



The Israeli European Policy Network

The Monitor of the EU-Israel Action Plan

Roby Nathanson
Stephan Stetter
Editors



Ben Gurion University
of the Negev



Institute for
World Society Studies
University of Bielefeld



The Israeli Institute for
Economic & Social Research

Tel Aviv - Vienna, June 2006

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Friedrich Ebert Stiftung, Israel Office
POB 12235, Herzliya, Israel 46733
Tel. +972-9-9514760
Fax. +972-9-9514764

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Preface

In recent years, relations between Israel and the European Union have become more rather than less intensive. In addition to the US superpower, the EU remains a major partner on whom Israel can count – something that is particularly true in the areas of economic, research and technological policy. Israel's ties with the EU on various social policy levels are undergoing steady, tangible growth. Due to a number of factors, this significant state of affairs does not enjoy commensurate attention from the different publics. On the one hand, neither the Europeans in the EU nor the Israelis are aware of these ties, which have never been stronger, because they can easily be overshadowed by Israel's dazzling relations with the US. On the other hand, European-Israeli ties are also eclipsed by current events in the ongoing conflict between Israelis and Palestinians.

However, for some time people in key positions in the political and economic spheres in Israel and the EU have been making every effort to underscore the real status and weight of bilateral and multilateral ties alike, and to make their publics aware of their specific positive aspects. It must be made clear, though, that this does not involve any possible future European Union membership for Israel. Such a development is not on the books for the moment, nor will it be up for serious discussion in the foreseeable future. What appears to be far more urgent as well as of greater importance to political ties is to provide a more appropriate political framework for these ever-closer relationships.

Basically, experience with the Barcelona Process has taught us that insisting on always observing the principle of treating all participating countries equally is not without its drawbacks. In this context, the political development of the countries in the Middle East/North African region does not yet appear to have reached the stage of democratisation and economic stability. In addition, the EU's interests are quite clearly far too heterogeneous.

However, so that the 25-strong EU, following the major and somewhat indigestible challenge of expanding eastward, can work out a new and beneficial relationship with its remaining neighbours, the EU has produced its new European Neighbourhood Policy (ENP) as a concept that can be used as a basis for political action. In the ENP, greater attention is focused on the specific characteristic of each neighbouring state, giving every country from Morocco to the Ukraine the chance to define its ties with the EU.

As regards content, the working instrument, known as the Action Plan, is due to be developed by the end of 2007 in order to act as the basis for a long-term bilateral neighbourhood agreement.

In Israel, most politically relevant circles in the fields of government, the economy and society have acknowledged the prospects of the Action Plan. This has facilitated the early start of cooperation on devising content.

In this context, after three years of successful cooperation in Israel and the EU and in the wake of its successful reader on Israel and the EU, which received a large-scale, positive response, the Israeli European Policy Network (IEPN) decided to issue another publication in the hope of generating public debate both locally and in the EU.

This time, however, it is more than simply a “reader”, which is based on specialized knowledge and provides recommendations, drawing attention to a number of decisive or outstanding developments in Israel’s relations with the EU and vice versa. The concern of the editors, authors and backers of the present publication is to offer a critical analysis of problematic areas that are to be found on both the European and the Israeli sides, with the goal of providing critical monitoring which can make sure that shortcomings or failings will be discussed again before it is too late, and that change for the better can be brought about. Hence rather than a “reader”, this time we are above all offering a “monitor”.

The IEPN’s entire team has worked on this project for almost twelve months. Under the successful tried-and-tested leadership of the editorial team involving Dr. Roby Nathanson

(Israel) and Dr. Stephan Stetter (European Union), a publication is now offered which can make the concept of a network, if taken seriously, the key concept for successful political consultation.

From the very beginnings of this network-based effort by the IEPN, the Friedrich Ebert Stiftung (FES) has not only helped to develop and provided material support for the approach but also tried to encourage public debate of its results. Other FES offices in both Europe and North Africa have provided specific support for the project – support which has and will continue to make it possible to come up with a down-to-earth expression of thinking about a politically and economically productive and above all peaceful neighbourhood as well as to provide the requisite constructive political groundwork.

On behalf of the FES, I would like to express my heartfelt appreciation in particular to the editors and all the authors as well as to the large numbers of outstanding helpful people who made this publication possible for all their unflagging efforts. The present result has made all the hard work worthwhile. It encourages us to continue along these lines for it shows the very clear need for close “monitoring” as we proceed along the path of improving ties between the EU and Israel.

Hermann Bünz

Representative of the Friedrich-Ebert-Stiftung in Israel

Herzliya, June 2006

Introduction

Roby Nathanson and Stephan Stetter

With completion of the Action Plan (AP) in December 2004, relations between the European Union (EU) and Israel entered new waters. Some would argue that through the AP, which is part of the European Neighbourhood Policy (ENP) toward non-member countries situated along the EU's Eastern and Southern borders, the promise of the Essen European Council Declaration of 1994 to establish a 'special status' between the sides had at last acquired a concrete, substantive outlook. Thus, through construction of possibilities for Israel to hold a 'stake in the single market' and to upgrade its political, socio-economic and security bonds with the EU within the broad range of issue-areas in which 'further integration into European...structures' is sought, the AP indeed has overcome some of the impasses which so often haunted EU-Israeli relations. Yet, while the AP is a more systematic and comprehensive framework for bilateral relations than any previous agreement signed between the EU and Israel, expectations of what the AP can in fact deliver should remain grounded in reality. The AP itself states explicitly that the move from objectives to implementation depends 'on the degree of commitment' exhibited by both sides in speeding up the 'pace of progress' in bilateral relations. Thus, while the AP sketches parameters for closer integration of Israel with the EU, concrete policies on economic, political and societal issues remain subject to the political will of both sides regarding use of the integration potential offered by the AP.

It therefore remains to be seen to what extent the AP can render EU-Israeli relations free of the manifold sources of tension that have previously affected this relationship. In that context, it is particularly important to stress that the AP (as well as the ENP) represents a shift in EU preferences away from the regional approach taken by the Euro-Mediterranean Partnership (EMP) and toward greater emphasis on the bilateral dimension. While this policy shift may well contribute to improvement in EU-Israeli relations, the jury remains out on whether de-emphasising the regional and multilateral

dimension of Euro-Mediterranean relations can really contribute to greater stability and security in the region.

This holds particularly true regarding EU interests in a comprehensive and lasting solution of the Israeli-Palestinian conflict. While efforts to resolve the Middle East conflict rank among the AP's top priorities for action, the AP is, simultaneously, an effort made by both sides to partially de-couple EU-Israeli relations from the ups and downs of the Middle East peace process. This point is particularly noteworthy: In the course of the last 25 years, bilateral relations between Europe and Israel have often been tense due to quite divergent perceptions and interests with respect to the Israeli-Palestinian conflict. It remains to be seen to what extent this de-coupling exerts a positive impact on the wider Middle Eastern political landscape, including Israeli-Palestinian relations.

At this stage, however, it would be premature – and unfair – to pass final judgement on the actual success of the AP in improving EU-Israeli as well as regional relations in the Middle East. Thus, it is paramount to admit that the AP is only “a first step in this process” of deepening EU-Israeli relations and that the concrete policies referred to in the AP are to be effected within a ‘time frame of three years’, i.e., by December 2007. What should be acknowledged, though, is that the AP has been widely welcomed among policymakers, academics, the business community and the media both in the EU and in Israel. Something of a shared understanding exists regarding the AP's success in outlining a concrete vision for closer co-operation and deeper integration between both sides. While it is true that any single issue in the AP could have been addressed within the framework of either the Association Agreement of 1995 or the EMP, the momentum generated by the ENP has – for the first time – brought together all the related issues that, while acknowledged for years, lacked political sanction within a comprehensive document.

Against this background of recent developments in EU-Israeli relations, the Israeli-European Policy Network (IEPN), established in 2003, has set itself the task of systematically discussing the opportunities and limitations of the AP. The IEPN vision

entails initiation and maintenance of an open, constructive and creative dialogue between key decision-makers in Israel and the EU by means of a series of debates meant to culminate in working papers and concrete policy proposals for distribution among decision makers in the two areas.

In order to realize its vision, a deep network has been constructed involving joint teams of senior Israeli and European researchers, targeted research teams and extended *circles*, located in Israel and the EU. In Europe, the *Israeli Circle* brings together experts and decision makers from the EU and other European countries; in Israel, the *European Circle* provides a forum for meetings between Israeli experts and decision makers. The network's flexible structure, regularly scheduled meetings and focus on concrete issues, together with its twin anchors in the EU and in Israel, distinguish the IEPN from other organizations devised for similar purposes.

The IEPN's work is directed from the Israel Office of the Friedrich Ebert Stiftung (FES, www.fes.org.il, Hermann Bünz, Director) together with its partners in Israel and Europe. IEPN activities in Israel are co-ordinated by Dr. Roby Nathanson (Director, The Macro Center for Political Economy) and Dr. Joel Peters (Director, Center for the Study of European Politics and Society). EU activities are co-ordinated by Katharina von Münster (Free University of Berlin) and Dr. Stephan Stetter (Institute for World Society Studies, University of Bielefeld). Since its establishment in 1978, the Israel Office of the FES has become a highly trusted partner for projects initiated by leading researchers and practitioners in Israel's political and civil arenas. In cooperation with its offices located in Europe's capitals, the FES is uniquely positioned to support the IEPN programmes.

With publication of *The Israeli European Policy Network Reader* (Roby Nathanson and Stephan Stetter (eds.), Herzliya: Friedrich Ebert Stiftung, 2005), in addition to the current volume, the IEPN has succeeded in taking important steps toward accomplishing its agenda: dissemination of its analyses to a broad public in Israel as in Europe. The forthcoming IEPN conference to be held in Vienna (19-20 June) represents another step.

By creating a venue for face-to-face discussion among major decision-makers, the IEPN's current and future impact on EU/Israeli relations will be nurtured.

The IEPN is, therefore, well prepared to offer a constructive and critical assessment of the AP. Since its establishment, the IEPN has set itself the task of striving for a new and more constructive dialogue on EU-Israeli relations, which have soured dramatically since the mid-1990s. Through its dense network-like structure, which links the aforementioned Circles, as well as its publications, the IEPN has launched an open, creative and permanent dialogue involving both sides. It has thereby been able to draw from the experience of policymakers, researchers, consultants, journalists, business people and civil society representatives from Israel as well as EU-level and about another 20 European countries.

Immediately after the AP was adopted, IEPN co-ordinators agreed to devote a new round of IEPN working papers to issues directly related to the AP. These papers were written in the first half of 2005 and discussed at meetings of *Circle Israel* (Brussels) and *Circle Europe* (Tel Aviv) during November–December 2005. Based on these deliberations, the authors were asked to finalise their papers in light of the comments received from members of the two circles. With *The Monitor of the EU-Israel Action Plan*, the IEPN achieved its self-set objective to 'prepare articles aimed at transforming the AP's declarations into operative proposals' as set out in the introduction of the previous IEPN publication (Nathanson and Stetter 2005: 12). In the immediate future, the IEPN will focus on two interrelated issues. First, the IEPN will sustain its monitoring approach by constructive yet critical screening of the way in which the EU and Israel implement the AP during the three-year period stipulated by the AP. Second, the IEPN will assess the extent to which the AP contributes to the broader political and strategic interests of the EU and Israel on the regional level as well as within the context of Israeli-Palestinian relations.

In *The Monitor*, soon to be available in Hebrew translation, the IEPN offers timely analyses of the current status of co-operation and integration between Israel and the EU

on a wide array of concrete issues; by doing so, it carefully explores the potential inherent in the AP. The contributions to this volume, written by well-known European and Israeli experts, target financial services, co-operation in space, trade integration, energy and environmental co-operation, industrial issues, legal issues, justice and home affairs, social policies, political affairs including policies regarding the Israeli-Palestinian conflict, anti-Semitism and civil society. By focusing on the dialogue created in the various fields of co-operation and integration, this book's chapters address the AP from three perspectives. First, the contributors outline AP proposals for the respective policy spheres. Second, all the articles discuss how the often quite general statements found in the AP can be transformed into concrete substance, thus making full use of this bilateral agreement's potential for integration. Third, the chapters provide concrete policy recommendations for implementation by policymakers in the EU and in Israel.

The articles in the current volume are divided in five main chapters. Chapter 1 focuses on bilateral economic issues. It contains two articles by Israeli researchers and one article by an EU researcher. Dennis Tunda looks at the way in which the Israeli system of financial services is prepared for Israel's integration into the Single European Market, while addressing the banking sector (chapter 2.3.2.2. of the AP) in particular. Nellie Munin then addresses Israeli-European co-operation in the context of the Galileo programme, the EU policy aimed at establishing a global communication navigation system, operated through a network of satellites and ground control installations (chapter 2.5.14. of the AP). Gonzalo Escribano follows with an analysis of the trade instruments proposed by the AP; he focuses on removal of non-tariff trade barriers between Israel and the EU (chapter 2.3.1. of the AP).

Chapter 2 looks at industrial and environmental co-operation with two articles by Israeli researchers. Amit Mor and Shimon Seroussi scrutinise the prospects for regional co-operation in the energy sector, particularly development of solar energy schemes and power interconnections in the Eastern Mediterranean (chapter 2.5.6. of the AP). Moshe Dovrat then explores the potential for industrial co-operation between Israel and the EU (mainly chapters 2.3.2. and 2.3.4. of the AP). Chapters 3 and 4, which contain three

articles by Israeli researchers, address justice and home affairs, issues that only recently have become cornerstones of EU foreign relations, as well as social policies. In chapter 3, Lior H. Zemer and Sharon Pardo analyse the legal issue of which judicial body should receive the authority to decide conflicts arising from implementation of the EU-Israel AP and other legal instruments (linked to chapter 3 of the AP); Shlomo Shpiro then focuses on EU-Israeli co-operation in the areas of justice and home affairs as well as wider security issues (chapters 1 and 2.4. of the AP). In chapter 4, Yehudit Kahn focuses on social policy issues related to deepening integration between EU and Israeli labour markets (chapters 2.2.1. and 2.2.3. of the AP).

Chapter 5 brings together four contributions on wider political relations and civil society-related issues, written by one Israeli and three EU researchers. Raffaella A. Del Sarto takes a detailed look at the AP's potential to pave the way for more enhanced (and more constructive) political co-operation between Israel and the EU (chapter 2.1. of the AP). Jonathan Touval then assesses AP provisions on combating anti-Semitism in Europe (parts of chapter 2.1. of the AP). Costanza Musu follows with an analysis of the extent to which the Quartet, explicitly referred to in the AP, represents an effective instrument of multilateralism, one of the AP's main political goals (parts of chapter 2.1. of the AP). Katharina von Münster closes the chapter while addressing an issue of particular relevance to the deepening of civil society and the strengthening of the EU-Israel dialogue, namely, the role of media in shaping bilateral relations (chapters 2.6.1. and 2.6.4. of the AP).

This volume could not have been completed without the contributions made by several individuals who worked behind the scenes. We would like to express our sincere gratitude to Michal Weiss who, as the Administrative Coordinator of The Macro Center, has worked selflessly to transform this volume into a finished product. Hagar Tzameret-Kertcher, Director of Research, deserves commendation for her intellectual input and Shlomi Orenshtein, Researcher, for his careful work on the project. We acknowledge also Shira Picciotto for her contribution as a Research Assistant. We would also like to thank Nina Reshef, our English language editor and Mara Haviv Almog for the Final Editing.

Our appreciation is extended to each and every one of our contributors for the astuteness of their work and recommendations.

Chapter 1

Economics and R&D

Summary and Recommendations

This chapter deals with Bilateral Relations as expressed in economic, political, international relations and scientific spheres of activity. The chapter's first article, 'Israel: Financial Services in the Context of the Participation in a European Single Market', by Dennis Tunda, relates to the Action Plan's Article 2.3.2: Right of establishment, company law and services. The second article, 'Israeli-European Cooperation Under the GALILEO Programme: The Sky is (Not) the Limit', by Nellie Munin, relates to Article 2.1 – Political dialogue and cooperation – and Article 2.5 – Transport, energy, information society, environment, science and technology – and their respective clauses.

The final article in the chapter, 'Promoting EU-Israel Trade Integration: The Bilateral and Regional Dimensions,' by Gonzalo Escribano, like that of Munin, relates to Article 2.1. The article also relates to Article 2.3, especially Article 2.3.1 – Movement of goods – and, together with Tunda, to Article 2.3.2 – Right of establishment, company law and services.

Abstracts

The purpose of Dennis Tunda's article, 'Israel: Financial Services in the Context of Participation in the European Single Market', is to examine the Israeli economy's preparedness for joining the European Union. Its focus is on coordination of Israel's system of financial services with those of its European partners, particularly the banking system. The European Union's previous decision to promote cooperation with Israel has been officially authorization by agreements signed between the parties. The two most salient of these agreements are the GATS (General Agreement on Trade in Services),

which formally institutionalised trade in financial services between the two economies, and the Israeli-EU Association Agreement, which mandates that a dialog and practices be inaugurated for the purpose of liberalizing trade in services within five years of the date of the agreement's signing. The latter agreement is currently being implemented within the framework of the Action Plan, a process entailing cooperation and comprehensive inclusion of Israel within the European neighbourhood along its economic, social, political, legal and cultural dimensions.

The article concludes that significant potential for trade in financial services between Israel and the EU is apparent, and that the two parties are interested in promoting its economic-financial dimensions. Nonetheless, this type of trade and financial activity remains limited in Israel as a result of the high level of centralization characterizing its banking and insurance industries.

With respect to implementation of the recommended steps, the article proposes that foreign financial activity within Israel be increased, based on Israel's participation in globalisation processes as well as the sophistication of Israeli technology and society, which offer numerous promising opportunities for foreign banks.

Nellie Munin's article, the second in the chapter, deals with Israel's participation in the European Galileo programme while focusing on the programme's economic, political and scientific features. The programme offers a wide range of applications that cover many aspects of daily lives. For example: Transport, Energy, Oil & Gas, Finance, Banking & Insurance, Agriculture and Fisheries, Personal Navigation, Search and Rescue, Humanitarian Aid, Justice and Home Affairs, Environment and Recreation.

The European Galileo programme is designed to further global communication navigation services, operated through a network of satellites and ground control installations. The programme is envisioned to be a daring, ambitious, multi-disciplinary and innovative scientific programme. Israel, together with countries such as the US and China, was invited to take part in this programmes by the EU based on its well-known

scientific and technological superiority in relevant fields. This cooperation may be taken as a model for the wished-for cooperation within the framework of the ENP individual action plan for Israel. An approach based on the unique needs, characteristics and comparative advantages of the parties would serve Israel's interests in developing new markets and EU interests in importing knowledge and technologies, aimed at meeting the Lisbon Objective. The Galileo programme effectively illustrates the potential of Israeli-EU cooperation and its benefits for both parties¹.

Expected economic impacts for the EU:

- Increased EU competitiveness with the US and Russia in all aspects related to the ownership and operation of a GPS system.
- Increased competitiveness of EU industries around the world, based on the upgraded technologies and knowledge acquired during the Galileo process;
- Creation of 150,000 hi-tech jobs in the EU alone.
- Upgrading the technological and professional competence of EU workers and scientists by exposing them to the skills and know-how of foreign experts.

On 16 January 2004, the European Council invited the European Commission to begin formal negotiations with Israel regarding its participation in the project; it was concluded on 13 July 2004.² The agreement provides for co-operative activities on satellite navigation and timing within a wide range of sectors, notably science and technology, industrial manufacturing, service and market development as well as standardization, frequencies and certification. Israel was also invited to take part in the programme's financing through the Galileo Joint Undertaking, the body managing the programme. The EU has stressed that 'Israel is one of the eight countries within the world space

¹ Another excellent example of the mutual benefit that may emanate from EU exploitation of Israel's relative advantages in scientific research and technology is Israel's participation in the EU's 4th, 5th and 6th Framework Programmes. Israel is the only non-European country that participates in these programmes. Total value of the projects displaying Israeli involvement in the 6th FP is estimated at more than €1,300 million.

² *Cooperation Agreement on a Civil Global Navigation System (GNSS) between the EU and Its Member States and the State of Israel*, www.moit.gov.il.

community demonstrating significant technological assets on space programmes and achievements on GNSS applications, equipment, user segment and technology'.³

Two tracks exist for Israel's (as well as other countries') participation in the Galileo Programme. The first track is research and development, specifically, the 6th *Research Framework Programme*,⁴ an EU programme operating between 2000-2006. The programme finances research initiatives, chosen according to prior criteria, conducted by consortia of researchers from participating countries.⁵ Because Israel is the only country outside Europe taking part in the programme, Israeli researchers should join their European colleagues to take advantage of the financing opportunities the programme offers.

Other aspects from which Israel might gain from participation in Galileo:

- Galileo may help Israel to preserve as well as to improve its status as a leading force in the scientific and technological fields relevant to this project.
- Israel can benefit from sharing the programme's strategic values.
- Cooperation with other leading powers in these fields can promote sharing of expertise, competencies and advanced technologies.
- Israel will be able to join forces with its two major trading partners – the EU and the US – a rare opportunity given the fact that Israel usually finds itself torn between the two entities' conflicting interests.

The large scale of the Galileo Programme, its limitless potential for development and its strategic significance can provide Israeli industries and scientists with an extraordinary opportunity to improve their skills and knowledge, enjoy worldwide exposure, develop important professional networking and share experiences.

³ www.eu-del.org.il, 14 March 2005.

⁴ To date, two calls for projects have been published under this programme. The first call concluded with 8 major research projects, begun in 2003 (before Israel joined Galileo) and valued at €19 million. The second call, published on June 2004, just after Israel joined Galileo, was valued at €67 million. See: www.europa.eu.int, IP/04/704, 8 June 2004.

⁵ The research activities initiated in the context of Galileo are part of a larger programme established by the EU: The *Thematic Priority 1.4 Aeronautics and Space, Work Programme 2002-2006*, pp. 31-33. See: www.iserd.org.il/aerospace.htm.

Due to the immense differences dividing countries in the Mediterranean region, the strategy of promoting relations with each neighbouring country according to its own characteristics, level of development and needs might eventually prove to be most appropriate for implementation of the European vision in the region.

Gonzalo Escribano's article concludes the chapter by discussing economic and political cooperation as well as the relations maintained between Israel and its neighbours as well as the European Union. The article therefore serves to integrate the two previous articles within a consistent framework.

More specifically, this paper explores the accuracy of the trade instruments proposed by the ENP with respect to the AP to its objectives; it closes with some policy recommendations. Concerning promotion of EU-Israel trade relations, the paper concludes that bilateral trade liberalisation relies on removal of non-tariff barriers, mainly customs regulations, standards and SPS. Israel's strategy of convergence with the EU *acquis* seems preferable to mutual recognition procedures insofar as it entails minimal regional fragmentation.

The main insights of the paper can be summarized as follows:

- Middle East regional cooperation in the construction of common infrastructure conducive to trade has not been operational due to the unfavourable political climate, the only exception being Jordan-Israel cooperation.
- EU financial support to Israel-Palestinian trade infrastructure poses problems of status quo recognition for the EU.
- Securitisation of cross-border trade flows, like back-to-back procedures, increases the transaction costs of Israel's intra-regional trade. New procedures that balance security and trade facilitation should be adopted.
- Lack of mutual confidence between Israel and its neighbours (with the clear exception of Jordan) harms normalisation of trade relations. Institutionalisation of trade relations

is almost nonexistent, a situation that lowers the opportunity costs associated with unilateral measures.

- The Arab boycott on Israel calls for political solutions: low politics and economic instruments are insufficiently powerful to solve high-level political and hard security issues.
- Rules of origin is one of the few domains in which the EU can exercise some operational leverage for promoting Middle East intra-regional trade. Israel's participation in the PanEuroMed system of cumulation of origin is a positive step forward.
- The Pan-Euro-Med system of cumulation of origin appears to be more flexible and liberal than equivalent US arrangements as cumulation of origin is not limited to exports originating in Qualified Industrial Zones (QIZ).
- The Israel-Palestinian Authority quasi-Custom Union (qCU) procedures create obstacles to bilateral and Palestinian intra-regional trade.

This paper's position is that the regional approach introduced by the Barcelona Declaration should not only be preserved, it should be placed at centre stage. Instruments of low politics are clearly insufficient to foster intra-regional trade because most trade facilitation measures (infrastructure, new customs and border-crossing procedures) may be blocked by security concerns. The Pan-Euro-Med cumulation of origin rules represent a positive step forward but they will benefit only those countries ready to move from conflict to cooperation.

Regarding the promotion of Israel's intra-regional trade (including Israeli-Palestinian trade), EU available instruments are much more limited. As a general principle, it should be recognised that economic instruments cannot always substitute for political instruments. Trade normalisation requires prior normalisation of political relations, as happened with Jordan and to a lesser extent with Egypt. Instead of relying solely on economic measures, the EU should consider the possibility of investing more political capital in upgrading the political dialogue between Israel and its Arab neighbours through

Barcelona Process institutions. However, there is some room for EU provision of incentives for regional cooperation at the trade level.

Recommendations

- Continuation of the deregulation of banking in Israel for the purpose of promoting competition and reducing government intervention
- Reduction of centralization and government intervention in the insurance industry.

Israel: Financial Services in the Context of Participation in the European Single Market

Dennis Tunda

Abstract

The purpose of this article is to examine the preparation, accommodation and ability of the Israeli economy to participate in the European Single Market. There are several ways to present this issue; this article focuses on financial services.

Israel: Macro Indicators

Background

Israel's economy in 2004 was characterized by a relatively good security situation, with higher world demand for hi-tech products and service industries. Together with stronger private consumption, this continued the upward trend with real GDP growth of 4.3%, up from 1.3% in 2003. Industrial output rates have grown by 12.8% since then, topped only by China (16.6%).

With GDP of about €94,638 million⁶ (ranked 37th worldwide)⁷ and average population of 6.81 million (2004),⁸ Israel's GDP per capita (€13,929 in 2004) placed it among the 25 most affluent economies worldwide. In terms of PPP,⁹ Israel's GDP PPP of €131,800

⁶ \$117,548 million converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005 [online].

⁷ See The World Bank (Ed.), 2005a [online], p. 1.

⁸ See Israel's Central Bureau of Statistics (Ed.), 2005c [online].

⁹ The *purchasing power parity method* is a better indicator for the living standards of countries because it compensates for the weakness of local currencies in world markets by calculating the relative effective domestic purchasing power of the average participant within an economy.

million¹⁰ ranked it 47th, with a GDP PPP per capita of €19,353 which is quite high even in comparison with the EU.¹¹

Israel's services account for 62% of its GDP with communications services, software production and tourism playing major roles. Industry represents 25% of GDP, with a comparative advantage in high value-added products, mostly hi-tech goods (in 2004, 72% of all Israeli industrial exports were hi-tech) and cut and polished diamonds,¹² which represented 36.1% of all Israeli exports or an amount of € 11,204¹³ million. Israel was the largest exporter of diamonds by far in 2004.¹⁴ As this figure significantly distorts trade figures with other countries, diamonds are not included in the regular statistics. Agriculture nowadays accounts for only 3% of GDP.¹⁵

Fiscal and Monetary Policy

Concerning monetary policy, Israel's central bank, the Bank of Israel, supported the economic recovery by the gradual lowering prime rate to 3.5%, effective July 2005. The average increase in inflation of 1.2% in 2004 fell within Israel's price stability target of 1%-3%; it reflected tight fiscal policies and improved production capabilities.¹⁶

With respect to fiscal policy, Israel continued to aim at reducing the size of the public sector and concentration. Total government budget deficit spending represented 3.9% of GDP in 2004, slightly below the planned target, lower than the 5.6% of GDP in 2003. As a consequence of the decline in the budget deficit and accessibility of financing from foreign sources (e.g., the US loan guarantee framework, with Israel benefiting in

¹⁰ \$163,703 million converted with the average foreign exchange rate of \$1.24386 / € in 2004 according to OANDA (Ed.), 2005 [online].

¹¹ See The World Bank (Ed.), 2005b [online], p. 1.

¹² See Israel's Central Bureau of Statistics (Ed.), 2005d [online].

¹³ \$13,937 million converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

¹⁴ See Chamber of Commerce and Industry Israel – Germany (Ed.), 2005 [online].

¹⁵ See Eurochambres (Ed.), 2004 [online], p. 1.

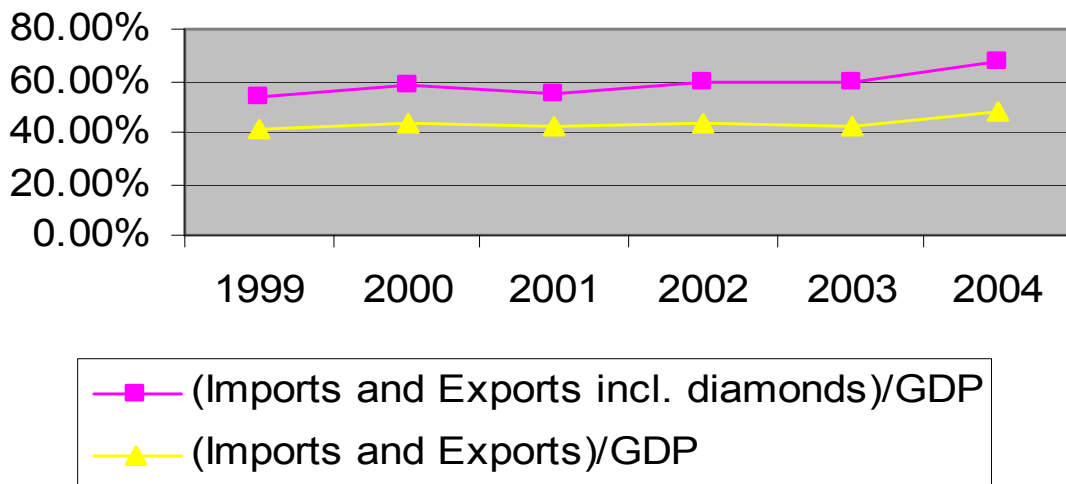
¹⁶ See Standard & Poors [Israeli Edition] (Ed.), 2004 [online]; European Commission (Ed.), 2005a, [online] p. 100.

February 2004 from new US loan guarantees worth €2,4 billion¹⁷), which continued to be an important source of financing, the government reduced its bond flotation on the Israeli market, which positively impacted on the public debt level as credit rating agencies use the debt/GDP ratio as one of their main economic indicators.

Import and Export

Israel's level of trade openness, defined as the amount of exports and imports of goods as a proportion of the GDP, which is used for measuring integration into the global economy, has increased significantly in the last five years, from 53.95% in 1999 to 67.51% in 2004. This reflects a number of factors, including unilateral trade preferences and early trade liberalization.¹⁸

Degree of trade openness



Source: Constructed on the basis of data obtained from Israel Central Bureau of Statistics (Ed.), 2005d [online].

¹⁷\$3 billion converted with the average foreign exchange rate of \$1.24386 / € in 2004 according to OANDA (Ed.), 2005.

¹⁸ See Israel Central Bureau of Statistics (Ed.), 2005d [online].

Over the last two decades, much progress has been achieved in the process of implementing structural reforms. Trade with third countries was augmented and greater monetary stability achieved. Indices such as the Fraser Institute's Economic Freedom Index, which displays trends of institutions and policies implemented toward increasing a country's economic freedom on a scale from one to ten (ten being the highest score), showed an increase from 5.71 in 1995 to 6.7 in 2003.

The EU remains Israel's main trading partner, with exports to the EU of 33% in 2004 and imports of 39.4% in the same year. Israel has a level of non-trade barriers similar to the EU and an average tariff rate close to that in the EU.¹⁹

The small size of the domestic market drove Israeli manufacturers to expand into foreign markets at an early stage. A major part of the economy is highly export-oriented, which led to joining the General Agreement on Tariffs and Trade (GATT) and establishing extensive free trade agreements with the European Union (1975) and the United States (1985). These have enhanced Israel's competitiveness greatly by enabling free trade access to over 700 million consumers.²⁰

In 2004, Israel exported goods worth €19,842 million²¹ (€31,047 million including diamonds)²², with 33% exported to the EU and 27.8% to the US. Divided by category, 24.8% of all exports to the EU were precious stones, 20.8% machinery such as hi-tech equipment, 18.9% were products of the chemical or allied industries, 8.1% plastics such as rubber and 6.7% vegetable products. With reference to the total exports, 76.7% of all vegetables exports went to the EU, 68.4% of all live animals or animal products, 56.2% of prepared foodstuffs, beverages or tobacco, 50% of plastics such as rubber and 45% of

¹⁹ See The Heritage Foundation/*Wall Street Journal* (Ed.), 2005 [online]; Zell, Goldberg & Co., Attorneys (Ed.), 2001 [online].

²⁰ See Israel's Ministry of Foreign Affairs (Ed.), 2004 [online].

²¹ \$24,681 million converted at the average foreign exchange rate of \$1.24386 / € in 2004 according to OANDA (Ed.), 2005.

²² \$38,618 million converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

all base metals.²³ With depreciation of the New Israeli Shekel against the Euro, Israeli exports became increasingly competitive on EU markets.

Israel opened its market to international competition in the 1990s with major decreases in customs. Imports in 2004 totalled €25,545 million²⁴ (€32,937 million²⁵ including diamonds), with the EU contributing 39.4% of all goods imported and the US 17.1%. Divided by category, 26.3% of all imports from the EU were precious stones, 24.2% machinery, 11.9% products of the chemical or allied industries, 7.4% vehicles and 5.1% base metals. Considering total imports, 64.7% of all wood pulp imports derived from the EU, 60.4% of products of the chemical or allied industry, 51.3% of prepared foodstuffs, beverages or tobacco, 50.6% of articles of stones, plaster, cement, asbestos, ceramic, glass or glassware, 45.7% of machinery, 46.4% of precious stones (with Belgium being Israel's main source of diamonds) and 45.5% of precision instruments. Israel remains highly dependent on imports of crude oil, grains, raw materials and military equipment.²⁶

R&D and Technologies

Foreign direct investment rose from €0.8 million in 1993 to €1.13 billion²⁷ in 2004²⁸ and to an astonishing rate of 135 scientists and engineers per 10.000 employees. Israel is consequently ranked 1st worldwide in R&D (comparable figures for the US are 70 and for Germany 48).²⁹

In reference to the country's success in developing cutting-edge technologies in computer software and communications, Israel is often referred to as the second Silicon Valley and consequently ranked 19 out of 104 countries in the competitive ranking of the World

²³ See Israeli Central Bureau of Statistics (Ed.), 2005e [online].

²⁴ \$ 31,775 million converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

²⁵ \$ 40,969 million converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

²⁶ See European Commission (Ed.), 2005b [online].

²⁷ \$ 1.4 billion converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

²⁸ See Bank of Israel (Ed.), 2005c [online].

²⁹ See Chamber of Commerce and Industry Israel – Germany (Ed.), 2005 [online]; OECD (Ed.), 2005 [online], p. 25.

Economic Forum 2004. It is furthermore one of the world's largest centres for start-up enterprises, with more than 4.000 Israeli start-up companies; in terms of the number of foreign companies traded on NASDAQ (with 71 enterprises), it ranks second only after the US itself.³⁰

Financial Services in the European Single Market

The Single Market

Development of the European Union has led to the abolition over the last fifty years of a multitude of barriers to its citizens, created a combined GDP of €10,254 billion, making it as the 2nd largest economy worldwide while maintaining the importance of national languages, cultures and traditions. Creation of the EU's Single Market on 1 January 1993 has made it a major driving force of integration, dismantling practically all internal borders. The Single Market accounts for one quarter of world trade and outward investment, granting free movement of *goods, capital, people and services* throughout the entire EU. The Market opened up economic opportunities and improved the living conditions for 455 million people.³¹

Goods can pass borders freely, which saves exhaustive paperwork, shortens delivery time and thus enables companies to save money and reduce the prices for their customers as they operate in a huge and highly competitive market. Due to mutual recognition of standards, products complying with the laws of one Member State can be sold in the entire EU without further requirements, a regulation that eases the distribution of products and increases variety throughout the EU.

Free movement of *people* enabled easily working in other Member States as well as crossing borders freely to visit friends, study and so on. Moreover, the provision of *services* across national borders throughout the entire EU is possible due to the freedom of cross-border services, mainly: property, transport and tourism.

³⁰ See *The Marker [Israeli Business News]* (Ed.), 2005 [online].

³¹ See Michael Dauderstaedt, 2004, p. 1; Daniel Mueller-Jentsch, 2004, p. xiii.

Financial Services in the Single Market

Freedom of *capital movement* enables floating within the single market to the area with the highest return, supporting companies that need capital to start and grow and thus create new jobs. Full liberalisation of capital movements in the EU has already been enshrined in the Maastricht Treaty, which came into force in November 1993, prohibiting all restrictions on capital movements and payments both between Member States and between Member States and third countries like Israel. A fully integrated EU-wide market in financial services is expected to reduce the costs of borrowing and provide consumers with a wider choice of investment products such as savings plans and pension schemes from all over the EU.

Financial services is an area with huge growth potential in the EU as very few of its 25 Member States have developed mature capital markets so far. According to the European Commissioner for Internal Market and Services, the two priorities for the coming years will be dynamic consolidation and better regulation. Borders between the EU and its partners around the world will be opened and regulatory barriers hindering trade and integration will be eliminated.³²

The core principles governing the internal market for financial services are set out in the EC Treaty, granting EU companies the freedom to establish themselves on the territory of another EU Member State and to provide services there freely. Freedom of establishment and free movement of services are two of the so-called *fundamental freedoms* that are central to the EU internal market.

Financial services in the global economy have been integrating at breathtaking speed over the last few years; modern technology has left the expression ‘distance’ almost meaningless as major transactions are completed around the globe at the click of a mouse. This has increased the need for regulatory action to speed up as well as establish structures capable of keeping up with market developments.

³² See European Commission (Ed.), 2005c [online], pp. 2 ff.

In the ‘Exchange of Views on Financial Services Policy, 2005-2010’ the opinion was again expressed that the EU needs to open borders outward and find solutions for the burden of several sets of regulations duplicating each other and causing legal conflicts for business partners. The EU has long since agreed to cooperate with partners like Israel to facilitate trade in financial services and to achieve success in the areas of deregistration, insurance, corporate governance, supervisory cooperation and others.³³ Israel and the EU have in fact used the multilateral provisions under the General Agreement on Trade in Services (GATS) since 1995 in order to formalize trade in financial services between the two economies.

Financial Services in the Israeli Market

Israel’s Financial Services Market: Concessions Made by Israel to Foreign Entities

Israel agreed to varying degrees of liberalization in financial services under the framework of the GATS. No restrictions exist on the establishment of a locally incorporated commercial institution or on the acquisition of such an institution in banking and insurance by foreigners. Exceptions exist in the banking sector, for example, regarding the possibility to open a branch in Israel, such as that it belongs to a large banking group with an excellent international rating as branches usually are regarded as cross-border trade, under the supervision and jurisdiction of the parent’s home country.³⁴

The EU requested that Israel ease restrictions on capital flows during the 1997 GATS negotiations and ensure the most favoured-nation (MFN) treatment of foreign banks. Israel, allowing foreign banking institution activities like depositing, lending and leasing, excused restrictions on capital flows and on foreign bank activity by the macroeconomic need to maintain exchange controls, a step that should have been relaxed after completion of the financial liberalization process. This stage was reached in January 2003; however, the mission to liberalize Israel’s banking sector has yet to be accomplished.

³³ See European Commission (Ed.), 2005c [online], pp. 2 ff.

³⁴ See: European Commission (Ed.), 2004d, page 18; Bank of Israel (Ed.), 2002 [online]; World Trade Organisation (Ed.), 1997, pp. 11 ff.

Trade in derivative products, exchange rates and interest rate instruments remain prohibited for foreign institutions. Furthermore, conditions of reciprocity exist in granting foreign bank licences as well as incorporation requirements for a variety of activities in securities trading. All financial services providers are supervised; they must be financially sound; most important, foreign entities usually have to hold a certain proportion of their financial assets within Israel's territory in order to ensure financial stability.

EU companies originating in a Member State need a single licence to operate in all member states while companies from Israel need a licence for their home country and each EU country they want to operate within, circumstances that make the market entry significantly harder, even for large and financially strong companies with access to legal advice. The direct costs of simply obtaining all the information necessary to establish a presence in a single EU country was estimated between €80,000 and €160,000 by an EU services trade association.³⁵

The Banking System

Israel's financial system is highly developed by regional and international standards, yet concentrated among a small number of large banking groups under the supervision and control of the Bank of Israel.³⁶ The Bank of Israel is the country's central bank and operates independently from the government. Its directives embrace ensuring price stability and generally regulating activities in monetary policy, managing foreign exchange reserves, supervising Israel's banking system and issuing bank notes and coins. In the past, it influenced establishment of a system of specialized banking institutions that were subject to different liquidity regulations in distinct business sectors, a measure that led to the division of banking institutions into two main groups: On the one side, ordinary banking institutions such as banks, foreign banks, and merchant banks; on the other side, specialized banking institutions such as mortgage banks, financial institutions, and joint services companies.

³⁵ See: Hirsch, M., 1996, p. 37; European Commission (Ed.), 2004e, p.1.

³⁶ See Israeli Ministry of Foreign Affairs (Ed.), 2004 [online]; International Monetary Fund (Ed.), 2004 [online].

Structure of the Banking System

As of September 2005 (for comparison, 1995 figures appear in parentheses), there were 30 (46) banking corporations in Israel, including 16 (24) commercial banks, 5 (9) mortgage banks, 5 (8) financial institutions, no merchant banks (1), 2 joint-service companies (2) and 2 foreign banks (2), namely, Citibank and HSBC.³⁷

The banking system is characterized by a high degree of concentration as the five largest banking groups account for over 90% of total bank assets and the three largest banking groups for approximately 80% of banking business in Israel, with little competition in lending and borrowing rates. Total assets of the five major banks was approximately €145.42 billion³⁸ at the end of 2004, an increase of 3.0% compared to the end of 2003.

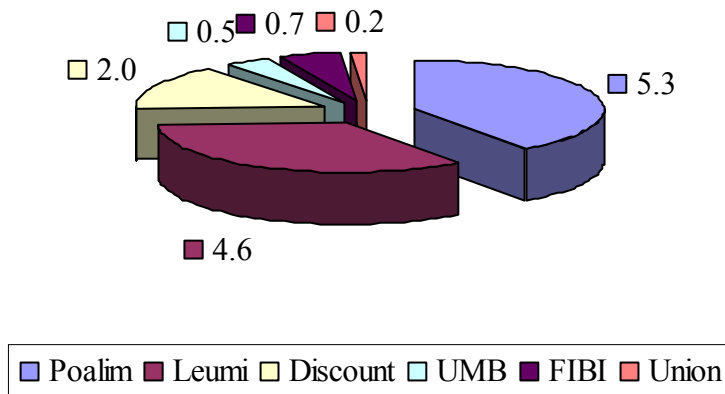
Within the banking sector, the five biggest banking groups hold 96 % of all deposits, 94% of all mutual and 99% of all pension funds. The direct and indirect control of almost all capital allocation in combination with the ability to pressure customers interferes with development of an efficient capital market, making the business sector heavily dependent on the banks and concentrating credit decisions in the hands of a small number of participants while limiting the range of both debt and equity capital sources.

