

CEPS POLICY BRIEF



Thinking ahead for Europe

The EU's Self-Defeating Aid Policy towards Palestine

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No. 343, May 2016

Key Points

Motivated by the dual aims of strengthening the Middle East Peace Process and contributing to Palestinian state-building, the European Union and its member states have been the biggest donors of financial assistance to the Palestinians. But these efforts have not managed to achieve the desired change, as the EU failed to develop a coherent strategy to address Israel's violations of international humanitarian law and it has accepted practices that undermine its political objectives. Hence, the aid has not contributed to a strong Palestinian government that can contribute to the security of both Palestinian and Israeli civilians. And meanwhile the Palestinian economy has become increasingly dependent on donor aid while Israel continues to strengthen its control over the territory.

Recommendations

1. The EU should conduct its bilateral relations with Israel in a manner that is coherent with its aid policies. The European External Action Service and the individual member states should insist that any strengthening of their relations with Israel is conditional upon its respect for international humanitarian law, a branch of international law that seeks to limit the effects of armed conflict on civilians.
2. The EU and its member states should use their leverage with the PA (Palestinian Authority) in order to promote good governance and find practical ways to ensure aid effectiveness both in the West Bank and the Gaza Strip.
3. The EU and its member states should take more measures to ensure that aid is received by people in need and that illegal practices on the part of Israel do not hamper its effectiveness.

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Introduction

For many years, the European Union and its member states have been the biggest donors of financial assistance to the Palestinians. Since the start of the Middle East Peace Process (MEPP) in 1993, the EU has targeted its aid primarily at strengthening the peace process in the context of a continuing occupation and a transitional agreement between Israel and the Palestinian Liberation Organization (PLO). Through its aid efforts, the EU wanted to contribute to Palestinian state-building and to reaching agreement on the two-state solution.

Yet, the EU did not want to restrict its role to being a mere payer of aid; it aspired to become a player in the diplomatic scene. By deepening and strengthening its bilateral relations with Israel and through the process of socialisation, it hoped that Israel would become more familiar with the practices of the EU and the *acquis communautaire* in particular, thereby having positive effect on Israel's willingness to abide by its international obligations.

Offering Israel carrots without brandishing any sticks, however, did not give the EU more leverage. On the contrary. Israel has largely ignored the EU's appeals to respect its obligations as an occupying power. Furthermore it has not given up its ambition to extend its effective control over the occupied Palestinian territory (oPt) and it applied the agreements with the EU to its settlements, despite the fact that the EU has insisted that it cannot recognise Israel's sovereignty beyond the pre-1967 borders and has taken steps accordingly. In 2012, the Foreign Affairs Council committed itself to ensure that all future agreements "unequivocally and explicitly indicate their inapplicability to the territories occupied by Israel in 1967" (FAC, 2012). The Council established a clear basis for member state action to prevent the designation of settlement goods as "Israeli", which resulted in an interpretative notice on the indication of origin of settlement goods (EEAS, 2015). Yet, this has not dissuaded Israel from deepening its control over the oPt and continuing its settlement expansion.

The current Israeli government, dominated by right-wing parties that question the two-state solution, is outspoken in its refusal to give up its control over the West Bank. It opposes international assistance in Area C, representing 60% of the West Bank, and has signalled to the EU that it will demolish projects that benefit the Palestinian population. Recently, this has led to an escalation of demolitions of EU-funded projects by Israeli security forces. Furthermore, Israel is reinforcing its separation policy between the Gaza Strip and the West Bank and is hampering reconstruction efforts via ongoing restrictions on the import of construction goods in Gaza. European policy-makers are increasingly critical about Israel's actions undermining the EU's aid efforts. The debate about aid effectiveness is being waged at the highest political level. Yet, as long as the Israeli government is unwilling to comply with its international obligations, the EU's role will be mainly limited to mitigating humanitarian crises.

Internationally there is a consensus that the status quo is untenable and that a political horizon needs to be created. After the failed peace talks in 2014, the US administration did start another round of peace negotiations but it will refrain from actively pursuing the talks before the Presidential elections in November. In order to revive the political process, France wants to hold an international conference in the course of 2016 that would ideally result in a statement on agreed principles for renewing the Israeli-Palestinian peace talks. The Quartet (composed of the UN, the US, Russia and the EU) is also preparing a report on the situation on the ground and the obstacles to renewing the peace talks. It might include recommendations to advance the two-state solution (Quartet, 2016). This is an important development for the EU, as it wants to create a momentum to enable an international consensus on the parameters of a resolution.

