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US and EU Engagement for a Palestinian State

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Seven Theses on US and EU Engagement

1) **While the international community has over the last decade converged around a two-state vision, it has neither worked convincingly to implement this vision nor to prevent or stop processes that have the potential of making a two-state settlement impossible**, such as the fragmentation of Palestinian territory through Israeli settlement activity and the separation wall, the isolation of Jerusalem, and the consolidation of the territorial-political split between the West Bank and the Gaza Strip. In general, there have been huge discrepancies between Western declarations and the West's engagement to act accordingly. This is true with regard to general values (to give but one example that has been of particular importance to Germany: efforts at ending impunity with regards to systematic human rights violations and war crimes by establishing the International Criminal Court) and with regard to specific positions on the Middle East conflict as specified in countless EU declarations (Venice, Berlin, etc.), George W. Bush's 2002 two-state vision, the 2003 road map, etc. Over the last years, these contradictions between declaratory positions on the one hand and action (or often rather: inaction) on the other have become ever more striking on Jerusalem, Israeli settlements, Palestinian unity, the Goldstone Report and the Gaza blockade. Declarations, resolutions and agreements, however, remain ineffective if not followed up by concrete and consistent policies.

2) **The international community's approach to negotiations has failed**. This approach has been that a two-state settlement should be reached through direct bilateral negotiations between the parties to the conflict and that the international community should set no preconditions or make proposals other than the relevant UN Security Council resolutions. This has meant that the role of third parties – above all, the US – has merely been to support peace talks as facilitators, rather than performing as active mediators. However, to date, this approach has failed to produce the desired outcome and its prospects of future success are minimal either. While such an approach can be justified because it stresses ownership of parties to the conflict, it ignores the power asymmetries between the parties, it does not help to overcome strong veto powers in both societies, and it does not help them to break out of the cycle of mistrust and violence. At the same time, it still imposes the US political calendar (electoral cycle) on the parties, thereby adding another

obstacle and increasing distraction from the relevant issues.

3) **The institution of the Quartet, formed in 2002 in order to combine international efforts with regards to reviving the Middle East peace process, has actually had a counterproductive effect on the international community's dealing with the conflict**. It has led to the imposition of the US approach not only on the Europeans (who had anyhow already accepted the US as the main power broker in the region and resigned themselves to a largely complementary role as a "payer") – but also on the UN. With the inception of the so-called "Quartet criteria," the UN was subjected to (or rather: subjected itself to) the policy of isolating Hamas. This has seriously undermined the UN's leverage and standing in a double sense: as an impartial body that has access to all actors in a conflict and as representing the world community which should by definition not be subjected to one country's specific interest. [Indeed, Russia has been the only Quartet partner that has felt free to ignore, at least at times, the isolation dictum.]

4) **The US and the EU have declared their support for the 2002 Arab Peace Initiative. However, while they have time and again asked Arab States to lend their support to Western initiatives – chief among them, Arab endorsement of the Annapolis process and US President Obama's attempt during 2009 to convince Arab States to send out signals to Israel that would serve as steps advancing confidence and an atmosphere in which negotiations could be restarted – they have never seriously tried to cooperate with the Arab States to explore the Arab Peace Initiative's potential. Also, in some cases where the West had asked or encouraged Arab States to engage, e.g. with regards to mediating between the Palestinian factions, they undermined the results – as with the so-called Mecca Agreement mediated by Saudi-Arabia in 2007. The agreement was criticized by the US because it did not explicitly mention the Quartet criteria. Worse, the National Unity Government that was formed on its basis in March 2007 was undermined by the international community by upholding the PA's financial boycott (EU, US) and by arming Fatah elements (US).**

5) **The international community's approach with regards to state and institution building has been inconsistent. While Europeans have claimed that since the establishment of the PA their main contri-**

tribution to the Middle East peace process has been to support institution building and thereby to establish the nucleus of a democratic and viable Palestinian state, in reality, the continuance of the peace process, however flawed, has always taken precedence over democratic reform and Palestinian self-determination (even if the latter is only understood in the sense of choosing their own representatives). This was illustrated by Western support for the authoritarian system that President Arafat had created (remember, for example, the American applause when the State Security Court was established in Gaza). That support persisted as long as Arafat was perceived as upholding the peace process – no single minute longer. It has also been shown by Western support to President Abbas, to the Fatah-dominated security forces and to PM Fayyad regardless of the 2006 Fatah election defeat and regardless of the retraction of internationally backed reform that had earlier strengthened the role of the Prime Minister over the President. It was amply demonstrated by the way the international community tried to channel its donations around the PA through ever more complicated mechanisms after 2006 – with the effect of weakening Palestinian governance institutions rather than strengthening them while at the same time increasing direct dependency of the population on international welfare and hand-outs. And it has become evident in the complete absence of any international demands for the Palestinians to return to the provisions of the constitution (i.e. the Basic Law) since January 2010, which has left all Palestinian institutions without legal legitimacy. However, Europeans have to be aware that under such circumstances no legitimate institutions can be built. No progress towards the rule of law can be achieved as long as there is no functioning parliament and no independent judiciary. Moreover, European human rights training for the Palestinian civil police will not make transform the Palestinian security forces into a legitimate and respected actor as long as the security services are not democratically controlled and are not perceived as serving, first and foremost, Palestinian security interests. It is time for the international community to finally realize: the contradiction between the aim of building democratic institutions and a process that is not leading to independence and that cannot satisfy a modicum of Palestinian aspirations cannot be reconciled. In this sense, the international community's enthusiasm about the so-called Fayyad Plan and its institution building approach is misled – unless it were to engage consis-

tently in favor of removing obstacles to sustainable Palestinian development and to Palestinian independence.

