This means that the target population must have a strong feeling of being owners of the particular ‘end-product’. Based on these characterizations of legitimacy and local ownership, this paper aims to assess the extent to which the CSDP missions in the OPT have increased the

1 Most of the EU’s state-building missions are civilian, but there are some combined ones as well. The missions in the Occupied Palestinian Territory are civilian and established under the Security and Defence Policy because their main aim is related to security. There are also other EU state-building efforts in the OPT that are run by the EU Commission and which partly compete with CSDP missions.

2 The Occupied Palestinian territory is divided between areas A, B and C. In area A, the PA has full civil police rights, in area B it has some shared competences with the Israelis, and in area C (over 60% of the West Bank) it has no competences regarding civil policing.

3 Bouris, D. (2014) *The European Union and Occupied Palestinian Territories – State-building without a state*, London and New York: Routledge.

4 For further elaboration on legitimacy and the OPT, see See Bouris, D. (2014) *The European Union and Occupied Palestinian Territories – State-building without a state*, London and New York: Routledge; OECD (2010) ‘Peace-building and state-building priorities and challenges: a synthesis of findings from seven multi-stakeholder consultations’; and Dietz et al. (2008) *The European Union and Border Conflicts: the Power of Integration and Association*, Cambridge: Cambridge University Press.

Trade options are limited for the Palestinians living in the Gaza strip. Pictured is the border crossing of Kerem Shalom, today the only crossing-point for goods from Israel to Gaza. In 2012, the rate of traffic was 250 trucks a day.

Photo: Benoit Cousin, EUBAM Rafah/
EUPOL COPPS press officer



legitimacy and local ownership with their concrete work. These elements are also deemed necessary preconditions for an independent state in the EU's state-building ideology.

The European Union Police Coordination Office for Palestinian Police Support (EUPOL COPPS) was established in 2005 in order to improve the capacity of the civil police force and law enforcement. It followed the EU approach to state-building efforts closely by emphasizing the security sector and the role of the police, but the other elements that would have increased democracy were less evident.

The core objective of the mission was to assist and facilitate the implementation of the Road Map principles in the field of the Palestinian security structures. The initial EUPOL COPPS objectives included "both immediate operational elements" as well as "long-term goals" for the Palestinian police force. Its short-term goals were related to providing technical equipment for the police force, while the main long-term goals were related to reforming management structures and establishing proper accountability mechanisms within the security sector.

Following the Berlin Conference in Support of Palestinian Civil Security and the Rule of Law (2008), the EUPOL COPPS' mandate was extended to include the rule of law component. This was a legitimate and logical step towards the ESS strategy, which states that law and order are a package and cannot be developed separately. With this addition, the mission touched for the first time upon the question of providing security for the Palestinians as well,

which is considered to be one of the main goals of the state-building efforts.

Although the rule of law section was added to the mission's mandate, the goal for this component has also been rather technical. It begins by addressing the most important actors in the "criminal chain", namely the Prosecution Services, Courts, High Judicial Council, Ministry of Justice, Penitentiary, the Bar Association and Civil Society, the latter playing only a minor role. On the other hand, the emphasis put on the Criminal Justice System was planned in full coordination with the Palestinian National Plan (the so-called Fayyad Plan) as it constitutes one of society's key components: Security is not complete unless there is a widespread belief on the part of the public that there is a due process which will lead to the state structures.

Despite some difficulties caused by the rule of law component, there is the widely held view that the EUPOL COPPS as such has made excellent progress in terms of technical achievements. The mission has contributed to the professionalization of the civil police force in the West Bank, which now numbers over 7,000 officers capable of maintaining public order. Additionally, it has helped the civil police to develop sophisticated crime investigation techniques, has provided specialized advisors in specific areas and has made tangible contributions to equipment, infrastructures and assessments. These have all contributed significantly to the security situation in the West Bank, particularly from Israel's perspective. This is just one element in the peace process, however.

European Union Border Assistance Mission Rafah (EUBAM Rafah) is the second EU civilian mission under the EU's Security and Defence Policy, established to implement the Road Map principles. It was established after Israel's decision to withdraw from the Gaza Strip in 2005.⁵ With this mission, the EU became, for the first time, a real actor on the ground dealing with borders, which is one of the Israel-Palestine conflict's core questions.

The mission became operational in November 2005 and one of its aims was to build confidence for all participants with regard to Palestinian abilities to autonomously manage their borders without undermining the security needs of Israel. Like EUPOL COPPS, this mission was also initially planned to have just a short mandate (one year), as it was designed to help implement the Road Map milestones within a fixed timeframe. However, similarly to EUPOL COPPS, the EUBAM Rafah mandate has been extended several times although the mission became "dormant" after Hamas took control of Gaza in 2007.

Neither EUPOL COPPS nor EUBAM Rafah had an executive mandate: the Palestinians did the actual work at the borders when the EU advisors were only advising and mentoring.