Donors have underestimated a complicated policy environment

From the early peace process onwards, the EU decided not to pursue a rights-based approach, but rather to take a pragmatic stance, in order to

secure Israel's cooperation. The aid strategy of the EU member states and the European Commission followed the logic of their political strategy. Donors did not understand that in order to move towards a two-state solution, it was necessary to transform both sides. They did not pressure Israel to withdraw to the armistice line of 1949. Moreover, there was no reference in the Oslo agreements to the Fourth Geneva Convention and Israel's obligations as an occupying power, as Israel had vetoed all references to international humanitarian law (IHL). Recently, as the Israeli right-wing parties became stronger, some Israeli officials have claimed that Israel has sovereignty in "Judea and Samaria". The EU's reluctance to strongly challenge Israel's position has contributed to a climate in which the rule of law is absent.

Consequently, Palestinian state-building has turned out to be more problematic than donors had anticipated. Throughout the peace process, Israel has continued its violations of IHL, even if it is bound by the 1907 Hague Regulations and the 1949 Geneva Conventions. As long as it is an occupying power, Israel is responsible for the welfare of the Palestinian civilians and it has to ensure that their needs are met, including food, medical supplies and services. Israel did not want to give the PA (Palestinian Authority) full sovereignty, nor did it want to fulfil the needs of the occupied population. Since Israel has not taken up its responsibilities, donor assistance has been used to meet the continuing and growing needs of the Palestinian population. Thus, the aid deliveries have made donors unwillingly assume responsibility for the Palestinian population (CIDSE, 2008).

Moreover, Israel has actively opposed the development of a healthy Palestinian economy by introducing new measures of control, such as closure. It has also kept control over numerous functions of the government, such as land use, borders and the right to residency. Israel's ongoing occupation and its refusal to transfer additional powers to the PA proved to be detrimental to state-building. The occupation has thwarted the EU's hoped for a 'transitional' scenario, in which the newly established PA would successfully establish its authority and become an effective administrator and provider

of public services while gaining popular legitimacy.

In the years following the signing of the Oslo Agreements, the donor community did not sufficiently address the grave consequences of declining development and the failure of Palestinian state-building, arising from Israel's continued abuse of its effective control. Nor did donors develop a coherent strategy to address Israel's violations of IHL and to deal with a transitional authority without any substantial authority. Donors chose to ignore the complex policy environment and refused to denounce the occupation as the main obstacle to development in order to avoid a political dispute with Israel.

Furthermore, donors have insufficiently tackled the PA's failings in the field of human rights, especially after the isolation of the Hamas-led government in 2006 and the military coup by Hamas in the Gaza Strip in 2007. The democratic deficit in Palestine, where parliamentary and presidential elections are long overdue, has not been fundamentally addressed. This situation falls far short of meeting the EU's norms on good governance. As a provider of public services to the Palestinian population, the PA has to provide accountability for resource allocation and management (European Commission, 2014). Even if the PA has made efforts to strengthen its legal and institutional framework against corruption, there is a need for better coordination of anti-corruption efforts and institutions. According to the World Bank, reforms are still incomplete in key areas such as public procurement, civil service hiring and regulation of the private sector (World Bank, 2011). The lack of access to information law also prevents civil society organisations and the media from performing their role as watchdogs (Transparency International, 2011).

The EU shifts from development to humanitarian aid

Since the start of the second Intifada in 2000 onwards, the EU has moved increasingly from conflict prevention and peace-building to conflict management (Lemore, 2005). The events of the Intifada, including Israel's excessive use of force, compelled donors to focus on emergency

aid. The Commission and the EU member states significantly increased their humanitarian assistance to the oPt in order to avoid a breakdown of basic social services and a humanitarian disaster. It shifted much of its assistance from more long-term institution-building to badly needed humanitarian assistance, which was given in order to prevent a humanitarian disaster, since the already weak Palestinian economy had virtually collapsed. The tightening of the closure regime in Gaza and the construction of the Separation Barrier aggravated this situation. The donors saw it as their role to protect Palestinian civilians from the undesired outcome of the ongoing crisis. In addition, the aid was meant to restore the conditions necessary to revive the peace process.

During the legislative election in January 2006, Hamas won enough votes to form a majority government. Its refusal to abide by the Quartet's principles and accept Israel's right to exist, abandon violence and accept the previous agreements between Israel and the PLO, made the Commission and the member states freeze their direct budget aid to the PA in April 2006. The development of alternative channels for EU assistance such as the Temporary International Mechanism (2006), and PEGASE (2008), did not prevent further reversal of development, but it did manage to ensure that salaries were paid to civil servants and that public hospitals and schools kept running. Furthermore, many of the pre-existing checks and balances and measures to avoid corruption were abandoned overnight to transfer funds directly to the Presidency.

