

Toward a Quartet Position on Hamas: European Rules on Banning Political Parties

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Sep 12, 2005

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Brief Analysis

A key issue in the runup to January's Palestinian parliamentary elections is whether the radical Islamist party Hamas will be allowed to participate and under what conditions. Israeli prime minister Ariel Sharon and foreign minister Silvan Shalom have insisted that the group disarm, disavow terror, and end its call for Israel's destruction before it is permitted to run in elections. Palestinian Authority (PA) president Mahmoud Abbas has favored an unconditional acceptance of Hamas's electoral participation, believing that it could coopt Hamas within the Palestinian political fold. However, he said in a Washington Post interview published on September 11, 2005, "A political party plus a militia is unacceptable," but he did not elaborate specific plans that would prevent Hamas from participating in elections as both party and militia.

The diplomatic Quartet -- the United States, the European Union (EU), Russia, and the United Nations (UN) -- that sanctioned the Roadmap to Middle East peace as the guiding document of the peace process will have an opportunity to weigh in on this important issue when it convenes September 20 in New York. Given the pivotal role the EU must play in this debate, it will be interesting to see whether Europe maintains the same standard for Palestinian political parties that it has taken at home by banning parties that are associated with discrimination or violence. That is also the policy written into the Oslo Accords.

Hamas and Oslo

The September 28, 1995, Oslo II agreement says in Annex II, Article III, Section 2, "The nomination of any candidates, parties, or coalitions will be refused, and such nomination or registration once made will be cancelled, if such candidates, parties, or coalitions: commit or advocate racism or pursue the implementation of their aims by unlawful or non-democratic means." This seems clearly to be the case when it comes to the Hamas charter, Article 15 of which declares, "We must spread the spirit of jihad among the umma (Muslim nation), clash with the enemies and join the ranks of the jihad fighters." Article 28 of the Hamas charter further declares, "Israel, by virtue of its being Jewish and of having a Jewish population, defies Islam and Muslims."

European Policy on Banning Extremist Parties

Curbing or banning the activity of such political parties is the norm in Europe. The postwar specters of Nazism and

fascism gave resonance to the need to rein in political parties that incite violence, especially when based on ethnicity or religious affiliation. European states have increasingly enacted and upheld laws that limit or ban the actions of groups that wish to participate in elections.

Belgium. In November 2004, Belgium's highest court ruled that the xenophobic Vlaams Blok (Flemish Bloc) party was guilty of "permanent incitement to segregation and racism," depriving the party of state funding and media access. Vlaams Blok was not an insignificant party, but rather was the most popular party in Flanders, the country's largest region, with 24 percent of the vote there. The ruling was based on Belgium's 1981 Anti-Racism Act, which calls for imprisoning and fining anyone who "incites to discrimination, segregation, hatred, or violence against a person, society, or the members thereof, on the grounds of so called race, color, descent, or national or ethnic origin of these members or some of them." Individuals are liable for equal punishment for belonging to a "group" advocating the banned principles.

Spain. On August 13, 2002, the Spanish parliament voted overwhelmingly to ban the Batasuna Party, said to serve as the political arm of the militant Basque separatist group ETA. Batasuna was also not a marginal party, having won 18 percent of the popular vote in 1998 Basque regional elections. The ban on Batasuna was consistent with the June 2002 Implementing Act on Political Parties, which prohibits parties that instigate and promote terrorism. In Article 9, the act bans parties that are "promoting or justifying attacks causing death or bodily injury," "encouraging or legitimizing violence as a political principle," "providing political support for terrorism," or "collaborating with terrorist groups or groups supporting terrorist action." The Batasuna ban was upheld by Spain's highest court in March 2003.

France. In 2002, France dissolved Unite Radicale, an extremist neo-Nazi party, after a member attempted to kill French president Jacques Chirac. In 2005, then interior minister Dominique de Villepin broke up twenty neo-Nazi parties in Alsace, Paris, and southern France. The groups were reportedly involved in sixty-five violent attacks in 2004. A 1936 law enables the government to dissolve any movement "that incites to armed demonstrations in the street," "that resembles, in its form and military organization, a combat group or private militia," or "whose aim is to undermine the integrity of national territory or use force to attack republican government." A ban was added in 1972 on groups that incite to "discrimination against, hatred of, or violence toward a person or group of people on the grounds of origin or membership of a particular ethnic group, nation, race, or religion, or propagate ideas or theories seeking to justify or encourage such discrimination, hatred, or violence." The law was expanded in 1986 to dissolve parties that "take steps in France to perpetrate acts of terrorism in France or abroad."

Netherlands. In 1998, the Amsterdam District Court ruled in favor of dissolving and banning the Nationale Volkspartij (National Peoples Party) for inciting hatred, racial discrimination, and xenophobia. Article 2 of the Dutch civil code states, "Organizations that aim to promote violence or the support of violence, either in the Netherlands or a foreign country, cannot be public-benefit organizations, and in fact, are forbidden under Dutch law."

Germany. It is not surprising that in the postwar years, Germany enacted legislation in reaction to the racist political parties that dominated the country during World War II. Article 21 of Germany's constitution declares "unconstitutional" those parties "which by reason of their aims or the behavior of their adherents, seek to impair or abolish the free democratic basic order or to endanger the existence of the Federal Republic of Germany." Under Article 21, Germany banned a neo-Nazi party in 1952 and a communist party in 1956.

Italy. Similarly to Germany, Italy wrote into its 1948 constitution a clause prohibiting the reformation of a fascist party "under any form whatsoever." This prohibition was later expanded; under Article 3 of the 1993 Mancino Law, individuals and organizations can be prosecuted and banned if they incite violence or hate crimes.

The Council of Europe. In 2002, the Parliamentary Assembly of the Council of Europe passed Resolution 1308, which

examined the question of "the banning of democratically elected political parties" in member states. In trying to balance freedom of expression with human rights, the assembly concluded that, while civil sanctions are preferable, the dissolution of a political party might be necessary if it "uses violence or threatens civil peace and the democratic constitutional order of the country."

Implications for Hamas

European leaders, who have a track record of sympathy with the Palestinian cause, have made clear their rejection of Hamas's claims for international dialogue, although there has been low-level dialogue with Hamas officials elected in municipal elections. EU high representative Javier Solana said in July, "Hamas must transform itself into a political party and begin by disarming. A political party cannot bear arms; this exists in no democracy." In an interview with Haaretz on July 19, 2005, Chirac declared, "Hamas is a terrorist organization that cannot be an interlocutor of the international community so long as it does not renounce violence and does not recognize Israel's right to exist. This is the unambiguous position of the EU and it will not change."

In light of the European attitude toward Hamas, it will be interesting to see whether the EU supports the same restrictions on Hamas that European states place on extremist parties at home. Were it to follow the European practice, the EU would require the Palestinian Authority to enact eligibility rules requiring Hamas (and any other party wishing to participate in the January ballot) to disarm, disband militias, forswear violence, and end all forms of incitement to violence. A party running on a platform calling for Israel's destruction by its very nature is an advocate of violence. Furthermore, any party that could use force of arms as political leverage is a threat to the entire democratic process. If the Quartet fails to grasp the opportunity for setting down markers now for participation in Palestinian electoral politics, it would in effect acquiesce in the legitimization of a terrorist group. The implications could reverberate in electoral politics throughout the Middle East and even in Europe.

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