



Palestinian Unity Government: EU Should Find Ways to Cooperate

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Hamas and Fatah, along with other Palestinian factions and parties, signed a unity agreement on the 27th of April, with the aim of ending a four-year-long political division of the occupied Palestinian territory (oPt) between the West Bank and the Gaza Strip. The announcement of the deal came as a surprise as the reconciliation efforts stalled mid-2009, when Hamas refused to sign an agreement brokered by Egypt. The agreement, involving 13 Palestinian factions and the Palestinian Liberation Organization (PLO), is a result of popular pressure and a first step to restore the democratic deficit in the oPt. It also presents the international community with a new opportunity to change the status quo. Delivery of development aid to the Gaza Strip could become far less constrained. Dealing with a technocratic unity government could also be an opportunity to push Hamas to become a responsible political player and respect international humanitarian law (IHL).

The Need for Palestinian Unity

Until recently, there was not enough political will to reach an agreement, as both parties were consolidating their power in their respective spheres of interest. Both parties were not

willing to change their position and seemed interested in reconciliation only as far it did not interfere with their decision-making. There were also some major obstacles to reconciliation, such as the Palestinian Authority's security cooperation with Israel and Hamas' refusal to renounce violence. Furthermore, both parties had different views on the purpose and timing of a national unity government, with President Abbas pushing for a national unity government in order to prepare for elections in September, and Hamas opposing an interim government and elections in the absence of reconciliation.

The reconciliation agreement is general and focuses on technical issues such as the preparation of parliamentary and presidential elections, leaving many details open for discussion.¹ It seems to give both parties enough scope to overcome their original objections. Hamas abandoned its condition that it will only accept a national unity government if it can participate in it. Fatah accepted the resumption of the activities of the Palestinian Legislative Council (PLC), which is dominated by Hamas. Both parties compromised on their unwillingness to share power. This will require a hitherto unknown discipline from both parties. Yet, both parties maintain their right to veto decisions of the caretaker government. Hamas is also in the

safe position of playing inside the political arena without exposing itself to too much risk. The interim government will follow the line of the PLO, the representative body of the Palestinians that will also remain in charge of negotiations with Israel.²

Many observers contend that the main trigger for the renewed reconciliation talks were the Arab protests and the domestic response to this regional push for democratic representation. On 15 March, youth in the Gaza Strip and the West Bank took to the streets, demanding reconciliation. Neither Fatah nor Hamas could ignore the growing domestic pressure for Palestinian unity. For Hamas, the regional transformation seems positive, as is clear from the decision of the Egyptian caretaker government to base its foreign policy more on Arab interests and to open the Rafah border crossing between Egypt and Gaza.³ This might have allowed Hamas to forsake its reluctance to sign the agreement that it refused to sign in 2009. Even if it is the same agreement, the context is different.⁴ The Palestinian Authority (PA)'s intention to unilaterally declare a Palestinian state in the General Assembly in September might also have had an impact on the timing of the unity deal.⁵

Both parties also realize that the division could harm their long-term interests. The geographic and political split between the West Bank and the Gaza Strip is detrimental to the prospects for a Palestinian state. Fatah, expelled from Gaza after Hamas' violent takeover in June 2007, wants to get a foothold in the Strip again. The PA, led by Fatah leader President Abbas, shifted its strategy away from the diplomatic process under the aegis of the US to the declaration of a Palestinian state at the General Assembly in September, and cannot afford to continue its state-building efforts without including Gaza. Hamas, as the de facto authority in Gaza, did manage to establish an administration and deliver services, despite international isolation and Israel's blockade.

Yet, in the long run, this situation where Hamas has established an alternative model of governance, is untenable and undesirable in terms of the need for unity of the future Palestinian state. Furthermore, Hamas' rule is undermined by the challenge posed by other radical Islamist groups and the divisions within its own movement.