Similarly to EUPOL COPPS, EUBAM Rafah was clearly considered successful and had international visibility until the takeover of Gaza by Hamas in June 2007. Since then, the mission has been reduced to a minimum and relocated to Tel Aviv. Further, it has concentrated on some small-scale training and its main activities are reporting and liaising. Its existence has been the target of considerable criticism in recent years as it has not been able to fulfil its initial mandate because of Hamas rule in Gaza. Nor has the EU used the mission as an instrument to put pressure on the Palestinians to reconcile their internal differences, or on Israel to lift the closure in Gaza. Supporters have argued that keeping EUBAM Rafah is a good complementarity between physical

presence and politics: it is a sign that the EU is expecting the peace process to continue, and lifting the closure in Gaza is a part of that. Despite these arguments, however, there are some limits on how long the EU can keep a mission alive based purely on wished-for action and without actively putting pressure on the parties involved in order to make the mission operational again.

Increasing legitimacy and local ownership in technical terms

Both of the EU missions have succeeded in constituting legitimacy concerning their purpose and their main objectives. EUBAM Rafah was established after the signing of the Agreement on Movement and Access (AMA) by the Israelis and the Palestinians, with the EU taking the third-party role in this process. As a concrete outcome (or product) of the mission activities, EUBAM Rafah was instrumental in increasing the flow of persons between Egypt and Gaza, as well as the trust between the parties involved. EUPOL COPPS, on the other hand, was established after the request by the PA, and the mission has greatly improved the capabilities of the Palestinian Civil Police (PCP) and law enforcement, as previously mentioned.

Furthermore, when examining the success in terms of a "product", it can be seen that the mandates of both missions followed the EU's "bottom-up" approach towards state-building efforts by prioritizing transformation of the states from the inside rather than ruling them from above. Following this approach, the actions that were prioritized for both missions were technical assistance and training, aimed at counter-terrorist capabilities and capabilities to maintain order in society. In that sense, both missions have been very successful and effective as they have created clear products in the field of security.

Another way to observe this success is from the perspective of local ownership. At the technical level, both missions have again produced positive results. An important reason for this is the adoption of a non-executive mandate for both missions. This led to significant local ownership in the sense that it was Palestinian security and customs officials who did the actual work at the Rafah crossing while the EU mission officials were helping, advising

5 Israel and the Palestinian Authority signed an Agreement on Movement and Access (AMA). A few days later, the EU Council decided to undertake the third-party role in this arrangement (after the US was unwilling to do so, but nevertheless obliged Israel to agree to it).

and supervising the process, but not actively participating in the action. Similar positive examples have been found in the case of EUPOL COPPS (for instance the refurbishment of the Jericho Training Centre, a facility of major importance for the PCP in the West Bank) as the Palestinians are now running the centre themselves, which has significantly increased the feeling of local ownership among the Palestinians. Therefore, it can be concluded that the EU has clearly been successful by providing technical products also in terms of legitimacy and local ownership.

Limitations of the two CSDP missions in promoting the goals of the peace process

Despite these great technical achievements, however, the success of increased local ownership is tempered by its limitations, as the process of reforming state structures continues to take place under Israeli occupation. With this in mind, this paper returns to the initial purpose of these two missions and poses the question: How successful have they been in fulfilling the Road Map milestones that aim at establishing an independent, democratic and viable Palestinian state co-existing peacefully side by side with Israel?⁶

On closer inspection, the question of legitimacy in the broader perspective as a process that should lead to a concrete outcome (an independent state) as stated by the EU in its peace process principles reveals a real gap: when reforming the state structure is considered in purely technical terms, the aim is soon reached and the structures are established.

However, a series of questions then comes into play: How do these institutions work? Who do they serve? How are they supervised? As explained previously, a core value in state-reforming ideology is that democracy provides the political foundation necessary to sustain all the other dimensions of security – and this also includes sustaining security

for the Palestinian people, against their own state.⁷ However, highlighting the security of Palestinians in the sense of strengthening Palestinian democratic structures to provide protection for Palestinians has not been prioritized by the mission work in a way that could have been expected based on the EU aims for the peace process at the political level. However, at the practical level, the mission has simply been developing the Palestinian security structure to be more effective in maintaining law and order.

This could be explained by the fact that, up to now, the EUPOL COPPS has been in the hands of the Head of Missions, whose background is in the police force. But the leadership of the mission does not explain everything. A more enduring limitation explaining the lack of the CSDP mission's ability to promote the security of the Palestinian people and to increase the democratic control of state structures is the fact that the EU's state-building efforts are taking place in a territory where the PA, no matter how professional it is, cannot maintain effective control over its respective territory because of the Israeli occupation of the entire West Bank and the Hamas rule of Gaza.

Neither the EU nor the Palestinians themselves have been able to define what reforming state structures means in the Palestinian context. Instead, it has largely been defined by the US and Israel by addressing Israeli security concerns.⁸ Against this background, the question of how much the EU missions have advanced local ownership can be seen in a different light. This is particularly evident when looking at the question of local ownership in the field of the rule of law.

When evaluating the EU's efforts to promote the rule of law and its success in terms of local ownership, these are again difficult to quantify as the Palestinian judiciary is functioning under limited

6 In this analysis the emphasis is put on assessing EUPOL COPPS but not EUBAM Rafah as the mission has been operational only in a limited sense since 2007.