Additionally, commercial banks play a significant role in long-term pension savings as the Israeli banks dominate the country's provident funds, which represent a significant part of pension savings. Hence, non-bank intermediaries operating alongside the banks and providing alternatives to banking services are almost absent in Israel. While many highly concentrated financial markets face competition from neighbouring countries, which limits their ability to exploit market power, Israeli banks face virtually no comparable competitive threats because of the country's geographical and political isolation.

³⁷ See Bank of Israel (Ed.), 2005c [online].

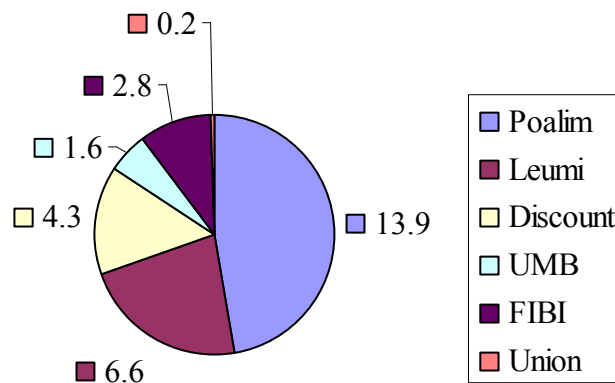
³⁸ ₪ 812 billion converted with the average foreign exchange rate of ₪ 5.584 / € in 2004 according to OANDA (Ed.), 2005.

Mutual funds (assets managed in € billion)



Source: Constructed on the basis of data obtained from Israel's Ministry of Finance (Ed.), 2005a, p. 4.

Pension funds (assets managed in € billion)



Source: Constructed on the basis of data obtained from Israel's Ministry of Finance (Ed.), 2005a, p. 4.

Current Developments

The ongoing upward trend in the Israeli economy can also be observed in the banks' profitability in terms of net return on equity, which increased from 8.6% in 2003 to 13.2% in 2004. The banks' ratio for loan loss provisions fell below one percent (0.92%) in 2004, which is still relatively high and reflects the continued existence of problem

loans from previous years. Yet, the ratio of non-performing loans to total loans decreased from 3.9% in 2003 to 3.5% in 2004. In accordance with Bank of Israel and international standards of the Basel Committee for Banking Supervision, every Israeli banking group or corporation must satisfy a minimum capital adequacy requirement (1st Basel Capital Accord) of 9% of its risk-weighted assets, which was topped in 2004 by a capital adequacy of 10.75%, after 10.32% in 2003 and 9.9% in 2002. The 2nd Basel Capital Accord is expected to be implemented in 2006.³⁹

Particularly among smaller banks, indicators for consolidation can be observed. For example, during 2003, when the Maritime Bank of Israel and the Mishkan Bank merged with Bank Hapoalim, which also purchased its missing 37% stake from the German bank SEC AG for its full ownership of the Israel Continental Bank. Alternatively, the Leumi Industrial Development Bank, an investment finance bank, will gradually be closed after encountering financial distress in 2002. In December 2003, Bank Hapoalim bought Bank Polska Kasa Opieki Tel-Aviv (Bank Pekao). Global Investment Bank (B.H.) closed in March 2004 and in December 2004 Tefahot-Israel Mortgage Bank merged with its parent bank United Mizrahi Bank. This trend has continued into 2005, with two additional small commercial banks terminating operations.⁴⁰

The Role of Government

Until the mid 1980s, financial intermediation by banks and other private sector financial institutions was quite limited due to a financial services market that was dominated by a government that was able and willing to issue endless quantities of effectively risk-free index-linked bonds to finance its huge government deficit, circumstances that severely harmed the availability of capital resources for the private sector and led to a state of 'crowding out'. Reduction in government activities and borrowings, combined with capital market reforms, has notably improved the situation for the private sector and given the banks, which were entitled to carry out a number of non-banking activities – such as underwriting securities, operating provident funds and trading securities through

³⁹ Israeli Ministry of Finance (Ed.), p. 62.

⁴⁰ See Bank of Israel (Ed.), 2004a, pp. 2 ff.; Israeli Ministry of Finance (Ed.), p. 62.

separated non-bank subsidiaries besides traditional banking activities – a large if not too large role in the financial system.⁴¹

The first steps toward Israel's economic integration with the EU consisted of the Free Trade Agreement of 1975; it would take nearly another two decades until Israel approved capital movements, when it finally abolished restrictions on capital exports and imports in 1992. Additional bank reforms have further reduced barriers to free capital movements. Furthermore a large proportion of restrictions on the issuance and trading of various types of derivatives and on interest rates have been removed together with the minimum terms of indexed deposits and credit. The deregulation of bank activity combined with foreign exchange liberalization has in fact diminished the spread between different types of financial intermediation, between domestic interest rates on foreign-currency denominated instruments and interest rates prevailing abroad. In addition, the process has increased the substitutability of different types of credit, lowered interest rate spreads in local currency sectors and overall cost of credit.⁴²

The government already sold (between 1997 and 2000) major parts of its share in the largest bank in Israel, Bank Hapoalim and owned 0.01% as of June 2005. Furthermore, it sold its controlling share (26%) of Israel Discount Bank for a total of €231.37 million⁴³ in February 2005, coupled with a three-year option to sell another 25%. If the option is exercised, the state will remain holding shares of about 6%. Between January 2000 and June 2005, the government moreover reduced its share of the second largest bank in Israel, Bank Leumi, by 21.35%, from 49.65% to 28.3%; it intends to complete the privatisation process by mid-2006. Regarding United Mizrahi Bank, the last of the four banking groups the government has had a stake in, Jerusalem sold 97.2% of the total outstanding shares in both public and private sales and holds 0.5% as of June 2005.⁴⁴

⁴¹ See International Monetary Fund (Ed.), 2004 [online].

⁴² See Friedmann, Y.; Goldstein, I., 2004, pp. 46 ff.; Israeli Ministry of Finance (Ed.), p. 63.

⁴³ ₪ 1.3 billion converted with the average foreign exchange rate of ₪ 5.61868 / € in 2005 according to OANDA (Ed.), 2005.

⁴⁴ See Israeli Ministry of Finance (Ed.), p. 35.

Foreign Activities

The share of Israel's banking system's net profit from operations abroad increased from 8.6% in 2000 to 29.3% in 2004, accounting for roughly 16% of the balance sheet. The average total number of offices abroad (see Figure 12) decreased in the period of time from 1996 till 2000 and remained from 2001 until 2004 slightly under the levels reached 10-15 years ago; nevertheless the trend indicates further growth.

The scope of activity is focused mainly on the US (73% of activity), the UK and Switzerland. So far, the EU financial services market has not been a major point of interest for the Israeli banks. Business activities were expanded in the US and Switzerland in the recent years, with total asset growth of 5.9% in the US (in dollar terms) and 9.5% in Switzerland (in Swiss franc terms), while activities in the UK decreased by 13.5% (in pound sterling terms).⁴⁵

	Total number of offices	Number of branches and representative offices abroad	Number of subsidiaries' offices (branches)	Number of employee posts
1991-1995 (Average)	120	72	48	2.827
1996-2000 (Average)	97	63	34	2.084
2001-2004 (Average)	116	63	53	2.437

Source: Constructed on the basis of data obtained from Bank of Israel (Ed.), 2004a, p. 48.

At the same time, the share of foreign banks in Israel continues to be negligible, standing at 2% even though the banking sector seems to be fairly liberalized according to several independent studies that gave Israel a liberalization index score of 86% and a financial openness index score of 8 out of 8. The reasons for the virtual non-existence of foreign institutions in Israel seem to be of a political and economic nature, including the Arab boycott of companies that had business relations with Israel. That step prevented them from engaging in business with Israel in order to be able to conduct more profitable deals with Arab countries, even after lifting of the boycott.

⁴⁵ See: Bank of Israel (Ed.), 2004b, p. 126.

Nevertheless, in the last few years foreign banks have shown growing interest in establishing representative offices or branches in Israel due to reasons that reflect Israel's improving credit-risk rating. Nine foreign banks, including the Bank of America International Limited (UK), BNP Paribas (France), CA IB Investment Bank (Austria), CIC Banques (France), Discount Bank and Trust Company (Switzerland), HSBC Bank (US), HSBC Republic Bank S.A. (Switzerland), Multi Commercial Bank (Switzerland) and Union Bancaire Private (Switzerland) have opened such representative offices. Opening these offices does not entitle them to conduct any banking activity; their sole tasks are to provide information and refer customers to the parent bank, which they can do without the need of any permit according to Israeli Laws. Citibank N.A (US) and HSBC Bank plc (UK) went one step further when they took the chance to open branches in Israel. Additionally, a non-banking American investor purchased 34.5% of Bank Hapoalim and the Italian-based Generali group bought 9.6% of Bank Leumi.⁴⁶

Some of the reasons for the enhanced interest of foreign banks are the Middle East peace process, which reduced political risk, and the enhanced macroeconomic situation, expressed by a low level of inflation and budget deficit spending. Furthermore, liberalization and deregulation of Israel's financial services markets has enabled Israel to participate in globalisation trends. Development of Israel's hi-tech sector led to emergence of a new class of wealthy managers within the Israeli society who represent attractive business opportunities for foreign banks and improve the banks' chances to provide these customers with a range of private banking services.

With respect to the easiest possible procedure for entering a new market, foreign banks usually prefer to open branches instead of establishing a commercial presence or purchasing a domestic bank, a route that is, however, more difficult in Israel. This has the result that foreign banks activity in Israel is still in its infancy and remains limited due to the highly concentrated structure of Israel's banking sector and the associated market entry barriers.

⁴⁶ See: Bank of Israel (Ed.), 2002 [online]; Sadeth, T., 2004, p. 48.

The Insurance Market

Israel has a well-developed insurance market operating under Israel's *Insurance Contract Law* and *Insurance Control Law*, which both reflect Israel's *Civil Wrong Ordinance*. The regulatory and supervisory authority responsible is the Commissioner of Insurance in the Capital Market, Insurance and Savings Division of the Ministry of Finance. Analogous to the structure of the banking system, Israel's insurance market is also characterized by a high degree of concentration. In 2004, the five largest insurance groups had an overall market share of 82.7%, reaching a share of 95.2% in the life insurance sector.

Insurance Group	General Insurance premium	Share	Life Insurance premium	Share	Total premium	Share
Clal	675	21.9%	595	23.5%	1,270	22.6%
Migdal	310	10.0%	816	32.2%	1,126	20.0%
Harel	593	19.2%	348	13.7%	941	16.7%
Phoenix	382	12.4%	416	16.4%	798	14.2%
Menorah	278	9.0%	237	9.4%	515	9.2%
Ayalon	192	6.2%	36	1.4%	228	4.1%
Others (domestic)	184	6.0%	0	0%	184	3.3%
I.L.D.	134	4.3%	43	1.7%	177	3.2%
Eliyahu	145	4.7%	27	1.1%	172	3.1%
Direct Insurance	124	4.0%	13	0.5%	136	2.4%
A.I.G	70	2.3%	3	0.1%	72	1.3%
Total	3,085	100.0%	2,535	100.0%	5,620	100.0%

Source: Constructed on the basis of data obtained from Ernst & Young Israel (Ed.), pp. 24 ff.

Total gross profit in the insurance sector amounted to €771 million⁴⁷ in 2004, compared to €928 million in 2003.⁴⁸ The decrease in profit derived mainly from lower investment income compared to 2003, when the capital market showed outstanding performance with exceptional yields. This was balanced by development of the total premium income of Israel's insurance companies, which amounted to €5,620 million in 2004, up from

⁴⁷ ₪ 4,304 million converted with the average foreign exchange rate of ₪ 5.584 / € in 2004 according to OANDA (Ed.), 2005.

⁴⁸ ₪ 4,775 million converted with the average foreign exchange rate of ₪ 5.14777 / € in 2003 according to OANDA (Ed.), 2005.

€5,533 in 2003. Total shareholders' equity increased from €1,855⁴⁹ in 2003 to €2,047 million⁵⁰ in 2004.

Year	2000	2001	2002	2003	2004
General Insurance	2,455	2,700	3,009	3,060	3,085
Change in %		9.9%	11.5%	1.7%	0.8%
Life Insurance	2,420	2,631	2,514	2,473	2,535
Change in %		8.7%	-4.4%	-1.6%	2.5%
Total premium	4,875	5,330	5,523	5,533	5,620
Change in %		9.3%	3.6%	0.2%	1.6%

Source: Constructed on the basis of data obtained from Ernst & Young Israel (Ed.), pp. 88 f.

Foreign insurance companies, formerly active in the Israeli market, have gradually withdrawn, leaving A.I.G. (American International Group) the only foreign company with a countable market share in Israel (though a mere 1.3%). As mentioned before, about 75% of total Israeli reinsurance has long since been transacted with foreign companies from the EU.

Year	2003		2004	
	Amount	Share	Amount	Share
Cash and cashequivalents	1,315	5.9%	1,547	6.4%
Securities	16,074	72.6%	17,758	73.4%
Loans	916	4.1%	1,169	4.8%
Deposits with banks	3,401	15.4%	3,199	13.2%
Subsidiaries	55	0.2%	80	0.3%
Real estate for rent	364	1.6%	407	1.7%
Others	26	0.1%	21	0.1%
Total	22,150		24,180	

Source: Constructed on the basis of data obtained from Ernst & Young Israel (Ed.), p. 9.

Structure of the Capital Market

⁴⁹ ₪ 9,549 million converted with the average foreign exchange rate of ₪ 5.14777 / € in 2003 according to OANDA (Ed.), 2005.

⁵⁰ ₪ 11,428 million converted with the average foreign exchange rate of ₪ 5.584 / € in 2004 according to OANDA (Ed.), 2005.

The regulatory and supervisory authorities dealing with Israel's capital market are the Israel Securities Authority, the Israel Antitrust Authority, the Bank of Israel, the Ministry of Justice and the Capital Market, Insurance and Savings Division of the Ministry of Finance.

Israel's only stock exchange is the Tel Aviv Stock Exchange (TASE), which is also the only public market for trading securities. It was founded in 1953; however, the government's domination of the activities in the capital market related to raising capital has significantly inhibited its proper development for a long time. All shares, convertibles, treasury bills, government bonds and derivatives are traded via TACT, the TASE's fully automated trading system. The TASE has 25 members and, as of the end of 2004, equity securities of 578 listed companies. In October 2000, a new Dual Listing Law came into force, enabling Israeli companies traded on the NYSE, AMEX or NASDAQ to be listed on the TASE as well without any further regulatory requirements. The aim was to increase turnover on the TASE, on option that 25 companies exercised until the end of 2004.⁵¹

Current State of the Capital Market and Foreign Investors

In 2004, the General Index of shares and convertible securities rose sharply by 17.6%, following an increase of 55.4% in 2003, whereas the most actively traded stocks, known as the TA-100 index, comprising the 100 largest companies by market capitalization, increased by 19.0%. Total market value of all equity securities was €74 billion in 2004,⁵² compared with €62.2 billion⁵³ in 2003 and €45 billion⁵⁴ in 2002. Average daily trading in

⁵¹ See: Israel's Ministry of Finance (Ed.), 2005, pp. 65 ff.

⁵² \$ 92.1 billion converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

⁵³ \$ 70.4 billion converted with the average foreign exchange rate of \$ 1.13208 / € in 2003 according to OANDA (Ed.), 2005.

⁵⁴ \$ 42.6 billion converted with the average foreign exchange rate of \$ 0.9459 / € in 2002 according to OANDA (Ed.), 2005.

equity securities increased to €118 million, after reaching €71.5 million⁵⁵ in 2003 and €53.9 million⁵⁶ in 2002.⁵⁷

Market Capitalization		Listed domestic companies	Daily Turnover (€ million)	P/E Ratio TA100
(€ million)	(% GDP)			
73,963	78.15%	578	118	18

Source: Constructed on the basis of data obtained from Tel Aviv Stock Exchange (Ed.), 2005 [online]; Israel's Ministry of Finance (Ed.), 2005, pp. 65 f.

Important factors behind the price gains on the equity market include, other than the improved security situation and expectations for a continuing growth in Israel, the further decline of Israel's interest rate, which induced institutional investors from Israel to look for alternative investment opportunities, as well as the ongoing positive investment recommendations on the Israeli equity market, which increased foreign investor interest.

In 2004, foreign investors held shares and convertible securities accounting for 10.2% of the total market capitalization, down from 11.3% in 2003. In contrast, however, the share of foreign investors in the trading volume of the TASE was 9.43% in 2004, compared to 8.44% in 2003.

The government bond market in Israel is highly developed and accounts for the vast majority of publicly issued debt securities. The Government raised €6.4 billion⁵⁸ in 2004, primarily through non-indexed bonds.

The Role of Credit Substitutes

Despite government interference, the Israeli bond market has also been a growing source of capital for corporate clients from Israel, expressed by the significantly increased

⁵⁵ \$ 81 million converted with the average foreign exchange rate of \$ 1.13208 / € in 2003 according to OANDA (Ed.), 2005.

⁵⁶ \$ 51 million converted with the average foreign exchange rate of \$ 0.9459 / € in 2002 according to OANDA (Ed.), 2005.

⁵⁷ See: Israel's Ministry of Finance (Ed.), 2005, pp. 65 f.

⁵⁸ \$ 8 billion converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

amount of capital raised through corporate bond issues, totalling €3.8 billion⁵⁹ in 2004 as compared with €1.2 billion⁶⁰ in 2003. This was partly due to institutional investors, mainly pension funds, provident funds, severance pay funds, advanced study funds, mutual funds, and a variety of life insurance savings plans, which turned to the capital market in order to substitute for falling yields-to-maturity on government bonds, caused by the decline in the government deficit. Pension funds held assets worth €27.7 billion⁶¹ at the end of 2004, provident and severance pay funds worth €27.2 billion⁶², advanced study funds worth €11.6 billion,⁶³ mutual funds worth €18.8 billion,⁶⁴ and life insurance savings plans, which invested a total of €19.1 billion,^{65,66}

Year		2000	2001	2002	2003	2004
Total credit		75,641	84,895	87,209	88,099	90,413
Bank credit		59,801	66,564	66,564	64,784	62,292
Nonbank credit		15,840	18,332	20,645	23,137	28,120
Thereof	From institutional investors	4,449	6,051	6,941	9,077	11,747
	From nonresidents	11,035	12,102	13,526	13,348	14,772
	From households (mutual funds)	178	178	356	712	1,780

Source: Bank of Israel (Ed.), 2005d [online].

The Framework of Israel's Participation in the European Single Market

The Association Agreements: A Bilateral Basis

⁵⁹ \$ 4.7 billion converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

⁶⁰ \$ 1.4 billion converted with the average foreign exchange rate of \$ 1.13208 / € in 2003 according to OANDA (Ed.), 2005.

⁶¹ \$ 34.4 billion converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

⁶² \$ 33.8 billion converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

⁶³ \$ 14.4 billion converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

⁶⁴ \$ 23.4 billion converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

⁶⁵ \$ 23.7 billion converted with the average foreign exchange rate of \$ 1.24386 / € in 2004 according to OANDA (Ed.), 2005.

⁶⁶ See Israeli Ministry of Finance (Ed.), 2005, pp. 65 ff.; Bank Leumi (Ed.), 2005, p. 18; Bank of Israel (Ed.), 2005d [online].

Since the late 1980s, Israel has been seeking to deepen its economic cooperation with the European Union. In December 1994, the European Council decided in Essen that Israel should enjoy special status with the European Union (EU). This led to the bilateral EU-Israel Association Agreement, the first of its kind and the basis for Israel's participation in the European Single Market, other than the mentioned multilateral agreements under the GATS. Introducing the Agreement, Article 1 informs the reader that: 'An association is hereby established between the Community and its Member States, of the one part, and Israel, of the other part.' Most of the areas covered by the Association Agreement redefine the relationship between Israel and the EU and reflect mutual aspirations to expand application of the primarily trade-related agreement of 1975 to economic and other areas as well.

Title One of the agreement is dedicated to the political dialogue between Israel and the EU, which 'shall strengthen their relations, contribute to the development of a lasting partnership and increase mutual understanding and solidarity' in order to enable "new forms of cooperation with a view to common goals, in particular peace, security and democracy', expressed in the form of regular meetings at ministerial and senior official levels as well as by 'taking full advantage of diplomatic channels, including regular briefings by officials, consultations on the occasion of international meetings and contacts between diplomatic representatives in third countries" and by 'any other means which would make a useful contribution to consolidating, developing and stepping up this dialogue.' Moreover, the two sides agreed to establish a political dialogue between the European Parliament and the Israeli Knesset.⁶⁷

Title Two, relating to the free movement of goods, expands the free trade area established between Israel and the EU in 1975 with respect to the General Agreement on Tariffs and Trade of 1994 and various multilateral agreements on trade in goods (in the context of the

⁶⁷ See: Official Journal of the European Communities (Ed.), 2000 [online], pp. 2 f.; Sadeth, T.: 2002, pp. 29 ff.

World Trade Organization) that prohibit custom duties on imports and exports of industrial products.⁶⁸

The right of establishment and supply of services is the content of Title Three, emphasizing the parties' wish to extend the scope of the agreement 'to cover the right of establishment of firms of one party in the territory of another party' and 'liberalization of the provision of services by one party's firms to consumers of services in the other.' The necessary recommendations for its implementation were scheduled to be made by the Israeli-EU Association Council, part of the political dialogue that is held at ministerial levels, in consideration of the agreements defined in the General Agreement on Trade in Services.

Title Four explicitly includes fields of major importance for the understanding of the legal framework of Israel's participation in the European Single Market for financial services. Regarding Capital Movement and Payments, including direct investment, real estate, establishing and providing financial services and admission of securities to capital markets, chapter 1 states that there shall be 'no restrictions between the Community of the one part, and Israel of the other part' and 'no discrimination based on the nationality or on the place of residence of their nationals or on the place where such capital is invested.' Only when extremely serious difficulties arise in the proper operation of exchange rate policy or monetary policy in the EU or Israel can protective actions, including restrictions, be introduced for a maximum period of six months.⁶⁹

Furthermore, the parties decided to mutually open their government procurement markets and the procurement markets of companies in the utilities sector for purchase of goods, work and services beyond the level already agreed upon in the framework of the World Trade Organization (WTO) Government Procurement Agreement. In addition, practices of any kind 'which have as their object the prevention, restriction or distortion of

⁶⁸ See: Official Journal of the European Communities (Ed.), 2000 [online], pp. 3 ff.

⁶⁹ See: Official Journal of the European Communities (Ed.), 2000 [online], pp. 6 ff.

competition', e.g., monopolies, are declared as 'incompatible with the proper functioning of the Agreement'.

Commercial state monopolies (like infrastructure providers in the telephone and electricity sector) should be adjusted accordingly to enable non-discriminatory conditions for the procurement and marketing of goods between nationals of the EU and Israel. Intellectual, industrial and commercial property is handled in the last chapter of Title Four; on that issue, Israel and the EU granted appropriate protection 'in accordance with the highest international standards, including effective means of enforcing such rights.'⁷⁰

Title Five created the framework for the intensification of cooperation in science and technology, and leaves space for future arrangements, to be implemented in separate agreements.

Finally, in Title Six, Israel and the EU agreed to support economic cooperation 'to their mutual benefit and on the basis of reciprocity in accordance with the overall objectives of the Agreement', primarily rapprochement in the sectors or sectors having the potential for producing growth and employment while considering protecting the environment and the ecological balance. Implementation of economic cooperation would require regular economic dialogues to be held between Israel and the EU. These would cover the entire economic policy sector, especially fiscal policy, balance of payments and monetary policy within forums like the Association Council (consisting of members of the Council of the European Union and members of the Commission of the European Communities on the one hand, and members of the Government of the State of Israel on the other) as well as exchanges of information and ideas, transfer of advice and technical, administrative and regulatory assistance at expert levels for discussion of professional matters.⁷¹

⁷⁰ See: Official Journal of the European Communities (Ed.), 2000 [online], pp. 7 f.

⁷¹ See: Official Journal of the European Communities (Ed.), 2000 [online], pp. 9 f.

Another point of interest is the agreed creation of harmonized *common standards* by means of reducing differences and mutually recognizing conformity assessments. This is especially important in the field of *financial services*, where integration is heavily dependent on the establishment of generally accepted rules and standards, *inter alia*, for accounting, supervisory and regulatory systems of banking and insurance. The same holds for the fields of *information infrastructures and telecommunications* as well as *transport and related infrastructure*.

To summarize, the aims of this agreement are to reinforce the 1975 free trade agreement that covered the areas of finance, agriculture and industrial products only, prohibiting all customs duties and charges having an reciprocal effect on imports and exports, providing freedom of establishment and liberalization of services, the free movement of capital and competition rules. These steps would promote harmonious development of economic relations between the EU and Israel, thereby fostering the progress of economic activity, the improvement of living standards and employment conditions and the increase of productivity and financial stability in the EU and in Israel. The targets included support of regional cooperation with a view to the consolidation of peaceful coexistence, economic and political stability as well as to promote cooperation in other areas of mutual interest while providing mechanisms for effective and ongoing implementation, including mechanisms for the prevention of disagreements.

The Association Agreement enhances Israel's relations with the EU in the political and economic sphere as a result of the liberalization of trade, particularly Israeli exports to the EU. Within the framework of the Agreement, Israel will be able to continue improving its economic status in relation to the EU, particularly in the field of new technologies, in which it specializes. As opposed to the alleged free capital commitments made in Title Four, the Association Agreement does not in fact formally establish any obligations beyond the commitments made under the GATS; however the parties have expressed their commitment to widening the scope of provision of financial services.⁷²

⁷² See: Official Journal of the European Communities (Ed.), 2000 [online], p. 2; European Commission (Ed.), 2003a [online].

Signed on 20 November 1995, the trade aspects of the Israeli-EU Association Agreement came into force in 1996. The entire agreement underwent ratification between 1996 and 2000 by the parliaments of all 15 EU Member States, the European Parliament and the Knesset, the Israeli Parliament, and entered into force on 1 June 2000. It replaced the former Free Trade Cooperation Agreement in manufactured goods of 1975 and was adjusted upon EU Enlargement to include all 25 Member States.⁷³

The Israeli-EU Association Agreement and the EU-Mediterranean Partnership

The EU-Israel Association Agreement is to be seen together with the EU-Mediterranean Partnership (EMP), whose point of departure was the Euro-Mediterranean Conference of Ministers of Foreign Affairs, held in Barcelona on 27-28 November 1995 (thereafter referred to as ‘Barcelona Process’). The Agreement is a broad, multilateral framework established between the European Union and its ten Mediterranean Partners.⁷⁴ The EU-Mediterranean Partnership is comprised of three main layers:

1. Political and security layer: Establishment of a common Euro-Mediterranean area of peace and stability based on fundamental principles, including respect for human rights and democracy, through reinforcement of the political and security dialogue at ministerial and senior official levels.
2. Economic and financial layer: Creation of an area of shared prosperity through an economic and financial partnership. This includes substantial EU financial support for economic transition and for the socio-economic consequences of this reform process as well as for the establishment of a free-trade area by 2010, covering the entire Mediterranean region.
3. Social, cultural and human layer: Rapprochement between the peoples in the Euro-Mediterranean region through institution of a social, cultural and human partnership

⁷³ See: European Commission (Ed.), 2005b [online]; The European Commission’s Delegation to Israel (Ed.), 2004, p. 21.

⁷⁴ Originally there were twelve Mediterranean Partners but Cyprus and Malta have since joined the EU in 2004.

having the goal of developing human resources, promoting understanding between cultures and developing free and flourishing civil societies.⁷⁵

The Euro-Mediterranean Partnership consists of two complementary dimensions:

- In the *bilateral dimension*, the European Union carries out a number of activities bilaterally, with each country. The EU-Israel Association Agreement, for example, was negotiated with Israel individually and is the most important of the bilaterally frameworks. It reflects the general principles of the Euro-Mediterranean partnership programme while containing characteristics specific to relations between the EU and Israel.
- The *regional dimension* is one of the most innovative aspects of the Partnership, referring to a regional dialogue with the aim of promoting regional cooperation in political, economical and cultural fields simultaneously. Regional cooperation has important strategic impacts as it deals with problems that are common to many Mediterranean Partners while strengthening national cooperation. Its fundamental aim is to build trust among the people of the region by engaging them in regular cooperation.

The main financial instrument for implementation of the EU-Mediterranean Partnership is the MEDA programme, offering technical and financial support instruments to accompany reform of the socio-economic structures of its Mediterranean partners. From 1995 to 1999, MEDA committed €3,424 million in grants to programme, projects and other supporting activities, with regional activities comprising around 10% and bilateral actions some 90% of this budget. From 2000 to 2006, the sum will be increased to €5,350 million. The other important source of funding is the European Investment Bank, which has lent €14 billion for development activities in the Euro-Mediterranean Partners since 1974 (€3.7 billion in 2002-2003).⁷⁶

⁷⁵ See: European Commission (Ed.), 2005d [online]; European Commission (Ed.), 2005b [online]; European Union (ed.), 2003 [online], pp. 11 ff.

⁷⁶ See: European Commission (Ed.), 2005b [online]; European Commission (Ed.), 2005d [online]; Emerson, M.; Noutcheva, G., 2005, pp. 3 f.

The main aspects of the EU-Israel Association Agreement are rooted in the general Euro-Mediterranean Partnership but emphasize additional provisions on freedom of establishment and liberalization of services, free movement of capital and competition rules, strengthening of economic cooperation on the widest possible basis and cooperation on social matters, supplemented by cultural cooperation.

At the second Association Committee meeting, held on 8 October 2002, a number of dialogues between the EU and Israel at the expert level were scheduled for, *inter alia*, the field of financial services. At the Economic Dialogue (17 October 2002), Economic Cooperation was discussed when Israel gave an overview of the structure and development of its financial markets as well as its plans for further liberalization. Through the Association Agreement, Israel has been offered the option of further integration within the EU's single market, with perhaps ultimately attaining full participation in its four basic freedoms (movement of persons, goods, services and capital). The EU has clearly indicated that Israel will be treated according to its wishes and specific assets.⁷⁷

Trade Provisions of the Association Agreement

The Barcelona Process has strengthened relationships with Israel through the Israeli-EU Association Agreement, which aimed at further decreasing tariffs in industry and agricultural as well as liberalizing services, facilitating trade and approximating product laws and standards. More important than the improvement of trade in agricultural products are the commitments to negotiate liberalization of services, a step that was set for not later than five years after the agreement had come into force. The European Neighbourhood Policy emphasises the process by implementing bilateral 'Action Plans'.

Israel accepted the Action Plan in December 2004, ending one and a half years of negotiations. The Action Plan covers a time frame of three years and is aimed at fulfilling the provisions of the EU-Israel Association Agreement with concise content, encouraging Israel's further integration into European economic and social structures and

⁷⁷ See: European Commission (Ed.), 2005b [online]

strengthening its ties in a number of political, economic, legal and cultural areas. With regard to financial services, paragraph 2.3.2 defines its aim as to

strengthen cooperation between the EU and Israel on regulation, supervision and financial stability and examine the possibility of convergence with a prudential regulatory/supervisory framework equivalent to the underlining principles of those existing in the EU while taking into account Israel's right to maintain and set benchmark standards and regulations [...] with a view to inclusion of this sector in a FTA and ultimately Israel's participation in the European Single Market for financial services.⁷⁸

Assessments under the Barcelona Process

Israel has been an integral part of the EU's neighbourhood for more than three decades. Of the fifteen countries located along the southern shores of the Mediterranean, Israel is by all means the most advanced and best prepared for sharing EU policies and becoming an integral part of the EU's Single Market. Both Israel and the EU have an immense interest in sharing the benefits of close integration into the EU. Israel's special status is also reflected in its association with the EU's Framework Programme for Research and Technical Development (RTD) since August 1996, which made it the first non-European country to be included in these programmes.

The Barcelona Process is considered to have been a vital institutional advance in EU-Israeli relations and a vital confidence-building measure on the large scale of its regional layer. Nevertheless, it has not been a satisfactory driving force for improvement of economic, political or social issues between Israel and the EU or Israel and other partner states. Therefore, it is quite understandable that the EU seeks to build on the positive features of the Barcelona process by introducing some new mechanism through the European Neighbourhood Policy.⁷⁹

⁷⁸ See European Commission (Ed.), 2004a, p. 12.

⁷⁹ See: Sadeth, 2002, p. 29; Calleya, S., 2004, p. 2.

The Action Plan shows the way ahead, replacing many of the vague intentions in the Association Agreement of the Barcelona Process with an extensive set of policy prescriptions that are linked to Israeli policy programmes or EU policy norms and standards. The remaining point of concern is how to realize the Action Plan by means of concrete measures.

Just how important this point is shown by a recent study about economic infrastructure in the Mediterranean region, according to which the greatest possibility of being a potential driver of change is the Action Plan. The Action Plan aligns Israel a great deal closer with EU programmes as the potential benefits for Israel offered by free trade are rather modest (most areas of interest were already covered by the 1975 agreement and only included goods according to the rules of origin) when compared with what can be achieved through liberalization and competitive private sector development in backbone services such as financial services. While membership in the EU will not become a reality in the near future, the EU and Israel should explore plausible scenarios that would allow for a more advanced association than is currently the case. The Neighbourhood Policy offers the conducive framework in which such a relationship can be established.⁸⁰

Israel and the EEA

Israel's specific status in the Middle East makes it a quasi-European state, with Israelis already enjoying visa-free access to the EU and an economy that easily fits into the EEA. In the future, Israel could become a member of the European Economic Area and a full member in many other EU forums, an Israeli goal for clear political and social reasons. The European Economic Area (EEA) is an agreement between the EU and three EFTA member states (Norway, Iceland and Liechtenstein); it came into force on 1 January 2004. It was established to grant EFTA countries the possibility of participating in the Internal Market without taking on the responsibilities of EU membership. Still, the Agreement gives them the unique right to be consulted by the Commission during the formulation of Community legislation. Therefore, and because of the high level of

⁸⁰ See: Emerson, M.; Noutcheva, G.: From Barcelona, 2005, pp. 21 f.; Calleya, S., 2004, p. 3.

integration of Community *acquis*⁸¹ into their national legislation, the EFTA EEA States are highly integrated in the EU. However, as EU membership is not the declared objective of EEA EFTA countries, they remain politically distant.

The EEA Agreement fosters “the four freedoms” of the European Single Market, i.e., the movement of *goods* (excluding agriculture and fisheries), *persons*, *services* and *capital* as well as provisions relevant to these four freedoms in the areas of social policy, consumer protection, environment, company law and data. It furthermore provides a framework for cooperation in a wide range of activities, e.g., research and technological development, information services, the environment, education, social policy, consumer protection, small and medium-sized enterprises, tourism, the audio-visual sector and civil rights protection. Participation involves regular contributions to the budgets of these activities, but no right to vote in the respective committees. Member states also make financial contributions in order to reduce economic and social disparities.⁸²

The Action Plan is already pointing in this direction for Israel; resolution of the conflict with the Palestinians would fully open this possibility. Undoubtedly, the uncertainty of the incentives (financial aid, etc.) the EU is willing to offer Israel as an ENP partner limits the possibility for a strong conditionality model based on incentives or disincentives. Instead, the EU relies on a model of strong socialization, while trying to convince Israel’s leadership to adopt EU standards and regulatory norms in various areas in order to boost their own economic and social development as well as to enhance governance structures. This method is particularly suitable for the EU’s Single Market regulatory norms and the regulatory approaches adopted in various areas of EU common policy, *inter alia*, the field of financial services. It will take a fair amount of diplomatic skill on the EU’s side to persuade Israel to see the value of adapting the EU model and to liberalize its financial services markets for its own benefit.⁸³

⁸¹ The constantly evolving, binding set of rights and obligations shared by all EU Member States.

⁸² See: Calleya, S., 2004, p. 3; European Commission (Ed.), 2004 [online].

⁸³ See: Emerson, M.; Noutcheva, G.: From Barcelona, 2005, pp. 16 ff.

Although these benefits vary greatly and can be achieved through liberalization efforts, it is imperative to mention that they are accompanied by certain risks as well.

Summary

A great potential for trade in financial services between Israel and the EU truly exists, making both markets interesting for financial services providers from the respective economies. Nevertheless, Israel's presence in the European Single Market for financial services remains shallow whereas financial services providers from the EU have so far exhibited restraint when entering Israel's market for financial services for several reasons, above all due to the high level of concentration in the sector.

Even though Israel has already made a variety of concessions on trade in financial services under the GATS, the general prohibition of cross-border trade remains detrimental for enhancing trade in this area between the two economies. In consideration of Israel's highly developed economy the EU could, however, offer Israel a nearly 100% stake in the European Single Market for financial services. Such an offer cannot be made on an à la carte basis but as a comprehensive and fully reciprocal deal, which would give Israel's financial industry the opportunity to compete with companies from all over Europe, inducing far deeper specialization and integration in financial services.

Integration of the financial services markets would lead to concrete improvements for Israel's firms and citizens as well as the EU because it would lower the costs of financial needs, ensure better pensions and safer financial products, services that play a significant role in everyday life. The underlying integration policies should be based on the principles of mutual recognition and the single passport system, allowing financial services operators from Israel and the EU to provide their services throughout Israel and the EU without further authorisation requirements. The ongoing reform in the Israeli banking system contributes to this goal as it decreases the high level of concentration within Israel's banking system and opens a golden window of opportunity for companies from the EU to enter the Israeli market. Alternatively, integration of the European Single Market for financial services represents a historical moment of opportunity for Israel as

participation in this process would enable the economy to more easily overcome the disadvantages of a small domestic market. All of the above is of immense interest to a small country like Israel, located at the periphery of the EU. Both Israel and the EU have essential roles to play in meeting this challenge.

Israeli-European Cooperation under the Galileo Programme: The Sky is (Not) the Limit

Nellie Munin

Introduction

The EU is Israel's most important trade partner. In 2004, imports from the EU to Israel accounted for \$16.8 billion while exports from Israel to the EU accounted for \$10.7 billion.⁸⁴

The history of trade relations between Israel and the EU began in the 1960's. A Free Trade Area Agreement was concluded by the parties in 1975. It was replaced by a more advanced Association Agreement in 2000.

After recent enlargement, the EU market is comprised of 25 countries, representing more than 450 million citizens. For Israel, as a small economy and politically isolated in the region, the European market, only 300 kilometres away, offers an inevitable potential for development as well as excellent conditions for economic and scientific cooperation.

Since 1995, the EU has addressed Israel as part of the Mediterranean region, in the context of Barcelona Process. This process was originally aimed at applying the European vision to the Mediterranean region by creating, first, a regional network of bilateral free trade area agreements between Mediterranean countries,⁸⁵ then by connecting the trade area created by those agreements to the EU by another network of

⁸⁴ Source: Israel's Central Bureau of Statistics.

⁸⁵ Including: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, the Palestinian Authority, Syria, Tunisia, Turkey as well as Cyprus and Malta, that joined the EU in 2004.

agreements, thus creating “an area of peace and stability” in the region. The Barcelona Process is still in place. However, political developments in the region as well as some ‘built-in’ shortcomings of the process have slowed down its accomplishment.

From an Israeli point of view, one of the shortcomings of the Barcelona Process is its uniform application to all the parties involved. Being far more advanced than other countries in the region in economic terms, on the one hand, and politically isolated on the other, Israel is isolated compared to the other participants and largely unable to exhaust the benefits enfolded in this process.

The European Neighbouring Policy (ENP) programme, launched in 2002, may offer an opportunity to overcome this difficulty. The ENP programme was developed to support enlargement of the EU from 15 to 25 Member States by creating a circle of neighbouring countries, sharing the same values and visions.⁸⁶ The ENP programme is complementary to the Barcelona Process. For Israel, the opportunity enfolded in this programme stems from the fact that an *individual action plan* is developed for each neighbouring country, based on its unique characteristics.

Israel holds a relative advantage in industries based on know-how, hi-tech, research and development. Such industries are very important for the development of the EU economy, which needs to accelerate growth to fulfil the Lisbon objective (2000) – to become the most competitive economy in the world by 2010.⁸⁷ Among other things, this objective aims at transforming the EU into a knowledge economy and society by developing research, innovation, education and training. Space activities are one of the fields that the EU would like to develop in this context:

⁸⁶ European Commission, *Communication from the Commission to the Council and the European Parliament, Wider Europe Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours* COM (2003) 104 final, EU Brussels, 11.3.03; European Commission, *Communication from the Commission. European Neighbourhood Policy: Strategy Paper* COM (2004) 373 final, EU Brussels, 12.5.04.

⁸⁷ In October 2003, the Council of Ministers decided to focus on two main aspects of this target first. One of them was European research, development and innovation: Presidency conclusions, Brussels European Council 16/17 October 2003.

Space activities are strategic for their contribution to the construction of Europe. Space is a tool to serve the interests of the Union, its Member States and its citizens: strategic influence, scientific progress, economic growth in the knowledge economy and security...

Space is a strategic industrial sector for growth and employment, and thus part of the Growth and Employment Strategy. Space applications underpin economic activity and crucial government services, taking their significance beyond the research environment. Their effectiveness depends on terrestrial systems, to exploit the comparative advantage of each. Their benefits are spread across Europe. New applications markets will be driven by innovation, in particular through SMEs.⁸⁸

The EU realizes that space activities are global by nature, due to their global objectives and high-risk expenses, which cannot be borne by one investor alone.⁸⁹ Therefore, the EU strives for international cooperation on this project.

In this context, the Galileo project sets a very good example for the potential of Israeli-EU cooperation, in its benefits to both parties.⁹⁰

The Galileo Programme

The European Galileo programme is a programme for global navigation services, operated through a network of satellites and a ground control system.

⁸⁸ European Commission, *Communication from the Commission to the Council and the European Parliament. European Space Policy – Preliminary Elements*. COM (2005) 208 final, EU Brussels, 23.5.05, p. 4.

⁸⁹ Ibid, p. 10.

⁹⁰ Another excellent example to the mutual benefit that may emanate from EU exhaustion of Israel's relative advantage in scientific research and technologies is Israel's participation in EU's 4th, 5th and 6th framework programmes. Israel is the only non-European country that participates in these programmes. The total value of projects with Israeli involvement in the 6th FP is estimated in more than €1,300 million.

The programme is named after Galileo Galilei, the well-known Italian scholar and inventor (1564-1642). Galileo Galilei was the first to discover that the Earth circles around the sun, a brave discovery that made him a declared enemy of the church and of academic circles at the time. Galileo's research did not stop in the field of astronomy but advanced to physics and mechanics. Some consider him to be a forefather of modern research in general because he established that scientific research must be based on experiments rather on philosophic or religious views.