6) European and US policies on Hamas and on the Gaza Strip have been counterproductive. The almost complete blockade imposed by Israel following the kidnapping of Israeli soldier Gilad Shalit in June 2006 and further tightened after Hamas seized power in June 2007 has been supported by Egypt, the PA and, implicitly, by the international community. It has prevented any meaningful reconstruction after the 2008/2009 war, has subjected the population to a next-to-complete dependency on international aid and the tunnel economy, and has contributed to entrenching Hamas control over the Strip's territory and population – and thereby to deepening the split between the two Palestinian entities and increasing the obstacles on the way to Palestinian statehood.

7) With the reluctant and contradictory approach that the US and the EU have adopted towards a two-state settlement, they have actually worked against their own interests. It would make a lot of sense for Europeans (and Americans) to think through if continued conflict in the region as well as the fact of a two-state settlement quickly becoming elusive really serve any of their interests. A question that Germans should ask themselves in particular is if they serve living up to the historical responsibility in guaranteeing Israel's security and right to exist. But also: do they contribute to effectively fight against security risks which emanate from a neighboring region with which the EU shares (sea) borders and which have been fueled by protracted conflict? Are they helpful in building good relations with Muslim populations in their neighborhood as well as in Europe – relations that have been impaired by perceptions of a clash of civilizations which is fed by the persistence of conflict as well as European double standards in dealing with parties to the Arab-Israeli conflict? Are they good for European relations with the resource-rich Arab states and Iran needed for the sake of energy security and moderate energy prices? The answers to these questions are quite clear: continued conflict and a two-state settlement becoming no longer attainable are not in the European nor in the US interest. In theory, this answer has informed Western engagement for Middle East peace. In practice, however, other interests have been stronger.

The Way Forward

Where do we go from here? Americans and Europeans have the choice between, on the one hand, taking a back seat and administering the conflict as well as continued inefficient spending of tax payers' money, and, on the other, taking on responsibility and strongly engaging in efforts towards a two-state settlement and elevating peace making to a top priority in their relations with Israel and the Palestinians. If Americans and Europeans indeed are interested in serving their interests, they should focus on three main points:

1) **Mediation and Incentives:** The US wants to start proximity talks between Israel and the Palestinians to restart the peace process. A much more energetic approach will be necessary to see success. It will be a waste of time to go back and negotiate the basic principles of a two-state settlement. In fact, the outlines of an Israeli-Palestinian settlement are well known, and have been sketched out with the December 2000 Clinton Parameters, the results of the January 2001 Taba Summit and the unofficial Geneva Accord of autumn 2003: two states defined along the 1967 borders, a shared Jerusalem as capital for both states, a compromise settlement for the refugees which guarantees the right of return without infringing on Israeli sovereignty, etc. Similarly, the main elements of an agreement between Syria and Israel have been negotiated and fleshed out in official and unofficial talks; proposals about how to bridge contradictory interests with regards to access to the Golan Heights and its resources are also on the table. It is also a waste of time to negotiate further interim agreements. What is needed now are negotiations with clear terms of reference, pushed forward by an active and consistent mediation – a mediation that actively assists the parties to overcome their differences. This would include that the international community present a blueprint for a final status agreement, that it offer to provide an international presence to monitor the implementation of an agreement and to secure peace as well as other contributions that can help to bridge the gaps between the parties with regards to final status. Such an approach requires that Quartet partners be ready to back up negotiations on the details of a final-status agreement and be willing to sanction non-compliance and the use of force. In this context, Europeans and Americans should think about incentives and disincentives to influence the parties' behaviour by increas-

ing the cost of occupation and the use of violence while raising incentives for conflict settlement. On the EU side that would imply, for example, linking to a complete cessation of settlement construction and concrete steps to ending the occupation the upgrade of relations with Israel decided in principle in December 2008.

2) **Gaza and Hamas:** At the center of US and European efforts should be to attain a permanent opening of the border crossings to the Gaza Strip – as stipulated in the Agreement on Movement and Access negotiated in 2005 under the auspices of then US Secretary of State Condoleezza Rice. A permanent and reliable opening is one of the elementary preconditions for reconstruction and economic development. Europeans who prided themselves to contributing substantially to making Israeli withdrawal from Gaza a success story by deploying a European border assistance mission (EU BAM Rafah) should now contribute to ending the blockade and push for a renewed agreement so as to allow for all crossings to resume their operations. This will have to include sort of a technical agreement with Hamas. Moreover, Fatah and Hamas will have no alternative but to cooperate in order to allow for the unblocking of the domestic political process and allow for presidential, parliamentary, and local elections to take place. In more general terms, such cooperation is also a necessary condition for European efforts at building Palestinian governance and security institutions to be successful. This implies for the West to decisively support rather than obstruct talks that aim at a new power-sharing arrangement between Hamas and Fatah, however limited it will be. It also implies the need for Western willingness to cooperate with any transitional Palestinian government or interim body that is supported by all the relevant political groups.

3) **Rule of law:** It should be a collective concern of the international community to uphold the rule of law, without discrimination or preference, to safeguard the universality and indivisibility of human rights and the respect for the principles of the UN Charter. If the West wants to be credible with regards to the propagation and dissemination of such norms and values, it will have to align its actions with its declaratory positions. It should also be aware that a sustainable peace settlement in the Middle East cannot be built on impunity, stark injustice, or continued domination. Such awareness should translate, amongst others, into a) consistent policies on dealing with produce from Is-

raeli settlements in the occupied territories, b) a clear stance supporting thorough and independent investigations of violations of humanitarian law and human rights committed by all sides during the Gaza war 2008/2009 as demanded by the so-called Goldstone Report, and c) policies consistent with the 2004 ICJ legal opinion on the course of the separation barrier in the West Bank.