However, the challenges to the reconciliation process are huge. The deal is skeletal and could unravel over some unresolved issues, such as the composition of the unity government, the choice of Prime Minister and the reform of the PLO, in which Hamas is not included.⁶ Domestically, the national unity government will have to prepare presidential and parliamentary elections within a year. Fatah and Hamas will be running against each other - this competition for votes might undermine the fragile cooperation. The interim government will have to show tangible results and improve the situation in the oPt, especially in the Gaza Strip. The most challenging task for the reconciliation committees (newly established under the unity deal) will be to work out a security arrangement between the West Bank and the Gaza Strip and integrate the militias, thus creating a monopoly on the use of force.

Furthermore, external actors might spoil the process. Israel strongly opposes a national unity government and announced the suspension of peace talks. Even if it originally denounced the split, it has an interest in maintaining the division and perpetuating a policy of separation. During the short-lived Palestinian unity government in 2007 (March-June), the US actively promoted division. It is doubtful that the current administration will be positive towards a unity government and the prospect of PLO reform in order to include Hamas. The question is whether the EU will change its position, taking into account the new geostrategic situation in the region and the lessons of the failed isolation policies.

Towards a Different European Strategy

The EU seems more favourable towards reconciliation, no longer adhering to the militarized security response it adopted in 2006.⁷ Within the institutions, many officials believe that the ‘no contact policy’ towards Hamas has failed.⁸ The EU has also called for Palestinian unity under President Mahmoud Abbas. Yet, there is reticence to consider a different strategy towards Hamas. Apart from a declaration by the High Representative Ashton, “interested in learning more about the agreement”, the EU did not officially take a position on the interim government. Some member states did refer to the Quartet conditions as a framework for engagement with a national unity government. Observers indicate, however, that it is crucial to distinguish between engagement with a unity government and engagement with Hamas. Furthermore, in discussions on engagement with Hamas as such, the Quartet principles could be seen as the end goal and not as the means. They should not be used as a cover to defend non-engagement. It is vital that the EU seeks ways to work with the unity government, in the interest of maintaining the viability of the two-state solution by supporting the building of a unified Palestinian state to live peacefully alongside Israel. Furthermore, in the interests of ensuring respect for international law, engagement with the unity government is an opportunity to indirectly exert leverage on Hamas to abide by IHL. Co-operation could be based upon furthering the following objectives:

Stopping all Attacks against Civilians and Hostage-Taking

The targeting of civilians and civilian objects, indiscriminate attacks which do not distinguish between civilians and military objectives, and hostage-taking are all forbidden under IHL.⁹ EU member states have the duty to ensure respect for the Geneva Conventions in all

circumstances, and where there is a failure to fulfil obligations, they should “endeavour to bring the party responsible for violations back to an attitude of respect for the Convention.”¹⁰ Although the various parties and factions in the oPt are not formally parties to the Geneva Conventions, the PLO has indicated that it considers itself bound by them, and in any event, customary IHL requires all states to exert their influence as far as possible to end IHL violations, regardless of who is responsible for them.¹¹ The EU has to use its influence on Hamas, as an armed group, to unilaterally commit itself to respect IHL and stop attacks against civilians, as well as release hostages and refrain from further hostage-taking.

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Gaza: Ending the Blockade, Facilitating Reconstruction and Development

Owing to the physical West Bank/Gaza separation exacerbated by the Israeli blockade, and the political separation caused by the Hamas-Fatah division, it was not possible for the PA’s previous development and state-building plan to have much effect in Gaza. With the political division alleviated, the EU should intensify efforts to end the physical separation, in order to allow the extension of the West Bank’s development progress to Gaza as well. The most important means of ending the physical separation remains for the EU to exercise leverage on Israel through bilateral relations to end the illegal blockade.

In this regard, the opening of Rafah crossing, announced by Egypt, will not absolve Israel of its duty to end its blockade on Gaza, which is recognized under IHL as a collective punishment of the population, and impairs

their dignity and rights. It will also not relieve Israel of its responsibilities as occupying power, and as the party with the ability to restore Palestinians' right to freedom of movement within their territory, i.e. between the West Bank and Gaza. However, the opening of Rafah, when implemented, can hopefully provide improved access to Gaza for reconstruction materials and greater possibilities for exports. This will enable a larger degree of reconstruction and recovery, as well as opening Gaza to greater opportunities for economic and social development. The EU could help to facilitate this opening and build confidence in it by providing a presence at the crossing to ensure access and security. This move would require, and be strengthened by, coordination with the Palestinian unity government.