Like Galileo Galilei, the Galileo programme is meant to be a brave, ambitious, multi-disciplinary and innovative scientific programme.

At present, two radio navigation satellite networks exist: the US's GPS and the Russian GLONASS system, both designed during the cold war for military purposes. The Russian system has not generated any civil applications. The US GPS system has generated civil applications but they are secondary to the military applications. Therefore, they may not be operated during security emergencies, for example. The Galileo system is introduced, first and foremost, as a civil-oriented system that "...will be administered and controlled by civilians".⁹¹ It is designed to offer a real alternative to the *de facto* monopoly of the GPS and US industry.

In a wider context, the Galileo programme may be seen as part of the EU's Lisbon vision (2000), meant to ensure that the EU becomes the world's most competitive economy by 2010. This vision has emerged in response to economic difficulties faced by the enlarged EU, now encompassing 25 countries and more than 450 million citizens. As it turns out, while the 10 new Members added 17% to the EU population, they contribute only an additional 5% to GDP. Furthermore, due to the low-to-negative birth rate in EU countries, a trend that becomes even stronger when taking into account the contribution

⁹¹ www.eu-del.org.il, 14.3.05. Nevertheless, the Europeans do not overlook the linkage between space and security. They admit that space technologies and infrastructure are undoubtedly crucial to any credible and effective security policy. Galileo is another space technology with a great potential security impact. Most programmes now on the way promise multiple-use capabilities. (www.europa.eu.int, MEMO/04/137). See also: *Space: New European Frontier for an Expanding Union* (Communication from the European Commission to the Council and European parliament) COM (2003) 673, 11.11.03; www.europa.eu.int, IP/04/718, 8.6.04.

of the central and eastern European countries that joined the EU in 2004, the ratio between the working and the dependent population, currently 4:1, is expected to go down to 2:1 by 2050. EU decision makers understand that any solution to these acute problems depends on significant improvement of the growth rate, which is low on average in recent years (around 2%). Without such active interference, aging alone is expected to lower the ratio still further, to 1.25%. Higher growth, which implies far more jobs and prosperity, may be achieved, among other things, by advanced science and technology developments, such as the Galileo programme.⁹² The Europeans hope that Galileo will eventually enable them to acquire technological independence, as was the case with the Ariane and Airbus initiatives, and that it will give the participating European industries a considerable competitive advantage in this sector and in the many ensuing applications. The need to acquire know-how may be one of the reasons why the EU is not alone in this project.

Considering its strive for excellence, as well as the spirit of the project – a *worldwide* network – the EU has concluded agreements of cooperation on the project with some third countries, including the US, Russia, India, China and Israel.⁹³ While some of these countries – like India and China – had probably been chosen for the huge consumption potential for Galileo future services, others – like the US and Russia – were chosen for their financial ability and control over existing systems, there is no doubt that Israel was chosen to participate in the project for its well known scientific and technological superiority in the relevant fields.

The Galileo programme is doing its first steps toward accomplishing its vision. In terms of Israeli-EU cooperation, it holds huge potential for mutual benefit. This concept will be further analysed and discussed here.

⁹² According to various studies, the equipment and service market resulting from the programme is estimated at around €10 billion EUR per annum, with the creation in Europe of more than 100,000 highly skilled jobs.

⁹³ COM (2005) 208 final (note 5), p. 10.

The first part of the essay describes in greater detail the Galileo vision and potential uses; the second part explains the decision making process used in Galileo; the third part attempts to assess the potential for Israeli participation in the project as well as the scientific, commercial and political benefits thereof; the fourth part concludes.

The Galileo Vision

The System⁹⁴

The Galileo system comprises a constellation of 30 satellites, divided between three circular orbits at an altitude of about 24,000 km, necessary to cover the Earth's entire surface. Two Galileo Control Centres in Europe will control the constellation as well as the synchronization of the satellite atomic clocks, integrity signal processing and data handling of all internal and external elements. A dedicated global communication network will inter-connect all the ground stations and facilities.

Data transfer to and from the satellites will be performed through a global network of Galileo Uplink Stations. Galileo sensor stations around the globe will monitor the quality of the satellite navigation signal. Information from these stations will be relayed by the Galileo Communication Network to the two ground control stations.

The infrastructure is being implemented in three phases:

- *Development and In-Orbit Validation (2000-2005)*
 - Consolidation of mission requirements;
 - Development of 2-4 satellites and ground-based components;
 - Validation of the system in orbit.
- *Deployment (2006-2007)*
 - Construction and launch of the remaining 26-28 satellites;
 - Installation of the complete ground segment.
- *Commercial Operations (from 2008)*

⁹⁴ The technical description is based on ESA publications.

Galileo Compared to GPS

Galileo is designed to overcome the shortcomings of the US GPS system in terms of accuracy, reliability and security. According to the Europeans, the GPS system suffers, among other things, from:

- Mediocre and varying position accuracy (sometimes to only several dozen meters), depending on place and time, and
- Reliability that leaves something to be desired. At high altitudes, regions crossed by numerous aviation routes do not have dependable coverage. Signal presentation in dense areas and town centres is unreliable. Furthermore, as already mentioned, the predominantly military character of GPS means that there is always a risk of civil users being cut off in the event of a crisis.

Whether international or local, signal interruptions can have disastrous consequences, especially when there are no warnings and no immediate information about errors. Galileo intends to overcome these shortcomings, based on the structure of its system, and to include an integrity message that immediately informs users of possible errors. It will also cover difficult areas such as northern Europe.

Galileo's Applications

The Galileo system offers a wide range of applications that cover many aspects of our daily lives. For example:

Transport: The system is applicable to every transport domain – air, maritime, road and rail, even pedestrian. Whatever the kinds of transport, the system will help the navigating person on the one hand, and help control and direct traffic efficiently and safely on the other hand. The use of Galileo for these needs will save countries decisive resources in traffic management.

Energy: The very precise timing obtainable via Galileo will help optimise the transfer of **electricity** through power lines. Galileo will also help in the maintenance of electricity distribution infrastructure.

As for *oil and gas*, Galileo may be used to achieve better geomorphologic and geophysical data before drilling in respective sites as well as improve the positioning of equipment necessary to obtain gas or oil. In this field as well, the system may be used for infrastructure maintenance.

Finance, Banking and Insurance: Galileo will improve data transmission where integrity, authenticity and security of transmitted data are crucial. This is true for e-commerce in general and for e-banking in particular, where access to documents, credit cards and accounts should be secure. Stock exchange activities are subject to the same risks.

In the insurance sector, Galileo provides an effective way of controlling and monitoring valuable goods, such as the transfer of gold bullion between national banks, works of art and large numbers of banknotes for distribution to banks or for destruction. One may assume that if the Galileo system had existed when the Euro came into force, and the EU authorities had had to transfer quickly the new banknotes and coins throughout Europe while simultaneously picking up the old national coins and banknotes, the operation would have been much easier. Galileo could further serve as a reliable means to assess damages due to ecological or other large-scale disasters, such as floods.

Agriculture and Fisheries: Galileo will contribute to yield monitoring and the spraying of fertilizers as well as to control of insects causing damage to yields. Alternatively, it will help authorities enforce environmental rules among farmers.

Galileo will also provide the means to establish and improve land registries.

In the field of fisheries, Galileo services will allow authorities to confirm that fishing vessels operate only in designated areas. This applies all the more to the international area, where there are strict rules governing the invasion of national water boundaries.

Personal Navigation: Galileo combines possibilities for positioning and communication. This is particularly important in emergency situations for identifying callers with only vague idea – or none whatsoever – of their locations. This concept is part of the development in Europe of the E-112 emergency call programme.

People-tracking is another application, when external staff – medical and welfare personnel; policemen; fire engines, etc. – can be coordinated more efficiently. The same technique will improve the safety of children on their way to school.

Another possible application is wearable computer systems to serve as navigational aids for blind people.

Search and Rescue: Galileo system offers a more accurate and efficient alternative to the existing COSPAS-SARSAT system, which is currently used for most emergency distress beacons. Galileo will significantly improve the system by detecting distress beacons in real time and locating them with an accuracy of few meters.

Crisis Management: Galileo will allow quick response to forest fire, floods, maritime emergencies, oil spills, earthquakes and humanitarian aid operations.

Customs, Justice and Home Affairs: The system can be used to combat vehicle thefts and help conduct maritime border control activities. Customs administrations are investigating possibilities of deploying systems to track trucks transporting various goods and ascertain whether they are still on the most direct route to their final destination. When unexpected movements or operations occur, alarms indicating the truck's position and identification will be sent to the closest customs office.

Environmental Management: Galileo will help in continuous collection of data, mapping of oceans and land, the determination of the extent of polluted areas, studies of tides and sea levels and tracking of icebergs.

Recreation: Galileo is expected to improve tourism by combining possibilities for navigation and communication.

Potential Consumers of Galileo's Services

Who Are the Potential Consumers?

According to its founders' estimations, North America, Europe and the Pacific Rim are the dominant markets for Galileo until 2007. In fact, these three markets together represent over 60% of the global during this period. However, after 2007, increased consumer spending in Central Asia and in Central and South America is expected to develop significant markets in these areas as well.⁹⁵

Economic Implications

According to the European Commission, in the past few years, the average annual global market growth rate for satellite navigation products and services has been 25%. This substantial growth rate should be appreciated even more when taking into account the difficult economic situation affecting the world since 2000. Consumer markets account for around 40% of the total today, a figure that will rise to 75% by 2015.

Technological progress impacts favourably upon the size and cost of different components of satellite navigation. In the case of Satellite navigation receivers, for example, component prices fall at a rate of 25%-30% annually.⁹⁶

A further significant development expected over the period relates to the growth of turnover associated with services. Current service turnover of €2.3 billion represents 12%

⁹⁵ *Business in Satellite Navigation - an Overview of Market Developments and Emerging Applications*, Galileo Joint Undertaking, ESA, the EU Commission, 3.5.2003, p. 9.

⁹⁶ *Ibid*, p. 4.

of the total market. By 2020, service turnover will expand to €112 billion or 43% of the total market value⁹⁷.

Forecasts for future global markets and navigation applications show that this industry is at the beginning of a great spurt, with global turnover of the €15 billion observed in 2001 predicted to rise to €140 billion by 2015.⁹⁸ In light of these forecasts, Galileo programmes is expected to have the following economic consequences for the EU:

- The EU will be placed in a competitive position with the US and Russia in all aspects related to the ownership and operation of a GPS system;
- The EU industries involved will find themselves in an improved competitive position around the world, based on the improved technologies and knowledge they will acquire during the process;
- 150,000 highly qualified jobs will be created in the EU alone.
- The technological and professional skills of EU workers and scientists involved in the project will be improved after exposing them to the skill and know-how of experts from other countries.

Considered from an international perspective, Galileo is aiming at the GNSS (Global Navigation Satellite Systems) market, potentially estimated at 3 billion receivers and revenues of some \$250 billion annually by 2010 worldwide.

⁹⁷ Ibid, p. 10.

⁹⁸ Ibid, p. 5.

Institutional Concept

Management

The *Development and In-Orbit validation* phase of Galileo is administered by the EU and the ESA (the European Space Agency).⁹⁹ For this purpose, a unique form of company has been set up, provided for in Article 171 of the Treaty establishing the EU: a Joint Undertaking. Its founding members are the EU and the ESA.¹⁰⁰ In addition, the European Investment Bank (EIB), which is the financial arm of the EU, and at a later stage firms subscribing to a minimum of €5 million (€250,000 for small- and medium-sized enterprises subscribing individually or collectively) can also become members. This special structure is designed to encourage the private sector to become involved not only in the performance but also the management of the project. On the other hand, by contributing capital to the Joint Undertaking, firms will take their share of normal risks inherent in industrial activities. Participating firms are further expected to do their long-term – not only short-term - calculations considering the value of their participation in the project.

Partners

Galileo is a European initiative, but it is world-oriented. Therefore, the EU is anxious to further stimulate international cooperation around the project. The Commission has already concluded agreements for cooperation on Galileo with the United States and China, and with the Russian Federation regarding compatibility between the Galileo and GLONASS systems. Other agreements are expected to be concluded with third countries such as India, Ukraine, Brazil, South Korea, Mexico and Australia. The EU expects that cooperation with those countries will result in better technical harmonization with other satellite navigation systems throughout the world, strengthen the worldwide infrastructure needed to operate the system in addition to develop and stimulate markets worldwide¹⁰¹.

⁹⁹ A cooperation agreement between the EU and ESA entered into force on 28.5.04. It establishes a legal basis for the parties to launch and found new projects, participate in each other's schemes, create common management agencies, carry out studies and jointly organize conferences and training for scientists, exchange and share experts, equipment and materials and access to facilities. See: www.europa.eu.int, MEMO/04/137, 8.6.04, p.2.

¹⁰⁰ Council Regulation 876/2002 of 21.5.2002 setting up the Galileo Joint Undertaking OJ L 138, 28.5.02, p. 1.

¹⁰¹ COM (2005) 208 final (note 5), p. 10.

Finance

The total cost of creating Galileo system is estimated at €3.2-3.4 billion. The *Development and In-Orbit validation* phase of Galileo (€1.1 billion) is co-funded mainly by the EU and the ESA. However, in more advanced stages, other participating countries (such as Israel) as well as private parties are expected to make a contribution in order to participate in the project: the Galileo Joint Undertaking will oversee its implementation and prepare the groundwork for the *Deployment* phase (€2.2 billion). In that phase, contributions will come predominantly from the private sector through a concession scheme. During the *Commercial Operations* phase (€220 million per year), private sector revenues will range from value added services sold to operators and collected by the concession holder, to the exploitation of intellectual property rights. By 2015, the founders believe that the revenues to the concessionaires will allow the public availability payments to be reduced to zero.¹⁰²

Regulation

Regulation at a number of levels – international, EU-wide and national – will indirectly steer the use of satellite navigation systems, hence also of Galileo. In general, regulation either mandates performance or mandates technology or authorizes certain technology.

Mandate of performance: Such regulations require provision of service with a set of performance criteria that are technologically neutral.

Mandate of Technologies: In this case, regulations require a particular technology to be used for provision of services.

Technology Authorization: There are cases where the use of satellite navigation is not obligatory but recommended as a standard navigational aid. For example, in Europe, regulation is either being implemented or under discussion in various domains, whether

¹⁰² *Galileo, The European Programme for Global Navigation Services*, ESA and the European Commission, p. 31.

for road tolls, agriculture, fisheries, road safety, customs, justice and home affairs, environment, telecommunication and so forth. These new demands will drive the demand for accurate and reliable navigation systems, to which Galileo is expected to offer a readily available solution.

Israel's Participation in Galileo

The Legal Framework

On 16 January 2004, the European Council invited the European Commission to start formal negotiations with Israel on its participation in the project. An agreement between the parties was finally concluded on 13 July 2004.¹⁰³

This agreement provides for co-operative activities on satellite navigation and timing in a wide range of sectors, notably science and technology, industrial manufacturing, service and market development, as well as standardization, frequencies and certification. Israel is also invited to take part in the programme financially through the Galileo Joint Undertaking, the body managing the programme.

The EU stressed that Israel is one of the eight countries within the world space community demonstrating significant technological assets on space programmes and achievements in GNSS applications, equipment, user segments and technology.¹⁰⁴

The Regional Context

Since 1995, the EU has maintained one policy toward all the Mediterranean countries parting in the Barcelona Process. Despite the clear Israeli superiority in the scientific and technological skills relevant for Galileo in comparison to the other Barcelona Mediterranean partners, the EU made an effort to present a façade of uniform treatment toward the region.

¹⁰³ This is the agreement that establishes the framework of principles for cooperation: *Cooperation Agreement on a Civil Global Navigation System (GNSS) Between the EU and its Member States and the State of Israel*, www.moit.gov.il. An additional implementation agreement was concluded in 6.10.05.

¹⁰⁴ www.eu-del.org.il, 14.3.05.

Thus, the 5th Euro-Mediterranean Conference of Ministers of Foreign Affairs, held in Valencia in April 2002, adopted an action plan stressing, among others, the need to boost cooperation on satellite navigation by considering introduction of concrete measures for the benefit of different application sectors. In that context, the European Commission decided to launch the Euro-Mediterranean satellite navigation (GNSS) project. The project is planned for a three-year period. It is designed to set up training and demonstration activities for the benefit of the Mediterranean partners. It will also set up a cooperation office. The project is aimed at raising the awareness of these countries to Galileo's potential for them as well as to identify national partners for Galileo among Mediterranean countries.¹⁰⁵ While most of these countries could become, in a best-case scenario, passive consumers of Galileo's services, this formal so-called uniform façade allows Israel to become an active partner in the project.

Two Tracks for Participation

There are basically two tracks for Israeli (as well as for other) participants to take part in Galileo: the first track is research and development – through the 6th *Research Framework programme*,¹⁰⁶ an EU programme operating between 2000-2006 that allocates budgets to research programmes chosen according to criteria published in advance.¹⁰⁷ (The overall budget allocated by the 6th Framework Programme to Galileo was €66.9 million (May 2004)). The programme finances research initiatives conducted by consortia of researchers from participating countries. Since Israel is the only country outside Europe taking part in this programme, Israeli researchers should join European researchers in order to enjoy financing through this programme.

¹⁰⁵ www.europa.eu.int/comm/dgs/energy_transport/galileo/international/meda_intro_en.htm.

¹⁰⁶ By now, two calls were published under this programme in the context of Galileo. The first call ended up with eight large research activities beginning in 2003 (before Israel joined Galileo) and totalling in €19 million. The second call was published on June 2004, just after Israel joined Galileo, totalling in €67 million. See: www.europa.eu.int, IP/04/704 8.6.04.

¹⁰⁷ Research activities in the context of Galileo are part of a larger work programmes set by the EU: the *Thematic Priority 1.4 Aeronautics and Space, Work Programme 2002-2006*, pp. 31-33. See in: www.iserd.org.il/aerospace.htm.

The second option is suitable for Israeli commercial entities, which may participate in the project either by joining a consortium that won the bid to lead the project or by investing money and becoming a partner in the Galileo Joint Undertaking.

Israel: A Member of the Joint Undertaking

As a result of the Agreements concluded, Israel became a Member in the Joint Undertaking that runs Galileo. Israel is represented in the Joint Undertaking by MATIMOP – the Israeli Industry Center for R&D. This organ is responsible for daily management of Israel's participation in the project.

The Consortia

Galileo founders believed that the project would be managed by one chosen consortium. While three consortia raced for the right to lead the programme, one eventually withdrew; since competition was tight the process took more time than expected. It was finally decided to allow the two remaining consortia – which include some of Europe's leading companies – to share in the project:

The iNavSat consortium was created by Thales, the French defence electronics company, Inmarsat of the UK and EADS, the Franco-German group that is the largest shareholder in Airbus, the aircraft maker. Its rival, the Eurely consortium, was spearheaded by Alcatel of France and Finmeccanica of Italy, along with Aena and Hispasat of Spain.

Because of the delay, the Joint Undertaking is still running Galileo, through Galileo Industries. This entity publishes the current bids connected to the project. Its mandate ends in June 2006 but may be prolonged. When the mandate finally expires, the chosen consortia will become managers of the project.

Israeli Industry Participation in Galileo

The first bids were published by Galileo Industries (ESA). They concerned installations and modules for the space and ground segments of the Galileo system. Some large Israeli industries submitted their offers to participate in fields mentioned in the agreement

between the parties. At the time of writing, the results had not yet been published. However, it was estimated that there is a good chance for these firms to win bids valued overall at some million Euros.

In the beginning of 2006, Galileo Industries published a second call, this time seeking new, innovative applications or suggested services, based on Galileo technologies. The idea was to sell Galileo's know-how for different civilian uses, thereby raising money for the project. This opportunity to use technological abilities developed under Galileo that went beyond GPS applications opens a door for small Israeli firms, start-ups, inventors, and others in fields such as software development, communication and telecommunication, navigation and even medical devices to take advantage of this venture. Therefore, further Israeli participation is expected in the following phases of Galileo.

Galileo's Potential for Israeli Scientists and Industries

There are some aspects in which Israel might gain from its participation in Galileo:

Israel's status in the international arena: Galileo may help Israel preserve as well as improve its status as a leading force in the scientific and technological fields relevant to this project. Being a strategic project, Israel as a participant will share its strategic values. It will allow Israel to cooperate with other leading forces in these fields, thereby sharing their know-how, skills and advanced technologies.

Of particular importance is the fact that the Galileo framework allows Israel to join forces with its two major trading partners – the EU and the US – a rare situation because Israel generally finds itself torn between their conflicting interests (e.g., the peace process, the Airbus affair).

From the perspective of individual scientists and industries: Israel's very successful participation in the 4th-6th European R&D Framework Programmes has shown that there are two main levels on which the Israeli industry profits from its participation in such projects: *Direct profit* stems from the success of the project. Not less and perhaps even

more important is the *indirect profit* from such participation: the professional networking with colleagues all over the world as well as exposure to international industries and clients.

Conclusion

Galileo is an ambitious, worldwide project lead by the EU. The EU has given Israel the opportunity to participate in this initiative due to the special trade and political connections maintained between the parties as well as Israel's reputation as a leading power in relevant fields of science and technology. Israel has thus been given the chance to participate in a technological project of worldwide importance, with far-reaching implications for the future in the areas of communication, policies enforcement, surveillance and rescue missions and a long list of other applications.

On the other hand, the EU-Israeli cooperation on this project allows the EU to profit from Israel's unique know-how and skills and to promote a project led by Europe as a global actor.

Cooperation on Galileo is legally taking place within the context of the Association Agreement between Israel and the EU, which was concluded between the parties under the Barcelona process. In the framework of this process, all Mediterranean countries will eventually take part in this programme as users if not as participants in its creation.

However, also Galileo represents a special example of the importance of specific, country-specific action plans for cooperation between the EU and its neighbours, such as the action plans tailored in the context of the ENP. Unlike the Barcelona Process, such individual action plans allow the parties to exploit the potential inherent in their mutual connections and to rely on their comparative advantages without comparing parties or tailoring the same suit to fit different parties having different needs and characteristics. Due to the immense differentiation between the countries in the Mediterranean region, the strategy of promoting relations with each neighbouring country according to its own

terms, degree of development and needs might prove, in the future, to be inevitable for the implementation of the general European vision in the region.

In the future, the EU will develop the security dimension of Galileo. Israel enjoys a comparative advantage and experience in this aspect. It could therefore aspire to take part in the development of this phase as well. However, due to its international sensitivity, that aspect will be addressed in due time.

From a regional perspective, Galileo might turn into an effective tool to control future peace agreements to the benefit of all Mediterranean partners.

Promoting EU-Israel Trade Integration: The Bilateral and Regional Dimensions

Gonzalo Escribano

Abstract

The EU often recurs to economic instruments, mainly development cooperation and trade preferences, to achieve foreign policy objectives. The EU emphasises trade policy instruments in order to promote peace in the Middle East because trade policy reform is easier to promote exogenously by asking for reciprocity when signing preferential agreements. Other reforms (economic and political) are more difficult to pursue exogenously because the EU simply does not have any leverage regarding these issues. Among its priorities, the European Neighbourhood Policy Action Plan has set resolution of the Middle East conflict, increasing EU-Israel economic integration, and regional cooperation. The EU also pursues the emergence of an economically viable Palestinian state. This paper explores the accuracy of trade instruments proposed by the ENP AP to attain its objectives and presents some policy recommendations. Regarding promotion of EU-Israel trade relations, the paper concludes that bilateral trade liberalisation relies on the removal of non-tariff barriers, mainly customs procedures, standards and SPS. Israel's strategy of converging toward the relevant EU acquis seems preferable, to this author, to mutual recognition procedures insofar as it entails a minor degree of regional fragmentation.

Regarding promotion of Israel's intra-regional trade, economic instruments cannot always substitute for political instruments; the EU should therefore invest more political capital in trying to upgrade the political dialogue between Israel and its Arab neighbours through the Barcelona Process. If not, most trade facilitation measures will be blocked by security concerns. Complementary measures may include cooperation in building common trade infrastructures, avoiding the securitisation of cross-border trade flows, institutionalising trade relations, liberalising rules of origin through Israel's participation

in the Pan-Euro-Med system of cumulation of origin and removing obstacles to bilateral and Palestinian intra-regional trade through the Israel-Palestine Authority quasi-Custom Union. The overall ENP strategy can deepen regional fragmentation as far as it introduces ‘variable geometry’ in EU-MPC trade agreements. The paper assumes that the regional approach introduced by the Barcelona Process should not only be preserved but also placed at centre stage.

Introduction

Linkages between political and economic processes are the building blocks of classical political economy theory. The writings of classic economists like Adam Smith, Ricardo or J. S. Mill advocate free trade because it fosters economic development *and* erodes international conflict. Liberal thinking opposes free trade and democratic peace to the mercantilist approach based on balancing trade and power; the neo-liberal school introduced international (and regional) organisations into the analysis. Such a framework for international relations is especially appealing to the EU, which was itself created partly by following that line of thinking. Since the EU’s inception, that ‘original virtue’ has been projected toward its external policies. The civilian nature of EU power made economic instruments, mainly development cooperation and trade preferences, prominent in achieving foreign policy objectives. The first cooperation agreements signed with Mediterranean countries (European and non-European) are a good example of this strategy; the Barcelona Process reinforced that approach.

So far for the instruments, but what are the EU objectives concerning its relations with Israel? The EU-Israel Association Agreement addresses the goal of ‘promoting peace, security and regional cooperation’. The European Neighbourhood Policy Action Plan (ENP AP) set ‘facilitating efforts to resolve the Middle East conflict’ and increasing EU-Israel economic integration among its priorities. The ENP AP likewise states that ‘the EU and Israel are also firmly committed to promote regional cooperation, as a way to address the challenges of a trans-boundary nature’. These are shared goals insofar as they are either part of an Association Agreement or were commonly agreed when preparing the AP. However, a third EU objective, not explicitly addressed in the ENP AP, derives from

its support for the Quartet Roadmap: the emergence of a viable Palestinian state, which includes its economic viability. This is implicitly recognised by the Israel ENP AP (p. 9), when it calls for ‘the facilitation of Palestinian trade’. But this objective is not assumed to be a priority, in contrast with the ENP Country Report-Israel (p. 11), which explicitly adheres to the Quartet Roadmap commitment through emergence of a ‘viable’ Palestinian State.

Given that this paper concentrates on trade issues, it is interesting to pose the preliminary question of why the EU emphasises so many trade policy instruments in order to achieve non-economic objectives – like promoting peace in the Middle East – with which they are, at best, only indirectly linked. In addition to being a civilian instrument of power, trade policy reform is easier to promote exogenously by means of asking for reciprocity when signing preferential agreements with third parties that highly depend on them. Other reforms (economic and political) are more difficult to pursue exogenously because the EU simply does not have any leverage over them. One of the virtues of the ENP may precisely be its capacity to foster such political reforms by reintroducing a reinforced conditionality mechanism. Although, formally, there is nothing in the economic domain of the ENP that could not be achieved under the existing EMP AA, the incentive of obtaining a stake in the European Single Market can give the EU leverage needed to influence non-economic policy areas. In fact, we have found it useful to analyse the ENP as an EU strategy consisting of “Europeanising” Mediterranean Partner Countries (Macs) ‘rules of the game’ (Escribano, 2005), to adopt the concept developed by North (1990) to account for formal and informal institutional settings.

This paper explores the accuracy of the trade instruments proposed by the ENP AP to attain the above-mentioned objectives and tries to put forward some policy recommendations. Given the vast range of issues that can be related to trade promotion, the paper concentrates on the movement of goods (article 2.3.1 in the Israel ENP AP), leaving aside other trade-related issues – such as trade in services, right of establishment, company law, taxation, competition policies and so forth – that may hamper Israel’s participation in the European Internal Market. The first section briefly analyses Israel’s

trading trends with the EU and its neighbours. The second and third sections are devoted to promotion of Israel trade flows with the EU and its immediate neighbours, including the Palestinian Authority (PA). A final section concludes with some policy recommendations.

Looking for Trade

Israel ranks among the leading exporters and importers in world trade. For 2004, excluding intra-EU trade, it was the 26th exporter and the 23rd importer in world merchandise trade, representing 0.6% of world exports and imports (WTO, 2005). Table 1 summarises Israel's direction of trade with selected countries. The EU is Israel's overall main trading partner, but a closer look at trade figures shows that this is barely comforting. Bilateral trade with the EU has been losing its relative importance in Israeli exports and, especially, imports: 40.81% of Israeli imports in 2003 came from the EU, compared with 52.15% in 1995, when the Barcelona Process started. True enough, these deceiving results are influenced by rising energy prices, which bias Israeli trade toward energy-exporting countries. In comparison, Israeli imports from the US fell by just 3 percentage points. Moreover, the US has taken the place of the EU and is now the main destination of Israeli exports: 38.41% in 2003 from 29.91% in 1995. By contrast, Israel's share of exports to the EU has fallen from 31.33% in 1995 to 27.13% in 2003. As a result, Israel runs a significant trade deficit with the EU, while it has a trade surplus with the US.

Table 1: Israel's Direction of Trade and Trade Intensity, Selected Countries, 1995 and 2003

	Exports (%)		Imports (%)		EII		III	
	1995	2003	1995	2003	1995	2003	1995	2003
EU	31.33	27.13	52.15	40.81	0.83	0.73	1.31	1.06
US	29.91	38.41	18.72	15.58	1.97	2.20	1.63	1.61
Turkey	0.89	1.45	0.93	2.78	1.27	1.56	2.18	4.41
Egypt	0.16	0.08	0.13	0.06	0.68	0.29	1.93	0.58
Jordan*	0.05	0.28	0.02	0.13	0.66	3.63	0.61	3.20
Morocco**	0.03	0.02	0.00	0.00	0.17	0.12	0.00	0.02

Source: Own calculations and *Direction of Trade Statistics* (DOTS), IMF, various years.

Notes: * 1996, ** 1997.

Export and import intensity indexes (EII and III, respectively) reinforce the evidence about the loss of dynamism of EU-Israel trade, mainly when compared with US-Israel trade.¹⁰⁸ In spite of distance, Israeli trade with the US is far more intense than with the EU. Israel's trade intensity with the EU has actually declined between 1995 and 2003. Israel's exports toward the EU are lower than expected according to the weight of the EU in world trade (the EII is lower than unity), while Israel's exports to the US are especially intense and have further increased since 1995 (the EII is 2.2 for 2003, indicating that Israel's exports toward the US are 2.2 times higher than the US share in world trade). Israel's imports from the EU are more intense than are exports, but the III shows that in spite of proximity and the AA, import intensity has decreased; for 2003, it was just proportional to the EU share of world trade (III close to unity). By contrast, Israel's III with the US has remained constant at 1.6, indicating that imports from the US are proportionally higher than they are from the EU.

The sub-regional trade picture is mixed. Israel's trade has become very intense with Turkey and Jordan, with whom Israel has signed Free Trade Areas (Fats). Between 1995 and 2003, Turkey's share in Israel's exports increased from 0.89% to 1.45%, while Israel's imports from Turkey showed a threefold increase, from 0.93% to 2.78% of Israel's total imports. As a result, Israel's export intensity toward Turkey has risen slightly (from 1.27 to 1.56), but Israel's import intensity with the latter more than doubled; for 2003, it was four times higher than Turkey's weight in world trade. The Israel-Jordan trade figures have experienced even more impressive development. Notwithstanding the small Jordanian share of Israeli exports and imports, trade intensity has evolved very positively since 1995, attaining an EII of 3.63 and an III of 3.2. That means that Israel-Jordan trade is over three times the weight of Jordan in world trade, an

¹⁰⁸ Export Intensity Index (EII) = $(X_{ij}/X_i)/(M_j/W)$; where X_{ij} : exports from 'i' to 'j'. X_i : total exports from country 'i'. M_j : total import of country 'j'. W : total world trade. Import Intensity Index (III) = $(M_{ij}/M_i)/(X_j/W)$; where M_{ij} : imports of country 'i' from country 'j'. A country index of 1 means that trade flows are proportional to its weight on world trade, while an index higher (lower) than 1 reflects flows that are more (less) important than expected according to this country weight in world trade.

impressive result when considering that trade intensity figures were very low in 1995 (close to 0.6).

Alternatively, between 1995 and 2003, Israeli-Egyptian trade lost importance in Israeli trade, and trade intensity experienced a significant fall, especially on the import side, where the *III* decreased from 1.93 to 0.58. So, while Israeli imports from Egypt were fairly intense in 1995, by 2003 they were almost half the Egyptian share of world trade. This is a worrisome trend insofar as it prevents emergence of the positive political externalities of international trade, such as increasing the opportunity cost of conflict or promoting socialisation through trade links. Israel's trade with the rest of the Masher and the Arab world is either non-existent or negligible

Low trade intensity between neighbours is not necessarily an unnatural result. Trade may be low because there are prohibitive transaction costs, countries are heavily populated (and then tend to be less open to trade), or the structure of comparative advantages across the countries is substitutive rather than complementary. Trade economists recur to gravity equations in order to obtain a more rigorous assessment of the potential of trade flows.¹⁰⁹ Table 2 summarises the findings by Tobias *et al.* (2004) regarding the potential for Israel's regional trade on the basis of gravity equation estimations. The difficulties of this kind of exercise may be exemplified by the fact that direct estimation of the Israel's gravity equation parameters was not statistically significant, so the results in Table 2 are taken indirectly from the estimation of Israel's regional partners. Moreover, estimation of Palestinian Authority trade potential was not possible due to the absence of reliable direction of trade data.

Table 2: Israel's Trade Potential with Selected Countries, 1995-2002

	Trade Potential (\$ million)		Current Trade (\$ million)		Current Trade/ Trade Potential (%)	
	Imports	Exports	Imports	Exports	Imports	Exports

¹⁰⁹ Gravity equations are mainly based on GDP and distance: the bigger (in GDP terms) and the nearest (in km., transport or transaction costs) is an economy, the larger trade flows are supposed to be.

Egypt	428.9	268.1	76.7	32.6	17.9	12.2
Jordan	65.8	255.8	33.3	28.3	50.6	11.1
Lebanon	66.6	437.1	0	0	-	-
Syria	363.2	490.2	0	0	-	-
Turkey	781.3	408.0	486.6	239.9	62.3	30.7

Source: Tobias *et al.*, 2004.

For the 1995-2002 average, Israel's trade potential was especially high with Egypt, and regarding Israeli exports toward Jordan. Israeli exports toward Egypt and Jordan were found to be 12.2% and 11.1%, respectively, of its predicted potential value, while Israeli imports from Egypt attain 17.9% of the predicted flows. Echo *et al.* (1996) found an even greater trade potential for Israel-Egypt trade, but on the basis of lower pre-1995 trade figures. Trade potential is smaller but nevertheless significant for Israeli imports from Jordan and Turkey (50.6% and 62.3%, respectively) and Israeli exports toward Turkey (30.7%). Trade with Lebanon and Syria also shows a significant estimated potential: \$255.8 million for Israeli exports toward Lebanon and \$363.2 million and \$490.2 million for Israeli imports and exports from/toward Syria, respectively. The above-mentioned statistical estimation problems for Israel, in addition to the absence of Palestinian Authority direction of trade data, prevented estimation of Israel-Palestinian Authority trade potential.

Anyhow, the benefits of liberalising intra-regional trade flows will come not only from increased trade volumes but also – probably and most importantly – from changes in the product composition of these flows. While the increase in trade volumes can be significant, freer trade can result in further export specialisation based on comparative advantage, nurturing the competitiveness of the productive system at a national and regional level (Escribano y Jordan, 1999). Moreover, gravity equations depend on the weight of the countries' GDP although diagonal cumulation of origin, as depicted by Tobias (1997a and 1997b), can foster intra-industry trade as far as such a trade depends mostly on expansion of exports toward the EU and the US. In a speech delivered at the Hebrew University, EU Trade Commissioner, Peter Mendelssohn (2005), stated that

according to Commission studies, trade between the Mediterranean countries could be as much as 40% higher once a system of PanEuroMed cumulation of origin is fully implemented.

Therefore, it seems clear that there is room for the increase of intra-regional trade between Israel and its neighbours, for a parallel process of specialisation according to their comparative advantages and for an extension of intra-industry trade intended for export to EU and US markets. The Israel ENP AP correctly identifies the challenge of promoting EU-Israel and intra-regional Middle East trade in addition to facilitation of Palestinian trade as a fundamental contribution to the economic viability of a Palestinian state. We now turn to each of these challenges in the following sections.

Promoting EU-Israel Trade Integration

In general, under the AA, the EU and Israel grant each other's goods duty free access, the only exception being agricultural products. By 1998, as much as 98% of Israel's merchandise imports from the EU and 94% of its exports were covered by the FTA (WTO, 1999, p. 19). However, as we have seen in the previous section, EU-Israel trade relations have been losing (comparatively) their dynamism in spite of the Barcelona Process and the conclusion of an AA that includes an FTA. The ENP AP tried to eliminate the non-tariff obstacles of EU-Israel trade with a set of measures summarised in Box 1. The following paragraphs deal with the main measures, with the exception of the development of regional trade, which will be addressed in the following section.

Box 1: Selected Israel ENP AP Measures Related to the Movement of Goods

Promote Trade Relations

Establish a dialogue to promote trade between Israel and the EU

- Progress with further liberalisation of trade
- Establish a mechanism with specific procedures for dispute settlements
- Improve reciprocal market access for processed agricultural products

Develop regional trade links

- Enable the participation of Israel in the Pan-Euro-Mediterranean cumulation of origin
- Support development of trade promotion between Israel and other Euro-Mediterranean partners such as Jordan and work toward facilitation of Palestinian trade
- Continue facilitation of customs procedures, administrative cooperation and relations with economic operators

Customs-related issues

- Explore the possible scope for cooperation and modernisation of the customs service
- Promote cooperation with other agencies at the border (e.g. Border Guards, Police, veterinary and phytosanitary services)
- Strengthen administrative cooperation to combat irregularities and fraud in customs
- Identify ways and means to enhance cooperation within the framework of joint customs enforcement
- Develop EU-Israel cooperation with regard to risk-based customs control ensuring safety and security of goods imported, exported or in transit
- Explore possible definitions of standards for certification of operators (exporters and transporters)

Technical regulations, standards and conformity assessment procedures

Facilitate market access of industrial products

- Accelerate progress toward bilateral negotiations leading to an ACAA

Sanitary and sanitary-sanitary issues

Improve cooperation on sanitary and sanitary-sanitary matters and on food safety

- Explore the possibility of increasing convergence of Israeli legislation with EU legislation on sanitary and sanitary-sanitary issues
- Identify the scope for increased convergence of food legislation in compliance with EU food safety principles
- Exchange of views on the setting-up of an animal and plant identification and tracing system

Agriculture

- Explore the scope of cooperation between EU and Israeli accreditation bodies

- Increase cooperation in the field of international marketing standards for fruits and vegetables.

The AP states, first, the will to progress with bilateral *trade liberalisation*, but given that tariff barriers and licenses (other than for agricultural products) have almost been removed, trade liberalisation relies on other, non-tariff barriers. The AP also calls for the establishment of a *dispute settlement mechanism*. In fact, no trade disputes between the EU and Israel are in process of settlement by the Two's responsible bodies, but this does not mean that disputes do not exist. Perhaps the better-known disputes were the ones affecting Israeli orange juice exports to the EU and settlements-originated products. In both cases the European Commission found that the AA protocol on rules of origin was being violated: settlement-originated products are not granted Israeli origin, and orange juice concentrate seemed to contain an excess of non-originating content. The validity of overall Israeli-issued certificates of origin was put into question and trade relations with the EU underwent some difficulties. A more agile system to address disputes will certainly be welcome, but it does not seem a fundamental step.

Regarding *customs-related issues*, the most repeated word in the AP is 'cooperation'. Customs cooperation was already introduced by the AA, which contemplates two different committees to deal with customs issues: a Customs Cooperation Committee under article 39 and an Experts Committee under article 49. Customs cooperation is far from being a rhetorical, given the importance of appropriately implementing rules of origin in order for EU trade preferences not to be misused. This is especially important for a small open country like Israel, which conducts over 80% of its trade under different Fats. Past problems with Israeli customs in inspecting orange juice certificates of origin are probably the cause of such an emphasis on customs cooperation. Suspicion rapidly spilled over to all Israeli products. EU importers, worried about the possibility of having to pay their customs debt on Israeli products actually non-originating from Israel, started to request financial guarantees in case their certificates were found invalid (Sadden, 2002), which increased the transaction costs of exporting to the EU.

Sadden (2002, p. 205) argues that the US-Israel FTA procedure is far more efficient than the EU-Israel one: Responsibility over certificates of origin lies with the exporter (not the national customs authority), with authorised exporters allowed to issue annual certificates (not shipment-specific ones). The AP contemplates the possibility of certifying operators in order to avoid the transaction costs that nowadays imply procedures for origin verification. However, though this is a desirable final outcome, it is also a sensitive measure, probably demanding that EU officials increase their trust in Israeli customs through closer cooperation.

On *standards*, the ENP AP intends to facilitate market access of industrial products by applying the Palermo Action Plan, adopted by the Third Euro-Mediterranean Trade Ministerial Meeting (7 July 2003). Its objective is to intensify technical cooperation in the field of industrial products to achieve an Internal market through approximation to EC legislation and development of the necessary quality infrastructure. The final goal is to attain a bilateral Agreement on Conformity Assessment and Acceptance (ACAA). In order to do so, the EU and Israel should identify priority sectors and conduct a gap analysis of existing legislation in both parties. Then, Israel should proceed with the transposition of framework and sectoral legislation, including creation or reform of existing institutions, such as certification and conformity assessment bodies. This approach entails intra-regional differentiation because Israel is ready to progress in this field faster than other Mediterranean partners, given its higher level of development. Once the transposition of the relevant Internal Market *acquis communautaire* starts, the EU and Israel will initiate exploratory talks for negotiation of a bilateral ACAA.

Israel has tried in the past to reach a Mutual Recognition Agreement (MRA) with the EU, like the ones the EU has with the US and Japan, in order to obtain EU recognition of Israeli standards. However, the European Commission refused on the basis that MRAs are too complicated to be justified for small countries like Israel. Israeli adoption of EU standards is clearly a positive step in promoting EU-Israel trade. First, concerning Israeli exports to the EU, it can solve the difficulties Israeli producers have in certifying the quality of their products by conducting expensive tests in Europe. Second, with regard to

EU exports toward Israel, because Israeli importers view Israeli standards as overly influenced by Israeli industry and thus acting as a non-tariff barrier that prevents national treatment of EU exports. The only problem is that Israeli convergence toward EU standards could harm Israel-US trade, as far as EU and US standards are different (Sadden, 2002). The possibility of standards convergence in commonly agreed sectors may help to differentiate between products oriented toward the EU or the US; however, in the long run, adoption of EU standards by Israel seems unavoidable if it wants to participate in the European Internal Market and ease intra-regional trade. Convergence of EU and US standards at a multilateral level can help solve the above-mentioned difficulties.