7 Youngs, R. (2010) 'Security through democracy: between aspiration and pretence' FRIDE working paper No. 103.

8 For more on the EU's unwillingness, see Bouris, D. (2014) *The European Union and Occupied Palestinian Territories – State-building without a state*, London and New York: Routledge; and Sayigh, Y. (2011) 'We serve the people: Hamas policing in Gaza', Crown Centre for Middle East Studies, Crown Paper No. 5. April www.brandeis.edu.

sovereignty. At the everyday level, it faces challenges such as the Israeli destruction of the infrastructure and prisons, as well as closure restrictions and limits on where Palestinian judges are able to travel, as well as difficulties for the police to move detainees from one court to another.⁹ Based on these “facts on the ground”, it is logical to ask how far the system of the rule of law can be further developed (i.e. the “end-product”) without the full capability to apply it (i.e. without the “process”).

Additionally, the internal split between the West Bank and Gaza has further complicated any assessment of the success of local ownership, particularly in the field of the rule of law. While the PA has had limited possibilities to fully apply its reformed state apparatus, the same has not happened in the case of the Hamas-led government in Gaza. The latter has been able to enforce its policies on the ground and also to fulfil one of the main criteria of successful state-building: to have a monopoly on the legitimate use of force.¹⁰

Finally, more fundamental to the EU’s policies in the OPT, and directly linked to the mission activities, is the EU’s decision to follow the USA and Canada in ceasing cooperation with the winner of the 2006 Palestinian free elections. If the EU had truly valued improving the democratic principles in its Israeli-Palestinian relations, it would not have banned the Hamas-led government, which was the democratically-elected government that took up office in 2006.

The EU decided not to engage with the Fatah-Hamas unity government formed in 2007, but instead continued cooperation with Fayyad’s West Bank government. This principle was also followed by the CSDP missions. Not only did this have negative implications for the legitimacy in the eyes of the internal population, but it also created problems at the ground level when it came to improving the rule of law system, which cannot be established in

the absence of a functioning parliament, democratic control and a judicial system. Further, the EU’s approach of not dealing with Hamas also limited the success of reforming the Palestinian security sector as it is not extended to Gaza, which should form an essential part of any future Palestinian state.

Conclusion

This paper has assessed whether the EU’s Common Security and Defence Policy Missions have contributed towards a two-state solution, which is the main goal of the EU’s Middle East policy. These missions can be regarded as being successful in terms of establishing technical “products” (i.e. reforming state structures), which are important pre-conditions for an independent state. In particular, EUPOL COPPS has significantly contributed to the Palestinian Authority’s ability to take responsibility for law and order in operational terms.

However, the limitations imposed by the Israeli occupation have undermined the PA’s ability to apply these new security structures on the ground, and particularly to provide protection for the Palestinian people against the state, which should be one of the main duties of a state. EUPOL COPPS has improved the professionalism of the Palestinian civil police, but the mission has been able to operate only in area A, where the PA has full administrative and security control, while a great majority of Palestinians live in area C and in Gaza, where the PA is not present as yet. This also applies to EUBAM Rafah and its mandate: there are serious limitations on how far the Palestinians can train the “border control” in abstract terms without the possibility of testing these capabilities at real borders. These examples clearly demonstrate that when legitimacy and local ownership are regarded as “processes” (i.e. how the state structures are applied) then the missions have been less successful in fulfilling the peace process principles – an independent and viable state needs not only state structures to maintain order, but also their constant application in the state’s territory and democratic control over the state.

Further, the mission has made little effort to engage public and civil society, which constructively monitors decision-making and ensures accountability – the fundamental principles of any democratic state.

9 Palestinian National Authority (2010). ‘The Justice and Rule of Law National Strategy’, PNA: Ramallah.

10 Brynen, R. (2008) ‘Palestine: Building neither peace nor state’ in Call, C. and Wyeth, V. (eds) *Building States to Build Peace*, London: Lynne Rienner Publishers.

It can be argued, based on the assessment of the mission's work in the Occupied Palestinian Territory, that the missions have ignored the importance of democratic civilian oversight and accountability, which places specific emphasis on the political and governance aspects. In addition, the holistic nature of the EU's security sector reform identifies physical security and democratic control over the security sector as the main objectives of this reform, which has not been well promoted by the CSDP missions at the practical level. On the other hand, it is clear that implementing security sector reform in the absence of its most important element – a state – is a great challenge.

The findings of this paper further support those who have harshly criticized the EU for being unable or unwilling to link its state-building initiatives in the OPT with a clear political position at the “high-politics” level and to translate them into reality. The full potential of the CSDP missions, as instruments to promote the MEPP principles in terms of emphasizing democracy and accountability as fundamental elements of an independent state, has not been utilized. If the focus of these two missions is not shifted away from polishing the already smooth-functioning Palestinian security apparatus towards better reflecting the political purposes of the peace process, it is questionable whether these CSDP missions can continue to serve as useful instruments for promoting the MEPP principles.

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