In addition, the feud between Hamas and Fatah had serious political and humanitarian consequences. Despite ongoing talks and the formation of a government of national consensus in 2014, reconciliation has stalled. In spite of its alleged willingness to relinquish its security presence near the border crossings, Hamas did not yield control over the crossings to the PA. Fatah refuses to integrate around 40,000 civil servants whom Hamas has recruited since 2007 into the payroll of the PA (IMF, 2015). The ongoing rift has affected the quality of basic services, duplicated the channels of aid delivery and hampered the reconstruction in Gaza. As a result, according to humanitarian actors, the

basic needs of Gaza's population, such as education, health, social welfare, water and municipal services, are not being met.

Palestine remains one of the world's leading per capita recipients of foreign support. Between 2007 and 2013, Palestinians were given €300 million per year under the European Neighbourhood and Partnership Instrument (ENPI). In 2014, another €309.5 million was distributed via the PEGASE direct financial support programme (€170.5 million), *United Nations Relief and Works Agency* (UNRWA) (€87 million) and development programmes (EEAS). In spite of the donors' efforts and the PA's financial improvements, Palestinian poverty and aid dependency have reached unprecedented levels (World Bank, 2015a). The situation has been aggravated by the donors' response to Hamas' coup in the Gaza Strip in 2007, Israel's separation policy and the three subsequent wars in the Gaza Strip. This has obliged the donors to shift even further to humanitarian aid, to the detriment of state-building. Between 2000 and 2014, the EU Humanitarian Aid and Civil Protection department (ECHO) provided €700 million in humanitarian funding to oPt (ECHO, 2014).

Despite a growing trend to link development aid from support for local businesses and international trade, aid for Palestine and, in particular, for Palestinians in the Gaza Strip, remains far behind best practices.¹ Donor money is used to mitigate the worst effects of the humanitarian crisis, but this happens in ways that discourage long-term development and rarely look beyond emergencies. The ownership and responsibility of all parties to the conflict towards the most vulnerable population is also not encouraged. Without a political solution, the Palestinian economy will continue to be unsustainable and dependent on donor aid, while the decreasing political prospect for a viable two-state solution and Palestinian

¹ For example, the Dutch Presidency of the EU, in the first half of 2016, is focusing its efforts within the Foreign Affairs Council on the 'aid and trade' agenda at EU level. See programme of the Netherlands Presidency of the Council of the European Union 1 January-30 June 2016.

reconciliation increases donors' fatigue (European Commission, 2015b).

Area C: Palestinian development made impossible

Approximately 300,000 Palestinians live in Area C in about 530 residential areas, 241 of which are located entirely in Area C (OCHA, 2014). According to the Israeli Central Bureau of Statistics, another 356,000 Israeli civilians reside in 135 settlements and some 100 'outposts' established in Area C, over which Israel claims to have full sovereignty. Israeli policies make Palestinian development in Area C virtually impossible, as only 1% of Area C is destined for Palestinian planning by Israeli authorities. Between 2010 and 2014, the Israeli Civil Administration (ICA) approved only 1.5% of all Palestinian building permit applications. As a result, Palestinians are left with no other option but to build without a permit, risking the demolition of their houses. Since 2011, over 3,500 Palestinians have been displaced by demolitions in Area C and over 11,000 demolition orders, affecting an estimated 13,000 structures are still outstanding (OCHA, 2015c).

Besides the continuing settlement expansion and demolitions, a growing concern is the transfer plans of Palestinian communities. The ICA advanced a plan in 2012 that calls for the removal of at least 19 Palestinian Bedouin and herder communities from their current locations in the E1 area in the periphery of Jerusalem. These locations are earmarked for settlements. These communities would be moved to three urban relocation sites (OCHA, 2014). In order to put pressure on the population, Israel hampers the provision of services and obstructs aid delivery (Knesset, 2014). However, the Fourth Geneva Convention prohibits the forced transfer of the local population and the destruction of the occupied population's property, and obliges the occupying power to agree to and facilitate the delivery of aid.

These developments have seriously affected the EU's aid efforts. Moreover, in late 2011 and early 2012, reports emerged about demolitions of or demolition threats to EU and member states' projects in Area C. In April 2014 and again in

August 2015, the Israeli Knesset's Subcommittee on Judea and Samaria, which reports to the Foreign and Security Affairs Committee, discussed the "illegal Palestinian construction in Area C". It called on the ICA to allocate more resources to the demolition of Palestinian structures in order to cause the displacement of Palestinians from areas in Area C that are of priority for the settlement movement. The Subcommittee members and the Coordinator of Governmental Activities in the Territories also discussed the need to target EU and other donor-funded structures. Accordingly in 2014, over 600 Palestinian structures were demolished in Area C and more than 1,200 Palestinians have been displaced (OCHA, 2015b). In 2015, over 450 structures in Area C were demolished. In the first quarter of 2016 alone, Israeli security forces have demolished over 500 structures, of which 140 were internationally financed. Between January and April 2016, assistance by ECHO and the member states valuing almost €210,000 was demolished (Koenders & Ploumen, 2016).