The last set of measures concerning the movement of goods included in the ENP AP refers to *Sanitary and Sanitary-sanitary* (SPS) issues. The ENP Country Report (p. 19) stresses that Israel ‘lacks and updated sanitary-sanitary legislation’, as requested in Article 46 of the AA and by WTO rules that ‘causes disruption to trade flows’. For instance, for vegetables, the system in place in Israel consists mainly of import permits and additional sanitary-sanitary declarations, provoking incertitude for EU exporters and making administrative procedures cumbersome for them. Sadden (2002, p. 209) warns that ‘Israeli importers of plants and vegetables from the EC share this concern and complain that the Israeli authorities make it very difficult to obtain a license’. Regarding kosher food, non-kosher meat cannot be imported to Israel, but the EU correctly understood that this is a sensitive issue and so it is not even mentioned in the ENP AP or the ENP Country Report. However, European Commission officials have also expressed their concerns that kashrus requirements have been instrumented in a discriminatory manner for imports from the EU when compared with imports from the US. Israel has also issued an import ban on live bovines coming from the EU because of Bovine Encephalopathy (BSE), in spite of the measures introduced by the EU since 1989, understood to provide the highest standard of consumer protection worldwide (including Israel’s SPS).¹¹⁰

¹¹⁰ See the market access database for a detailed description of these measures: <http://mkaccdbeu.int/mkaccdbe2/indexPubli.htm>.

On the Israeli side, EU SPSs are seen as having a protective dimension, with Israeli officials trying to obtain equivalence agreements like the ones the EU has signed with other industrial countries. As happens with industrial standards, the ENP AP approach consists of looking for convergence of Israeli legislation over the EU *acquis communautaire* instead of signing a bilateral equivalence agreement. In order to achieve such an agreement, the ENP AP calls for increased cooperation between EU and Israel accreditation bodies in the field of international standards for fruits and vegetables.

The ENP Country Report on Israel also highlights other trade-related obstacles, like the existence of monopolies and state-owned companies in some sectors (despite the move toward privatisation beginning in the 1990s), a lack of uniform state aid surveillance and problems with intellectual and industrial property. For the pharmaceutical sector, the ENP Country Report identifies the problem of lack of data exclusivity, but the European Commission also complains about Israeli legislation on patent extension, patent registration delays and registration of generic products. Some Israeli scholars (Sadeh, 2004) have also shown other divergence in EU and Israel European Internal Market-related institutions. These are, however minor obstacles when compared with those identified by the ENP Country Reports for Tunisia, Jordan or Morocco.

The main difficulties for Israel remain the ‘political issues’ chapters of the ENP Israel Country Report, and its consequences at the trade level. Tovias (2003, p. 3) has argued that while Israeli accession to the EU would be rejected due to the Israeli-Palestinian conflict, ‘access to the Single Market is practically devoid of political significance’. This is certainly true when comparing Israel’s eventual EU membership (although Italy has publicly supported it) with participation in the European Internal Market, but in any case, political divergence permeates even the most technical economic issues, as we shall see in the next section when dealing with the rules of origin issue.

Some scholars (Sadeh, 2002) have raised the issues of the European embargo on dual-use goods and European boycotts on Israeli goods. These are issues that intersect at the

political and trade levels, but fit the political dialogue and cooperation section of the ENP AP. International trade reveals societies' preferences as far as they result from consumers and government official preferences. Distrust between societies tends to lower bilateral trade even in the presence of a liberal trade policy because at the end of the day, sovereignty lies with consumers within market economies. A general problem with EU-Israel relations is that public opinion is not very receptive of each other. A Worldviews 2002 report shows that in six European countries (Germany, France, Great Britain, Italy, Netherlands and Poland), the public has 'cold feelings' toward Israel. For instance, the esteem that the Spanish population has for Israel has fallen from 3.82 (over 10) in 1991 to 2.87 in 2002, very close to that felt toward Iran or Iraq; the esteem of Spanish leaders toward Israel was higher, 4.07, but nevertheless close to the esteem toward Iran and lower than the esteem toward countries like Morocco or Egypt (Del Campo and Camacho, 2003). Something similar happens with Israeli public opinion toward Europe, which is perceived as too supportive and non-critical toward the Palestinians. The ENP AP contemplates measures in order to combat anti-Semitism and Islamophobia, but public diplomacy measures are probably needed, too, in order to counteract tensions within civil societies.

Promoting Sub-Regional Trade Integration

As explained in the introduction, promoting sub-regional integration in the Middle East is an intermediate goal for the EU. Increased sub-regional integration is expected to promote economic development and erode sub-regional conflicts. This logic not only applies to Egypt and to Arab countries with which Israel does not have relations, but also to the Palestinian Authority. However, it is also a way to deepen EU-Israel bilateral integration: Sub-regional trade links will allow Israel to further incorporate neighbouring countries into its production function and widen Israel's export opportunities toward Europe to labour-intensive products, for which it does not have a clear comparative advantage *vis-à-vis* the EU.

In spite of the regional approach adopted by the Barcelona Declaration, the Euro-Mediterranean FTA has been criticized from its inception for further fragmenting the

Southern shore of the Mediterranean, at least from a trade perspective (Tovias, 1997a, 1999; Vasconcelos, 1999). Other authors have introduced some nuances on the grounds of limited trade potential among MENA countries and political economy factors (Ekholm, Torstensson and Torstensson, 1996; Escribano and Jordán, 1999). The EU response to prevent the perverse effects of a 'hub-and-spoke' system was to promote sub-regional integration within MPCs. These efforts were to proceed along the New Middle East initiative for the Mashrek region and the Arab Maghreb Union in the Western Mediterranean. Both failed, mainly due to political factors, to the point that even 'normalisation' of trade relations (as proposed for Israel-Arab trade by Tovias (1997b)) has proven impossible to achieve for some countries, perhaps only with the exception of Jordan, and in a very limited manner.

The EU Commission's reaction to the failure of sub-regional integration in the southern shore of the Mediterranean seems to recognise that the MPC's sub-regional 'virtual integration' (Vasconcelos, 1999) cannot be pursued at the expense of EU-MPC bilateral 'deep integration'. For some authors, the ENP may have deliberately abandoned the sub-regional dimension of the Barcelona Process, at least in the Middle East (Johansson-Nogués, 2004; Aliboni, 2004). To be fair, concerning economic integration, such a sub-regional dimension has always been one of the weakest links of the Barcelona Process (Escribano, 2000). In any case, there is no doubt that the 'differentiated approach' that inspires the ENP will erode the already weak incentives it offered for sub-regional integration. The ENP Strategy Paper rhetorically calls for increased MPC sub-regional integration, but apart from support for the Agadir initiative and emphasis on sub-regional infrastructures, few of the instruments identified in this document are capable of promoting it. For Israel, the ENP AP identifies two main instruments to promote intra-regional trade: cumulation of origin and regional infrastructures. This paper concentrates on 'pure' trade issues, but given the scarcity of instruments available to promote Israeli trade with its neighbours, in the coming paragraphs we will briefly review the infrastructure issue.

The Israel ENP AP (p. 8) intended ‘to promote dialogue’ on issues like ‘environment, energy, transport, science and technology, and people-to-people contacts’. In the Israel ENP AP, the energy and transport dimensions translate into measures such as ‘explore the benefits of regional cooperation with a view to promote efficiency of land transport services’, ‘participate in regional cooperation in the field of maritime policy, ports and sea shipping’ (p. 17) and ‘develop regional cooperation on, *inter alia*, electricity and gas, energy and renewable energy sources and networks’ (p. 18). Past experience of Middle East regional cooperation in the building of common infrastructure has not been very bright, excluding Jordan-Israel cooperation. A number of bilateral treaties have been signed but the unfavourable political climate has translated into a dearth of operational capacity.¹¹¹

The only exception to that general pattern is Jordan-Israel cooperation. The 1991 Madrid Conference laid the foundations for a series of bilateral agreements between Israel and Jordan in the fields of transport, water and agriculture; these have translated in a common agenda. By contrast, infrastructure cooperation between Egypt and Israel under the Camp David Agreement has not been very effective, especially after the outbreak of the second *Intifada* in 2000. The lack of relations with other neighbours simply precludes any cooperation on the infrastructure level.

Cooperation with the Palestine Authority in the field of infrastructure was included in the 1993 Declaration of Principles, which contemplated upgrading Palestinian infrastructure, for example, connecting the West Bank and Gaza by a corridor in order to allow for the free movement of goods. The worsening of the political situation and the outbreak of hostilities has made the efficient use of existing transport infrastructure by Palestinian traders almost impossible. It actually led to the destruction of Palestinian infrastructure (that by the way, was financed to a great extent by the EU or EU Member States; for example, the Gaza airport) by the Israeli army.¹¹² Movement of goods between the West Bank and Gaza, with Israel and third countries underwent serious difficulties due to

¹¹¹ On this issue, see Tovas et al. (2002), chapter 5.

¹¹² \$200 million worth donor-financed capital assets was destroyed by the end of 2002 (World Bank, 2004).

security impediments. The question of transport infrastructure is a complex one, being that it connects economic and security issues with donor concerns. For instance, prior to disengagement, Israel proposed opening five border crossings between the West Bank and Israel. Three of these were situated on the alignment of the separation barrier where it deviates from the Green Line. Some donors, like the EU, will not support financially infrastructure construction in such places, fearing that this could legitimate the location of the separation wall (World Bank, 2004).

The lack of regional trade and transport infrastructure reflects Middle East tensions but is only one ingredient among others in a complex problem. Israel's security concerns are so stringent with regard to Palestinian trade that one might doubt that they are solely intended to secure Israeli territory; one wonders whether they also have a component of hampering the viability of a Palestinian state. True enough, terrorists have in the past resorted to trade channels to attack Israel,¹¹³ but there are control measures that could be adopted in order to provide security to Israel without heavily disrupting Palestinian trade. According to the World Bank (2004, p. 52), 'costly and unreliable trade logistics are the most immediate impediment to improving Palestinian market access and competitiveness'. The World Bank (*ibid.*) identifies the following obstacles that, it estimates, adds 50%-100% to transport costs:

- Delays and uncertainty at border crossings increase transit times and reduce order fulfilment.
- Lack of flexibility in routing goods increases costs and the risk that a closure will prevent shipments.
- The need to use Israeli trucks in Israel means that Israeli transporters can charge Palestinian shippers high transport prices.
- Multiple inspections per shipment reduce profits.
- Travel limitations to Palestinian exporters oblige Palestinian exporters to turn to Israeli intermediaries, which hampers Palestinian trade.

¹¹³ In March 2004, suicide bombers hid in a container coming from Gaza and conducted a suicide attack in Ashdod.

Some of these problems also arise in Israeli trade with Egypt and Jordan. Back-to-back procedures¹¹⁴ result in extensive delays and damage to merchandise as well as increase the transaction costs of intra-regional trade. Israel's customs clearance procedures seem to penalise trade with Egypt as well as the Palestinians. Put briefly, with the exception of Jordan and hopefully Egypt, the lack of mutual confidence between Israel and its neighbours harms normalisation of trade relations in the Middle East. The influence of negative cross-perceptions is clearly more evident than in EU-Israel trade relations as far as they relate to security concerns. Additionally, the latter are by far more institutionalised, thereby providing a more stable framework that raises the opportunity costs of unilateral measures. When compared with strong political measures such as the Arab boycott of Israel, resolution of issues such as infrastructure, trade facilitation or rules of origin do not seem very promising: political boycotts call for political solutions.

The second vector of action put forward by the Israel ENP AP refers to the *rules of origin* issue. This is a well-documented question on which Israeli scholars have made significant contributions (Tovias, 1997a, 1997b, 1999, 2003; Sadeh, 2002, 2004); the following paragraphs rely on these works.

The rules of origin question differs from the previous obstacles to intra-regional integration in a fundamental way: While the EU has little leverage, other than political pressure, to foster Middle East trade normalisation in the fields of infrastructure and trade facilitation, this is not so for the rules of origin. For instance, a long-standing demand by Israel involves EU amendment of the present protocol on rules of origin for the application of PanEuroMed cumulation of origin. However, the EU makes this application conditional on the arrangement for settlement-originated products, which illustrates how the Israeli-Palestinian conflict pervades EU-Israel economic relations even if kept at a low profile, technical level. Rules of origin are perhaps one of the few domains where the EU can claim some operational leverage in promoting Middle East intra-regional trade.

¹¹⁴ The back-to-back system involves the transfer of goods from one truck or container to another, because non-Israeli trucks are not allowed to transit Israel.

Cumulation of rules of origin will allow Israel to benefit from its neighbours' (and non-EU European countries) comparative advantages in labour-intensive products, which complement Israel's factor endowments and improve its competitiveness in EU markets. This has become more important after enlargement because the EU now includes labour abundant members, making it easier for EU producers to sub-contract labour-intensive production to the new members, further eroding Israeli exports' competitiveness. In the wake of future enlargements, its importance will certainly increase. By definition, larger markets, like that of the EU or the US, can benefit more from economies of scale than can small ones. In the EU's case this is even more so due to its members' differences in economic development and factor endowments. For instance, in order to sub-contract a labour-intensive productive stage, a EU producer does not need to recur to a non-EU sub-contractor, because there are new member states that fulfil that requirement. Furthermore, the structural and regional policies of the EU, which finance infrastructures and human capital formation in less-developed EU regions, make credible expectations that its comparative disadvantages can be more than compensated.

The Israel ENP AP intends to enable Israel's participation in the PanEuroMed system of cumulation of origin. This is a result of the Barcelona Process attempt to create a functioning Euro-Mediterranean FTA, reached in the July 2003 Palermo Euro-Mediterranean conference of trade ministers. The Palermo meeting decided to open up the European system of cumulation to those MPCs able to meet certain conditions. For the Israeli case, those conditions were understood by the EU as being fulfilled following the arrangement arrived at regarding the rules of origin dispute and the new Israel-Jordan trade agreement, signed December 2004.¹¹⁵ This means that the protocols of the rules of origin applicable to the EU's AA with Jordan and Israel should be changed, something that was underway at the time of writing.

¹¹⁵ The new extended Israel-Jordan FTA agreed to ease trade barriers and phase in the FTA by the end of 2010. More than 80% of Jordan's exports to Israel and more than 50% of Israeli exports to Jordan will be exempt from customs duties at that time.

To some extent, the inclusion of Israel in the PanEuroMed system of cumulation has followed previous steps taken by US trade representatives. The US-Israel-Jordan and US-Israel-Egypt trade arrangements allowed for duty free exports to the US provided they had at least 35% value added by companies within the Qualified Industrial Zones (QIZ). For instance, in the US-Israel-Egypt arrangement, the 35% can include costs in Egypt, in Israel, or in the US; Israel and Egypt agreed that each country must contribute at least a third – or 11.7% – to the 35% minimum cost requirement. In fact, as recognised by the ENP Israel Country Report, Israel had asked the EU for a similar arrangement on QIZ. The PanEuroMed system of cumulation seems more flexible and liberal than do the arrangements with the US as cumulation is not limited to exports originating in the QIZ. However, its impact on intra-regional and Israel-EU trade remains to be seen although the impressive results on the increase in Israel-Jordan, Israel-US and Jordan-US trade flows are promising.

Israel-Palestine Authority trade takes place under a quasi-Customs Union (qCU). The Israel ENP AP does not mention any specific measure to promote trade with the Palestinians, a fundamental issue insofar as over 90% of Palestinian exports go to or through Israel. Moreover, in the near future, Israel will remain its first trading partner. In addition to the infrastructure and securitisation obstacles to trade flows, the qCU presents additional obstacles to bilateral trade (World Bank, 2004). There are problems with export and import licenses that need Israeli authorisation: Palestinian traders complain about the length of time it takes to obtain authorisation and about inaccurate certificates that make it difficult to clear goods at customs. Also, the Paris Protocol limits Palestinian trade agreements with Arab League countries to the products included in three positive lists, hampering Palestinian intra-regional trade.

Policy Recommendations

Concerning the measures listed in the Israel ENP AP for promotion of *EU-Israel trade relations*, we highlight the following conclusions:

- Given that EU-Israel tariff barriers and licenses (other than for agricultural products) have almost been removed, *trade liberalisation* relies on other non-tariff barriers, mainly standards and SPS.
- With regard to the establishment of a *dispute settlement mechanism*, a more flexible system to address disputes will be welcome, but this does not seem fundamental.
- Concerning *customs-related issues*, the AP contemplates the possibility of certifying operators in order to avoid the transaction costs that origin verification imply. However, this calls for closer cooperation, as the AP also correctly states.
- Regarding *standards*, the ENP AP intends to facilitate market access of industrial products by applying the Palermo Action Plan and reaching a bilateral Agreement on Conformity Assessment and Acceptance (ACAA). This is a better strategy than the Israeli demand of achieving a Mutual Recognition Agreement (MRA).
- The ACAA approach entails intra-regional differentiation, because Israel is ready to progress in this field faster than are other Mediterranean partners, but to a lesser extent than needed for a MRA.
- Similarly, for *Sanitary and Phyto-sanitary* (SPS) measures, the ENP AP rightly proposes convergence of Israeli legislation with the *acquis communautaire* instead of signing a bilateral equivalence agreement.
- A general problem with EU-Israel relations is that public opinion is not very receptive on either side. The ENP AP contemplates general measures to combat anti-Semitism and Islamophobia, but clearer and better-targeted public diplomacy measures may be needed to counteract tensions among civil societies.

With respect to promotion of Israel's intra-regional trade (including Israeli-Palestinian trade), the EU's available instruments are much more limited. As a general principle, it should be recognised that economic instruments cannot always substitute for political instruments. Trade normalisation requires the previous normalisation of political relations, as happened with Jordan and to a lesser extent with Egypt. Instead of relying solely on economic measures, the EU should consider the possibility of investing more political capital in trying to upgrade political dialogue between Israel and its Arab

neighbours through Barcelona Process institutions. However, there is some room for the EU to provide incentives for regional cooperation at the trade level.

We can summarise the main insights of the paper on this issue as follows:

- Middle East regional cooperation in the building of common infrastructure conducive to trade has not been operational due to the unfavourable political climate, with the only exception of Jordan-Israel cooperation.
- EU financial support to Israel-Palestinian trade infrastructure poses some problems of status quo recognition by the EU so far as it concerns facilities across the Separation Barrier, its associated regime or the settlements that, according to the International Court of Justice, contravene international law.
- Securitisation of cross-border trade flows, like back-to-back procedures, increases transaction costs for Israel's intra-regional trade. New procedures that balance security and trade facilitation should be adopted.
- Lack of mutual confidence between Israel and its neighbours (with the clear exception of Jordan) harms normalisation of trade relations. Institutionalisation of trade relations is almost absent, providing an unstable framework that lowers the opportunity costs of unilateral measures.
- The Arab boycott on Israel calls for political solutions: low politics and economic instruments are not powerful enough to solve high politics, hard security issues.
- Rules of origin is one of the few domains where the EU enjoys some operational leverage in promoting Middle East intra-regional trade. Israel's participation in the PanEuroMed system of cumulation of origin is a positive step.
- The PanEuroMed system of cumulation seems more flexible and liberal than do the arrangements with the US inasmuch as cumulation of origin is not limited to exports originating in Qualified Industrial Zones (QIZ).
- The procedures of the Israel-Palestine Authority quasi-Custom Union (qCU) present obstacles to bilateral and Palestinian intra-regional trade.

The regional dimension of trade promotion is clearly under-specified in the Israel ENP AP. This is not a fault of the Israel ENP AP, but of the overall ENP strategy, which can

deepen regional fragmentation to the degree to which it introduces ‘variable geometry’ into EU-MPC trade agreements. However, some Israeli scholars (Herman, 2005, p. 40) hold the opposite view, believing that the EU should ‘de-link between its Barcelona Process south-south integration goal, and its additional targets set in the ENP’. By contrast, this paper’s view is that the regional approach introduced by the Barcelona Declaration should not only be sustained but also elevated to centre stage. The instruments of low politics are clearly instruments insufficient to foster intra-regional trade because most trade facilitation measures (infrastructure, new custom and border-crossing procedures) can be blocked by security concerns. The PanEuroMed cumulation of rules of origin is a positive step, but this will benefit only those countries ready to shift from conflict to cooperation.

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Chapter 2

Industrial and Environmental Cooperation

Summary and Recommendations

This chapter reviews initiatives pertaining to the *Proposed EU-Israel Action Plan*, Article 2.5, Para. 2.5: Energy, the Information Society, the Environment, Science and Technology. The first of the two articles in the chapter, ‘Prospects for Regional Cooperation in the Energy Sector in the East Mediterranean Rim: Development of a Solar Energy Schemes and Power Interconnections,’ prepared by Dr. Amit Mor and Shimon Seroussi, treats energy issues; the second article, ‘On Industrial Cooperation between the European Union and Israel,’ prepared by Moshe Dovrat, treats information society, environment and science and technology issues.

Abstracts

The first article, ‘Prospects for Regional Cooperation in the Energy Sector in the East Mediterranean Rim: Development of a Solar Energy Schemes and Power Interconnections,’ proposes two major programmes for promotion of cooperation:

- Development of a solar energy development scheme by Middle Eastern countries.
- Connection of national power grids throughout the region.

The article reviews the various advantages associated with implementation of these programmes as well as the numerous economic and environmental benefits to be gained from a policy involving participation on the individual country as well as regional levels. The article presents the various reasons for favouring EU involvement in energy production. In addition, the authors suggest that energy programmes should be included

within the European agenda. This implies the appointment of a special task force to further initiatives such as those mentioned.

The second article deals with issues related to industrial cooperation between the EU and Israel. It details the various levels of this cooperation and suggests practical models for furthering successful relations between the partners.

In the area of industrial cooperation, the article reviews issues related to information and R&D, bi-national funds, matching grant agreements between countries, international agreements, inter-university contracts. In doing so, it lists various projects initiated to date in addition to the directions to be taken to further that cooperation. The article also inquires into the current status of cooperation in other areas – environmental protection, cooperation in export marketing, legislation and adjudication, infrastructure, corporation in education and training – while suggesting steps to be taken to improve the current level of cooperation.

Prospects for Regional Cooperation in the Energy Sector in the East Mediterranean Rim: Development of Solar Energy Schemes and Power Interconnections

Amit Mor and Shimon Seroussi

Introduction

The energy sector provides various possibilities for regional cooperation among countries along the eastern Mediterranean rim. Such cooperation can include the connection of oil pipelines, power and natural gas grids as well as schemes for water desalination and renewable energy projects.

The latest agreement between Egyptian and Israeli companies for exporting Egyptian natural gas to Israel encourages the development of additional projects that could involve Egypt, Jordan, Israel and the Palestinian Authority at the first stage, and other countries in the region at a later stage.

This paper describes preliminary ideas in two related fields for such cooperation, specifically, the development of solar energy by Middle Eastern countries and the connection of national power grids in the region. It is envisioned that such projects can yield major economic and environmental benefits to the countries involved and to the region as a whole.

It is also suggested that such initiatives should be recognized by the EU as themes for central activity in the energy, environment and infrastructure sectors in the Middle East.

The Solar Energy Scheme

The possibility of solar energy project development as a basis for fostering regional economic cooperation cannot be underestimated. Egypt's Sinai Peninsula, Israel's Arava and Negev regions, and the Jordanian deserts provide optimal locations for building and developing solar thermal facilities for power generation in an area that is endowed with high solar radiation.

Evidence from other countries suggest that solar technology can become a major economic engine, producing high-quality employment, exportable technology in a growing market and a clean, stable energy source in countries that have relied heavily on imported fuels (e.g., Jordan, Israel, the Palestinian Authority) whose market prices are becoming increasingly volatile and whose fossil-based reserves for meeting a growing peak demand are limited or non-existent.

The benefits of developing the region's solar sector range from energy security to environmental improvement to increased economic opportunities.¹¹⁶ Specifically, the geographical proximity between these areas would allow for development such as:

- Establishing large-scale commercial solar thermal power plants.
- Constructing solar towers with heliostat fields for steam production and other industrial processes at facilities such as the Dead Sea Works or the Jordanian Potash Works.
- Establishing a regional research and training centre for solar energy applications, e.g., expanding the commercial viability of photovoltaic systems and improving solar thermal energy storage, including chemical storage of solar thermal energy.¹¹⁷
- Desalination of seawater in cogeneration, a 'by-product' of solar generation, which would expand the potential for cooperation and sustainable development in North Africa and the Middle East.

¹¹⁶ Mor A., Seroussi S. and M. Inspan, *Large scale utilization of solar energy in Israel - economic and social impacts*, Greenpeace International, June 2005 (Hebrew).

¹¹⁷ Government of Israel. (1994), *Development Options for Regional Cooperation*, submitted to The Middle East and North Africa Economic Summit.

- Efficient exploitation of each country's comparative economic advantages in engineering and manufacturing of high-quality solar facilities for export, especially to the European and East Asian countries where solar demand is outpacing supply (e.g., Germany, France, Spain, and China). This would improve the region's terms of trade with Europe as it progresses toward compliance with greenhouse gas reduction requirements.
- More rapid deployment of new solar technology as the presence of multiple solar facilities within a small geographical area creates 'network externalities'. Network externalities are the benefits one receives from using a product because a number of other people are using similar or compatible products. In our case, network externalities are created by a number of countries working with and improving upon a shared technology standard that would not exist without that sharing.¹¹⁸
- Need for learning to accelerate solar penetration. As other countries have amply demonstrated, establishing centres of solar technology R&D creates opportunities for readily available information sharing. This 'network externality' within a small region often results in technology standards with which solar developers worldwide must comply, thereby creating a sustainable competitive advantage for that region.¹¹⁹
- Trade in emission rights of greenhouse gases (especially carbon dioxide – CO₂) with European or other countries. Production of clean energy will enable the developers to gain environmental credits via the Clean Development Mechanism (CDM) or other, newly developed, trading means. This environmental benefit could yield gains of millions of Euros to the developers and to the host countries as the trading price of a saved-ton of CO₂ emission is currently greater than Euro 20.

The magnitude of these benefits from regional cooperation is directly related to the region's ability to be an early contestant in global solar development. The 'first-mover advantage' requires a degree of continued government or international assistance in order to develop technology locally and export it beyond the immediate region. However, to the extent that the region develops first-mover advantages in newer solar technologies (as

¹¹⁸ Shy, O., (2001), *The Economics of Network Industries*, Cambridge: Cambridge University Press.

¹¹⁹ Taillant P., (2002), *Competition, Lock-in and Development of Technological Variety in the Production of Solar Electricity*, paper delivered at the 25th IAEE International Conference.

Germany, Denmark, Australia and Japan have already done), the benefits to the region can be substantial, ranging up to a long-term market share of nearly 50% for the markets that the first mover develops.¹²⁰ The combination of large tracts of inexpensive desert land in Israel, Jordan and Egypt, together with the technology developed at the major universities – with some government assistance – has the potential of making this region a leader in solar applications for the long term.

The additional direct costs usually associated with solar energy are due largely to the failure of reflecting environmental costs in the prices of electricity generation, steam, heat and air conditioning. This in turn favoured the development of large fossil-fuelled units at the expense of developing an indigenous solar sector to the degree that would drive solar costs downward.

It is argued that internalising environmental costs, under reasonable assumptions, will make solar a much more attractive investment than natural gas and coal, even without extensive government incentives. To the extent that the governments of the region create such incentives, however, the cost of solar resources declines, creating a demand for solar that requires mass production of components and drives costs down further. This ‘virtuous cycle’ is manifested in the current leaders in the global solar development, such as Germany, vis-à-vis photovoltaic solar technologies. It could occur in Middle Eastern countries as well, especially with regard to solar thermal technologies.

The development of renewable energy sources in the Mediterranean rim is the objective of the Trans-Mediterranean Renewable Energy Cooperation (TREC) group,¹²¹ a joint Mediterranean network of researchers that is promoting construction of a solar energy-based water desalination plant for Gaza.

¹²⁰ See for example, Australia Department of the Environment and Heritage, *Corporate Sustainability: An Investor Perspective: The Mays Report*. <http://www.deh.gov.au/industry/finance/publications/mays-report/energy-sector.html>. This 50% figure is a common estimate used by strategic consultants for first movers.

¹²¹ See the TREC Development Group, *Trans-Mediterranean Renewable Energy Cooperation ‘TREC’*, Working Paper, 2003.

Power Interconnection and Trade

Linking-up the electricity grids of neighbouring countries is deemed to be one of the projects most rewarding to all the countries involved. The idea has already been proposed at several occasions during the 1990's; some preliminary work, sponsored by European countries, was conducted to examine its feasibility. Eventually, in 2003, Egypt and Jordan connected their power grids via a submarine electricity line that ranges from Sinai to Aqaba by crossing the Aqaba/Eilat Gulf, while Israel and the Palestinian Authority remained out of the loop.

Three of the major benefits resulting from the interconnection of electricity grids are:

- At time of peak demand in a given country, the country would be able to purchase electricity from the base loads of the other country, thus obviating the need to utilize its own, more expensive production capacity.
- The overall amount of installed electrical power capacity that either country would have to maintain over time would be lower, enabling all countries to reduce their investments in generation infrastructure in the long run.
- Electricity interconnection enables trade of electrical power and transactions in spot markets as well as long-term transactions between Utilities, Independent Power Producers (IPPs) and consumers in all the interconnected countries.

Interconnecting Israel and the Palestinian Authority to the regional electricity grid will enable cooperation in solar energy generation. In addition, once such projects reach the joint planning stage, one can expect that the joint technical, commercial and geopolitical work among the participants will stimulate additional ideas for technological development which may prove mutually beneficial to the partners.

Reasons for EU Involvement

It is suggested that the EU would prioritise its involvement in these fields for the following reasons, among others:

- The EU has been facilitating various projects and programmes in the region and is perceived as an honest broker by the prospective partners. Its involvement can thus assist in mitigating geopolitical risks.
- Further the involvement of European companies in the economies and markets of the Middle East.
- Facilitate economic and environmental cooperation between Israel and neighbouring Arab countries
- Investing in clean energy and greenhouse gas reduction projects is within the interest of European countries since such investments can facilitate their obligation to reduce CO₂ emissions.
- Diversification of the fuel mix and lowering dependency on expensive imported oil.
- Technology transfer from European countries and Israel to other countries in the region.
- Creation of employment opportunities in equipment production and infrastructure construction in Europe and the countries involved.
- Facilitate R&D activities that benefit companies and research institutions in Europe as well as in the participating countries.

In conclusion, it is recommended that the EU include the solar energy and electricity interconnection schemes for the Middle East in its agenda and nominate a task force to promote and develop such initiatives.

Industrial Cooperation between the European Union and Israel

Moshe Dovrat

Guiding Assumptions

Future transformation of the power relations holding in the global system and between producers into a multi-polar (rather than uni- or bi-polar world) will increase interest in cooperation in order to buttress the sustainability of international competition. At present, 55% of world product is produced by advanced economies, with 45% by awakening markets. The latter's share is expected to grow in the future.

The European Union stresses selective movement toward neighbouring countries that are not expected to join the EU, based on those countries' respective capacity and desire to become members. Israel can enjoy the benefits of being a partner as well as contribute to such efforts (e.g., the ENP – European Neighbourhood Policy). Europe has indeed come closer to Israel with the joining of Cyprus and, perhaps, the eventual inclusion of Turkey.

As a small and open economy, Israel is highly sensitive to any fluctuations in the international economy and in international trade, but especially to events transpiring internally and in the Middle East. Israel's inability to launch meaningful industrial cooperation with its neighbours (not always for political reasons) requires her to seek opportunities for cooperation in other, more appropriate markets.

This paper deals with issues related to industrial cooperation at various levels of detail and suggests practical models for furthering successful relations between the partners. As such, the issue of the labour market is excluded because cooperation in this sector remains inchoate on the international level; tourism is excluded as well. Monetary and other macroeconomic issues remain beyond the chapter's scope.

Industrial Cooperation

Information and R&D

Cooperation in this area should progress along three dimensions: development of a scientific and technological infrastructure, encouragement of scientific research and promotion of industrial ventures. Israel has rather successfully integrated itself into this broad area although there is room for improvement. Examples of Israeli-European cooperation include:

- R&D frameworks – As in the past, Israel has been included as a partner in the EU's 6th R&D programme. In addition, Israel participates in the EUREKA programme, aimed at helping improve the productivity and competitiveness of European industries and economies. The programme entails a Europe-wide network promoting collaborative market-driven R&D in most fields involving advanced civilian technology. In June 2000, Israel was accepted as the only non-European participant in EUREKA programme projects.
- Coordinating collaboration in Israel has been assigned to MATIMOP – the Israeli Industry Centre for R&D. In the first half of 2003, Israel participated in 82 projects, 23 of which were headed by Israel, including 13 *cluster projects*, long-term, strategically focused industrial initiatives. Israel is also active in the EUROAGRI+, where it plays a major role in the development of technologies in biotechnology, genomics, and proteomics.

Bi-National Funds

Israel has signed an agreement with the UK for the operation of the bi-national BRITECH Fund for industrial development. This fund furthers industrial collaboration projects by assisting in the location of partners and providing support for joint ventures by means of financial grants.

Matching-Grant Agreements between Countries

These agreements focus on cooperation in industrial R&D performed by comparable entities. Each country provides the support according to local precedents. Israel has

entered into agreements with France, Holland, Spain, Portugal, Belgium, the UK, Italy, Sweden and Finland.

International Agreements

Israel's Ministry of Science and Technology has been mandated responsibility for executing these agreements. Agreements have been signed with Germany, France, Italy, the UK, Austria, Holland, Hungary and Poland.

Inter-University Contracts

These agreements relate to basic and applied research conducted by university institutions in Israel investigating the practical application of technology. For example, Deutsche Telecom recently signed a \$4 million research contract with Ben-Gurion University in the Negev. The project deals with computer and information network security systems. The contract was signed with the applied technology institution established by the University.

Practical Proposals

Practical proposals for the expansion of policy involve establishment of additional bi-national funds between Israel and EU Member States; initiation of projects for the application of military technologies (e.g., NATO and IDF technologies) for civilian uses and creation of joint risk-capital funds in developing areas such as nanotechnology, ecology, environmental protection and water.

Environmental Protection

In July 2005, comprehensive research was published by the Faculty of Law, Bar-Ilan University (www.biulaw.org, in Hebrew), comparing European with Israeli environmental legislation. Legislation of compatible laws is necessary to further exports between European and Israeli firms. The study showed that contrary to the orderly system of environmental protection laws effective in the EU, Israeli has yet succeeded in formulating an orderly system of laws despite the significant progress observed in recent years. The Israeli government's decision to formulate a strategic plan for sustainable

development in Israel, meant to create uniform conceptual foundations for Israel's environmental policies, is an important step in this direction.

Practical Proposals

Practical proposals for policy implementation include creation of collaborative working groups for mutual initiation of environmental legislation. Another proposal involves setting up cooperative efforts in the area of earthquakes, recovery and rehabilitation as well as identification of sources of water pollution (e.g., terrorist activity).

Cooperation in Export Marketing

This sphere remains in its infancy, especially regarding collaboration between Europe and Israel. The associated projects should aim at initiation of collaboration in marketing research, advertising, trade exhibitions and fairs, design and labelling, funds for new market penetration and the establishment of logistical centres. Within this framework, support should be provided for the long-term stationing of managers in the cooperating countries to guarantee the project's effectiveness.

Legislation and Adjudication

Globalisation has stimulated the formation of new legal norms as well as the reinforcement of international judicial institutions. This trend, currently expressed primarily on the policy level, has not always been positively received. Spread of the phenomenon is nonetheless inevitable in the commercial, economic as well as civil arenas.

Globalisation will weaken the power of labour unions as well as drive privatisation of government corporations in addition to social welfare-oriented institutions, including the health system, the education system, prisons and so forth. Globalisation will also further compatibility between local national and international law, observed as expanded international adjudication and increased confrontations between national and international institutions.

This process, despite its complexity, can be exploited for improvement in the links between economic and business networks by formulation of compatible laws, expansion of enforcement instruments and cost reduction. These processes can support cooperation of the commercial sector in various countries by introducing familiarity and consistency into civil frameworks. It is suggested that a collaborative working group be established to study the subject.

Infrastructure

As to infrastructure, the EU can contribute more to Israel than Israel can contribute to the EU. Options have recently been examined for the renewal of European Bank activities in Israel, which may stimulate the interest of other investment banks.

The main areas of activity should be public transport, energy and water. Recently, A proposal for the construction of an infrastructure corridor between Turkey and Israel was investigated for the purpose of transporting oil, natural gas, electricity and water. The possibility was raised that the corridor might pass through Cyprus. Other Mediterranean states in the region could also benefit from the project. Also worthwhile is investigation of the future construction of a corridor for the movement of tourists and goods between Israel, Cyprus and Turkey even before construction of an underwater transport corridor.

Cooperation in Education and Training

As far as we know, this area has been almost totally neglected. Such cooperation can be rooted primarily in the exchange of advanced and professional training programmes and students (for example, Israeli hotel management students might train in European hotels).

Business interests need to become more involved in these projects because the sector often provides the setting for advanced training. In order for this goal to be accomplished, public agencies must be prepared to construct an information and consultancy network.

Chapter 3

Constitutional and Justice Affairs

Summary and Recommendations

The chapter pertains to Article 2.4. of the Action Plan (AP), cooperation in justice and home affairs. Its overall objectives are to:

- Enhance cooperation and coordination in Justice and Home Affairs in order to respond to the challenges faced by democratic societies,
- Identify the scope of Israel's participation in relevant EU programmes and, in this context,
- Identify the scope for legislative approximation as required by the respective programme.

This chapter contains two articles. The first article is devoted to a discussion of which judicial body is to receive the authority to decide conflicts arising from EU relations with third countries in general and Israel in particular in light of the objectives defined in the AP document 'The European Neighbourhood Policy and Israel: Choosing the Judicial Forum', framed by the European Constitution. The second article deals with security cooperation as outlined in the AP programme, beyond what has been defined within the framework of NATO-Israel relationships. Also treated is the role of the Quartet in finding solutions for the Palestinian-Israeli conflict.

The European Union has chosen to include stable foreign relations and the maintenance of peace among its fundamental constitutional objectives. In the 'Treaty Establishing a Constitution for Europe,' the limits of cooperation with other states are defined among the Union's commitments to sustain far-reaching political stability. Article V refers to the Union's foreign activities aimed at constructing and sustaining cooperation with third

countries. Among other things, the principles of peacekeeping, prevention of conflicts and encouragement of integration in the global economy has been incorporated into the Union's vision. Article VIII states that in order to accomplish these goals, the EU will sign specific agreements with third countries that will stipulate mutual rights and obligations.

The article deals with the question of which instruments capable of achieving these purposes are available to the EU when dealing with its neighbours. The authors argue that the Union has yet to make a definitive statement regarding the legal complexities associated with the AP agreements it has signed with its neighbours in response to demands for its increased involvement in the respective regions. According to the authors, the Union's legal mandate requires the construction of a legal mechanism to interpret, enforce and, when needed, provide legal solutions for the conflicts expected to arise as a result of the agreements signed with Israel. Hence, the jurisdiction of the European Court of Justice (ECJ) is to be broadened in order to justify the extension of its authority to the Union's objectives as stated in Articles V and VIII.

At present, the standing (*locus standi*) of Israel and its neighbours before the Court in Luxembourg has yet to be resolved. The authors discuss this issue while focuses the European Neighbourhood Policy (ENP). They argue that within the ENP framework, the Union signed an AP with Israel for the purpose of revitalizing the existing framework of relations. When viewed from this perspective, the authors anticipate that in the near future, conclusion of the European-Israeli Neighbourhood Agreement will entail new legal obligations. With respect to the possibility of establishing a separate governing body for the European Neighbourhood Space, including a court to legally sanction agreements signed with third countries, the authors maintain that the Union's fundamental position negates establishment of additional institutions.

With respect to the possibility of creating a system parallel to the European Economic Area, the authors argue that the EEA-EFTA-EC trio has introduced institutional complexity. Based on past European expansions, it may be argued that membership in

EFTA or the EEA represents a springboard to membership in the EU. In the future, the EFTA/EEA system might even cease to exist. Such a contingency requires a public vote; therefore, any prediction should be treated with caution.

With respect to establishment of a Court similar to the European Neighbourhood Policy, the authors are of the opinion that problems are likely to emerge on the basis of competing jurisdictions. Since the European Neighbourhood Policy has not endeavoured to create a collective entity, a Court would be unable adjudicate issues, being politically loaded and having no interest in balancing the interests of other Union members. Should a country insist on using the EFTA judicial infrastructure – provided that the EFTA Member States join the European Neighbourhood Policy – extension of the EFTA Court's jurisdiction to encompass ENP-related issues may offer a viable solution. Hence, rather than establishing a new judicial body, the most appropriate judicial body to accept responsibility over implementation of these agreements is the ECJ.

The primary benefit of this solution rests on the fact that the ECJ is identified with the Union, with its identity framed by the Union's constitution, the source of its political legitimacy. This substantiates the preference of the ECJ to an autonomous body: The ECJ could make more effective contributions to EU capacity building. The authors therefore conclude that Israel and its neighbours should be awarded standing before the ECJ.

If this route should be taken, the relevant question becomes what type of standing should Israel be granted? Several possibilities exist. In the law's present form, given the lack of explicit competence to hear disputes arising between the EU and Israel or third countries, several avenues remain open for 'qualifying a dispute' for acceptance by the Court in Luxembourg. The first lies under paragraph 4, Article 230 – 'Action for Annulment' – of the EC Treaty; this paragraph differentiates between privileged and non-privileged applicants. EU Member States and institutions belong to the first category, while others, including non-Member States, belong to the second category. The latter, as opposed to the former, have to establish that the precise issue is of 'direct and individual concern'. However, the ECJ will likely refuse to rule on such matters unless they are clear-cut and

confined to very specific economic issues; otherwise, it will reject them on grounds of inadmissibility.

The second avenue for establishing standing is the right to intervene pursuant to Section 40 of the Statute of the Court of Justice. Section 40 stipulates that: ‘Member States and institutions of the Communities may intervene in cases before the Court. The same shall be open to any other person establishing an interest in the result of any case submitted to the Court, save in cases between Member States, between institutions of the Communities or between Member States and institutions of the Communalities’. However, this article’s authors argue that interpretation of this statement indicates that it does not relate to third countries.

Another possibility for establishing Israel’s or neighbouring third country standing involves the indirect application of Article 234 of the EC Treaty. Article 234 is the main legal instrument used by the ECJ when interpreting the Treaty, ruling on the validity of acts committed by various institutions and the Community in addition to raising concerns that have yet to be addressed by legislation. In general, according to Article 234, only a court of last resort is obliged to refer a question, thus, if a dispute appears before a lower court, the latter *may but is not obliged* to refer the case. Finally, if the EU and the neighbouring country enter an arbitration clause into an agreement that defines the ECJ as the final arbitrator, then the ECJ has full competence to adjudicate.