Ending Human Rights Violations Committed by Palestinian Security Forces

Human rights violations by security forces, particularly torture, arbitrary detention and the repression of freedom of peaceful assembly, have been a cause for serious concern in the oPt. Many such violations have reportedly been fuelled by the internal political division – for example, the dispersing of assemblies which are seen as affiliated to the opposing party, and the numerous “political detentions” reported every month to the Independent Commission on Human Rights.¹² A national unity government presents an opportunity to remove one of the root causes of violations, i.e. opposing factions' repression of each others' activities. The EU would also be able to extend to Gaza its existing efforts to curtail security force abuses.

Organization of Palestinian Elections

Palestinian elections, which are long overdue, are planned for next year. They will allow Palestinians to exercise their right to vote and to take part in public affairs through their elected representatives. More than a vote is at stake – the EU has recognized that the postponement of elections is impeding the promotion of democratic governance, and that the suspension

of the PLC (owing to the West Bank-Gaza split) is holding back legislation which is required to implement reforms, particularly in the justice sector.¹³ Elections are therefore one major key to ensuring the rule of law, which has been a focus of the EU-aided state-building process. Currently, there is no functioning legislature to enact necessary reform measures through a democratic mandate, and elections are the only way to change this situation.

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Endnotes

¹ Text of the Agreement between Fatah and Hamas, <http://www.palestinemonitor.org/spip/spip.php?article1787>

² Interview with Palestinian official, 2 May 2011.

³ MULLIN C., *The Hamas-Fatah unity deal: regional and international power dynamics*, 3 May 2011 <http://www.opendemocracy.net/corinna-mullin/hamas-fatah-unity-deal-regional-and-international-power-dynamics>.

⁴ ELDAR A., *Palestinian reconciliation is good news for Mideast peace*, 2 May 2011, <http://www.haaretz.com/print-edition/opinion/palestinian-reconciliation-is-good-news-for-mideast-peace-1.359278>.

⁵ SCHEINDLIN D., *Hamas Fatah Reconciliation- what does it mean?*, 27 April 2011, <http://972mag.com/hamas-fatah-reconciliation-what-does-it-mean/>.

⁶ BUCK T., *Palestinian factions prepare to sign deal*, 3 May 2011, Financial Times.

⁷ CROOKE A., *Permanent Temporariness*, London Review of Books, 27 February 2011, <http://www.lrb.co.uk/v33/n05/alastair-crooke/permanent-temporariness>. The EU adopted a policy of security-led repression of movements such as Hamas after Tony Blair's acceptance of the US-led doctrine of counter-insurgency.

⁸ Researcher Dimitris Bouris interviewed 60 EU officials – 58 interviewees acknowledged that the ‘no contact policy’ towards Hamas had failed and that the EU made a mistake in following the US' vision (unpublished research).

⁹ International Committee of the Red Cross (ICRC),

Customary IHL, Rules 1, 7, 11 and 96, available at http://www.icrc.org/customary-ihl/eng/docs/v1_rul.
First Additional Protocol to the 1949 Geneva Conventions, Articles 51 and 52; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Article 34.

¹⁰ Geneva Conventions of 12 August 1949, Common Article 1; ICRC, *Commentary on Article 1 of Convention(I) for the Amelioration of the Conditions of the Sick and Wounded in Armed Forces in the Field*, p. 26, available at <http://www.icrc.org/ihl.nsf/COM/365-570004?OpenDocument>.

¹¹ ICRC, *Customary IHL*, Rule 144.

¹² See monthly reports of the Independent Commission on Human Rights at <http://ichr.ps/etemplate.php?id=12>

¹³ European Commission, *Implementation of the European Neighbourhood Policy in 2009: Progress Report on the occupied Palestinian territory*, Brussels, 12 May 2010, p. 4.

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