The problem of Israel's demolitions of EU-funded projects is not new. However, Israel is increasingly targeting donor-funded projects. According to UN OCHA and EU sources, donor-funded projects constitute roughly 20% of all structures demolished or seized by Israel in recent years.² Already in 2011, the High Representative had indicated that for damaged EU projects, Israeli officials were approached and compensation had been asked in some cases. In its Council Conclusions of May 2012, the EU stated that it "will continue to provide financial assistance for Palestinian development in Area C and expects such investments to be protected for future use".

² Some 79 donor funded structures were demolished in 2012, 90 in 2013 and 118 in 2014 (see [UN OCHA oPt, Annual Humanitarian Overview 2014](#), p. 19). Bringing into account dismantled and seized structures, 157 structures were removed in 2013 and 143 in 2014 (see [UN OCHA oPt, West Bank Demolitions and Displacement: An overview, December 2014](#)). In 2015, 110 donor-funded structures were demolished, constituting some 20% of the total of 539 structures demolished (see [UN OCHA oPt, Humanitarian Bulletin, December 2015](#)).

Between 2010 and January 2014, EU humanitarian assistance projects with a value of €84,000 were demolished. No compensation was received. In December 2014, the EU decided to react systematically to demolitions and confiscations. The Commission outlined a common EU approach to this issue in February 2015. Firstly, it would set up a comprehensive and timely monitoring mechanism of EU and member state projects by mid-2015. Member states agreed to “react” systematically to threats through diplomacy and legal assistance to beneficiaries. In case the engagement with Israel would not lead to a freeze of the demolitions and confiscations, the EU and member states would be able to ask for compensation (European Commission, 2015a).

It was not until September 2015 that the EU embarked on a formal structured dialogue with Israel with an aim to halt the demolitions. During this six-month period, Israel has continued and even stepped up its demolitions of EU-funded projects. Despite continuous waves of demolitions, neither the EU nor its member states (other than Belgium) have publicly asked for compensation (MO*, 2015). According to the UN, projects financed by both EU and non-EU donors, with a value of more than €4 million, currently risk demolition. However, no reactive nor preventive EU mechanism has been created to systematically respond to further demolitions.

Gaza: Arrested development

Following the takeover of Hamas in Gaza in 2007, Israel tightened its land, sea and air blockade on the Gaza Strip. Gaza and West Bank became effectively separated by Israel and the international community, resulting in a political, social and economic fragmentation of the occupied Palestinian territory. The blockade has had a devastating impact on Gaza’s economy. It reduced Gaza’s GDP by about 51% (World Bank, 2015b). The unemployment rate in the Gaza Strip is now the highest in the world: 43% of the population, and over 60% of the youth, is unemployed. Despite the fact that nearly 80% of Gaza’s residents receive aid, around 40% still lives below the poverty line (World Bank, 2015b).

In addition to more than eight years of economic blockade, Gaza has witnessed three military operations during the past six years. At least 2,100 Palestinians were killed and more than 500,000 were displaced as a result of Israel’s military operation in the summer of 2014. More than 20,000 Palestinian homes, 148 schools, 15 hospitals and 45 healthcare centres were damaged or destroyed (UNCTAD, 2015). In September 2014, Israel, the PA and the UN agreed to establish the Gaza Reconstruction Mechanism (GRM) to enable construction and reconstruction work. However, Israel still imposes enormous restrictions and only a limited amount of all needed construction materials has been allowed into the Gaza Strip.

Although EU member states have pledged \$568 million for Gaza’s reconstruction (Carnegie Europe, 2014a), just 3,000 of the severely damaged or destroyed houses have been rebuilt so far and 75,000 persons remain displaced. (OCHA, 2016). It seems clear that the GRM has shown to be insufficient given Israel’s ongoing restrictive policy. Within this mechanism, Israel is appointed to approve individual applications of construction materials and is allowed to veto any decision regarding companies delivering construction materials. Although Israel was given this authority ostensibly to guarantee its security, this control renders the whole reconstruction process slower and more costly.