The Court in Luxembourg has yet to clarify why an entity affected by acts committed by European institutions should be barred from challenging one of its decisions. With respect to Israel and neighbouring third countries, the Union runs the risk of leaving one of the parties without a remedy but also creating absurd situations, incapable of judicial review. If the Union can establish a specialised Patent Court, then the EU is also capable of constructing judicial mechanisms appropriate for the European Neighbourhood Policy era. The best mechanism nonetheless remains that of the ECJ.

If trans-European networks are to cover the European Neighbourhood Space in the future, Euro-justice should not remain the monopoly of Brussels or the capitals of the other 24 EU Member States. The ECJ should claim the role of ‘a far more pro-active patroller of government through its grant of extensive powers of judicial review’.

The second article also discusses issues affecting justice and home affairs (JHA), but from a security rather than legal perspective. The authors argue that JHA components appearing within the AP relate primarily to areas already benefiting from some type of bilateral cooperation; they therefore advise against broadening the scope of cooperation to entirely new areas of interest. They also propose approaching the issues by:

- Separating traditional from new areas of cooperation
- Traditional areas: counter-terrorism, national security, defence, intelligence
- New area: financial crime, family crime, child abductions, evidence in criminal proceedings, conventional forensics, judicial education and training, Europol.

An alternative approach would distribute cooperation according to the following categories of ‘soft’ vs. ‘hard’ JHA cooperation:

- *Soft cooperation*: Passive forms of cooperation involving little political commitment or risk, e.g., police training, forensic and technical assistance (ENFSI), visits, declaratory activities, high level contacts over general issues
- *Hard cooperation*: Active forms of cooperation requiring political commitment and/or public exposure, e.g., joint investigations, confiscation of terrorist organization funds, extraditions.

We should note that for countries in which previous bilateral JHA cooperation has been in effect, no major modifications in operative patterns of cooperation would be required. However, in countries having little or no previous experience with bilateral JHA cooperation (including some new EU Member States), EU channels would be used to establish contacts and solve specific problems.

The article implies that gaps in the priorities regarding JHA cooperation have appeared between Israel and the Union. Issues at the top of the European agenda but relatively low on the Israeli agenda include: asylum, migration (basic policies differ greatly) and trafficking in human beings. Additional issues linked to cooperation between Israel and the Union include:

- New Israeli ‘Witness Protection’ programmes, learning from US and EU experience, cooperation with the EU on relocation, and so forth.
- Expanded enforcement of intellectual property rights.

With respect to EU security assistance in the Middle East, the article discusses the following issues:

- The role of EU security representatives in monitoring border crossings between Egypt and Gaza, together with supervision of movements of people at the Rafah border crossing, now monitored electronically by Israel.
- The role of the European Union Coordination Office for Palestinian Police Support.

Recommendations

Regarding Israel/NATO cooperation, it should be noted that Israel and NATO depend primarily on the European members of the alliance. When considering how to promote relations between Israel and NATO, the follow issues should be considered:

- Appointment of a permanent Israeli liaison officer (navy colonel) at Operation Active Endeavour Naval headquarters in Naples, the first permanent Israeli military representation ever to be assigned to NATO. Active Endeavour is NATO’s ongoing operation for intercepting vessels carrying arms or other materials related to terrorism activities in the Mediterranean.
- Participation of Israeli forces in large-scale NATO peacekeeping exercises, such as that held in the Ukraine (spring 2005).
- Participation of Israeli staff officers at NATO regimental headquarters exercises, such as those held in Macedonia (late 2005).
- Participation in the NATO peacekeeping force in the Gaza Strip. This remains a long-term goal, with no short-term prospects for implementation.

With respect to promotion of security cooperation between Israel and the EU, the authors propose the following steps:

- Security cooperation between the EU and Israel must continue beyond traditional counter-terrorism and defence issues in order to approach the European concept of comprehensive security.
- Europol and Israel should conclude an agreement on cooperation, data sharing, information security and operational assistance.
- As Israel moves closer to further unilateral withdrawals in the West Bank, application of lessons learned from the EU's Border Assistance Mission (BAM) should be considered when making future border arrangements with the Palestinians. Both the EU and the Israeli security establishment should contemplate a future role for an expanded EU observers mission at other points of friction, while bearing in mind the deficiencies of the current BAM system.
- European officials should work more closely with Egypt and its security apparatus to bring the situation at the Rafah border crossing under control.
- The European Union has shifted its policy toward the Palestinians from providing financial aid exclusively to active, albeit still limited work in support and verification.
- Europe has gained much experience from its police and security assistance work in the Balkans over the past decade. The lessons of those activities should be studied closely and analysed in their relevance to the current situation in the Middle East.

Basing future security assistance operations on past experience and on workable even if somewhat unconventional solutions while keeping realistic expectations will enhance the active role of the EU in the region and keep it from falling into expensive and potentially dangerous political traps.

The European Neighbourhood Policy and Israel: Choosing the Judicial Forum in Light of the European Constitution

Lior H. Zemer and Sharon Pardo

Introduction

The EU opted to include solid external relations and the preservation of peace among its primary constitutional objectives. Hence the ‘Treaty Establishing a Constitution for Europe’¹²² also defines the ties and boundaries of cooperation with other countries as part of the EU’s commitment to preserve wide-scale political stability.

Title V of Part III, ‘The Policies and Functioning of the Union’, of the ‘Treaty Establishing a Constitution for Europe’¹²³ refers to ‘The Union’s External Action’ (hereinafter referred to as – Title V) and as such not only ‘conveys an optimistic sense of dynamism’¹²⁴ but also attests to the argument that the constitutional importance of external relations was recognised by the framers of the European Constitution. Article III-292 reads:

1. The Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and

¹²² ‘Treaty Establishing a Constitution for Europe’ *Official Journal of the European Union*, 2004/C310/01, 16 December 2004 (hereinafter referred to as - the European Constitution). The full text of the European Constitution is available on the Constitution for Europe website, <http://europa.eu.int/eur-lex/lex/JOHtml.do?uri=OJ:C:2004:310:SOM:EN:HTML>, accessed 6 August 2005.

¹²³ ‘Treaty Establishing a Constitution for Europe’ *Official Journal of the European Union*, 2004/C310/01, 16 December 2004 (hereinafter referred to as the European Constitution). The full text of the European Constitution is available on the Constitution for Europe website, <http://europa.eu.int/eur-lex/lex/JOHtml.do?uri=OJ:C:2004:310:SOM:EN:HTML>, accessed 6 August 2005.

¹²⁴ M. Cremona, ‘The Draft Constitutional Treaty: External Relations and External Action’ (2003) 40 *Common Market Law Review*, pp. 1347, 1366.

indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

Article III-292 continues:

1. The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations that share the principles referred to in the first subparagraph. It shall promote multilateral solutions to common problems...
2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:
 - (a) safeguard its values ... ;
 - (b) consolidate and support democracy, the rule of law, human rights and the principles of international law;
 - (c) preserve peace, prevent conflicts and strengthen international security ... ;
 - (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
 - (h) promote an international system based on stronger multilateral cooperation and good global governance.

Title VIII of Part I ‘The Union’s and Its Neighbours’ of the European Constitution (hereinafter Title VIII) further provides, in Article I-57, that:

1. The Union shall develop a special relationship with neighbouring countries, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union

and characterised by close and peaceful relations based on cooperation.

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

How does the EU attempt to meet all these objectives in the case of Israel and other neighbouring countries? How can cooperation and the consolidation of economic stability be maintained? Does the constitutional mandate necessitate a legal mechanism to interpret, enforce – and where applicable – provide judicial remedies for foreseeable disputes emerging from the agreements signed between the EU and Israel? Should the jurisdiction of the European Court of Justice (ECJ)¹²⁵ be extended to cover such situations? These questions motivate this account.

We argue that the jurisdiction of the ECJ should extend to encompass the ambitions of the Union as stipulated in Titles V and VIII. Considering the importance of the EU-Israeli/neighbouring countries relations, the main theme of our discussion is to challenge the lack of clear *locus standi* of Israel and other neighbouring countries before the ECJ. This account considers this aspect as one that relates to foreign policy and as an element responsible for the success of any attempt to abide by the spirit of the European Constitution and the ideology underlying Titles V and VIII.

At present, the standing of all neighbouring countries – including Israel – at the courts in Luxembourg is unclear. However, if the current version of the European Constitution enters into force, the possibility of granting standing will cease to exist. Article III-376 explicitly excludes ‘common foreign and security policy’ (CFSP) issues from the jurisdiction of the Courts. This Article provides that “the Court of Justice of the European

¹²⁵ For purposes of the present account, the ECJ includes the Court of First Instance (CFI). However, it is submitted that jurisdictional differences exist.

Union shall not have jurisdiction with respect to Articles I-40 and I-41 and the provisions of Chapter II of Title V concerning the common foreign and security policy and Article III-293, insofar as it concerns the common foreign and security policy....”

We criticize this proposed exclusion of CFSP issues from the agenda of the ECJ. In order to keep the analysis as close as possible to the law as it stands today, the discussion primarily examines currently applicable rules while focusing on the European Neighbourhood Policy (ENP).¹²⁶

Section two discusses the judicial organ most suitable for the ENP. It advances the argument that the ECJ, rather than a new judicial body, should be chosen. Section three draws on the discussion presented in the previous sections and argues that neighbouring countries, including Israel of course, should be bestowed *locus standi* before the ECJ. In our view, Brussels has not yet paid sufficient attention to the legal intricacies and necessary remedies that may emerge from the agreements and Action Plans that the EU signed and adopted with neighbouring countries prior to its claim for a more decisive role in its immediate neighbourhood. In this way, we will be able to highlight some of the errors that can be avoided once the European Neighbourhood Policy is activated in full force.

The ENP: Choosing the Judicial Forum

The European Neighbourhood Policy aims at moving toward an arrangement whereby relationships between the EU and its neighbouring countries resemble ‘membership-minus and at the same time foresees a policy process that emulates the method of formal accession’.¹²⁷ The ENP progresses via country-specific strategic Action Plans developed by the European Commission in partnership with the neighbouring countries. The EU-

¹²⁶ See European Commission, *Communication from the Commission to the Council and the European Parliament. Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours. COM(2003) 104 final*, EU Brussels, 11 March 2003; European Commission, *Communication from the Commission European Neighbourhood Policy: Strategy Paper COM(2004) 373 final*, EU Brussels, 12 May 2004. For the ENP website see, <http://europa.eu.int/comm/world/enp>, accessed 17 August 2005.

¹²⁷ N. Tocci, ‘Does the ENP Respond to the EU’s Post Enlargement Challenges?’ (2005) XL (1) *The International Spectator*, pp. 21, 24.

Israel Action Plan was adopted by the two sides on December 2004 and is designed to reinforce current cooperation and provide added value to the existing EU-Israeli Association Agreement by imparting new potential benefits to Israel. The Policy does not supersede existing EU-Israel bilateral ties; rather, it endeavours to enhance, supplement and build on them. In other words, the European Neighbourhood Policy is an attempt to inject new dynamics into the existing framework of relations with Israel.

In the near future, a decision may also be taken on the next step in the development of relations, including the possibility of new contractual links between the EU and Israel. These could take the form of a 'European-Israeli Neighbourhood Agreement' whose scope would be defined in accordance with progress made in meeting the priorities set out in the EU-Israel Action Plan. The adoption of the European-Israeli Neighbourhood Agreement would inevitably entail new legal obligations.

One additional matter requires discussion here. It is possible to argue that there should be a separate governing body for the European Neighbourhood Space¹²⁸ and that this should include a court with jurisdiction over the agreements signed between the EU, Israel and the rest of the neighbourhood countries. For the time being, however, the European Commission maintains the position that new institutions are not a necessity. At present, to advance and monitor implementation of the Action Plans, the ENP does not plan to establish new bodies but, rather, is making use of the 'old' institutional structure of the Association Agreements¹²⁹ and the Partnership and Cooperation Agreements.¹³⁰

In our opinion, it is necessary to search for the best judicial venue for disputes that may arise between the EU, Israel and any other neighbouring country. Since the Policy is only at its initial stages and has not yet matured, it is useful to draw benefits from existing patterns. The following section examines the Policy and the manner in which disputes

¹²⁸ For a novel perspective on the institutionalisation of the European Neighbourhood Space see, S. Pardo and L. Zemer, 'Toward a New Euro-Mediterranean Neighbourhood Space' (2005) 10 (1) *European Foreign Affairs Review*, p. 39.

¹²⁹ In the case of Israel and all the Mediterranean partners.

¹³⁰ To put it in the words of Michael Leigh, Deputy Director General European Commission DG External Relations: 'I see no reason why there is a need to establish new institutions for the 'Wider Europe Policy' (predecessor of the ENP)', (16 December 2003) Hebrew University, Jerusalem.

between the EU and countries with which it has signed an Association Agreement, Partnership and Cooperation Agreements and other types of agreements are currently addressed.

Choosing the Judicial Forum – Route I: The EEA Model

Bearing in mind that the ENP is not intended to supersede the existing EU frameworks for relations with its neighbours – the Barcelona Process in the case of Israel – we hold that the European Economic Area (EEA) model may constitute a workable scenario for a geopolitically coherent wider neighbourhood. On May 2 1992, the EEA Agreement was signed by European Community Member States¹³¹ and European Free Trade Area (EFTA) Member States.¹³²

The prime aim of the EEA is to promote a continuous and balanced strengthening of trade and economic relations between the contracting parties. The fundamental provisions of the EEA Agreement replicate the provisions of the EC Treaty with respect to the four freedoms. The Agreement also covers other policies such as social policy, consumer protection, the environment, statistics and company law. It establishes equitable conditions of competition and abolishes discrimination based on nationality in all 28 EEA States.¹³³ The Agreement also includes much EC secondary legislation, such as Regulations and Directives, and incorporates decisions reached by the ECJ. By removing barriers to trade and opening new opportunities for nationals of the EU, the largest trading bloc in the world, the EEA stimulates economic growth and contributes to the international competitiveness of EEA Member States. This corresponds with the long-term objective of the European Neighbourhood Policy of ‘membership-minus’, i.e., moving toward an arrangement whereby the EU relations with neighbouring countries resemble the political and economic links currently enjoyed with the EEA.

¹³¹ The Agreement came into force on January 1, 1994.

¹³² The European Free Trade Area was founded by the following seven countries: Austria, Denmark, Norway, Portugal, Sweden, Switzerland, and the UK. Finland joined in 1961, Iceland in 1970, and Liechtenstein in 1991. In 1973, the UK and Denmark left EFTA to join the EC. They were followed by Portugal in 1986 and by Austria, Finland and Sweden in 1995. Today Iceland, Liechtenstein, Norway and Switzerland are the remaining EFTA Member States.

¹³³ Namely, EU-25 and 3 out of the 4 EFTA Member States: Iceland, Liechtenstein, and Norway. The EEA Agreement was rejected in Switzerland by a referendum.

Although many features of the EEA Agreement and the EC Treaty are identical in nature, their application differs. The ECJ has already rendered its thoughts on this issue, when requested to address the possible tension between the judicial mechanisms of the EEA Court with the EC Treaty. The ECJ highlighted the distinction between the two, holding that identical provisions do not necessarily mean identical interpretation. While both frameworks aim at economic integration, the EFTA does not hold the formation of a single market as one of its goals, whereas the EC Treaty does.¹³⁴

The division of jurisdiction between the ECJ and the EFTA Court is also important to note. It was originally proposed to have an EEA Court composed of judges representing ECJ and EFTA Member States. The former rejected the proposition arguing that the EEA Agreement and the EC Treaty cannot be interpreted in a similar way and that mixed representation on the EEA Court would have a polluting effect.¹³⁵ To this end, a two-pillar structure has been devised with respect to judicial review: the EFTA Court has jurisdiction on EFTA issues and the ECJ on the EC side.¹³⁶

An additional word on competence is necessary.¹³⁷ The jurisdiction of the EFTA Court is limited relative to that its counterpart, the ECJ. It has jurisdiction, *inter alia*, (i) to hear cases relating to an EFTA Member State failure to fulfil obligations under the EEA Agreement;¹³⁸ (ii) to provide advisory opinions on the interpretation of provisions of the Agreement;¹³⁹ (iii) to hear proceedings brought by an EFTA Member State against a decision of the EFTA Surveillance Authority (the ESA, analogous to the European

¹³⁴ See Opinion 1/91 [1991] E.C.R. I-6079; [1992] C.M.L.R. 245. Another example was where the EFTA Court held that although Article 7(1) of Council Directive 89/104/EEC (Trademark Directive) was incorporated into the EEA Agreement as *acquis communautaire*, it should be interpreted as leaving it up to the EFTA States to determine how to address the principle of exhaustion of rights conferred by a trademark. See E-2/97 *MAG Instruments v California Trading Company* [1998] E.T.M.R. 86; [1998] 1 C.M.L.R. 331. In contract, the ECJ did not leave it up to the EC Member States to decide on similar matter. See C-355/96 *Silhouette v Hartlauer* [1998] E.C.R. I-4799.

¹³⁵ Opinion 1/91 [1991] E.C.R. I-6079; [1992] 1 C.M.L.R. 245.

¹³⁶ The ECJ approved this arrangement. See Opinion 1/92 [1992] E.C.R. I-282; [1992] 2 C.M.L.R. 217.

¹³⁷ It is not at all necessary to enter into an elaborate disquisition on the very structure of the Court. The discussion is confined to the competence of the Court and on this alone the criticism is based.

¹³⁸ ESA/Court Agreement, Article 32.

¹³⁹ *Ibid*, Article 34.

Commission, ensures fulfilment of Member States' obligations under the Agreement) on the grounds of lack of competence, breach of an essential requirement, infringement of the Agreement or any rule of law relating to misuse of powers;¹⁴⁰ (iv) to hear proceedings brought by an individual member against a decision of the EFTA Surveillance Authority where the latter is either addressed to an individual or the individual is directly or individually concerned;¹⁴¹ and (v) to hear proceedings brought by an EFTA Member State when the EFTA Surveillance Authority fails to act on infringements of the Agreement.¹⁴² Similar provisions, with a broader scope of application, can be found at the EC level. Both systems strive to ensure uniform implementation and application of the rules common to all members.

'Route I – The EEA Model', addresses the possibility of creating a system similar to the European Neighbourhood Policy. The EEA-EFTA-EC triangle has created institutional complexity. Based on past European enlargements, it may be argued that membership in EFTA or the EEA is a springboard to membership in the EU. In the future then, the EFTA/EEA system might cease to exist. This is contingent on a public vote; therefore, such predictions should be taken with a certain degree of caution.

With respect to establishing a Court similar to the European Neighbourhood Policy, we are of the opinion that problems relating to competing jurisdictions are likely to emerge. Moreover, since the European Neighbourhood Policy does not endeavour to create a collective enterprise, a Court would be unable to deliver the goods when politically charged and has no interest to account for the interests of other member countries. Ironically, if the European Constitution attempts to abolish the three-pillar system due to its difficulties, Europe might end up with a three-pillar judicial system.

If one still insists on using the EFTA judicial infrastructure, then, provided that the EFTA Member States join the EU for its European Neighbourhood Policy, one might find the extension of the jurisdiction of the EFTA Court to issues relating to the ENP a viable

¹⁴⁰ Ibid, Article 36.

¹⁴¹ Ibid, Article 36.

¹⁴² Ibid, Article 37.

solution. Interestingly, in addition to the regular judges presiding at the EFTA Court, a system of *ad hoc* judges (2 *ad hoc* judges from each EFTA Member State) can be established according to Article 30(4) of the ESA/Court Agreement for situations where a regular Judge cannot act in a particular case. An *ad hoc* chamber with an additional judge from a relevant neighbouring country can be considered a suitable framework for ruling on specific ENP issues.

Further, as already stated, it was originally proposed to have an EEA Court composed of judges from ECJ and EFTA Member States. With respect to the European Neighbourhood Policy, a judge from the relevant neighbouring country could be invited to join the EU-ENP Court. However, the European Neighbourhood Policy is not positioned between EFTA and former prospective members but between the EU and its neighbouring countries. If EFTA does not join the EU in its European Neighbourhood Policy, a EU-ENP judicial organ will address the interests of the EU.

Again, the legitimacy of all these possibilities – a new judicial organ or tacking the European Neighbourhood Space onto the EFTA – is open to severe criticism primarily since the European Neighbourhood Policy is not a collective project. These possibilities might be realistic only after the geopolitical status of the European Neighbourhood Space has changed. Given the spirit of the European Constitution, this is something that may enter the EU's agenda.

Choosing the Judicial Forum – Route II: The European Court of Justice

The alternative to creating an external judicial framework for the ENP— be it independent or linked in some manner to the EFTA – is to extend the jurisdiction of the ECJ. Why the European Court of Justice? Identity is the answer. The identity of the European Union as a legitimate political entity lies at the heart of the European Constitution. Some argue that the Court is silent and passive and that its judgements therefore lack a sufficient degree of judicial activism. Although this is not the place to discuss judicial activism, we remind the reader that it was the ECJ that stamped the

constitutional identity of the Community. In *Van Gend*,¹⁴³ the Court announced that the ‘Community constitutes a new legal order’. A neo-*Van Gend* decision that extends the competence of the Court to judge on matters of the Union’s external activities is vital if the EU wants to fulfil its aspiration to play ‘a new role in a globalised world’¹⁴⁴ and realize the objectives stipulated in Titles V and VIII of the Constitution. Current world affairs have created a new international order. Without a new ‘legal order’ at the EU level, the legal order envisioned by the Court in the 1960s will become obsolete.

The vibrant yet, to some extent, subtle structure of the ECJ is advantageous in this regard. Judge Mancini once wrote: ‘Amongst the judicial organs currently in operation in the Western World, the ECJ is unique in many different aspects’. Indeed, after the May 2004 enlargement, the ECJ has a new face, with judges whose countries just recently broke with the Communist legacy and with more judges having a Mediterranean identity. The emerging post-state European polity seems to encompass identity of many colours. It leaves no space to question whether the ECJ as an institution has limited identity – or, as the Union’s motto goes, ‘united in diversity’ – or whether its members lack the wisdom to see beyond the concerns of the EU itself.

The European judicial architecture is in a state of transition.¹⁴⁵ At the same time, with the enlargement process and the EU’s constitutional crisis, the European political framework is in its most crucial stage. While it is outside the scope of this paper to discuss these issues at length, we contribute to the discourse on European federalism by focusing on how the extension of judicial jurisdiction to foreign relations contributes to the consolidation of the EU’s political and legal identity.

¹⁴³ Case 26/62 *Van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1.

¹⁴⁴ At the Laeken Summit of December 2001 the European Convention was instructed by the European Council to present its draft proposal on the basis of the above order. The ‘*Draft Treaty Establishing a Constitution for Europe*’ was submitted to the President of the European Council on 18 July 2003.

¹⁴⁵ On the jurisdiction of the European Courts see P. Craig, ‘The Jurisdiction of the Community Courts Reconsidered’ in G. de Burca and J.H.H. Weiler, *The European Court of Justice* (Oxford University Press, Oxford, 2001) pp.177-214. See also A. Arnulf, *The European Union and its Court of Justice* (Oxford University Press, Oxford, 1999) in particular pp. 538-565.

After mapping the EU's constitutional mandate with respect to external relations (such as the European Neighbourhood Policy), we conclude that judicial review is imperative for the attainment of the ambitions outlined in the Constitution. The discussion went on to debate two possible judicial forums: one that is either an extension of or modelled after EFTA and one that extends the jurisdiction of the ECJ. We concluded that the ECJ, rather than an independent body, is the most suitable judicial forum as it contributes more effectively to the process of EU capacity-building. In the following section, we examine the possible standing of neighbouring/third countries in general and Israel in particular at the ECJ. If one accepts the idea that the ECJ is the appropriate forum to resolve potential disputes between the EU and neighbouring countries, one is invited to experience the current tensions between the EU and neighbouring/third countries with the best example, the 'rules of origin' saga between the EU and the State of Israel.

Rationalising *Locus Standi* for the New European Impulse

Principles

It has been argued 'that a new Constitution for the Union, which expressly confers rights on individuals, but which does not provide for effective judicial remedies to protect these rights, will fall behind citizen's expectations'.¹⁴⁶ This remark was made with respect to the *locus standi* of individuals at the ECJ. We shall add and claim that a document that declares the importance of external relations, without recognising an adequate system of judicial remedies for disputes between non-Member States and the EU premised on the agreements signed between them, will render the role of Titles V and VIII, relating to the role of the EU in global affairs, redundant.¹⁴⁷

Disputes with neighbouring countries can express much variation. A good example is the 'rules of origin' saga between the EU and Israel. In this dispute, the EU claimed that Israel's occupied territories, namely the West Bank, Gaza Strip, East Jerusalem and the

¹⁴⁶ 'Letter from M.M. Farnleiter and Michel concerning the discussion circle on the Court of Justice', cited in M. Varju, 'The Debate on the Future of the Standing under Article 230(4) TEC in the European Convention' (2004) 10 *European Public Law*, p. 43.

¹⁴⁷ We briefly discussed this issue elsewhere. See L. Zemer and S. Pardo, 'The Qualified Zones in Transition: Navigating the Dynamics of the Euro-Israeli Customs Disputes' (2002) 8 *European Foreign Affairs Review*, p.51. Also in *Jean Monnet Working Papers on International and Comparative Politics* (2003) 49 (2).

Golan Heights – the ‘Disputed Territories’ – are not part of the ‘recognised area of the State of Israel’ to which the EU-Israeli Association Agreement applies, and therefore, goods which are exported to EU markets that originate in the Disputed Territories, cannot enjoy the customs benefits stipulated in the Association Agreement.¹⁴⁸

There are ample examples of EU Member States taking the European Commission to the ECJ under Article 232 of the EC Treaty on matters pertaining to third countries, such as when the European Commission initiates a Directive to ban imports of certain products; when an EU member fails to respect certain clauses of a given agreement; when individual importers impose fines on certain products coming from outside the EU; or when the European Commission fails to take steps against infringement of an agreement clause by a neighbouring country/third country with whom the EU signed a trade Agreement. In these cases, the neighbouring country is directly affected by the Commission’s decision as well as the Court’s ruling.

As the law stands today, in the absence of explicit competence to hear disputes between the EU, and Israel or neighbouring countries/third countries, there are several possibilities to ‘qualify a dispute’ for entry to the Court in Luxembourg.

Consider first the fourth paragraph of Article 230 EC Treaty – ‘Action for Annulment’: ‘Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former’. The Article differentiates between privileged and non-privileged applicants. EU Member States and institutions are of the first category while others, including non-Member States, are of the second category. The latter, as opposed to the former, have to establish that the given measure is of ‘direct and individual concern’.

¹⁴⁸ See L. Zemer and S. Pardo, *ibid.* See also L. Zemer, ‘On a Different Triangle: The European Union, Israel, and ‘Rules of Origin’ Saga’ (2002) 16 (1) *Israel Tax Law Review*, p. 87 (in Hebrew); and M. Hirsch, ‘Rules of Origin as Trade or Foreign Policy instruments? The European Union Policy on Products Manufactured in the Settlements in the West Bank and the Gaza Strip’ (2003) 26 *Fordham International Law Journal*, p. 572.

In *Chris International v Commission*¹⁴⁹, the ECJ was required to rule whether the Dominican Republic has *locus standi* before it. The legal issue at stake was a resolution of the European Commission relating to the protection of the local banana market in England. The Court held that the Dominican Republic has *locus standi* under Article 230. This case provides a useful tool for Israel or any other neighbouring/third country that qualifies under Article 230 to institute proceedings before the ECJ. However, it is likely that the ECJ will refuse to rule on such matters unless they are clear-cut and confined to very specific economic aspects, otherwise rejecting them on grounds of inadmissibility.¹⁵⁰

The second possibility for *locus standi* is the right to intervene pursuant to Section 40 of the Statute of the Court of Justice.¹⁵¹ Section 40 stipulates that ‘Member States and institutions of the Communities may intervene in cases before the Court. The same shall be open to any other person establishing an interest in the result of any case submitted to the Court, save in cases between Member States, between institutions of the Communities or between Member States and institutions of the Communalities’. There is good reason to argue that Section 40 excludes non-Member States as the third paragraph reads: ‘Without prejudice to the second paragraph, the States, other than Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, may intervene in cases before the Court where one of the fields of application that Agreement is concerned’. Despite this direct reference only to EEA or EFTA Member States, the Court’s wide interpretation of Article 230 in *Chris International* leaves little reason to question the *locus standi* of Israel or neighbouring/third countries and to include them in the second paragraph while the third one is exclusively reserved to EEA or EFTA Member States.

Another possibility for establishing Israel’s or neighbouring/third countries’ standing involves the indirect use of Article 234 of the EC Treaty. Article 234 is the prime legal

¹⁴⁹ Joined Cases 91 and 200/82, *Chris International v Commission*, Order of February 23, 1983.

¹⁵⁰ For the procedural aspects of application under Article 230 see K. Lenaerts and D. Arts, *Procedural Law of the European Union* (Sweet & Maxwell, London, 1999) pp.139-206.

¹⁵¹ O.J. 24 December 2002 C 325/167.

instrument in the hands of the ECJ for interpreting the Treaty, ruling on the validity of acts of institutions and the Community and raising concerns that have yet to be addressed by legislation. Assume a dispute between a Danish importer and Israel, for instance, reaching the court in Copenhagen. If the latter has standing according to Danish law, use of Article 234 can be made: Israel can request the Danish court to refer the question to the ECJ for interpretation, if the legal question deserves the intervention of the ECJ.¹⁵² In general, according to Article 234, only a court of last resort is obliged to refer a question; thus, if the dispute appears before a lower court, the latter *may* refer the case. Finally, if the EU and the neighbouring/third country entered an arbitration clause that places the ECJ as the final arbitrator, then the ECJ has competence regardless of the above conditions.

If constitutional principles override previous Court rulings, the future is far from promising. On the one hand, in Article III-374 the European Constitution provides: ‘The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.’ On the other hand, the first paragraph of Article III-376 disqualifies disputes relating to Title V of the European Constitution. However, the second paragraph of Article III-376 provides that ‘the Court shall have jurisdiction...to rule on *proceedings*, brought in accordance with the conditions laid down in Article III-365(4), reviewing the legality of European decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter II of Title V.’ Furthermore, Article III-322 provides:

¹⁵² See for example Case C-265/03 *Igor Simutenkov v. Ministerio de Educación y Cultura, Real Federación Española de Fútbol* from 12 April 2005. In this case the reference for a preliminary ruling concerns the interpretation of Article 23(1) of the Agreement on Partnership and Cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part, 1994 (OJ 1997 L 327, p. 1; ‘the Communities-Russia Partnership Agreement’). The reference has been submitted in the context of a dispute between Mr Simutenkov, a Russian national, on the one hand, the Spanish Ministry of Education and Culture and the Royal Spanish Football Federation, on the other, concerning sporting rules which limit the number of players from non-member countries who may be fielded in national competitions. Among other issues, the ECJ also examined whether the principle of non-discrimination laid down in the EC-Russia Partnership Agreement can be relied on by individuals before the courts of a Member State. It replied to that question in the affirmative.

1. Where a European decision, adopted in accordance with Chapter II, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the Union Minister for Foreign Affairs and the Commission, shall adopt the necessary European regulations or decisions. It shall inform the European Parliament thereof....

Article III-376 refers to the legality of ‘proceedings’. This may raise difficulties for Israel and neighbouring/third countries as the Article does not refer to them directly but to the proceedings in which a decision by which they might be affected was reached. Although Article III-376 mentions Article III-365(4), which resembles the wording of Article 230(4) of the EC Treaty, qualifying a third party for *locus standi* on the *Chris International* decision was made not impossible but more difficult.

The current situation provides options for Israel and neighbouring/third countries to either institute proceedings before the ECJ or intervene in existing proceedings. However, this is mitigated by two considerations that render the future of *locus standi* less certain. The first consideration is the expressed intention of the framers of the European Constitution to leave external relations outside the competence of the ECJ. The second relates to situations in which stipulations of a given agreement exclude ECJ jurisdiction. There are ways to overcome these barriers. First, an arbitration clause may specify the ECJ as the sole judicial authority in cases between the EU and Israel/neighbouring countries or other third countries. This may also provide redress in transitional periods – a common feature in Association/Partnership and Cooperation Agreements. Second, the ECJ’s competence in its capacity as an appellate court for such cases may be extended, allowing judges from Israel/the relevant neighbouring country or third country to be invited to sit on the case. However, the qualification of a non-Member State for standing at the ECJ appears to be a difficult task.

The notion of standing was recently discussed by the ECJ. It has generated ample academic debate.¹⁵³ Although the cases refer to European entities, it is interesting to see the Court's lack of sensitivity toward the issue of the standing of individuals. In *Commission v Jago-quere et Cie SA*,¹⁵⁴ the ECJ held that:

It should be noted that individuals are entitled to effective judicial protection of the rights they derive from the Community legal order, and the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States. That right has also been enshrined in Articles 6 and 13 of the ECHR (see, in particular, Case 222/84 *Johnston* [1986] ECR 1651, paragraph 18, and Case C-50/00 P *Union de Pequenos Agricultores v Council* [2002] ECR I-6677, paragraph 39)....¹⁵⁵

However it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection;¹⁵⁶ therefore:

Although the condition that a natural or legal person can bring an action challenging a regulation only if he is concerned both directly and individually must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty. The Community Courts would otherwise go beyond the jurisdiction conferred by the Treaty.¹⁵⁷

¹⁵³ See for example A. Cygan, 'Protecting the Interests of Civil Society in Community Decision-Making – The Limits of Article 230 EC' (2003) 52 *International and Comparative Law Quarterly*, p.995; and M. Varju, 'The Debate on the Future of the Standing under Article 234 (4) TEC in the European Convention' (2004) 10 *European Public Law*, p.43.

¹⁵⁴ Case C-263/02 from 1 April 2004.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

The lack of sensitivity of the ECJ toward the standing of individuals affected by European measures is a great cause of concern. It was Advocate General Jacobs who remarked in his opinion in *Union de Pequenos Agricultores v Council* that ‘*locus standi* must indeed be determined independently and that, moreover, the only solution which provides adequate judicial protection is to change the case-law on individual concerns’.¹⁵⁸ The question why an entity affected by acts of European institutions would be barred from challenging a decision is still in need of further clarification by the Court in Luxembourg. With respect to Israel and neighbouring/third countries, the EU runs the risk that it will not only leave a party with no remedy but it will also create absurd situations to which judicial review is alien. If the EU can design a specialised Patent Court,¹⁵⁹ then the EU is capable of constructing an appropriate judicial mechanism for the age of the European Neighbourhood Policy. The best mechanism is that of the ECJ.

Conclusions

The ultimate interplay between justice and polity demonstrates that constitutional ambitions cannot forsake elements residing at the very heart of the proposed EU system of constitutional values: judicial review and subsequent remedies. The process of identity building does not operate in a vacuum. Its development is contingent on the attainment of constitutional objectives and principles, which in the case of the EU include external frontiers as well as internal affairs. The EU’s role in reaching regional and global peace and stability is part and parcel of its constitutional agenda and the core of its identity. The EU has promoted its global political influence in many ways, one of them being the bundle of Association Agreements and Partnership and Cooperation Agreements signed with Israel and neighbouring/third countries. These agreements are premised on recognition of mutual commitments and responsibilities. If the Union claims to ‘develop into a stabilising factor and a model in the new, multi-polar world’,¹⁶⁰ there is a need to formalize external policies. The European Neighbourhood Policy was envisioned by the

¹⁵⁸ Case C-50/00 *Union de Pequenos Agricultores v Council* from 21 March 2002.

¹⁵⁹ See European Commission, *Proposal for a Council Decision establishing the Community Patent Court and concerning appeals before the Court of First Instance*. COM(2003) 828 final, EU Brussels, 23 December 2003.

¹⁶⁰ European Council, *Declaration on the Future of the European Union*, EU Laeken, 14-15 December 2001.

EU not merely as a one-way political move but as a step on which to ground dominance in global affairs in general and in the European Neighbourhood Space in particular.

In order for the EU to realize its constitutional ambitions, judicial protection is a fundamental necessity. The EU has to realise the capacity of the ECJ to act as a constitutional court, which includes arbitration over disputes arising from bilateral agreements. If a court of law can deliver judgements for 25 Member States; if a court of law can impose its decisions on 456 million nationals of the largest trading bloc in the world; if a court of law will manage to function with members of diverse legal identities; and if a court of law is able to create a 'new legal order'; then this court of law is an organ with competence to rule on Association, Partnership and Cooperation Agreements, on Titles V and VIII, and on the European Neighbourhood Space matters. It is irrelevant whether this conclusion sounds either too romantic or too remote: Romanticism and remoteness have been part of the European project since the six founding Member States joined forces.

The enlarged European Union fulfils the vision of a unified continent, one that has a say and political (not only economic) power in the immediate neighbourhood. If trans-European networks are to cover the European Neighbourhood Space in the future, Euro-justice should not remain a monopoly of Brussels or the other 24 capitals of the EU Member States. The ECJ should claim the role of 'a far more pro-active patroller of government through its grant of extensive powers of judicial review'.¹⁶¹ In *Van Gend*, the Court announced that the 'Community constitutes a new legal order'. As previously stated, a neo-*Van Gend*¹⁶² decision that includes the competence of the Court to judge on

¹⁶¹ Editorial Comment, 'The European Transformation of National Government' (2004) 29 *European Law Review*, p. 151.

¹⁶² *Supra* note 22; The European Court should claim itself a more pro-active role such the one it took in *Van Gend en Loos* decision and recently in the *Kobler* decision. Case C-224/01 *Kobler v Austrian Republic* [2003] 3 CMLR 28. In this case the ECJ created a new environment for state liability answering with the affirmative that Member States could be held liable for misapplication and breaches of Community law committed by national courts adjudicating at last instance. See M. Breuer, 'State Liability for Judicial Wrongs and Community Law: The Case of Gerhard Kobler v Austria' (2004) 29 *European Law Review*, p. 243.

the above matters is fundamental to the success of the evolving European project. A 'new legal order', then, does not start or end with justice within internal frontiers.

EU-Israel Security, Justice and Home Affairs Cooperation: One Year into the Action Plan

Shlomo Shpiro

Introduction

The European Union's Israel Action Plan marked an important milestone in the relations between Europe and Israel. The Action Plan contains a wide range of activities and signalled not only a general will to enhance relations but also concrete measures of benefit to both sides. Throughout 2005, those measures were being slowly put into place, as the structures and forms of future EU-Israel relations took a new shape.¹⁶³

The Action Plan contains a wide range of security elements, mostly contained under the heading of 'Cooperation in Justice and Home Affairs'.¹⁶⁴ Beyond traditional JHA issues, the Introduction to the Action Plan states specifically that: 'An important goal of the Action Plan is to encourage cooperation on non-proliferation of weapons of mass destruction and the fight against terrorism.' Security cooperation is also mentioned under the heading of regional and international issues, which specifically refers to '*strategic issues and regional security*'. This research examines the development of European-Israeli security, justice and home affairs cooperation over the first year of the Action Plan's implementation. Issues explored include not only direct EU-Israeli cooperation but also NATO-Israel relations and the role of the EU in security negotiations and security solutions within the Quartet framework of the Israeli-Palestinian conflict. Special emphasis is given to the establishment of EU-BAMS, the European Union's first military

¹⁶³ The author would like to express his sincere thanks to Mr. Hermann Bünz and his staff, Dr. Sharon Pardo, Dr. Jonathan Rynhold, and to Ms. Shelly Feld, whose help has been invaluable for this research.

¹⁶⁴ Section 2.4 of the Action Plan.

observers' mission to the region, responsible for monitoring the Gaza-Egypt Rafah border crossing.

Justice and Home Aspects of the Action Plan

Chapter 2.4 of the Action Plan covers a multitude of issues relating to justice and home cooperation, including migration, asylum, fight against organised crime, drugs and financial crime. Most of these issues cover areas over which some form of bilateral cooperation already exists between Israeli and European authorities. Thus, the real importance of including these issues in the Action Plan is not to create new areas of cooperation but rather to bring existing bilateral cooperation under a European umbrella.

When analysing the justice and home affairs issues of the Action Plan, a differentiation should be made between traditional and new fields of cooperation. Traditional issues include counter-terrorism, national security, defence and intelligence. New issues include financial crime; family crime, including child abductions; rules of evidence in criminal proceedings; conventional criminal forensics; judicial education and training; and Israel's relations with Europol. Two forms of EU-Israel security cooperation emerge, 'soft cooperation' and 'hard cooperation'. 'Soft cooperation' involves inherently passive forms of cooperation requiring little political commitment or risk, such as police training, forensic and technical assistance (ENFSI), visits, declaratory activities and high-level contacts over general issues. 'Hard cooperation' refers to active forms of cooperation requiring political commitment and/or a level of public exposure, e.g., joint investigations, confiscation of terror funds, controversial extraditions, etc.

Generally speaking, in countries having experienced strong bilateral JHA cooperation with Israel, the Action Plan made no discernible difference on the level of police and justice relations. Real differences were introduced by countries that had maintained little or no previous bilateral JHA cooperation with Israel, especially the ten new EU member states that joined in 2004. In those countries, European channels were used to create police contacts and solve specific judicial problems. The expansion of EU-Israel police and justice cooperation highlighted distinct differences in law enforcement priorities

between EU and Israel. Some elements in Action Plan JHA have a high priority for the European Union but low priority for Israel while others are more important to Israel than to the EU. Items high on the European agenda are asylum and migration issues as well as trafficking in human beings, offences that are treated quite differently in Israel. On the other hand, confiscation of terror funds is an Israeli priority that receives relatively little Europe-wide attention.

Cooperation between Israeli and European police forces has in the past almost always been conducted on a bilateral level. Most European countries have several or even many police forces, and police problems that necessitated cooperation with Israel were routinely handled by a combination of official and unofficial contacts as well as local goodwill. The Action Plan created the base for expanding this cooperation to the European level, especially cooperation between Israel's national police and Europol.

In Israel, the 'Foreign Operations and Interpol Section' of its police intelligence branch is responsible for police cooperation with other countries.¹⁶⁵ This section is also responsible for relations with Europol and the operations of Israeli police representatives in Europe. The Israeli police have long maintained representatives at several key European capitals, including Paris, Berlin and Amsterdam. These representatives function as liaison officers between the Israeli and local police forces and, in some countries, actively participate in investigations relating to Israel. The Action Plan placed these local and somewhat haphazard bilateral representations on a European footing. The enhanced police and justice cooperation brought significant results in complicated police investigations conducted throughout 2005.

For example, in March 2005, after culmination of a long joint investigation, an Israeli citizen was arrested on suspicions of money laundering in Britain.¹⁶⁶ In April 2005, an Israeli businessman was arrested in Spain as part of an extensive investigation into money laundering activities. The investigation was jointly conducted by the Spanish and

¹⁶⁵ See structural charts of the Israeli police at its Internet site, http://www.police.gov.il/al_hamishtara/machozot_v_agafim/01d_cbd_mach.asp.

¹⁶⁶ Y. Liss, *Israeli suspected in assisting money laundering in Britain*, Haaretz, 17 March 2005.

Israeli police forces and involved months of covert intelligence gathering activities which culminated in raids by Spanish police in over 250 houses and 18 company offices throughout southern Spain. Spanish police confiscated dozens of luxury cars, two aircraft and a yacht, while estimating that the group's members were involved in money laundering valued at over €250 million. Following this successful cooperation, Israel and Spain signed an agreement over police cooperation and Spain pledged itself to supporting Israeli membership in Europol.¹⁶⁷

Following suggestions by several European countries, the Council decided on 25 November 2005 to include Israel in the list of countries with which Europol's Director may enter negotiations over a cooperation agreement.¹⁶⁸ In practical terms, this inclusion provides Israel with observer status in Europol, indicating the importance attached by European police officials to cooperation with Israel. Officials estimate that a Europol-Israel agreement will be concluded in 2006, subject to approval by the Joint Supervisory Body established by the Europol Convention.

Another area that saw closer cooperation in 2005 was that of intellectual property crime. In past years, Israel was criticised as being a haven for intellectual property infringements. Indeed, some software manufacturers have characterised Israel as a 'one-disk' country, referring to the level of software piracy. The Action Plan provided impetus for closer cooperation in this field. Although police officials are close-mouthed about the extent of the cooperation, the Israeli police have conducted ten successful raids on criminal enterprises dealing with forged and counterfeit products. As of 2000, Israel's customs service began collecting intelligence and operating more aggressively toward intellectual property offenders. Customs seizures of forged goods on intellectual property infringements in 2003 rose by 80% and in 2004 by a further 45%.¹⁶⁹ Closer cooperation between customs, police, manufacturers and importers, both in Israel and abroad, resulted in several successful prosecutions and seizures.

¹⁶⁷ S. Diaz, *Israeli businessmen involved in global money laundering affair*, NFC, 13 April 2005.

¹⁶⁸ Council Decision 2005/169/EC.

¹⁶⁹ R. Linder-Ganz, *Find the Differences*, *Haaretz*, 10 January 2006.

NATO-Israel Relations

Relations between Israel and NATO, long dormant, took on a new impetus during 2005. NATO's Mediterranean Dialogue has been hampered for years due adherence to the principle of symmetry and Egyptian objections to any initiative which seemed to favour Israel over other members of the Dialogue. The huge differences in military size and force composition between the seven Mediterranean partners meant that little of NATO's activities relevant to the Dialogue could interest all partners. The result was that little real progress was made in NATO-Israel relations during 2000-2004.

All that, however, changed in 2005, as NATO all but abandoned its traditional insistence on symmetry and began developing relations with Mediterranean countries on more a bilateral basis. This meant that joint activities could be conducted together with Israeli forces without other Med Dialogue members having to be invited along. Although Israeli forces have, in the past, already participated in some NATO activities, those activities were of a limited nature.

The February 2005 visit of NATO Secretary General Jaap de Hoop Scheffer in Israel opened the way for closer cooperation between NATO and the Israel Defence Forces (IDF). The Secretary General met with Prime Minister Ariel Sharon, Foreign Minister Silvan Shalom, Defence Minister Shaul Mofaz and the Chief of Staff of the Israeli Defence Forces, Lt. General Moshe Ya'alon to discuss possible ways of expanding current cooperation particularly in the areas of military cooperation, the fight against terrorism and proliferation of weapons of mass destruction.

Traditionally, NATO relations with Israel have been dependent on European members of the alliance. The United States enjoyed many years of very close bilateral military relations with Israel and tends to leave the NATO side of those relations to its European alliance partners. The warming of NATO-Israel relations over the past year has proceeded concurrently with closer military relations between Israel and Britain, and more recently Israel and France.

In March 2005, a flotilla of NATO navy ships docked at the southern Israeli port of Eilat, the first visit of a major NATO force to Israel since the June 2004 Istanbul summit in which the Med Dialogue was elevated to a partner's relationship. The ships formed part of NATO's new Standing Response Force (SNMCMG2), operating as part of NATO's 'Active Endeavour', NATO's maritime counter-terrorism operation in the Mediterranean.

Shortly after the Eilat visit, NATO approached Israel with a request to send naval vessels to participate in Operation Active Endeavour. Negotiations between the two sides produced understandings on expanding operational forms of cooperation, including assigning an Israeli naval officer to coordinate such activities. Israel's first-ever staff officer assigned to NATO will be stationed at NATO's naval headquarters in Naples, where he will assist the naval intelligence effort against terrorism.¹⁷⁰

In spring 2005, a group of young Israeli platoon commanders participated in a large NATO peacekeeping exercise held in the Ukraine. In late 2005 twelve Israeli staff officers participated in NATO regimental HQ exercises in Macedonia. These activities signalled the alliance's will to incorporate IDF elements in its operational activities in the region. The IDF enjoys a high level of respect for its professionalism and technology, and many NATO military officials are anxious to learn from the IDF's experience in urban combat and counter-terrorism. Further bilateral activities are planned for 2006.

One open question that has not been addressed by recent developments is the possibility of NATO peacekeeping forces being deployed between Israel and the Palestinians. Although both NATO and the Palestinian Authority toyed with the idea in the period before Israel's unilateral withdrawal from the Gaza Strip, developments on the ground, especially the lawlessness and anarchy in Gaza, made the idea unpalatable to many policymakers. In the months following Israel's withdrawal, the Gaza Strip seemed to plunge into anarchy as different and competing armed groups fought for control of various areas. The acute danger of uncontrollable armed gangs on the one hand, and the

¹⁷⁰ A. Harel, *Appearing: Israeli Officer will be stationed for the first time at NATO Headquarters*, Haaretz, 19 October 2005.

growing reluctance of the Palestinian Authority to request or authorise such a peacekeeping mission on the other, meant shelving of the idea, at least in the short term. It was left to the European Union to provide a viable security solution on the ground for opening the Rafah border with Egypt. That led to the establishment of the EU-BAMS observers' mission to Gaza in November 2005.

The European Union Coordination Office for Palestinian Police Support (EU-COPPS)

In November 2004, the European Council endorsed a programme of assistance to the Palestinian Authority to promote progress in four key areas: security, including support to the Palestinian police, Palestinian reforms, elections (the EU monitored the Palestinian presidential elections in January 2006) and economic recovery and development.¹⁷¹ In order to coordinate efforts of different European countries offering support to the Palestinian police and security forces, a new coordinating office was formed, the EU Coordination Office for Palestinian Police Support, universally known in the region as 'EU COPPS'. EU COPPS draws on member state funding and expertise, cleared through the EU Police Unit in Brussels. Its role consists of providing support for immediate operational priorities and longer-term transformational change management by advising the Palestinian Chief of Police and Minister of Interior, coordinating assistance and monitoring progress.¹⁷² The main practical aim of EU COPPS is to use European police experience gained in the field of civil crisis management in different regions, such as the Balkans, in order to help the nascent Palestinian police in Gaza and the West Bank establish a reasonable level of law and order.¹⁷³ This was to be achieved by dispatching a team of experienced European police experts who would work closely with their Palestinian counterparts as well as provide a wide range of technical assistance, including vehicles, equipment and logistics. The political aim was to reduce crime and insecurity in Gaza and the West Bank, thus helping create the conditions for economic recovery. EU

¹⁷¹ The European Commission Delegation to Israel, (June 2005), 'EU COPPS Starts Work', www.eu-del.org.il.

¹⁷² EU Council Secretariat Factsheet, (25.02.05), 'EU assistance to the Palestinian civil police', http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/declarations/83884.pdf.

¹⁷³ Ibid.

COPPS also set out to help the Palestinian Authority meet its Roadmap commitments regarding consolidation of its security services and internal reforms.

The EU Council set high hopes for EU COPPS. It was assigned three core tasks:

- Assisting the Palestinian Civil Police in implementing the ‘Police Development Programme’ by closely mentoring Palestinian senior police officials at District, Headquarters and Ministerial level.
- Co-coordinating and facilitating EU Member State assistance, and — when requested — international assistance to the Palestinian Civil Police.
- Advising on police-related Criminal Justice elements.¹⁷⁴

EU COPPS began with four European police experts deployed to the region in January 2005 in addition to a local team assembled for the administrative tasks. Within the EUSR, this unit is based in East Jerusalem and in Ramallah, with a satellite office in Gaza City.¹⁷⁵ Within a month of its arrival, EU COPPS already provided the Palestinian Police with 54 equipped vehicles and communication equipment, and placed orders for public order equipment including specialist vehicles and personal protection gear worth over €10 million. EU COPPS took over responsibility for the new Jericho Police Training Centre and conducted an audit of the communications infrastructure in Gaza and the West Bank.¹⁷⁶

In November 2005, the EU COPPS mission was upgraded and renamed EUPOL COPPS, with EU Political and Security Committee appointing Jonathan McIvor as its new Head. An experienced senior British police official, McIvor had previously served in the Metropolitan Police and the Royal Ulster Constabulary in Northern Ireland.¹⁷⁷ Manpower

¹⁷⁴ The United Kingdom Parliament Hansard, House of Commons - European Scrutiny - Eighth Report, (27.10.05), ‘EU assistance to the Palestinian territories’, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmeuleg/34-viii/3418.htm>.

¹⁷⁵ EU Council Secretariat Factsheet, (25.02.05), ‘EU assistance to the Palestinian civil police’, http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/declarations/83884.pdf.

¹⁷⁶ Ibid.

¹⁷⁷ ‘Javier Solana, EU High Representative for CFSP, welcomes appointment of Head of EU Police Mission for the Palestinian Territories’, (16.11.05), http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/declarations/83884.pdf.

was upgraded too, with 33 European police experts and 17 Palestinian local staff assigned to the mission, including Kaj Stendorf, Chief Superintendent of the Danish national police. EUPOL COPPS supplied the Palestinian police with hundreds of vehicles, equipment and comprehensive training.¹⁷⁸ On 1 January 2006, EUPOL COPPS began the operational phase of its three-year mission, which is expected to be expanded further.

Monitoring the Rafah Border Crossing: The Establishment of EU BAM

One of the key issues in Israel's Gaza unilateral withdrawal plan was the future of the Gaza-Egypt border and the border crossing located in the town of Rafah. As long as Israel controlled the Jewish settlements in the Gaza Strip, it also controlled the 40 km-long Gaza-Egypt border, commonly referred to as the 'Philadelphia Road'. Once the Israeli government announced its intention to evacuate all Jewish settlements in the Gaza Strip by summer 2005, the issue of the Gaza-Egypt border had to be resolved. Israel could not maintain physical control of the border since that would entail leaving a strong troop presence in Rafah, negating the political value of a unilateral withdrawal. Yet, Israel expressed strong concerns about leaving the Rafah border open for terrorists to cross freely from Egypt into Gaza. Both sides searched for a solution that would transfer border control to the Palestinian Authority while taking Israel's security concerns into consideration.

Control of Gaza's border is crucial for Palestinian economic development and for ensuring stability in the area. Opening the Rafah border crossing with Egypt was considered essential since this is the only point for free movement of people to and from Gaza until its sea port and airport are opened. Palestinians reluctant – or unable – to travel abroad via Israel could cross into Egypt and continue their journey via land or air. The movement of goods between Israel and the Palestinian areas is regulated by the 1994 Paris Protocol on Economic Relations, by which Israel undertook to collect import duties for the Palestinian Authority and enable the further movement of goods arriving in Israeli

¹⁷⁸ BBC News, Raffi Berg, (30.11.05), 'Rebuilding the Palestinian Police', http://news.bbc.co.uk/1/hi/world/middle_east/4481072.stm.

ports into Palestinian areas (see Annex II). Agreement had to be reached on Gaza's border crossings to enable not only future economic development but also the everyday humanitarian needs of the population.

Once Israel's unilateral withdrawal from Gaza was completed, negotiations turned to the issue of border controls. The negotiations were mediated by the US Special Envoy to the Middle East, James Wolfensohn, and the EU regional representative, Marc Otte. The Israeli government explored the possibility of having European observers monitoring the Rafah border with the EU. Within Europe, opinions were divided on the subject. While some EU officials saw an opportunity to expand Europe's active role in regional conflict management, others feared political and military entanglement in the deteriorating security situation in Gaza. The Italian Minister of Foreign Affairs, Gianfranco Fini, told Israeli Foreign Minister Silvan Shalom that Europe was not willing to act as Israel's border police.¹⁷⁹

After months of negotiations and intense US pressure, a unique compromise was reached. Both sides agreed that Israel could monitor persons crossing the border by video cameras and accept '3rd Party' observers at the border crossing as honest brokers who could ensure that the agreed border controls would actually be implemented in an effective way. The '3rd Party' was to be the European Union. On 7 November 2005, the General Affairs and External Relations Council (GAERC) agreed in principle to respond positively to the Israeli and the Palestinian Authority request.¹⁸⁰ On 15 November 2005, the full Agreement was signed (see Agreement text in Annex I).

Following the Agreement's signing, the EU began to develop an ESDP Border Assistance Mission at the Rafah border crossing. EU Foreign Ministers discussed the mission at the 21 November 2005 GAERC and shortly afterwards adopted the Joint Action by written procedure. The Agreement provided for a 3rd party presence, which would work to increase the capacity of the Palestinian Authority to operate the border

¹⁷⁹ E. Shachar, 'We will not be your border police', *Maariv*, 2 November 2005.

¹⁸⁰ United Kingdom Parliament Hansard, (21.11.05.), '16 European Security and Defence Policy: Border Assistance Mission in Gaza', www.publications.parliament.uk, p.1-2.

crossing at Rafah, to build confidence, and to monitor implementation of the Agreement between the two parties, allowing for the border's reopening. An initial fact finding mission was immediately dispatched to Gaza in order to prepare the ground for the new mission, called EU Border Assistance Mission on the Gaza-Egypt Border-Crossing (EU BAM).¹⁸¹ EU BAM observers were to implement the responsibilities entrusted to the European Union as the 3rd party to the Agreement, but would not act in place of the Palestinian Authority. EU BAM was also to liaise with EU COPPS regarding the presence and role of Palestinian police at the border crossing because it was dependent on the goodwill of the Palestinian police for protection of its personnel in volatile Rafah area. Funding for EU BAM, estimated at €13 million for the first year,¹⁸² came from the CFSP budget.

On 23 November 2005, Israeli Vice Premier Shimon Peres handed to Marc Otte, the EU Special Representative to the Middle East Peace Process, the official letter inviting the EU to be the 3rd party at the Rafah border crossing. This formal agreement paved the way for the implementation of the Agreement and marked the starting point for EU BAM operations.¹⁸³ Two days later, the first EU BAM observers arrived in Gaza; Italian Major General Pietro Pistolese was then appointed Head of EU BAM. Pistolese has extensive experience in multinational police operations as head of the WEU police assistance mission in Albania in 1999-2004, tasked with rebuilding the Albanian police force. He also previously served as Deputy Head of Mission with the Temporary International Presence in Hebron (TIPH)¹⁸⁴. EU BAM Rafah currently includes about 70 personnel, mainly seconded from member states. Of those, about 40 are observers and the others are engaged in support and logistics tasks.

EU BAM was assigned three tasks:

¹⁸¹ Ibid.

¹⁸² Ibid, p. 4.

¹⁸³ Israel Ministry of Foreign Affairs, (23.11.05), 'Agreement concluded on EU role at Rafah crossing', www.mfa.gov.il.

¹⁸⁴ EU Council Secretariat Factsheet, (25.02.05), 'EU assistance to the Palestinian civil police', <http://ue.eu.int>.

- To actively monitor, verify and evaluate the PA's performance regarding implementation of the Framework, Security and Customs Agreements concluded between the Parties on the operation of the Rafah terminal.¹⁸⁵
- To contribute to the liaison between the Palestinian, Israeli and Egyptian authorities in all aspects regarding management of the Rafah Crossing Point.¹⁸⁶
- To monitor and verify the performance of the Palestinian border guards and customs officials concerning:
 - Effective border control and surveillance measures on the basis of relevant PA Legislation and the APRC.
 - Undisturbed functioning of the surveillance cameras, computer systems and equipment installed at the RCP and transmission of data in accordance with the specifications agreed upon by the Parties to the APRC.
 - Appropriate handling of passengers who act/have acted in breach of applicable rules and regulations.
 - Proper disposal of confiscated goods.
 - Implementation of the Paris Protocol.¹⁸⁷

The opening of the Rafah border crossing involved complicated technical arrangements to ensure Israeli knowledge about persons crossing and the ability to deny their entry into Gaza. For the practical implementation of the Agreement, a Regional Command Post (RCP) was constructed near Kerem Shalom. The RCP is manned by Israeli, Palestinian, EU BAM and Egyptian officials during the hours that the Rafah border crossing is open. EU BAM observers have unrestricted access to all operations and locations at the RCP, including all Border Units and Customs Posts, along access, exit and transit itineraries to and from the outer perimeter of the RCP, including the road leading to and up to Kerem Shalom. Video surveillance cameras and computers installed at the Rafah crossing transmit real-time images and data to the RCP. Palestinian border guards feed details of persons crossing from Egypt into Gaza into the computer system. Israeli officials at the

¹⁸⁵ European Union @ United Nations, (25.11.05), 'EU Border Assistance Mission for Rafah crossing Point (EU BAM Rafah)', <http://europa-eu-un.org>, p.1.

¹⁸⁶ Ibid.

¹⁸⁷ IMRA, (28.11.05), 'Agreed Arrangement on the EU Border Assistance Mission', www.imra.org.il, p.2.

RCP can object to the entry of any person on grounds of involvement in terrorist activities. This objection is then transmitted to EU BAM observers at the crossing, who have the authority to order the re-examination and reassessment of any person, luggage, vehicle or goods. While the request is being processed, the person, luggage, vehicle or cargo in question will not be allowed to leave the premises.¹⁸⁸ Final decision over entry lies with the Palestinian Authority. The EU BAM reports weekly in writing to the Coordination and Evaluation Committee, established by the Agreement, on its activities and findings.¹⁸⁹

Despite these elaborate arrangements, the presence of EU BAM observers did not prevent the crossing of wanted terrorists into Gaza. In early December 2005, wanted Hamas activists, expelled by Israel, crossed the border at Rafah unhindered, despite Israeli protests. Israeli Prime Minister Sharon threatened to close all border crossings into Gaza if the agreed border controls were not enforced by the Palestinians. After a meeting with Israeli representatives, Egyptian President Hosni Mubarak promised to tighten supervision at Rafah.¹⁹⁰ Palestinian officials said that every individual who holds Palestinian citizenship is allowed to cross the border at Rafah.¹⁹¹

Operation of the Rafah crossing was dogged by technical problems and Palestinian reluctance to transfer data to the RCP almost from the outset. On 18 December 2005, Javier Solana visited Israel and the Rafah border crossing.¹⁹² Solana toured the border terminal installations and met the European members of EU BAM.¹⁹³ At the end of December 2005, a severe incident demonstrated how fragile the EU BAM presence in Rafah could be. Over 100 Palestinian police officers stormed the border crossing,

¹⁸⁸ European Union @ United Nations, (25.11.05), 'EU Border Assistance Mission for Rafah crossing Point (EU BAM Rafah)', <http://europa-eu-un.org>, p.2.

¹⁸⁹ IMRA, (28.11.05), 'Agreed Arrangement on the EU Border Assistance Mission', www.imra.org.il, p.3.

¹⁹⁰ S. Shiffer and R. Shaked, 'Exiled Hamas terrorists returned to Gaza through the Rafah crossing point', *Yediot Acharonot*, 2 December 2005, p. 6.

¹⁹¹ A. Ben, 'Rice spoke with Abu Mazen about the situation of the border crossings in the Gaza strip', *Haaretz*, 3 December 2005, p. 1.

¹⁹² Arjan El Fassed, 'Solana exposes European bias toward Israel once again', 18 December 2005, www.kibush.co.il, p. 3.

¹⁹³ 'Javier Solana, EU High Representative for the CFSP, pleased with Rafah border crossing management, appeals to Palestinian militant groups to renounce violence', (19.12.05), <http://ue.eu.int>.

shooting in the air and staging a sit-in inside the terminal building in protest of their working conditions and the lack of law enforcement in the area after a policeman was shot dead the previous day. The ten EU BAM observers escaped from the chaos at the terminal and sought refuge at Kerem Shalom. It took over six hours before the protest ended and observers could return to their posts.¹⁹⁴ Five weeks later, following demonstrations against derogatory cartoons of the Prophet Muhammad published by a Danish newspaper, the EU office building in Gaza was surrounded by armed men who vocally demanded it be closed 'until further notice'.¹⁹⁵

Despite the occasional problem, the Rafah border crossing soon operated at full capacity, with an average of about 1200 persons crossing daily in both directions. In January 2006, EU BAM decided to extend the crossing's hours in order to accommodate pilgrims travelling to the traditional Hajj pilgrimage to Mecca. EU BAM plans to gradually extend the crossing's hours until a border open 24 hours daily could be achieved.¹⁹⁶

Conclusions

The past year has seen major developments in EU-Israel relations in the fields of security, police and justice cooperation. However, it is still too early to fully assess the long-term impact of the Action Plan in these areas. Police and security services are very traditional organisations and notoriously difficult to change. Changes are slow and incremental, depending not only on declarations but also the goodwill of mid-level officials who need to implement high-level decisions in practice.

The real change brought about by the Action Plan is a change in attitudes. Officials on both sides realise the mutual value of close cooperation, especially in security issues. Europe is no longer perceived as an 'enemy' by Israeli officials, while European officials are more open to Israeli needs and working together toward practical solutions. Enhanced cooperation in traditional security fields brings clear tangible benefits to both sides, e.g.,

¹⁹⁴ CNN report, 'Gaza crossing to reopen after protest', 30 December 2005. www.cnn.com.

¹⁹⁵ 'Two embassies in Damascus torched because of Muhammad cartoon', *Haaretz*, 4 February 2006.

¹⁹⁶ European Union Border Assistance Mission Rafah, 'Opening hours to be extended for the return of the Hajj' (13 to 17 January 2005), <http://ue.eu.int>.

arrests of wanted terror suspects, interruption of radical Islamic terror activities, confiscation of terrorist funds, etc., although European police forces are more inclined to work closer with the Israeli police on financial crime and intellectual property crime.

Despite the short-term successes of EU COPPS, the long-term value of European involvement in post-Israeli-withdrawal Gaza security arrangements is questionable. Both NATO and EU officials show little enthusiasm to commit peacekeeping troops on the ground. The EU BAM border supervision would, in the long term, probably have more political than security value and the growing anarchy in Gaza makes its continued operation highly dangerous. In an area where almost every adult carries a machine gun, EU BAM observers have no enforcement powers at the border and can do little to stem the tide of unchecked crossings. Yet its very presence sends a clear message to the Gaza Strip that European involvement is not limited to financial aid. It remains to be seen how these European efforts will be affected by the recent election victory of the Hamas.

This research concludes with five policy recommendations:

- Security cooperation between the EU and Israel must continue to go beyond traditional counter-terrorism and defence issues and toward the European concept of comprehensive security. Israeli police and justice officials, not only top-echelon but also mid-level officials with operational responsibilities, should travel to meet their European counterparts and learn about European law enforcement. The personal element plays an important role in enhancing the institutional relations established by the Action Plan.
- Europol and Israel should conclude an agreement on cooperation, data sharing, information security and operational assistance. This would immeasurably help the Israeli police confront the spreading financial crime in Israel and open the way to sharing police intelligence with Europol.
- As Israel moves closer to further unilateral withdrawals in the West Bank, consideration should be given to implementing the lessons from EU BAM within future border arrangements with the Palestinians. Both the EU and Israel's security establishment should consider a possible future role for an expanded EU observers

mission at other points of friction as well, while keeping in mind the deficiencies of the current BAM system.

- European officials should work more closely with Egypt and its security apparatus to bring the situation at the Rafah border under control. Any further deterioration there may potentially wreck Israeli-Palestinian cooperation at other border crossings into Gaza and thus significantly affect the Gaza economy in an adverse way.
- The European Union began to shift its policy toward the Palestinians from providing financial aid exclusively to active, albeit still limited work in support and verification. Europe has gained much experience from its police and security assistance work in the Balkans over the past decade. The lessons of those activities should be closely studied and analysed in their relevance to the current situation in the Middle East. Basing future security assistance operations on past experience and on workable, even if somewhat unconventional, solutions while keeping realistic expectations will enhance the active role of the EU in the region and keep it from falling into expensive and potentially dangerous political traps.

Annex I: Agreed Documents on Movement and Access To and From Gaza (15 November 2005)

On 15 November 2005, negotiators from Israel and the Palestinian Authority achieved an agreement on movement and access from and to Gaza.

The negotiations were facilitated by US Secretary of State Condoleezza Rice, European Union High Representative for the Common Foreign and Security Policy Javier Solana and the international community's envoy for the Israeli disengagement from Gaza, James Wolfensohn. The details of the agreement are contained in two documents - Agreement on Movement and Access, and Agreed Principles for Rafah Crossing.

Agreement on Movement and Access

To promote peaceful economic development and improve the humanitarian situation on the ground, the following agreement has been reached. It represents the commitments of the Government of Israel (GoI) and the Palestinian Authority (PA). Its implementation

and further elaboration will be assisted by the Quartet Special Envoy for Disengagement and his staff and/or the United States Security Coordinator (USSC) and his staff.

Rafah

The parties have agreed to the attached statement of principles. Rafah will be opened as soon as it is ready to operate at an international standard in accordance with the specifications of this agreement and as soon as the 3rd party is on site, with a target date of November 25.

Crossing Points

The parties have agreed that:

- The passages will operate continuously. On an urgent basis, Israel will permit the export of all agricultural products from Gaza during the 2005 harvest season.
- The new and additional scanner will be installed and fully operational by December 31. At that time, the number of export trucks per day to be processed through Karni will reach 150, and 400 by end-2006. A common management system will be adopted by both parties.
- In addition to the number of trucks, above, Israel will permit export of agricultural produce from Gaza and will facilitate its speedy exit and onward movement so that quality and freshness can be maintained. Israel will ensure the continued opportunity to export.

To enhance operation, the parties agree that:

- When a new generation of x-ray equipment able to scan trailers as well as containers becomes available it will be used. Once it arrives in the country, testing will also be carried out with the assistance of the Quartet Special Envoy.
- The USSC will ensure continuing consultation, with unresolved implementation issues to be discussed as needed with the parties.
- The PA will ensure that the passages will be protected on the Palestinian side of the border and will train and upgrade the management of all crossings to ensure efficiency

and effectiveness. The PA will establish, without delay, a unified system of border management.

- The management system that has been developed for Karni should, with suitable local variations, be adapted to the passages at Erez and Kerem Shalom. Israel also undertakes to put in place similar arrangements as appropriate that will make West Bank passages fully operational as soon as possible. A bilateral committee, with participation as needed of the Quartet Special Envoy and/or the USSC, will develop operational procedures for those passages.

Link between Gaza and the West Bank

Israel will allow the passage of convoys to facilitate the movements of goods and persons. Specifically:

- Establish bus convoys by December 15.
- Establish truck convoys by January 15.
- Work out detailed implementation arrangements in a bilateral committee of the GoI and PA with participation as needed from the Quartet team and the USSC.

It is understood that security is a prime and continuing concern for Israel and that appropriate arrangements to ensure security will be adopted.

Movement within the West Bank

Consistent with Israel's security needs, to facilitate movement of people and goods within the West Bank and to minimize disruption to Palestinian lives, the ongoing work between Israel and the U.S. to establish an agreed list of obstacles to movement and develop a plan to reduce them to the maximum extent possible will be accelerated so that the work can be completed by December 31.

Gaza Seaport

Construction of a seaport can commence. The GoI will undertake to assure donors that it will not interfere with operation of the port. The parties will establish a U.S.-led tripartite

committee to develop security and other relevant arrangements for the port prior to its opening. The 3rd party model to be used at Rafah will provide the basis for this work.

Airport

The parties agree on the importance of the airport. Discussions will continue on the issues of security arrangements, construction, and operation.

Agreed Principles for Rafah Crossing

To be supplemented prior to opening by agreements on security, customs and 3rd party implementation procedures.

General

Rafah will be operated by the Palestinian Authority on its side, and Egypt on its side, according to international standards, in accordance with Palestinian law and subject to the terms of this agreement.

Rafah will be opened as soon as it is ready to operate at an international standard in accordance with the specifications of this agreement and as soon as the 3rd party is on site, with a target date of November 25.

Use of the Rafah crossing will be restricted to Palestinian ID cardholders and others by exception in agreed categories with prior notification to the GoI and approval of senior PA leadership.

The PA will notify the GoI 48 hours in advance of the crossing of a person in the excepted categories – diplomats, foreign investors, foreign representatives of recognized international organizations and humanitarian cases.

The GoI will respond within 24 hours with any objections and will include the reasons for the objections.

The PA will notify the GoI of their decision within 24 hours and will include the reasons for their decision.

The 3rd party will ensure the proper procedures are followed and will advise both sides of any information in its possession pertaining to the people applying to cross under these exceptions.

These procedures will remain in place for a period of 12 months, unless the 3rd party delivers a negative evaluation of the PA's running of the Rafah crossing. This evaluation will be done in close coordination with both sides and will give due consideration to the opinion of both sides.

Rafah will also be used for export of goods to Egypt.

Objective criteria for the inspection of cars will be established by consensus. The criteria are as follows:

- Search equipment will be installed, including.
- Black lights.
- Power tools and a compressor for the tools.
- Technology to be agreed, possibly including sonic imagery, gamma detection (full vehicle or hand held), and/or millimetre wave imagery.
- Mirrors and bore scope equipment to search hard to reach places.

Personnel will be trained to search vehicles and on the use of this equipment by the 3rd party to international standards.

Cameras will be installed to monitor the search process.

The 3rd party will evaluate the capacity of the PA to inspect cars according to these criteria and to international standards. Once the PA develops the capacity to inspect cars to the satisfaction of the 3rd party, cars will be allowed to pass through Rafah. Until that

time, cars will pass through on an exceptional basis, subject to specifications agreed on in the security protocol.

Rafah will be the only crossing point between the Gaza Strip and Egypt (with the exception of Kerem Shalom for the agreed period).

The PA will establish clear operating procedures.

Until Rafah is operational, the PA will open Rafah crossing on an ad hoc basis for religious pilgrims, medical patients, and others, in coordination with General Gilad's office on the Israeli side.

Israel will provide the PA with all information needed to update the Palestinian population registry, including all information on Palestinian ID cardholders who are currently outside the country.

A liaison office, led by the 3rd party, will receive real-time video and data feed of the activities at Rafah and will meet regularly to review implementation of this agreement, resolve any disputes arising from this agreement, and perform other tasks specified in this agreement.

Security

The PA will act to prevent the movement of weapons and explosives at the Rafah crossing.

The PA will establish baggage limits for each passenger as part of the procedures. Limits will be the same as currently applied by the GoI; very frequent travellers (suitcase policy) to be agreed.

Travellers, including returning residents, may use the crossing point to bring in personal effects as defined in Rule 1(e) to Heading 7 of the Annex to the prevailing Customs

Tariff. Any other personal belongings or other goods shall be cleared at the Kerem Shalom crossing point.

The PA will provide the 3rd party a list of names of the workers at Rafah crossing which will be shared with the Israelis. The PA will take the Israeli concerns into account.

Security services from Israel, PA, the U.S., and Egypt will continue to coordinate on security issues and will participate in the security working group.

On a case-by-case basis, the PA will consider information on persons of concern provided by the GoI. The PA will consult with the GoI and the 3rd party prior to the PA making a decision to prohibit travel or not. During this consultation, which will not take more than six hours, the person in question will not be permitted to cross.

Customs

GoI and PA will continue to apply the Paris Protocol of 29 April 1994.

Rafah will be operated according to international standards and rules and the Paris Protocol.

GoI and PA agree on widest possible cooperation and information sharing.

GoI and PA will cooperate on training issues.

GoI and PA customs will hold regular meetings to which the GoE will be invited as appropriate.

Kerem Shalom

PA customs officials will clear incoming cargo at Kerem Shalom under the supervision of Israeli customs agents.

Both sides will discuss operating procedures at a later stage.

Operations at Kerem Shalom will provide training and capacity building to PA customs staff.

The 3rd party will review the PA's customs capacity in 12 months and make a recommendation to both sides for a joint decision regarding future arrangements. In the event of a disagreement, the U.S., in consultation with the GoI, the PA, and the 3rd party, will resolve the issue expeditiously.

Third party

The 3rd party will have the authority to ensure that the PA complies with all applicable rules and regulations concerning the Rafah crossing point and the terms of this agreement. In cases of non-compliance the 3rd party has the authority to order the re-examination and reassessment of any passenger, luggage, vehicle or goods. While the request is being processed, the person, luggage, vehicle or cargo in question will not be allowed to leave the premises of the Rafah crossing point.

The 3rd party will assist the PA to build capacity – training, equipment and technical assistance – on border management and customs.

Details of the 3rd party's role are specified in the attached memorandum of understanding.

The 3rd party will be the European Union.

Annex II: Gaza-Jericho Agreement – Annex IV to the Agreement: Protocol on Economic Relations between the Government of the State of Israel and the P.L.O., Representing the Palestinian People (Paris, April 29, 1994)

Preamble

The two parties view the economic domain as one of the cornerstones in their mutual relations with a view to enhance their interest in the achievement of a just, lasting and comprehensive peace. Both parties shall cooperate in this field in order to establish a sound economic base for these relations, which will be governed in various economic spheres by the principles of mutual respect of each other's economic interests, reciprocity, equity and fairness.

This protocol lays the groundwork for strengthening the economic base of the Palestinian side and for exercising its right of economic decision making in accordance with its own development plan and priorities. The two parties recognise each other's economic ties

with other markets and the need to create a better economic environment for their peoples and individuals.

Article I: Framework and Scope of This Protocol

1. This protocol establishes the contractual agreement that will govern the economic relations between the two sides and will cover the West Bank and the Gaza Strip during the interim period. The implementation will be according to the stages envisaged in the Declaration of Principles on Interim Self Government Arrangements signed in Washington D.C. on September 13, 1993 and the Agreed Minutes thereto. It will therefore begin in the Gaza Strip and the Jericho Area and at a later stage will also apply to the rest of the West Bank, according to the provisions of the Interim Agreement and to any other agreed arrangements between the two sides.
2. This Protocol, including its Appendixes, will be incorporated into the Agreement on the Gaza Strip and the Jericho Area (in this Protocol – the Agreement), will be an integral part thereof and interpreted accordingly. This paragraph refers solely to the Gaza Strip and the Jericho Area.
3. This Protocol will come into force upon the signing of the Agreement.
4. For the purpose of this Protocol, the term “Areas” means the areas under the jurisdiction of the Palestinian Authority, according to the provisions of the Agreement regarding territorial jurisdiction. The Palestinian Jurisdiction in the subsequent agreements could cover areas, spheres or functions according to the Interim Agreement. Therefore, for the purpose of this Protocol, whenever applied, the term “Areas” shall be interpreted to mean functions and spheres also, as the case may be, with the necessary adjustments.

Article II: The Joint Economic Committee

1. Both parties will establish a Palestinian-Israeli Joint Economic Committee (hereinafter – the JEC) to follow up the implementation of this Protocol and to decide on problems related to it that may arise from time to time. Each side may request the review of any issue related to this Agreement by the JEC.

2. The JEC will serve as the continuing committee for economic cooperation envisaged in Annex III of the Declaration of Principles.
3. The JEC will consist of an equal number of members from each side and may establish sub-committees specified in this Protocol. A sub-committee may include experts as necessary.
4. The JEC and its sub-committees shall reach their decisions by agreement and shall determine their rules of procedure and operation, including the frequency and place or places of their meetings.

Article III: Import Taxes and Import Policy

1. The import and customs policies of both sides will be according to the principles and arrangements detailed in this Article.
2.
 - a. The Palestinian Authority will have all powers and responsibilities in the sphere of import and customs policy and procedures with regard to the following:
 - i. Goods on List A1, attached hereto as Appendix I locally-produced in Jordan and in Egypt particularly and in the other Arab countries, which the Palestinians will be able to import in quantities agreed upon by the two sides up to the Palestinian market needs as estimated according to para 3 below.
 - ii. Goods on List A2, attached hereto as Appendix II, from the Arab, Islamic and other countries, which the Palestinians will be able to import in quantities agreed upon by the two sides up to the Palestinian market needs as estimated according to para 3 below.
 - b. The import policy of the Palestinian Authority for Lists A1 and A2 will include independently determining and changing from time to time the rates of customs, purchase tax, levies, excises and other charges, the regulation of licensing requirements and procedures and of standard requirements. The valuation for custom purposes will be based upon the GATT 1994 agreement as of the date it will be introduced in Israel, and until then – on the Brussels Definition of Valuation (BDV) system. The classification of goods will be based on the principles of ‘the Harmonized Commodity Description and Coding System’. Concerning imports

referred to in Article VII of this Protocol (Agriculture), the provisions of that Article will apply.

3. For the purposes of para 2(a) above, the Palestinian market needs for 1994 will be estimated by a sub-committee of experts. These estimates will be based on the best available data regarding past consumption, production, investment and external trade of the Areas. The sub-committee will submit its estimate within three months from the signing of the Agreement. These estimates will be reviewed and updated every six months by the sub-committee, on the basis of the best data available regarding the latest period for which relevant data are available, taking into consideration all relevant economic and social indicators. Pending an agreement on the Palestinian market needs, the previous period's estimates adjusted for population growth and rise in per-capita GNP in the previous period, will serve as provisional estimate.
4. The Palestinian Authority will have all powers and responsibilities to independently determine and change from time to time the rates of customs, purchase taxes; levies, excises and other charges on the goods on List B, attached hereto as Appendix III, of basic food items and other goods for the Palestinian economic development programmes, imported by the Palestinians to the Areas.
5.
 - a. With respect to all goods not specified in Lists A1, A2 and B, and with respect to quantities exceeding those determined in accordance with paras 2(a) & 3 above (hereinafter – the Quantities), the Israeli rates of customs, purchase tax, levies, excises and other charges, prevailing at the date of signing of the Agreement, as changed from time to time, shall serve as the minimum basis for the Palestinian Authority. The Palestinian Authority may decide on any upward changes in the rates on these goods and exceeding quantities when imported by the Palestinians to the Areas.
 - b. With respect to all goods not specified in Lists A1 and A2, and with respect to quantities exceeding the Quantities, Israel and the Palestinian Authority will employ for all imports the same system of importation, as stipulated in para 10 below, including *inter alia* standards, licensing, country of origin, valuation for customs purposes, etc.

6. Each side will notify the other side immediately of changes made in rates and in other matters of import policy, regulations and procedures, determined by it within its respective powers and responsibilities as detailed in this Article. With regard to changes which do not require immediate application upon decision, there will be a process of advance notifications and mutual consultations which will take into consideration all aspects and economic implications.
7. The Palestinian Authority will levy VAT at one rate on both locally produced goods and services and on imports by the Palestinians (whether covered by the three Lists mentioned above or not), and may fix it at the level of 15% to 16%.
8. Goods imported from Jordan, Egypt and other Arab countries according to para 2(a)(1) above (List A1) will comply with rules of origin agreed upon by a joint sub-committee within three months of the date of the signing of the Agreement. Pending an agreement, goods will be considered to have been “locally produced” in any of those countries if they conform with all the following:
 - a.
 - i. They have been wholly grown, produced, or manufactured in that country, or have been substantially transformed there into new or different goods, having a new name, character, or use, distinct from the goods or materials from which they were so transformed;
 - ii. They have been imported directly from the said country;
 - iii. The value or the costs of the materials produced in that country, plus the direct processing costs in it, do not fall short of 30 percent of the export value of the goods. This rate may be reviewed by the joint committee mentioned in para 16 a year after the signing of the Agreement.
 - iv. The goods are accompanied by an internationally recognized certificate of origin.
 - v. No goods will be deemed as substantially new or different goods, and no material will be eligible for inclusion as domestic content, by virtue of having merely undergone simple combining or packaging, or dilution with water or other substances, which do not materially alter the characteristics of the said goods.

9. Each side will issue import licences to its own importers, subject to the principles of this Article and will be responsible for the implementation of the licensing requirements and procedures prevailing at the time of the issuance of the licenses. Mutual arrangements will be made for the exchange of information relevant to licensing matters.
10. Except for the goods on Lists A1 and A2 and their Quantities – in which the Palestinian Authority has all powers and responsibilities, both sides will maintain the same import policy (except for rates of import taxes and other charges for goods in List B) and regulations including classification, valuation and other customs procedures, which are based on the principles governing international codes, and the same policies of import licensing and of standards for imported goods, all as applied by Israel with respect to its importation. Israel may from time to time introduce changes in any of the above, provided that changes in standard requirements will not constitute a non-tariff-barrier and will be based on considerations of health, safety and the protection of the environment in conformity with Article 2.2. of the Agreement on Technical Barriers to trade of the Final Act of the Uruguay Round of Trade Negotiations. Israel will give the Palestinian Authority prior notice of any such changes, and the provisions of para 6 above will apply.
- 11.
- a. The Palestinian Authority will determine its own rates of customs and purchase tax on motor vehicles imported as such, to be registered with the Palestinian Authority. The vehicle standards will be those applied at the date of the signing of the Agreement as changed according to para 10 above. However, the Palestinian Authority may request, through the sub-committee on transportation, that in special cases different standards will apply. Used motor vehicles will be imported only if they are passenger cars or dual-purpose passenger cars of a model of no more than three years prior to the importation year. The sub-committee on transportation will determine the procedures for testing and confirming that such used cars comply with the standards' requirements for that model year. The issue of importing commercial vehicles of a model prior to the importation year will be discussed in the joint sub-committee mentioned in para 16 below.

- b. Each side may determine the terms and conditions for the transfer of motor vehicles registered in the other side to the ownership or use of a resident of its own side, including the payment of the difference of import taxes, if any, and the vehicle having been tested and found compatible with the standards required at that time by its own registration administration, and may prohibit transfer of vehicles.
- 12.
- a. Jordanian standards, as specified in the attached Appendix I, will be acceptable in importing petroleum products into the Areas, once they meet the average of the standards existing in the European Union countries, or the USA standards, which parameters have been set at the values prescribed for the geographical conditions of Israel, the Gaza Strip and the West Bank. Cases of petroleum products that do not meet these specifications will be referred to a joint experts' committee for a suitable solution. The committee may mutually decide to accept different standards for the importation of gasoline that meet the Jordanian standards even though, in some of their parameters, they do not meet the European Community or USA standards. The committee will give its decision within six months. Pending the committee's decision, and for not longer than six months of the signing of the Agreement, the Palestinian Authority may import to the Areas, gasoline for the Palestinian market in the Areas, according to the needs of this market, provided that:
 - i. this gasoline is marked in a distinctive colour to differentiate it from the gasoline marketed in Israel; and
 - ii. the Palestinian Authority will take all the necessary steps to ensure that this gasoline is not marketed in Israel.
 - b. The difference in the final price of gasoline to consumers in Israel and to consumers in the Areas will not exceed 15% of the official final consumer price in Israel. The Palestinian Authority has the right to determine the prices of petroleum products, other than gasoline, for consumption in the Areas.
 - c. If Egyptian gasoline standards will comply with the conditions of sub-para (a) above, the importation of Egyptian gasoline will also be allowed.
13. In addition to the points of exit and entry designated according to the Article regarding Passages in Annex I of the Agreement for the purpose of export and import of goods,

the Palestinian side has the right to use all points of exit and entry in Israel designated for that purpose. The import and export of the Palestinians through the points of exit and entry in Israel will be given equal trade and economic treatment.