The blockade also impacts the internal division of Palestinian factions on a political level. The inability of the Palestinian government representatives to move freely between the West Bank and Gaza makes it impossible to govern effectively. Moreover, although local elections were held in 2012 in the West Bank, no national elections have been held since 2006. Consequently, the international community holds on to its isolation policy of Hamas and does not have contact with the local authorities in Gaza. Despite the establishment of a Palestinian Government of National Consensus in 2014, internal disputes between Fatah and Hamas are ongoing. According to humanitarian actors, there is still a reluctance to allocate sufficient resources to basic services in Gaza, leading to delays in the transfer of money from Ramallah to Gaza.

Some donors have launched initiatives to assist the process of reintegration of the two authorities. The EU recognises these efforts as an “area of new priority in its technical assistance”. The reintegration initiatives, mainly in the health and education sectors, are only making slow progress at a technical level (Carnegie Europe, 2014b). Extending the programmes to the political level will be far more complicated as long as the EU holds on to its no-contact policy with Hamas’ authorities in Gaza. This policy effectively hinders institution-building, which is necessary for a long-term development strategy implemented by a viable state, and often prevents recovery and development assistance from reaching vulnerable populations.

Conclusion and recommendations

Aid is often disbursed in a political environment that donors cannot control. However, if applied under conditions that are impossible to achieve, aid can be harmful or contribute to the status quo. This has been the case in the oPt where the humanitarian situation is defined as a protracted protection crisis driven by insufficient respect for international law (OCHA, 2015a). In order not to harm its relations with Israel, the EU has not sufficiently highlighted international law in its operational policy. Yet, the EU has failed to gain leverage in Israel and did not win the trust of the Israeli authorities. Hence, it was unable to establish itself as a strong player and its role was mainly restricted to being a payer.

Donors need to fundamentally rethink their strategies. Firstly, aid effectiveness must be improved. For this to take place, dialogue on access to humanitarian aid must be held with all parties to the conflict and clear standards for improvement must be set. The EU also needs to pay further attention to transparency and checks and balances in order to improve the PA’s performance and serve the needs of its population. Secondly, donors have to ensure respect for international law and promote the rule of law while giving assistance. They have to stress that donor money does not absolve parties to the conflict from their obligations under international law and ensure that the delivery of aid is not impeded by such violations. In this

respect, the EU urgently needs to develop a coherent response to prevent and respond to Israel’s demolitions of EU-funded projects and structures in the West Bank.

Lastly, the EU has to reverse the tendency where the Palestinian economy becomes increasingly dependent on donor aid while Israel continues to strengthen its control over the territory and natural resources that are necessary to enable Palestinian development. Without an easing of Israel’s closure policy in the West Bank and the Gaza Strip, poverty will only continue to grow. In the absence of a political settlement, aid has limited potential. If the EU’s assistance is not linked to a political agreement that ends the occupation, it cannot advance peace.

Recommendations

- The EU should conduct its bilateral relations with Israel in a manner that is coherent with its aid policies. The EEAS and the individual member states must insist that any strengthening of their relations with Israel is conditional upon its respect for IHL.
 - o The human rights situation in Palestine must be given a more prominent part in the EU-Israel dialogue on the Middle East Peace Process. This dialogue should focus on ensuring Israel’s respect for international law.
- The EU and its member states should use their leverage with the PA in order to promote good governance and find practical ways to ensure aid effectiveness both in the West Bank and the Gaza Strip.
 - o The EU and its member states need to insist that the PA improves its performance in the field of transparency and human-rights. Since a significant amount of the PA budget is devoted to the security sector, it needs to meet basic standards regarding accountability and the rule of law.
 - o The EU and its member states should support independent audits of PA expenditure, also to ensure the equitable distribution between the West Bank and the Gaza Strip.

- Discussions with local authorities and actors, including Hamas in the Gaza Strip, are key to enable the effective delivery of assistance and the practical realisation of aid projects.
- The EU and its member states should take more measures to ensure that aid is received by people in need and that illegal practices on the part of Israel do not hamper its effectiveness. Therefore, it is key that the EU explores instruments to assign the financial responsibility for damage to EU-financed projects or infrastructure affected by the unlawful use of force to Israel as the internationally responsible party.
- Given that the structured dialogue with Israel, which was aimed at addressing the issue of Israel's demolitions, has not brought about their freeze or even reduction, the member states have to implement their commitments and register the financial losses, publicise the costs of the destruction and confiscation of EU-funded structures and publicly demand compensation.
- The Belgian Ministers of Foreign Affairs and Development have already called for compensation within a European framework. This should be a priority in order to allow the EEAS and the member states to develop a coherent response to prevent and respond to Israel's demolition of EU-funded projects and structures in the West Bank, including East Jerusalem.

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