14. In the entry points of the Jordan River and the Gaza Strip:

- a. *Freight shipment*: The Palestinian Authority will have full responsibility and powers in the Palestinian customs points (freight-area) for the implementation of the agreed upon customs and importation policy as specified in this protocol, including the inspection and the collection of taxes and other charges, when due. Israeli customs officials will be present and will receive from the Palestinian customs officials a copy of the necessary relevant documents related to the specific shipment and will be entitled to ask for inspection in their presence of both goods and tax collection. The Palestinian customs officials will be responsible for the handling of the customs procedure including the inspection and collection of due taxes. In case of disagreement on the clearance of any shipment according to this Article, the shipment will be delayed for inspection for a maximum period of 48 hours during which a joint sub-committee will resolve the issue on the basis of the relevant provisions of this Article. The shipment will be released only upon the sub-committee's decision.
- b. *Passengers' customs lane*: Each side will administer its own passenger's customs procedures, including inspection and tax collection. The inspection and collection of taxes due in the Palestinian customs lane will be conducted by customs officials of the Palestinian Authority. Israeli customs officials will be invisibly present in the Palestinian customs lane and entitled to request inspection of goods and collection of taxes when due. In the case of suspicion, the inspection will be carried out by the Palestinian official in a separate room in the presence of the Israeli customs official.

15. The clearance of revenues from all import taxes and levies, between Israel and the Palestinian Authority, will be based on the principle of the place of final destination. In addition, these tax revenues will be allocated to the Palestinian Authority even if the importation was carried out by Israeli importers when the final destination explicitly stated in the import documentation is a corporation registered by the Palestinian

- Authority and conducting business activity in the Areas. This revenue clearance will be effected within six working days from the day of collection of the said taxes and levies.
16. The Joint Economic Committee or a sub-committee established by it for the purposes of this Article will deal inter alia with the following:
- a. Palestinian proposals for addition of items to Lists A1, A2 and B. Proposals for changes in rates and in import procedures, classification, standards and licensing requirements for all other imports.
 - b. Estimate the Palestinian market needs, as mentioned in para 3 above.
 - c. Receive notifications of changes and conduct consultations, as mentioned in para 6 above.
 - d. Agree upon the rules of origin as mentioned in para 8 above, and review their implementation.
 - e. Coordinate the exchange of information relevant to licensing matters as mentioned in para 9 above.
 - f. Discuss and review any other matters concerning the implementation of this Article and resolve problems arising there from.
17. The Palestinian Authority will have the right to exempt the Palestinian returnees who will be granted permanent residency in the Areas from import taxes on personal belongings including house appliances and passenger cars as long as they are for personal use.
18. The Palestinian Authority will develop its system for temporary entry of needed machines and vehicles used for the Palestinian Authority and the Palestinian economic development plan. Concerning other machines and equipment, not included in Lists A1, A2 and B, the temporary entry will be part of the import policy as agreed in para 10 above, until the joint sub-committee mentioned in para 16 decides upon a new system proposed by the Palestinian Authority. The temporary entry will be coordinated through the joint sub-committee.
19. Donations in kind to the Palestinian Authority will be exempted from customs and other import taxes if destined and used for defined development projects or non-commercial humanitarian purposes. The Palestinian Authority will be responsible exclusively for planning and management of the donors' assistance to the Palestinian

people. The Joint Economic Committee will discuss issues pertaining to the relations between the provisions in this Article and the implementation of the principles in the above paragraph.

Article IV: Monetary and Financial Issues

1. The Palestinian Authority will establish a Monetary Authority (PMA) in the Areas. The PMA will have the powers and responsibilities for the regulation and implementation of the monetary policies within the functions described in this Article.
2. The PMA will act as the Palestinian Authority's official economic and financial advisor.
3. The PMA will act as the Palestinian Authority's and the public sector entities' sole financial agent, locally and internationally.
4. The foreign currency reserves (including gold) of the Palestinian Authority and all Palestinian public sector entities will be deposited solely with the PMA and managed by it.
5. The PMA will act as the lender of last resort for the banking system in the Areas.
6. The PMA will authorize foreign exchange dealers in the Areas and will exercise control (regulation and supervision) over foreign exchange transactions within the Areas and with the rest of the world.
7.
 - a. The PMA will have a banking supervision department that will be responsible for the proper functioning, stability, solvency and liquidity of the banks operating in the Areas.
 - b. The banking supervision department will predicate its supervision on the international principles and standards reflected in international conventions and especially on the principles of the 'Basle Committee'.
 - c. The supervision department will be charged with the general supervision of every such bank, including:
 - i. The regulation of all kinds of banking activities, including their foreign activities.

- ii. The licensing of banks formed locally and of branches, subsidiaries, joint ventures and representative offices of foreign banks and the approval of controlling shareholders.
 - iii. The supervision and inspection of banks.
8. The PMA will relicence each of the five branches of the Israeli banks operating at present in the Gaza Strip and the West Bank, as soon as its location or the authorities regarding it come under the jurisdiction of the Palestinian Authority. These branches will be required to comply with the general rules and regulations of the PMA concerning foreign banks, based on the 'Basle Concordat'. Para 10 d, e, and f below will apply to these branches.
- a. Any other Israeli bank wishing to open a branch or a subsidiary in the Areas will apply for a license to the PMA and will be treated equally to other foreign banks, provided that the same will apply to the Palestinian banks wishing to open a branch or a subsidiary in Israel.
 - b. Granting of a license by both authorities will be subject to the following arrangements based on the "Basle Concordat" valid on the date of signing of the Agreement and to the host authority's prevailing general rules and regulations concerning opening of branches and subsidiaries of foreign banks. In this para 10 'host authority' and 'home authority' apply only to the Bank of Israel (BOI) and the PMA.
 - c. A bank wishing to open a branch or establish a subsidiary will apply to the host authority, having first obtained the approval of its home authority. The host authority will notify the home authority of the terms of the license, and will give its final approval unless the home authority objects.
 - d. The home authority will be responsible for the consolidated and comprehensive supervision of banks, inclusive of branches and subsidiaries in the area under the jurisdiction of the host authority. However, the distribution of supervision responsibilities between the home and the host authorities concerning subsidiaries will be according to the 'Basle Concordat'.
 - e. The host authority will regularly examine the activities of branches and subsidiaries in the area under its jurisdiction. The home authority will have the right to conduct

on site examinations in the branches and subsidiaries in the host area. However, the supervision responsibilities of the home authority concerning subsidiaries will be according to the 'Basle Concordat'. Accordingly, each authority will transfer to the other authority copies of its examination reports and any information relevant to the solvency, stability and soundness of the banks, their branches and subsidiaries.

- f. The BOI and the PMA will establish a mechanism for cooperation and for the exchange of information on issues of mutual interest.

9.

- a. The New Israeli Shekel (NIS) will be one of the circulating currencies in the Areas and will legally serve there as means of payment for all purposes including official transactions. Any circulating currency, including the NIS, will be accepted by the Palestinian Authority and by all its institutions, local authorities and banks, when offered as a means of payment for any transaction.
- b. Both sides will continue to discuss, through the JEC, the possibility of introducing mutually agreed Palestinian currency or temporary alternative currency arrangements for the Palestinian Authority.
- a. The liquidity requirements on all deposits in banks operating in the Areas will be determined and announced by the PMA.
- b. Banks in the Areas will accept NIS deposits. The liquidity requirements on the various kinds of NIS deposits (or deposit linked to the NIS) in banks operating in the Areas will not be less than 4% to 8%, according to the type of deposits. Changes of over 1% in the liquidity requirements on NIS deposits (or deposits linked to the NIS) in Israel will call for corresponding changes in the above-mentioned rates.
- c. The supervision and inspection of the implementation of all liquidity requirements will be carried out by the PMA.
- d. The reserves and the liquid assets required according to this paragraph will be deposited at the PMA according to rules and regulations determined by it. Penalties for non-compliance with the liquidity requirements will be determined by the PMA.

- 10. The PMA will regulate and administer a discount window system and the supply of temporary finance for banks operating in the Areas.

- a. The PMA will establish or license a clearing house in order to clear money orders between the banks operating in the Areas, and with other clearing houses.
 - b. The clearing of money orders and transactions between banks operating in the Areas and banks operating in Israel will be done between the Israeli and the Palestinian clearing houses on same working day basis, according to agreed arrangements.
11. Both sides will allow correspondential relations between each other's banks.
12. The PMA will have the right to convert at the BOI excess NIS received from banks operating in the Areas into foreign currency, in which the BOI trades in the domestic inter-bank market, up to the amounts determined per period, according to the arrangements detailed in para 16 below.
- a. The excess amount of NIS, due to balance of payments flows, that the PMA will have the right to convert into foreign currency, will be equal to:
 - i. Estimates of all Israeli 'imports' of goods and services from the Areas, valued at market prices (inclusive of taxes), which were paid for in NIS, less:
 - 1. The taxes collected by the Palestinian Authority on all Israeli 'imports' from the Areas and rebated to Israel in NIS, and
 - 2. The taxes collected by Israel on all Israeli 'imports' from the Areas and included in their market value, and not rebated to the Palestinian Authority, minus
 - ii. Estimates of all Israeli "exports" of goods and services to the Areas, valued at market prices (inclusive of taxes), which were paid for in NIS, less
 - 1. the taxes collected by Israel on such 'exports' and rebated to the Palestinian Authority, and
 - 2. the taxes collected by the Palestinian Authority on such 'exports' and included in their market value, and not rebated to Israel;
 plus
 - iii. The accumulated net amounts of foreign currency converted previously into NIS by the PMA, as recorded in the BOI Dealing Room.
 - b. The said flows and amounts will be calculated as of the date of the signing of the Agreement.

- c. Notes to para 16:
 - i. The estimates of the said 'exports and imports' of goods and services will include, *inter alia*, labour services, NIS expenditure of tourists and Israelis in the Areas and NIS expenditure of Palestinians of the Areas in Israel.
 - ii. Taxes and pension contributions on 'imports' of labour services, paid to 'importing' side and rebated to the 'exporting' one, will not be included in the estimates of the sums to be converted, as the 'exports' earnings of labour services are recorded in the statistics inclusive of them, although they do not accrue to the individuals supplying them.
- 13. The PMA and the BOI will meet annually to discuss and determine the annual amount of convertible NIS during the following calendar year and will meet semi-annually to adjust the said amount. The amounts determined annually and adjusted semi-annually will be based on data and estimates regarding the past and on forecasts for the following period, according to the formula mentioned in para 16. The first meeting will be as soon as possible within three months after the date of the signing of the Agreement.
 - a. The exchange of foreign currency for NIS and vice-versa by the PMA will be carried out through the BOI Dealing Room, at the market exchange rates.
 - b. The BOI will not be obliged to convert in any single month more than 1/5 of the semi-annual amount, as mentioned in para 17.
 - c. There will be no ceiling on the annual foreign currency conversions by the PMA into NIS. However, in order to avoid undesirable fluctuations in the foreign exchange market, monthly ceilings of such conversions will be agreed upon in the annual and semi-annual meetings referred to in para 17.
 - d. Banks in the Areas will convert NIS into other circulating currencies and vice-versa.
 - e. The Palestinian Authority will have the authorities, powers and responsibilities regarding the regulation and supervision of capital activities in the Areas, including the licensing of capital market institutions, finance companies and investment funds.

Article V: Direct Taxation

1. Israel and the Palestinian Authority will each determine and regulate independently its own tax policy in matters of direct taxation, including income tax on individuals and corporations, property taxes, municipal taxes and fees.
2. Each tax administration will have the right to levy the direct taxes generated by economic activities within its area.
3. Each tax administration may impose additional taxes on residents within its area on (individuals and corporations) who conduct economic activities in the other side's area.
4. Israel will transfer to the Palestinian Authority a sum equal to:
 - a. 75% of the income taxes collected from Palestinians from the Gaza Strip and the Jericho Area employed in Israel.
 - b. The full amount of income taxes collected from Palestinians from the Gaza Strip and Jericho Area employed in the settlements.
5. The two sides will agree on a set of procedures that will address all issues concerning double taxation.

Article VI: Indirect Taxes on Local Production

1. The Israel and the Palestinian tax administrations will levy and collect VAT and purchase taxes on local production, as well as any other indirect taxes, in their respective areas.
2. The purchase tax rates within the jurisdiction of each tax administration will be identical as regards locally produced and imported goods.
3. The present Israeli VAT rate is 17%. The Palestinian VAT rate will be 15% to 16%.
4. The Palestinian Authority will decide on the maximum annual turnover for businesses under its jurisdiction to be exempt from VAT, within an upper limit of 12,000 US \$.
5. The VAT on purchases by businesses registered for VAT purposes will accrue to the tax administration with which the respective business is registered. Businesses will register for VAT purposes with the tax administration of the side of their residence, or on the side of their ongoing operation. There will be clearance of VAT revenues between the Israeli and Palestinian VAT administrations on the following conditions:

- a. The VAT clearance will apply to VAT on transactions between businesses registered with the VAT administration of the side in which they reside.
- b. The following procedures will apply to clearance of VAT revenues accruing from transactions by businesses registered for VAT purposes:
 - i. To be acceptable for clearance purposes, special invoices, clearly marked for this purpose, will be used for transactions between businesses registered with the different sides.
 - ii. The invoices will be worded either in both Hebrew and Arabic or in English and will be filled out in any of these three languages, provided that the figures are written in 'Arabic' (not Hindi) numerals.
 - iii. For the purpose of tax rebates, such invoices will be valid for six months from their date of issue.
 - iv. Representatives of the two sides will meet once a month, on the 20th day of the month, to present each other with a list of invoices submitted to them for tax rebate, for VAT clearance. This list will include the following details regarding each invoice:
 - 1. The number of the registered business issuing it;
 - 2. The name of the registered business issuing it;
 - 3. The number of the invoice;
 - 4. The date of issue;
 - 5. The amount of the invoice;
 - 6. The name of the recipient of the invoice.
 - v. The clearance claims will be settled within 6 days from the meeting, through a payment by the side with the net balance of claims against it, to the other side.
 - vi. Each side will provide the other side, upon demand, with invoices for verification purposes. Each tax administration will be responsible for providing invoices for verification purposes for 6 months after receiving them.
 - vii. Each side will take the necessary measure to verify the authenticity of the invoices presented to it for clearance by the other side.
 - viii. Claims for VAT clearance that will not be found valid will be deducted from the next clearance payment.

- ix. Once an inter-connected computer system for tax rebates to businesses and for VAT clearance between the two sides is operational, it will replace the clearance procedures specified in sub-paras (4) - (8).
 - x. The two tax administrations will exchange lists of the businesses registered with them and will provide each other with the necessary documentation, if required, for the verification of transactions.
 - xi. The two sides will establish a sub-committee that will deal with the implementation arrangements regarding the clearance of VAT revenues set above.
6. VAT paid by not-for-profit Palestinian organizations and institutions, registered by the Palestinian Authority, on transactions in Israel, will accrue to the Palestinian tax administration. The clearance system set out in para 5 will apply to these organizations and institutions.

Article VII: Labour

1. Both sides will attempt to maintain the normality of movement of labour between them, subject to each side's right to determine from time to time the extent and conditions of the labour movement into its area. If the normal movement is suspended temporarily by either side, it will give the other side immediate notification, and the other side may request that the matter be discussed in the Joint Economic Committee. The placement and employment of workers from one side in the area of the other side will be through the employment service of the other side and in accordance with the other sides' legislation. The Palestinian side has the right to regulate the employment of Palestinian labour in Israel through the Palestinian employment service, and the Israeli Employment Service will cooperate and coordinate in this regard.
2.
 - a. Palestinians employed in Israel will be insured in the Israeli social insurance system according to the National Insurance Law for employment injuries that occur in Israel, bankruptcy of employers and maternity leave allowance.
 - b. The National Insurance fees deducted from the wages for maternity insurance will be reduced according to the reduced scope of maternity insurance, and the

equalization deductions transferred to the Palestinian Authority, if levied, will be increased accordingly.

- c. Implementation procedures relating thereto will be agreed upon between the Israeli National Insurance Institute and the Palestinian Authority or the appropriate Palestinian social insurance institution.
- 3.
- a. Israel will transfer to the Palestinian Authority, on a monthly basis, the equalization deductions as defined by Israeli legislation, if imposed and to the extent levied by Israel. The sums so transferred will be used for social benefits and health services, decided upon by the Palestinian Authority, for Palestinians employed in Israel and for their families. The equalization deductions to be so transferred will be those collected after the date of the signing of the Agreement from wages of Palestinians employed in Israel and from their employers. These sums will not include
 - i. Payments for health services in places of employment.
 - ii. 2/3 of the actual administrative costs in handling the matters related to the Palestinians employed in Israel by the Payments Section of the Israeli Employment Service.
4. Israel will transfer, on a monthly basis, to a relevant pension insurance institution to be established by the Palestinian Authority, pension insurance deductions collected after the establishment of the above institution and the completion of the documents mentioned in para 6. These deductions will be collected from wages of Palestinians employed in Israel and their employers, according to the relevant rates set out in the applicable Israeli collective agreements. 2/3 of the actual administrative costs in handling these deductions by the Israeli Employment Service will be deducted from the sums transferred. The sums so transferred will be used for providing pension insurance for these workers. Israel will continue to be liable for pension rights of the Palestinian employees in Israel, to the extent accumulated by Israel before the entry into force of this para 4.
5. Upon the receipt of the deductions, the Palestinian Authority and its relevant social institutions will assume full responsibility in accordance with the Palestinian legislation and arrangements, for pension rights and other social benefits of

Palestinians employed in Israel, that accrue from the transferred deductions related to these rights and benefits. Consequently, Israel and its relevant social institutions and the Israeli employers will be released from, and will not be held liable for any obligations and responsibilities concerning personal claims, rights and benefits arising from these transferred deductions, or from the provisions of paras 2-4 above.

6. Prior to the said transfers, the Palestinian Authority or its relevant institutions, as the case may be, will provide Israel with the documents required to give legal effect to their aforesaid obligations, including mutually agreed implementation procedures of the principles agreed upon in paras (3)-(5) above.
7. The above arrangements concerning equalization deductions and/or pension deductions may be reviewed and changed by Israel if an authorized court in Israel will determine that the deductions or any part thereof must be paid to individuals, or used for individual social benefits or insurance in Israel, or that it is otherwise unlawful. In such a case the liability of the Palestinian side will not exceed the actual transferred deductions related to the case.
8. Israel will respect any agreement reached between the Palestinian Authority, or an organization or trade union representing the Palestinians employed in Israel, and a representative organization of employees or employers in Israel, concerning contributions to such organization according to any collective agreement.
9.
 - a. The Palestinian Authority may integrate the existing health insurance scheme for Palestinians employed in Israel and their families in its health insurance services. As long as this scheme continues, whether integrated or separately, Israel will deduct from their wages the health insurance fees ('health stamp') and will transfer them to the Palestinian Authority for this purpose.
 - b. The Palestinian Authority may integrate the existing health insurance scheme for Palestinians who were employed in Israel and are receiving pension payments through the Israeli Employment Service, in its health insurance services. As long as this scheme continues, whether integrated or separately, Israel will deduct the necessary sum of health insurance fees ('health stamp') from the equalization payments and will transfer them to the Palestinian Authority for this purpose.

10. The JEC will meet upon the request of either side and review the implementation of this Article and other issues concerning labour, social insurance and social rights.
11. Other deductions not mentioned above, if any, will be jointly reviewed by the JEC. Any agreement between the two sides concerning these deductions will be in addition to the above provisions.
12. Palestinians employed in Israel will have the right to bring disputes arising out of employee–employer relationships and other issues before the Israeli Labour Courts, within these courts’ jurisdiction.
13. This Article governs the future labour relations between the two sides and will not impair any labour rights prior to the date of signing of the Agreement.

Article VIII: Agriculture

1. There will be free movement of agricultural produce, free of customs and import taxes, between the two sides, subject to the following exceptions and arrangements.
2. The official veterinary and plant protection services of each side will be responsible, within the limits of their respective jurisdiction, for controlling animal health, animal products and biological products, and plants and parts thereof, as well as their importation and exportation.
3. The relations between the official veterinary and plant protection services of both sides will be based on mutuality in accordance with the following principles, which will be applied in all the areas under their respective jurisdiction:
 - a. Israel and the Palestinian Authority will do their utmost to preserve and improve the veterinary standards.
 - b. Israel and the Palestinian Authority will take all measures to reach equivalent and compatible standards regarding animal disease control, including mass vaccination of animals and avians, quarantines, “stamping out” measures and residue control standards.
 - c. Mutual arrangements will be made to prevent the introduction and spread of plant pests and diseases, for their eradication and concerning residue control standards in plant products.

- d. The official veterinary and plant protection services of Israel and the Palestinian Authority will coordinate and regularly exchange information regarding animal diseases, as well as plant pests and diseases, and will establish a mechanism for immediate notification of the outbreak of such diseases.
4. Trade between the two sides in animals, animal products and biological products will be in keeping with the principles and definitions set out in the current edition of the OIE National Animal Health Code as updated from time to time (hereinafter – I.A.H.C.).
5. Transit of livestock, animal products and biological products from one side through the area under the jurisdiction of the other side, should be conducted in a manner aimed at the prevention of diseases spreading to or from the consignment during its movement. For such a transit to be permitted, it is a prerequisite that the veterinary conditions agreed upon by both sides will be met in regard to importation of animals, their products and biological products from external markets. Therefore the parties agree to the following arrangements.
6. The official veterinary services of each side have the authority to issue veterinary import permits for import of animals, animal products and biological products to the areas under its jurisdiction. In order to prevent the introduction of animal diseases from third parties, the following procedures will be adopted:
 - a. The import permits will strictly follow the professional veterinary conditions for similar imports to Israel as prevailing at the time of their issuance. The permits will specify the country of origin and the required conditions to be included in the official veterinary certificates which should be issued by the veterinary authorities in the countries of origin and which should accompany each consignment. Each side may propose a change in these conditions. The change will come into force 10 days after notice to the other side, unless the other side requested that the matter be brought before the Veterinary Sub-Committee specified in para 14 (hereinafter – VSC). If it is more stringent than the prevailing conditions – it will come into force 20 days after the request, unless both sides decide otherwise through the VSC, and if more lenient – it will come into force only if agreed upon by both sides through the VSC. However, if the change is urgent and needed for the protection of animal

and public health, it will come into force immediately after notice by the other side and will remain in force unless and until both sides agree otherwise through the VSC.

- b. The official veterinary certificates will include the provisions regarding OIE Lists A & B Diseases as specified in the I.A.H.C. When the I.A.H.C. allows alternative requirements regarding the same disease, the most stringent one will be adopted unless otherwise agreed upon by the VSC.
 - c. When infectious diseases which are not included in Lists A & B of the I.A.H.C. exist or are suspected, on scientific grounds, to exist in the exporting country, the necessary veterinary import conditions that will be required and included in the official veterinary certificates, will be discussed in the VSC, and in the case of different professional opinions, the most stringent ones will be adopted.
 - d. The import of live vaccines will be permitted only if so decided by the VSC.
 - e. Both sides will exchange, through the VSC, information pertaining to import licensing, including the evaluation of the disease situation and zoosanitary capability of exporting countries, which will be based upon official information as well as upon other available data.
 - f. Consignments that do not conform to the above mentioned requirements would not be permitted to enter the areas under the jurisdiction of either side.
7. Transportation of livestock and poultry and of animal products and biological products between areas under the jurisdiction of one side through areas under the jurisdiction of the other side, will be subject to the following technical rules:
- a. The transportation will be by vehicles which will be sealed with a seal of the official veterinary services of the place of origin and marked with a visible sign 'Animal Transportation' or 'Products of Animal Origin' in Arabic and Hebrew, in coloured and clearly visible letters on white background.
 - b. Each consignment will be accompanied by a veterinary certificate issued by the official veterinary services of the place of origin, certifying that the animals or their products were examined and are free of infectious diseases and originate from a place which is not under quarantine or under animal movement restrictions.

8. Transportation of livestock and poultry, animal products and biological products destined for Israel from the Areas and vice versa will be subject to veterinary permits issued by the official veterinary services of the recipient side, in keeping with the OIE standards used in international traffic in this field. Each such consignment will be transported by a suitable and marked vehicle, accompanied by a veterinary certificate in the form agreed upon between the official veterinary services of both sides. Such certificates will be issued only if permits of the recipient side are presented.
9. In order to prevent the introduction of plant pests and diseases to the region, the following procedures will be adopted:
 - a. The transportation between the Areas and Israel, of plants and parts thereof (including fruits and vegetables), the control of pesticide residues in them and the transportation of plant propagation material and of animal feed, may be inspected without delay or damage by the plant protection services of the recipient side.
 - b. The transportation between the Areas through Israel of plants and parts thereof (including fruits and vegetables) as well as of pesticides, may be required to pass a phyto-sanitary inspection without delay or damage.
 - c. The official Palestinian plant protection services have the authority to issue permits for the import of plants and parts thereof as well as of pesticides from external markets. The permits will be based on the prevailing standards and requirements. The permits will specify the required conditions to be included in the official Phyto-sanitary Certificates (hence P.C.) based upon the standards and the requirements of the International Plant Protection Convention (I.P.P.C.) and those of the European and Mediterranean Plant Protection Organization (E.P.P.O.) which should accompany each consignment. The PCs will be issued by the plant protection services in the countries of origin. Dubious or controversial cases will be brought before the sub-committee on plant protection.
10. The agricultural produce of both sides will have free and unrestricted access to each others' markets, with the temporary exception of sales from one side to the other side of the following items only: poultry, eggs, potatoes, cucumbers, tomatoes and melons. The temporary restrictions on these items will be gradually removed on an increasing scale until they are finally eliminated by 1998, as listed below:

Year	Poultry (tons)	Eggs (millions)	Potatoes (tons)	Cucumbers (tons)	Tomatoes (tons)	Melons (tons)
1994	5,000	30	10,000	10,000	13,000	10,000
1995	6,000	40	13,000	13,000	16,000	13,000
1996	7,000	50	15,000	15,000	19,000	15,000
1997	8,000	60	17,000	17,000	22,000	17,000
1998	unlimited	unlimited	unlimited	unlimited	unlimited	unlimited

Note: The above figures refer to the combined quantities marketed from the West Bank and Gaza Strip to Israel and vice-versa. The Palestinian Authority will notify Israel the apportioning of these quantities between these areas concerning the quantities pertaining to the Palestinian produce.

11. The Palestinians will have the right to export their agricultural produce to external markets without restrictions, on the basis of certificates of origin issued by the Palestinian Authority.
12. Without prejudice to obligations arising out of existing international agreements, the two sides will refrain from importing agricultural products from third parties that may adversely affect the interests of each other's farmers.
13. Each side will take the necessary measures in the area under its jurisdiction to prevent damage that may be caused by its agriculture to the environment of the other side.
14. The two sides will establish sub-committees of their respective official veterinary and plant protection services, which will update the information and review issues, policies and procedures in these fields. Any changes in the provisions of this Article will be agreed upon by both sides.
15. The two sides will establish a sub-committee of experts in the dairy sector in order to exchange information, discuss and coordinate their production in this sector so as to protect the interests of both sides. In principle, each side will produce according to its domestic consumption.

Article IX: Industry

1. There will be free movement of industrial goods free of any restrictions including customs and import taxes between the two sides, subject to each side's legislation.

2.
 - a. The Palestinian side has the right to employ various methods in encouraging and promoting the development of the Palestinian industry by way of providing grants, loans, research and development assistance and direct-tax benefits. The Palestinian side has also the right to employ other methods of encouraging industry resorted to in Israel.
 - b. Both sides will exchange information about the methods employed by them in the encouragement of their respective industries.
 - c. Indirect tax rebates or benefits and other subsidies to sales shall not be allowed in trade between the two sides.
3. Each side will do its best to avoid damage to the industry of the other side and will take into consideration the concerns of the other side in its industrial policy.
4. Both sides will cooperate in the prevention of deceptive practices, trade in goods that may endanger health, safety and the environment and in goods of expired validity.
5. Each side will take the necessary measures in the area under its jurisdiction to prevent damage that may be caused by its industry to the environment of the other side.
6. The Palestinians will have the right to export their industrial produce to external markets without restrictions, on the basis of certificates of origin issued by the Palestinian Authority.
7. The JEC will meet and review issues pertaining to this Article.

Article X: Tourism

1. The Palestinian Authority will establish a Palestinian Tourism Authority that will exercise, *inter alia*, the following powers in the Areas.
 - a. Regulating, licensing, classifying and supervising tourist services, sites and industries.
 - b. Promoting foreign and domestic tourism and developing the Palestinian tourist resources and sites.
 - c. Supervising the marketing, promotion and information activities related to foreign and domestic tourism.

2. Each side shall, under its respective jurisdiction, protect, guard and ensure the maintenance and good upkeep of historical, archaeological, cultural and religious sites and all other tourist sites, to fit their status as well as their purpose as a destination for visitors.
3. Each side will determine reasonable visiting hours and days for all tourist sites in order to facilitate visits at a wide variety of days and hours, taking into consideration religious and national holidays. Each side shall publicize such opening times. Meaningful changes in the opening times will take into consideration tourist programmes already committed to.
4. Tourist buses or any other form of tourist transport authorized by either side, and operated by companies registered and licensed by it, will be allowed to enter and proceed on their tour within the area under the jurisdiction of the other side, provided that such buses or other vehicles conform with the EEC technical specifications [I. currently adopted.] All such vehicles will be clearly marked as tourist vehicles.
5. Each side will protect the environment and the ecology around the tourist sites under its jurisdiction. In view of the importance of beaches and maritime activities for tourism, each side will do its best efforts to ensure that development and construction on the Mediterranean coast, and especially at ports (such as Ashkelon or Gaza), will be planned and carried out in a manner that will not adversely affect the ecology, environment or the functions of the coastline and beaches of the other side.
6. Tourism companies and agencies licensed by either side shall enjoy equal access to tourism-related facilities and amenities in border points of exit and entry according to the regulations of the authority operating them.
7.
 - a. Each side will license, according to its own rules and regulations, travel agents, tour companies, tour guides and other tourism businesses (hereinafter – tourism entities) within its jurisdiction.
 - b. Tourism entities authorized by either side, will be allowed to conduct tours that include the area under the jurisdiction of the other side, provided that their authorization as well as their operation will be in accordance with rules, professional requirements and standards agreed upon by both sides in the sub-

committee mentioned in para 9. Pending that agreement, existing tourism entities in the Areas that are currently allowed to conduct tours that include Israel, will be allowed to continue to do so, and Israeli authorized tourism entities will continue to be allowed to conduct tours that include the Areas. In addition, any tourism entity of one side that the tourism authorities of the other side will certify as fulfilling all its rules, professional requirements and standards, will be allowed to conduct tours that include that other side.

8. Each side will make its own arrangement for compensation of tourists for bodily injury and property damages caused by political violence in the areas under its respective jurisdiction.
9. The JEC or a tourism sub-committee established by it shall meet upon the request of either side in order to discuss the implementation of the provisions of this Article and resolve problems that may arise. The sub-committee will also discuss and consider tourist issues of benefit to both sides, and will promote educational programmes for tourism entities of both sides in order to further their professional standards and their ethics. Complaints of one side against the behaviour of tourism entities of the other side will be channelled through the committee.
10. It is agreed that the final wording in the last sentence in para 4 will be adopted according to the final wording in the relevant provisions of the Agreement.

Article XI: Insurance Issues

1. The authorities, powers and responsibilities in the insurance sphere in the Areas, including inter alia the licensing of insurers, insurance agents and the supervision of their activities, will be transferred to the Palestinian Authority.
2.
 - a. The Palestinian Authority will maintain a compulsory absolute liability system for road accident victims with a ceiling on the amount of compensation based upon the following principles:
 - i. Absolute liability for death or bodily injury to road accident victims, it being immaterial whether or not there was fault on the part of the driver and whether or not there was fault or contributory fault on the part of others, each driver

being responsible for persons travelling in his vehicle and for pedestrians hit by his vehicle.

- ii. Compulsory insurance for all motor vehicles, covering death or bodily injury to all road accident victims, including drivers.
- iii. No cause of action in tort for death or bodily injury resulting from road accidents.
- iv. The maintenance of a statutory fund (hereinafter – the Fund) for compensation of road accident victims who are unable to claim compensation from an insurer for the following reasons:
 - 1. The driver liable for compensation is unknown.
 - 2. The driver is not insured or his insurance does not cover the liability involved.
 - 3. The insurer is unable to meet his liabilities.
- v. Terms in this Article will have the same meaning as in the legislation prevailing at the date of signing of the Agreement concerning compulsory motor vehicle insurance and compensation of road accident victims.
- vi. Any change by either side in the rules and regulations regarding the implementation of the above-mentioned principles will require prior notice to the other side. A change that might substantially affect the other side will require prior notice of at least three months.

3.

- a. Upon the signing of the Agreement the Palestinian Authority will establish a Fund for the Areas (hereinafter – the Palestinian Fund) for the purposes detailed in para 2(a)(4) above and for the purposes detailed below. The Palestinian Fund will assume the responsibilities of the statutory Road Accident Victims Compensation Fund in the West Bank and the Gaza Strip (hereinafter – the Existing Fund) regarding the Areas, according to the prevailing law at that time. Accordingly, the Existing Fund will cease to be responsible for any liability regarding accidents occurring in the Areas from the date of signing of the Agreement.
- b. The Existing Fund will transfer to the Palestinian Fund, after the assumption of the above-mentioned responsibilities by it, the premiums paid to the Existing Fund by

the insurers for vehicles registered in the Areas, pro-rata to the unexpired period of each insurance policy.

4.

- a. Compulsory motor vehicle insurance policies issued by insurers licensed by either side will be valid in the territories of both sides. Accordingly, a vehicle registered in one side covered by such a policy will not be required to have an additional insurance coverage for travel in the areas under the other side's jurisdiction. These insurance policies will cover all the liabilities according to the legislation of the place of the accident.
 - b. In order to cover part of the liabilities which may incur due to road accidents in Israel by uninsured vehicles registered in the Palestinian Authority, the Palestinian Fund will transfer to the Israeli Fund, on a monthly basis, for each insured vehicle, an amount equal to 30% of the amount paid to the Israeli Fund by an insurer registered in Israel, for the same type of vehicle, for the same period of insurance (which will not be less than 90 days).
5. In cases where a victim of a road accident wishes to claim compensation from an insurer registered by the other side or from the Fund of the other side or in cases where a driver or an owner of a car is sued by a victim, by an insurer or by the Fund of the other side, he may nominate the Fund of his side as his proxy for this purpose. The Fund so nominated may address any relevant party from the other side directly or through the other sides' Fund.
6. In the case of a road accident in which neither the registration number of the vehicle nor the identity of the driver are known, the Fund of the side which has jurisdiction over the place of the accident will compensate the victim, according to its own legislation.
7. The Fund of each side will be responsible toward the victims of the other side for any liability of the insurers of its side regarding the compulsory insurance and will guarantee their liabilities.
8. Each side will guarantee its Fund's liabilities according to this Article.
9. The two sides will negotiate within three months from the date of the signing of the Agreement a cut-off agreement between the Existing Fund and the Palestinian Fund

concerning accidents which occurred in the Areas prior to the date of the signing of the Agreement, whether claims have been reported or not. The cut-off agreement will not include compensation for Israeli victims involved in accidents that occurred in the Areas prior to the date of the signing of the Agreement.

10.

- a. The two sides will establish immediately upon the signing of the Agreement, a sub-committee of experts (hereinafter – the Sub-Committee) which will deal with issues regarding the implementation of this Article, including:
 - i. Procedures concerning the handling of claims of victims of the one side from insurers or from the Fund of the other side.
 - ii. Procedures concerning the transfer of the amounts between the Funds of both sides as mentioned in para 4(b) above.
 - iii. The details of the cut-off agreement between the Existing Fund and the Palestinian Fund, as set out in para 9 above.
 - iv. Any other relevant issue raised by either side.
- b. The Sub-Committee will act as a continuous committee for issues regarding this Article.
- c. The two sides will exchange, through the Sub-Committee, the relevant information regarding the implementation of this Article, including police reports, medical information, relevant statistics, premiums, etc. The two sides will provide each other with any other assistance required in this regard.

11. Each side may require the re-examination of the arrangements set out in this Article a year after the date of the signing of the Agreement.

12. Insurers from both sides may apply for a license to the relevant authorities of the other side, according to the rules and regulations regarding foreign insurers in the latter side. The two sides agree not to discriminate against such applicants.

Done in Paris, this twenty ninth day of April, 1994, for the Government of Israel Finance Minister Abraham Shohat, for the PLO Abu Ala (Ahmed Korei)

Chapter 4

Social Policy

Summary and Recommendations

This chapter deals with social policy as defined in Articles 2.3.2.2 and 2.3.3 of the Action Plan.

The chapter's article, 'Integration of European and Israeli Labour Markets: Social Policy Issues,' written by Dr. Yehudith Kahn, examines the changes that have transpired in Israeli-European relations through a comparison of two documents, the Association Agreement (AA) and the Action Plan (AP). In doing so, the article focuses on two main issues: liberalization of the hoped-for integration of the two respective labour markets and implications for social security policy arising from opening these markets to entry of workers from other countries.

The AA and the AP both mention the necessity of cooperation regarding movement of persons and workers between Israeli and European labour markets as well as resolution of the attendant social security issues. Programmes mentioned in the AA have yet to be implemented due to a lack of political will. Yet, references to these same programmes are repeated in the AP.

Two of the major issues explicitly addressed in the AP – liberalization of trade in services and movement of natural persons – are directly linked to coordination of social rights policies. A comparison of the respective articles in the AA and AP indicate that the movement of all categories of workers and natural persons is essential to further economic integration between the EU and Israel. The implementation of AA Article 64, that is, effective coordination of social security legislation, is a necessary condition for

liberalization of trade in services and continued integration of Israel into the Internal Market.

While the AA refers to coordination of social security schemes for *Israeli workers*, the AP – for the first time – mentions free movement of *persons*, including work-seekers, part-time workers, unemployed workers, students, pensioners, tourists and others. In addition, liberalization of services is a declared objective of the AP because, among other things, free movement of natural persons enhances trade in services.

In other matters of social security coordination, the AP does not expand on provisions noted in the AA. Nevertheless, the AP's restatement of the necessity of implementing the AA represents re-affirmation of political will to indeed do so.

The first part of the article argues that Israel should gain inspiration and guidance from the basic principles of social rights coordination applicable to the Community's workers and non-economic residents and from the practice of social rights coordination as experience by EU Member States.

During the 1950s, European states agreed to open their doors to labour markets but not to differing welfare regimes. Social security and social rights were awarded solely to each state's residents; hence, immigrants were denied eligibility. During that period, the Council established a regulatory coordination mechanism aimed at preventing the loss of social security rights in the wake of free movement of workers. The harmonization that enabled Europe's residents to move between countries had raised the need for regulation. The following laws are presently in effect:

- The Territoriality Principle: This principle implies preservation of social benefits for persons residing or working within a state's territory. Depending on national laws, minimum subsistence benefits are not exportable because governments cannot collect tax contributions from people residing outside their borders; hence, such persons cannot claim benefits as nationals.

- **Social Solidarity and Non-discrimination Principle:** The concept of social justice as adopted in European countries requires that all members of a society have the minimum means to meet the basic costs of living. It also demands that all persons residing within the confines of national territories have access to essential services such as education, health care and housing.

These laws are anchored in regulation aimed at guaranteeing coordination between states for the purpose of enabling all persons to continue to enjoy social security rights as they move between states. The regulation relates to different categories of persons, ranging from those having employment potential to pensioners and students.

The second part of the article treats the problem of the labour migration of nationals from Turkey and the Maghreb. Persons belonging to this category are, in principle excluded from the free movement regime. However, Community law grants them special rights in the field of social, health and education. The article details the conditions applicable to migrants, by country, according to the previously signed agreements. We should note that these rights vary by the migrants' country of origin. Irrespective of this variability, universal eligibility for a number of basic rights has been determined. These rights include equality of treatment and the right to aggregate periods of insurance, employment and residence in other Member States.

The third part of the article compares Israeli with European social policies. After drawing up the current bilateral conventions regarding coordination of social rights between Israel and EU states, policy recommendations address enhanced implementation of the proposals appearing in the AA. These proposals were not implemented due to the need to estimate and adjust the level of anticipated social security expenditures, data that was, unfortunately, never compiled by Israel's Central Bureau of Statistics (CBS), the Ministry of the Interior nor the Ministry of Foreign Affairs either in Israel or with respect to Israelis residing in the EU.

In closing, the article examines the claim that social security costs are higher in Europe than in Israel. Although Europe is currently experiencing high demand for labour, it appears to be suffering from a shortage of labour. The sources of most shortages are demographic changes (increasingly elderly populations) in addition to qualitative and regional labour mismatches. The proposed strategic response is labour migration to Europe. With respect to Israel, enhancing free trade in services and free movement of persons could, however, raise the social security cost burden domestically.

In conclusions, the article posits three recommendations to solve the problems raised:

- Extension of current conventions to cover additional categories of workers, students and pensioners. Bilateral conventions signed with France, the United Kingdom, Germany and Poland should be re-negotiated and extended to all categories of persons. If no agreement can be reached on the movement of natural persons, negotiations must begin with respect to specified categories of professionals to enhance trade in services, the most urgent categories being IT workers, financial services workers and managers.
- Israel should begin talks to negotiate bilateral agreements with the remaining thirteen European countries. Conventions can initially be applied to a limited number of worker categories.
- Social security legislation is not always able to provide comprehensive answers to actual problems. Bilateral conventions offer practical and relatively satisfactory solutions to most of the respective cross-border problems. Since the Community provisions on social security were adopted, the European Court of Justice has delivered more than 500 judgments on their interpretation, the majority favouring migrant workers and their family members. This figure clearly indicates the importance of the European Court for protection of European citizens. It plays a crucial role in deciding the scope of Community provisions, their application to individual cases and their interpretation within the framework of international law: 'The Court of Justice is the legal guardian of European citizens exercising their right of movement and stay in Europe.'

Integration of European and Israeli Labour Markets: Social Policies Issues

Yehudith Kahn

Introduction

The Association Agreement (AA) and the Action Plan (AP) both mention the necessity of cooperation on matters of movement of persons, movement of workers and social security issues between Israeli and European labour markets.

Article 64 of the AA states:

In order to coordinate the social security regimes of Israeli workers legally employed on the territory of a Member State and of their family members legally resident there, the following provision should apply, subject to the conditions and modalities applicable in each Member State:

- All period of insurance, employment or residence fulfilled by such workers in the different Member States, shall be totalled for the purpose of the establishment of the right to old age, invalidity and survivor's pensions and allowances and for the purpose of medical care for themselves and their families.
- All pensions and allowances for old age, survivors, accident at work, occupational illness or invalidity **with the exception of non-contributory payments** shall benefit from free transfer to Israel at the rate applicable resulting from the legislation of the liable Member State (s).
- The workers concerned shall receive family allowance for the members of their family referred to above.

In social matters, the AA has not been exploited. The main reason seems to be a lack of political will and the fact that the agreement necessitates bilateral negotiations on social security issues between Israel and each European country separately. Israeli initiatives to enlarge its range of bilateral social security conventions with European Countries were not met since the signing of the AA. Coordination was accomplished by bilateral agreements, each country determining if it will be a net –payer.

The ENP initiative marks a change of political attitude between Europe and Israel. It is a positive incentives policy that leaves to each Mediterranean Country an active role: The AP was negotiated according to each country's specific priorities.

It seems that the AP offers a real opportunity to deepen European-Israeli political and economical relations. The AP states the 'perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU Internal Market, and the possibility for Israel to participate progressively in key aspects of EU policies and programmes.

Two main issues explicitly addressed in the AP are directly linked to coordination of social rights policies: liberalization of trade in services and movement of natural persons. On those specific issues, the AP states:

Article 2. Promote liberalisation of trade in services –
Promote the opening of bilateral negotiations on liberalisation of services with Israel. This will be done taking into account the specific nature of the Israeli economy, the overall objectives set in the conclusions of the Euro-Med Ministerial meetings and the objectives set in the draft Framework Protocol for Liberalisation of Services among Euro-Mediterranean partners (known as 'the Istanbul Protocol'), notably mutual recognition of professional services.

Article 2.3.3 Movement of persons, including movement of workers and coordination of social security – Implement the provisions under Article 64 and 65 of the Association Agreement as regards the coordination of social security. Preparation for a decision of the Association Council, in line with Article 65, concerning the ways and provisions for implementation of the objectives in Article 64.

Movement of all categories of workers and natural persons is a central issue, essential to further economic integration between the EU and Israel. Implementation of Article 64 of the AA, meaning practical coordination of social security legislations, is a necessary condition for liberalization of trade in services and further integration of Israel into the Internal Market. While the AA concerns only coordination of social security schemes for Israeli *workers*, the AP mentions for the first time free movement of *persons* – including work-seekers, part-time workers, unemployed workers, students, pensioners, tourists and others. Moreover, liberalization of services is a stated objective of the AP. Facilitating the movement of natural persons will enhance trade in services.

In other matters of social security coordination, the AP does not add any particular issue to the AA. Nevertheless, stating the necessity of implementing the AA represents a re-affirmation of political will.

For the purpose of this paper, it is useful to outline how EU Member States regulate access of non-nationals to social insurance services. Israel can learn, or draw inspiration from the main principles of social rights coordination for community workers and non-economic residents and from the experience of coordination of social rights in the EU.

The second category of beneficiaries to be studied comprises Turkish and Maghreb nationals. This category of persons is, in principle, excluded from the free movement regime. However, Community law grants them special rights in the field of social, health and education.

The third part of the paper focuses on Israeli and European social policies. After having drawing up the current bilateral conventions regulating the coordination of social rights between Israel and EU states, policy recommendations will be addressed to enhance the implementation of Article 64.

Social Policies within the EU: Harmonization or Coordination?

In the late 1950s, EEC Member States committed themselves to integration of their private economic markets but they did not give up their power in the field of social security. They did not intend to be transformed into a 'European Welfare State'. European states agreed to open their doors to labour markets but not to their welfare states.

Harmonization of national security systems or establishment of a common social security system has never been seriously considered within the EU.

Traditionally, national social security legislation distinguished between claimants on the ground of nationality. Benefits were only granted to persons residing in the country. Therefore, migrants who returned to their home country could not enjoy such benefits. Moreover, benefits were always conditional on the completion of a certain period of insurance, employment or residence. Thus, the Council adopted regulations establishing a coordination mechanism aimed at preventing a loss of social security rights caused by the exercise of free movement of workers.

Coordination concerns 'rules of international social law intended to adjust social security schemes in relation to each other for the purpose of regulating transnational questions, with the objective of protecting the social security position of migrating persons, their families and similar groups of persons.'¹⁹⁷ Coordination regulations aim at solving four kinds of issues that may occur in case of cross-border movement:

1. Conflicts of law.

¹⁹⁷ Frans Pennings, 'Introduction to European Social Security Law', *Kluwer Sovac Series on Social Security*, 1994, p. 34.

2. Unequal treatment on ground of nationality.
3. Territorial requirements for acquiring benefit rights.
4. Territorial requirements for payment of benefit rights.

Whereas coordination leaves the differences between national systems intact and makes additional rules for migrant workers in order to avoid negative effects from the interaction of national laws systems, harmonization aims to remove these differences.

Community provisions on national social security do not replace the different national social security systems by a single European system. Such harmonization would not be possible because of the wide divergence in standards of living among the 28 States belonging to the European Union and the European Economic Area (EEA). Moreover, even those States with similar standards of living have different social security systems, the result of traditions deeply rooted in national culture.

Rather than harmonizing the national social security systems, the Community provisions on social security provide for simple coordination of these systems. In other words, every Member State is free to decide who is to be insured under its legislation, which benefits are granted and under what conditions, how these benefits are calculated and how many contributions should be paid.¹⁹⁸

The Community provisions establish common rules and principles that have to be observed by all national authorities, social security institutions, courts and tribunals when applying national laws. By doing so, they ensure that the application of different national legislation does not adversely affect persons exercising their right to move and to stay within the European Union and the EEA.

Major Principles of Social Rights Coordination for EU and EEA Members

¹⁹⁸ European Commission, *Social Security and Social Integration*, 'The Community provisions on social security: Your rights when moving within the European Union', Update, 2004.

As of 1957, regulations have been concluded to enable workers to be employed anywhere in the Community. Measures were taken to avoid a situation where moving inside the community would negatively affect workers' social rights. Social rights cover social security and social assurance schemes. *Social security schemes* are state-created systems which insure workers against loss of income resulting from sickness, unemployment, invalidity or old age. The payment of social charges by the worker or its employers grant the worker a right funded out of the collective paid contribution. *Social assurance programmes* grant minimum financial means to all members of society who are not able to provide for themselves. Benefits are only granted to persons without any other financial income.

When the Community realized free movement of workers, it did not consider giving workers a right to claim minimum subsistence revenues. Workers were supposed to provide for themselves with an income earned from full-time employment.

Territoriality Principle

There are conflicting interests between promoting free movement of persons and preserving public social systems. EU Member States wish to prevent 'social tourism'. States are inclined to keep their social responsibilities as restricted as possible. Therefore, they limit their social security system mainly to their own territory. Traditionally, then, social security was linked to the place where a person was born or resided (i.e., *the territorial principle*).

The territorial principle implies that social benefits are preserved for persons residing or working within the state territory. On the basis of national law, minimum substance benefits are not exportable.

Welfare states are systems functioning on the basis of territoriality. Territoriality implies a kind of membership that grants rights and duties as a contribution to the financing of public services. The required balance between revenues and expenditures could not be attained were States to allow non-nationals unconditional access to their territory and

social services. Governments cannot collect tax contributions from people residing outside state borders; therefore, such persons cannot claim benefits as nationals.

Social Solidarity and the Non-Discrimination Principle

Social justice in the European countries requires that all members of society have the minimum means to meet the basic costs of living. It also demands that all members of society within national territories have access to essential services such as education, health care and housing.

Article 48 of the European Treaty prohibits any discrimination on grounds of nationality between workers of the Member States. It concerns employment as much as remuneration.

Article 51 provides the legal basis for coordination. For the first time, it allows for a supra-national coordination regulation. For this regulation to become effective, the Treaty requires unanimity. This article states that the Council has to adopt measures to secure for migrant workers aggregation of all periods of work in the different Member States for the calculation of social benefits.

The Council shall, acting unanimously on a proposal of the Commission, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end it shall make arrangements to secure for migrant workers and their dependants:

- a. Aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries.
- b. Payment of benefits to persons resident in the territories of the Member States.

Those measures are defined in regulations 1408/71 and 575/72.

Regulations 1408/71 and 575/72: The Legal Basis for Coordination

Both regulations aim to promote freedom of movement by coordinating national security systems in such a way that people enjoy constant social protection.

Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the community.

The regulation is only applicable to persons who move across the borders of their own country to another Member State. The reason for worker movement is irrelevant, that is, it need not be for economic reasons. The Regulation applies to employed or self-employed persons, members of their family, their survivors and civil servants. Freedom of movement is not yet realized for all citizens.

The regulation is based on four basic principles:

- **Equality of Treatment:** Migrants are subject to the same obligations and enjoy the same benefits as nationals of the State. The regulation forbids discrimination on grounds of nationality.
- **Beneficiaries are insured in the State of their employment.**
- ***Aggregation Principle:*** States whose national legislation makes social benefits conditional on a minimum period of insurance, employment or residence must consider periods completed in other Member States as if they have been completed in their own country.
- ***Exportability of benefits:*** Article 10 enables payment of specific types of benefits outside the national territory. It includes sickness and maternity benefits, unemployment benefits, invalidity, old age or survivor's cash benefits, pensions for accidents at work and death grants. This exported facility exists only when the migrant person remains within the territory of the EC.

Regulation 574/72 establishes procedures for implementing Regulation 1408/71.

The following persons, nationals of a Member State of the European Union or the European Economic Area, are protected by the Community provisions¹⁹⁹:

- Employed and self-employed persons who are or have been insured under the legislation of one of these States.
- Civil servants.²⁰⁰
- Students.²⁰¹
- Pensioners, even if they had already been pensioners before their country joined the European Union or the European Economic Area.
- Members of the families and survivors of the above persons, regardless of their nationality. As a rule, the status of a family member is defined in the legislation of the State of residence.
- Third-country nationals.

Community provisions on social security apply to all national legislation on:

- Sickness and maternity.
- Accidents at work.
- Occupational diseases.
- Invalidity benefits.
- Old-age pensions.
- Survivors' benefits.
- Death grants.
- Unemployment benefits.
- Family benefits.

Community Workers

¹⁹⁹ European Commission, *Social Security and Social Integration*, 'The Community provisions on social security: Your rights when moving within the European Union, Update, 2004.

²⁰⁰ Council Regulation (EC) No 1606/98 of 29 June 1998 (OJ L 209, 25.7.1998).

²⁰¹ Council Regulation (EC) No 307/99 of 8 February 1999 (OJ L 38, 12.2.1999).

A Community citizen has to work at least half the normal number of working hours in given sectors to be classed as a Community worker. Community workers are granted the right to work anywhere in the Community and the right to equal treatment in all matters related to employment. They are also granted the right to reside in the State of employment. Workers who voluntarily quit their job lose rights of residence; however, involuntary unemployment does not end the right of residence.

Community workers are also granted rights not directly linked with employment matters:

- Regulation No 1612/68 provides for equality of treatment in public housing, fiscal advantages and social advantages. Political rights are not granted to Community workers.
- Regulation No 1612/68 grants family members of Community workers the right of residence in the host State. Their children are admitted to national educational institutions. Basically, Community workers and their family members must be treated equally in the field of education. They may even enjoy educational rights when they do not reside in the State of employment or when they wish to study in another state.

Unemployed Workers

Community provisions on unemployment insurance have become particularly important. Compared with the provisions for other benefit categories, they are relatively restrictive and less generous. In contrast to other benefits, unemployment insurance applies only to individuals who have completed such periods under the legislation of the country in which the benefits are claimed immediately before becoming unemployed. It is then not possible to claim unemployment benefit in a country where you were not insured immediately before you became unemployed. Furthermore, unlike other benefits (old-age, invalidity, survivors' pensions, for example), unemployment benefits are not paid regardless of the country in which you reside or stay. They are paid only whilst you are looking for work in another State, under restrictive conditions and for a limited period of time.

Non-Economic Residents

This category defines Community citizens who move to other states for a limited period of time without relocating their place of economic establishment: students and pensioners, among others. Union citizens who have convinced the host state authorities that they are able to provide for themselves but who, contrary to expectations, temporarily become in financial need do not lose their right of residence and can claim for social assistance.

Students

Students who reside in the country of study, are insured in their country of origin and are pursuing their studies are entitled to all sickness benefits of the kind provided under the legislation of the country of study.

Pensioners

Old-age pensions are among the most important social security benefits. In every country where a person was insured, her insurance record is preserved until she reaches pension eligibility age.

Every country where a person was insured for at least one year has to pay an old-age pension when the person concerned reaches pension eligibility age. No contributions will be lost, acquired rights are protected, and every country will pay a pension corresponding to the insurance periods completed there. The result is not just in the interest of migrant workers but is also in the interest of the Member States. Every country pays neither more nor less than the pension that has been ‘earned’ by the worker’s contributions.

Old-age pensions are paid regardless of the place of residence within the European Union or the European Economic Area.

Treatment of Third Country Nationals: The Turkish and Maghreb Case

In principle, third country nationals are excluded from the coordination mechanism set up by Regulations 1408/71 and 575/72. Nevertheless, the community has concluded various

association and cooperation agreements with third countries under which the nationals of these states are offered free movement and/or equal treatment rights.

Turkish workers are granted social protection by Decision No 3/80, adopted by the EEC-Turkey Association Council. This decision has extended equality of treatment, aggregation and exportability to Turkish workers. Maghreb nationals enjoy various rights by virtue of the agreements adopted with Morocco, Tunisia and Algeria. Those rights include equality of treatment and the right to aggregation of periods of insurance, employment and residence requirements fulfilled in other Member States.

Here we consider in detail three kind of social schemes: Minimum social assistance, Health care and Education.

Turkish Nationals

In 1963 an Association Agreement was concluded in Ankara with Turkey. Among other things, one purpose of the Agreement was to secure progressive freedom of movement for workers. The Association Council adopted two Decisions but a third decision, which would govern the final stage in which free movement of workers would be realized, was never adopted.

As a result, Turkish nationals do not have the right to move to Community Member States in order to take up employment. However, once admitted, they enjoy a number of rights: Decision No 1/80 grants Turkish workers and their family members employment rights which enable them to gradually integrate in the labour market and which encompass rights of residence. In matters of social security, Decision No. 3/80 provides for the right to equal treatment in social security matters and the right to export certain benefits.

Health Care

Decision No. 3/80 of the EC-Turkey Association Council states that all health care provisions contained in Regulation No. 1408/71 apply to Turkish workers. Turkish

workers seem to enjoy extensive health care protection in the states they have been admitted to. However, significant limitations exist:

- Turkish workers can only benefit from provisions that are not dependent for their practical application on the fulfilment of administrative formalities. Article 18 of Regulation No 1408/71 is applicable to Turkish workers but conditional upon fulfilment of various administrative formalities for its implementation.
- Turkish workers do not have any right to claim medical benefits in Member States other than the State of residence or insurance.

Education

The Association Agreement had not pay particular attention to Turkish national rights in the field of education. Turkish nationals who have been admitted for employment to one of the Community Member States are not expressly granted educational rights. Turkish workers are not entitled to be admitted to general education or to claim student grants in the host State. Only Turkish children of legally employed workers must be admitted to course of general education, apprenticeship and vocational training under the same educational entry qualifications as the children of the Member States (Decision N0 1/80 of the EC-Turkey Association Council)

Maghreb Nationals

Neither the 1978 Maghreb Agreements nor the more recent Euro-Mediterranean Agreements confer upon Maghreb nationals the right to freedom of movement. However, the various agreements contain a number of provisions regarding social security. The Euro-Mediterranean Agreement with Morocco offers Moroccan nationals who are residing in one of the EC member state the right to equal treatment in the field of social security: the right to aggregation of insurance, employment and residence period for various social benefits, the right to family allowance for family members residing in the community and the right to transfer old-age pensions to Morocco. Identical provisions are found in agreements with Algeria and Tunisia.

Minimum subsistence benefits

Workers who are nationals of one of the three Maghreb countries and members of their family are living with them enjoy the right to claim for minimal subsistence benefits under the same conditions as are nationals of the host state. However, the agreement does not confer to Maghreb nationals the right to reside in the State of employment. Being in need of minimal subsistence benefits can be a reason to refuse them a work and residence permit.

Health Care

In the State where they are employed, residing and insured Maghreb nationals have the right to be treated equally as regards health insurance and access to medical care with nationals of the host state. However, they cannot benefit from aggregation rules guaranteeing health care to persons staying in a Member State other than the State of insurance.

Education

The legal status of Maghreb nationals in the field of education is regulated by national law, not by Community law. The Maghreb Agreement provides for the right to equal treatment in working conditions that may include the right to vocational training in the host state.

The Case of Israel

Bilateral Conventions on Social Security Schemes between European Countries and Israel

Eleven bilateral Conventions on social security have been concluded between Israel and Member States of the EU. All of them, with the exception of the Czech Agreement, were ratified before the Association Agreement came into force on 1 June 2000. All the Conventions include only contributory benefits.

- Settlement of disputes: If no agreement is reached between contracting parties, the dispute shall be submitted to arbitration by a court of arbitration whose composition and procedure shall be agreed to by both parties.

- Beneficiaries vary extensively by state: The Conventions concluded with Austria, Germany, Sweden, Netherlands, Denmark, Finland and the Czech Republic apply to all nationals of contracting parties. Other conventions are more restrictive:
 - a. Conventions concluded with France and Belgium only apply to employees.
 - b. Conventions concluded with the United Kingdom apply to employees and self-employed workers.

Table 1 indicates that most conventions grant old age, survivors and invalidity insurance, work accident and occupational diseases insurance, child allowance and maternity insurance. Medical insurance is only mentioned in the conventions with Austria, Germany, Sweden, Netherlands, Denmark, Finland and the Czech Republic. Only three states award unemployment insurance: Austria, Sweden and Netherlands.

Table 1: Bilateral Conventions on Social Security between Israel and EU Member States

Country	Signature	Validity	Beneficiaries	Type of benefits
United Kingdom	04/1957	11/1957	Nationals of a Contracting party who are employed or self-employed, includes members of their families	<i>Maternity benefits:</i> Child allowance, Old age pensions, Widow and orphan benefits, Work accident insurance and Occupational diseases
France	12/1965	10/1966	French or Israeli Employed Workers and members of their families	Old Age, Survivors and Invalidity Insurance, Work accident insurance and Occupational diseases, Child Allowance, Maternity Grants
Italy	01/1967	11/1989	Workers temporarily detached	None
Belgium	07/1971	05/1973	Employed worker and members of their families	Old Age and Survivors Insurance, Work accident insurance and Occupational

Country	Signature	Validity	Beneficiaries	Type of benefits
				diseases
Austria	11/1973	12/1974	Residents in the Territory of a Contracting Party, refugees and stateless persons who are employees or self-employed, including members of their families	<i>Unemployment benefits:</i> Medical Insurance, Old Age, Survivors and Invalidity Insurance, Work accident insurance and Occupational diseases, Child Allowance, Maternity Grants
Germany	12/1973	05/1975	Legal Residents in the Territory of a Contracting Party, refugees and stateless persons who are employees or self-employed, including members of their families	<i>Medical Insurance:</i> Old Age, Survivors and Invalidity Insurance, Work accident insurance and Occupational diseases
Sweden	06/1982	07/1983	Residents in the Territory of a Contracting Party, refugees and stateless persons who are employees or self-employed, including members of their families	<i>Unemployment benefits:</i> Medical Insurance, Old Age, Survivors and Invalidity Insurance, Work accident insurance and Occupational diseases, Child Allowance, Maternity Grants
Netherlands	04/1984	09/1985	Residents in the Territory of a Contracting Party, refugees and stateless	<i>Unemployment benefit:</i> Old Age and Invalidity Insurance, Widow and Orphans Insurance, Sickness

Country	Signature	Validity	Beneficiaries	Type of benefits
			persons who are employees or self-employed, including members of their families	insurance, Child Allowance, (Work injury and Maternity Insurance for Israel only)
Denmark	07/1995	04/1996	Residents in the Territory of a Contracting Party, refugees and stateless persons who are employees or self-employed, including members of their families	National health security and hospital service (Denmark only); Maternity care, Daily cash benefits in the event of sickness and childbirth (Denmark only) Work injury insurance Family allowances, Social pension, Labour market supplementary pension ATP (Denmark only)
Finland	07/1997	09/1999	Permanent residents in a Contracting Party, refugees and stateless persons and their family members.	Medical Insurance, Old Age, Survivors and Invalidity Insurance, Work accident insurance and Occupational diseases, Child Allowance Maternity Grants
Czech Republic	07/2000	07/2002	Citizens of a Contracting party, refugees and stateless persons	Medical Insurance, Old Age, Survivors and Invalidity Insurance, Work accident insurance and Occupational diseases, Child Allowances, Maternity Insurance

Evaluating the Costs of Coordination of Social Schemes

Israeli initiatives to enlarge its range of bilateral social security conventions with European countries were ignored since signing the AA. Coordination is only attained through bilateral agreements, with each country determining if it will be a net –payer.

To evaluate the cost of coordination of social policies for each contracting party, a database containing data about the total number of immigrants from each country to Israel and the age distribution of immigrants is necessary. Unfortunately, such data were never compiled by the CBS, neither by the Israeli Ministry of Interior nor the Ministry of Foreign Affairs. The only information available concerns the total number of immigrants by country of birth, compiled since 1948.

We cannot consider the total number of migrants as potential beneficiaries because many have since passed away. Nevertheless, this information is still the closest indication available.

Table 2: Immigrants by Period of Immigration by Country of Birth

Country of Birth	Period of Immigration				
	1948-1960	1961-1971	1972-1979	1980-1989	1990-2001
Austria	3,242	1,021	595	356	368
Italy	1,719	940	713	510	656
Nordic Countries ²⁰²	216	886	903	1,178	1,145
Belgium	685	1,112	847	788	1,053
Germany	9,596	3,175	2,080	1,759	2,242
Netherlands	1,723	1,470	1,170	1,239	997
Hungary	24,143	2,601	1,101	1,005	2,444
Yugoslavia (former)	7,981	322	126	140	2,029
Greece	2,807	514	326	147	128
United Kingdom	3,355	6,421	6,171	7,098	5,365
Spain	249	406	327	321	269

²⁰² Finland, Sweden, Norway and Denmark

Country of Birth	Period of Immigration				
	1948-1960	1961-1971	1972-1979	1980-1989	1990-2001
Poland	146,032	14,706	6,218	2,807	3,064
Czechoslovakia (former)	19,571	2,754	888	462	527
France	4,712	8,050	5,399	7,538	11,986
Other Countries	1,434	412	252	303	802
Total European Union	227,465	44,790	27,116	25,651	33,075

Source: Central Bureau of Statistics, *Statistical Abstract of Israel, 2004*, Table 4.4.

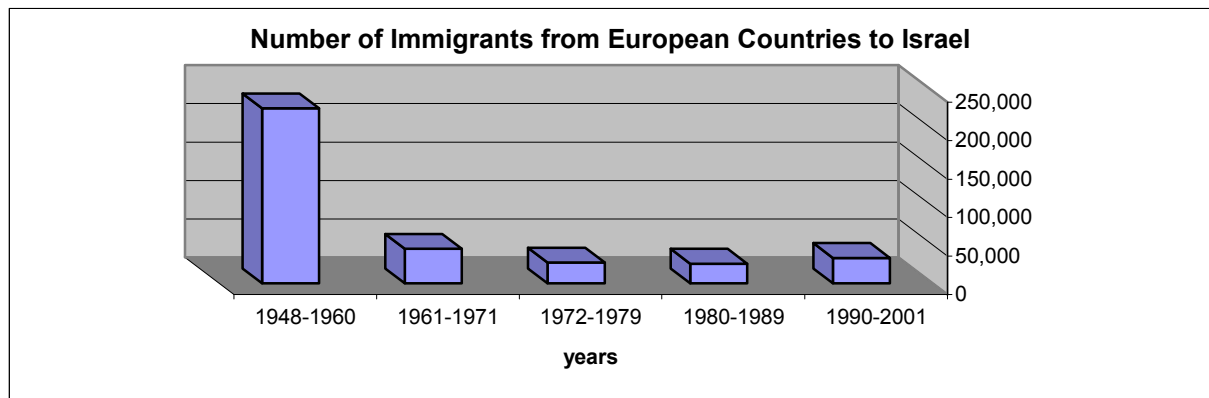


Table 2 highlights the fact that since the 1990's, there has been a net growth of immigration from European countries. Sending countries are primarily France, the United Kingdom, Poland and Germany.

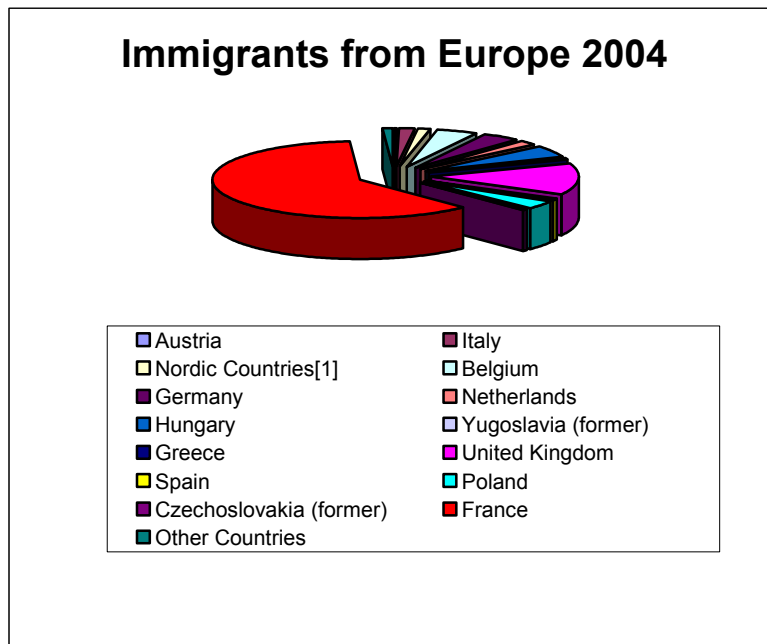
As mentioned earlier, bilateral conventions with France, the United Kingdom and Germany apply only to workers. A convention was concluded with Poland in 1991; it granted social insurance to citizens of a contracting party only in cases of Work Injury and Occupational Disease.

More recent data about immigrants' country of origin confirm those trends, as Table 3 shows.

Table 3: Numbers of Immigrants from European Union Countries – Recent Trends

Country of Birth	Year of Immigration		
	2003	2004	2005 (I-IX)
Austria	8	8	
Italy	17	34	
Nordic Countries ²⁰³	30	34	
Belgium	86	102	
Germany	92	99	74
Netherlands	37	43	37
Hungary	49	113	69
Yugoslavia (former)	3	12	4
Greece	5	-	
United Kingdom	274	309	294
Spain	24	15	
Poland	97	83	
Czechoslovakia (former)	36	15	
France	1,299	1,403	2,064
Other Countries	18	27	
Total European Union	2,075	2,297	

²⁰³ Finland, Sweden, Norway and Denmark



No precise data has ever been published about the number of Israelis living in the EU.

The latest statistics were presented in 2003 by Ministry of Absorption official Nadia Prigat to Colette Avital, Chair, the Knesset Immigrant Absorption Committee; they concerned all Israeli living abroad. Prigat stated that 760,000 Israeli were living abroad in 2003: 600,000 adults and 160,000 children. According to Prigat, some 25% of this group lives in Europe. This means that about 190,000 Israelis are living in Europe, although not necessarily in the EU.

Fifty percent of the Israeli who have returned to Israel over the past 13 years did so after a stay abroad of between 2 and 5 years. Most of those who return to Israel are between 25 and 44 years of age. From 1993 to 1999, between 4,700 and 6,500 Israelis returned annually. However, in 2000, 3,956 Israelis returned while in 2001, 3,456 Israeli returned.

Only 550,000 Israeli were living abroad in 2000. This means that 210,000 left following the outbreak of the second *Intifada*. Statistics show the return rate is also influenced by the economic and security situation in Israel.

The costs of coordination of social rights seem to be higher for the EU as a whole than for the Israeli economy. Enhancing free trade in services and free movement of persons could raise the cost burden on Israel.

Many EU states are experiencing serious labour shortages despite high rates of unemployment. The causes of most shortages lie in demographic changes, with shifts toward ageing populations as well as qualitative and regional mismatches. Immigration is viewed as one of the strategic instruments enabling the EU to cope with labour market imbalances.

Concluding Remarks and Policy Recommendations

Movement of all categories of workers and natural persons are central issues, essential to further economic integration between the EU and Israel.

The implementation of Article 64 of the AA, regarding practical coordination of social security legislation, is a necessary condition for liberalization of trade in services and further integration of Israel into the Internal Market. Nevertheless, movement of natural persons is a delicate matter, involving political issues touching on Israel's identity as the Jewish Nation State. From the European side, this policy involves coordination of immigration policy, which has not been yet fully achieved at the EU level.

Three main policy recommendations immediately arise from this research:

- There is a need to extend the scope of current conventions to further categories of workers, students and pensioners. Bilateral conventions with France, United Kingdom, Germany and Poland should be re-negotiated and extended to all categories of persons. If no agreement can be reached on the movement of all natural persons, negotiations must begin on particular categories of professionals to enhance trade in services. The most urgent categories are IT workers, financial services workers and managers.

- Israel should begin talks to reach additional bilateral agreements with the remaining 13 European countries left. At the first stage, conventions can refer to only specific categories of workers.
- Social security legislation is not always able to provide full answers. Bilateral conventions offer practical and relatively satisfactory solutions to most of the cross-border problems arising in the sphere of social security. Since Community provisions on social security were adopted, the European Court of Justice has delivered more than 500 judgments on their interpretation, most of them in favour of migrant workers and members of their families. This figure clearly demonstrates the importance of the European Court for the protection of European citizens. Its role is essential when doubts arise about the scope of the Community provisions, their application to individual cases and their interpretation with respect to international law. ‘The Court of Justice is the legal guardian of European citizens exercising their right of movement and stay in Europe.’²⁰⁴

Is there need to extend the jurisdiction of the ECJ in order to cover disputes emerging from the agreements signed between the EU and Israel?

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Chapter 5

Political Relations and Civil Society Related Issues

Summary and Recommendations

The chapter pertains to AP Article 2.1, Political dialogue and cooperation as well as Article 2.6, People-to-people contacts; it includes four articles. The chapter's first article, 'The EU and Israel, an Enhanced Political Cooperation? An Assessment of the Bilateral ENP Action Plan', by Raffaella A. Del Sarto, discusses issues relating to political cooperation between Israel and the EU, the Action Plan as a general framework and implications for the EU given relations maintained between Israel and the 'wider European Neighbourhood'. The second article, 'Combating Anti-Semitism: Monitoring the EU-Israel Action Plan', by Yonatan Touval, focuses on the campaign against anti-Semitism, particularly in relationship to the AP sub-articles Combating anti-Semitism and The fight against racism and xenophobia, including Islamophobia. The third article 'The Madrid Quartet: An Effective Instrument of Multilateralism?' by Dr. Costanza Musu, deals with the role played by the Madrid Quartet in relation to Multilateralism as an instrument of negotiation and refers to the Action Plan sub-articles Situation in the Middle East. The fourth article, by Katharina von Münster, addresses the civil society dialogue between Israel and the EU, while focusing in particular on the way in which Israel (and the Middle East conflict) is portrayed in EU media and how the media could contribute to greater civil society dialogue and cooperation.

The first article begins by analysing those provisions of the Action Plan referring to bilateral cooperation. In order to assess the significance of the Action Plan, however, the document must be placed within the broader context of EU-Israeli relations. Hence, the subsequent sections focus on the development of EU-Israeli relations in recent years

while stressing the erosion of bilateral relations observed since collapse of the Peace Process in late September 2000.

The article subsequently evaluates the development of bilateral relations against the background of the emerging 'wider European Neighbourhood' policy, the policy's implications for the EU and Israel in addition to its impact on the bilateral negotiations stipulated in the Action Plan. The article's authors conclude by arguing that although the Action Plan may be the source for some very cautious optimism, the development of meaningful political cooperation between the EU and Israel, together with the development of EU-Israeli relations in general, will depend on the political will of both sides, above all, a change of attitude regarding each respective partner.

The article discusses several issues as they appear in the AP.

- Shared values, democracy, and human rights: The Action Plan provides general directions but does not obligate the taking of specific steps.
- The EU's role in peacemaking: The Action Plan's wording is open to varying interpretations.
- Non-proliferation of WMD, disarmament, and regional security: The EU has fully accepted Israel's position on regional security and arms control.
- The war against terrorism: A relatively high degree of bilateral understanding is apparent.
- Multilateralism and international fora: It remains unclear how exactly the EU intends to influence UN reform regarding Middle East programmes.

The article continues with an analysis of the political and economic relations maintained between Israel and the EU. A survey is presented of the various agreements signed and the main events that influenced relations during the period 1980-2004. The article describes the routes taken and the difficulties faced by the Action Plan and the advantages it provided up to and including the negotiations surrounding elaboration of the 'wider Europe' initiative. The items concluded as well as left open within the initiative, in addition to the reasons for their status are likewise discussed, as are the AP's

limitations. In closing, the article states several conclusions to be reached as a result of its analysis of Israeli-EU relations and proposes several policy recommendations. These are offered in consideration of the fact that Israeli-EU relations are subject to the influence of several factors, such as institutionalisation of EU foreign policy making, the fate of the Middle East Peace Process, and the quality of the trust exhibited by both parties.

The second article sketches events leading to entry of the paragraph in the Action Plan dealing with anti-Semitism. It recommends several concrete measures that Israel and the EU can initiate in their joint commitment to eliminating the phenomenon. The article begins by framing reasons for the rise in incidents of anti-Semitism observed in the last few years in EU member states. The authors explain that this is a new brand of anti-Semitism, variously related to the Israeli-Palestinian conflict. In doing so, it surveys the phenomenon in three key European Union Member States—France, the United Kingdom, and Germany—homes to the EU’s largest Jewish communities.

The article continues with a discussion of the initial formal recognition of the need to combat anti-Semitism, marked by the Association Agreement signed (but never implemented) by Israel and the EU in 1995. The Agreement lists various bodies to be established to fight anti-Semitism, racism, xenophobia and discrimination as well as a decision to introduce a special paragraph in the EU-Israel Action Plan in 2004. This decision came in the wake of an increasing rate of anti-Semitic incidents and the desire to upgrade Israel-EU relations within the context of the European Neighbourhood Policy (ENP).

Review of the events and the respective section in the AP (i.e., Combating anti-Semitism) inspired the following policy recommendations:

- The EU, Europe’s Jewish Communities and Israel should agree on a uniform definition of anti-Semitism and work to improve coordination as well as cooperation in their activities against anti-Semitism.
- Research and development of technological equipment aimed at supporting the fight against anti-Semitism (mainly through the Internet).

- Establishment within the European Commission of a special unit charged with combating anti-Semitism that will work through networks of professionals active in all EU Member States.
- Development of appropriate educational programmes targeted at countering racism, anti-Semitism and xenophobia.
- All EU Member States, candidate countries and acceding countries will be obligated to join the Task Force for International Cooperation on Holocaust, Education, Remembrance and Research.
- Passage of tougher penalties for anti-Semitic crimes together with strict enforcement of the existing statutes.
- Increase awareness among EU citizens of anti-Semitism, racism and xenophobia through television programmes.

The third article deals with the Madrid Quartet. The paper analyses the rationale behind the Quartet's creation, its activities and its effectiveness. Thus, the AP directly refers to the importance of the Quartet and the need for Israel to work 'together with the EU, on a bilateral basis and as a member of the Quartet, with the aim of reaching a comprehensive settlement of the Israeli/Palestinian conflict'. In the same context, the Action Plan refers to the need for 'cooperation between Israel and the EU...to promote effective multilateralism'. This paper consequently addresses the crucial question of whether the Quartet has indeed become such an effective instrument of multilateralism, as called for by the Action Plan.

EU participation in the Peace Process was based on its previous efforts. In June 2000, the European Union had approved a new Common Strategy for the Mediterranean Region.¹ The failure of the Camp David talks and the collapse of the Peace Process left the EU – as well as other international and regional actors – unable to respond in a co-ordinated, effective fashion. In 2002, the EU finally decided to renounce the proposed launching of an independent peace plan and to back the US peace initiative that soon led to creation of the Madrid Quartet. EU Member States had hoped that participation in the Madrid

Quartet would provide the EU with gains expressed in greater visibility and influence in the peace process, a tool that might increase EU influence on American policymaking.

The article continues to discuss the role of multilateralism in the Arab-Israeli Peace Process as it evolved from the Madrid Conference to the Madrid Quartet. The article focuses on the roles played by the US, the UN and the EU while describing the impact of several events – the Oslo Process, the Madrid Conference, the Barcelona Process – on Israeli and Palestinian responses regarding negotiations.

In the course of his analysis, the article's author asks a fundamental question: Is the Quarter an effective instrument of multilateralism as called for by the Action Plan? In responding to this question, several definitions of multilateralism are offered, all of which stress multilateralism as a demanding organizational form, requiring 'its participants to renounce temporary advantages and the temptation to define their interests narrowly in terms of national interest...it also requires them to forgo ad hoc coalitions and to avoid policies based on situational exigencies and momentary constellations of interests.'

Application of this perception of multilateralism and its consequences for the Middle East raises several points that may explain why multilateralism has been relatively unsuccessful as a method of negotiation in this arena. It is important to remember that a state's preference for unilateralism, bilateralism or multilateralism derives directly from its *substantive preferences* regarding crucial issues such as power, security or wealth. We can therefore expect states to engage in multilateralism when they anticipate receiving substantial benefits from the process, and to turn to unilateralism or bilateralism when these better serve their purposes (or substantive preferences). This point is demonstrated by examples taken from Israeli and Palestinian experiences.

The European Union has long favoured a multilateral approach to the Peace Process, insisting that such a framework is best suited to create conditions for real progress. The Quartet's participation in the Peace Process underscores the international community's commitment to achieving an equitable settlement. What the Quartet offers in effect is a

multilateral “control framework” for bilateral negotiations. These bilateral negotiations should, however, aim at implementing pre-determined steps, agreed upon by the Quartet. Arguably, the contradictory nature of the Quartet’s actions is partly at the root of its less than brilliant record: The Israelis, like the Palestinians, turn to the Quartet and the Roadmap to the extent that they appear to safeguard their interests, but do not hesitate to return to traditional negotiation schemes (i.e., Israel and the Palestinian Authority with the US as mediator) in order to negotiate important points that the Roadmap may not address to their satisfaction.

The article closes with a set of conclusions and recommendations:

- Multilateralism is an important element of European policy.
- The Quartet has not been an effective instrument of multilateralism so far. It has created an ambiguous structure that cannot be defined as truly multilateral.
- In order for the Quartet to be effective, the perception of multilateralism held by its main actors has to change.
- Instead of working through the Quartet, the EU should concentrate on persuading the parties of the benefits of diffuse reciprocity.
- The main parties should be involved in the definition of the various phases and specific steps to be undertaken in the negotiations. Only under these conditions will the Israelis and the Palestinians feel truly committed to the plan (rather than the present situation of feeling pressurized into accepting externally imposed solutions).
- Permanent resolution of the conflict can be achieved only if the principle of diffuse reciprocity is recognized and both sides agree to make changes or even sacrifices for their own albeit delayed benefit. Only within this framework will the guarantees offered by the Quartet’s commitment to the Peace Process become crucial and ultimately render progress feasible.

The final article in the chapter addresses the crucial issue of civil society cooperation in a specific issue-area, namely the media. Based on a thorough empirical analysis of EU media reporting on Israel and the Israeli-Palestinian conflict in several European quality newspapers, the article discusses the possibilities and limitations of the media as an

instrument to promote the EU-Israeli civil society dialogue as envisioned by the Action Plan. The relevance of this focus is underlined by the fact that in a recent opinion poll, almost 60% of Europeans view Israel as a great danger to world peace. Though the methodology of this survey was criticised, many commentators were quick to blame the EU media for these results, arguing that stereotypical and at times anti-Israeli and anti-Semitic images are advanced in media reporting. A focus on media reporting in major quality newspapers throughout the EU shows that the weakness of reporting was not so much located in anti-Israeli sentiments but rather the fact that due to stereotyping practices, reporting did not contribute to better mutual understanding. By addressing several key events, the article argues that Israel (and the Palestinians) is mainly presented against the backdrop of the conflict. One might be led to think that this makes the role of the media as an instrument for dialogue in EU-Israeli relations questionable. However, the way in which the conflict is presented could contribute to a broader and deeper understanding. Indications have appeared that the concrete way in which the conflict figures in EU media could contribute to nurturing stereotypical thinking and, in the worst case, fuel anti-Israeli, anti-Semitic and Islamophobic sentiments, thus directly operating against key objectives of the Action Plan. While there are many channels for dialogue between the EU and Israel, the media is one of these and the Action Plan aspires to strengthen existing and establish new forms of civil society dialogue.

The media plays a crucial role in this process because before people meet face to face they will almost certainly have gathered information and formed opinions through media reporting of their respective counterparts. While the EU media in the cases analysed in this article have attempted to give a balanced and fair description of the situation in Israel and the Middle East, there are several weaknesses to media reporting such as the lack of reflection on long-term developments, a lack of focus on wider societal and domestic developments not directly related to the conflict at, at times, the reproduction of stereotypical images. In order to achieve key objectives of the Action Plan the role of media on the context of civil society dialogue in EU-Israel relations should receive considerable attention. The article proposes a two-pronged approach in terms of concrete policy recommendations.

First, the set-up of new and the strengthening of existing networks between journalists and media people from the EU and Israel. These meetings should focus on good practices of media reporting and involve existing media monitoring organisations. Instruments could be developed to monitor standards of news reporting in the EU (on Israel, Palestine and the Middle East conflict) and in Israel (on the EU and its Member States) to monitor standards of news reporting and the use of language. In such a setting, an EU-Israel prize for fair, accurate and informative reporting could be established. Second, as part of the people-to-people objectives of the Action Plan, newspaper readers need to be addressed. Encounters between youth, young professionals, teachers and other groups should be systematically encouraged.

The EU and Israel: An Enhanced Political Cooperation? An Assessment of the Bilateral ENP Action Plan

Raffaella A. Del Sarto

Abstract

Developed within the framework of the European Neighbourhood Policy, the EU-Israel Action Plan of December 2004 is notably vague on the envisaged *political* cooperation. The ambiguities reflect the need to reconcile divergent positions of the EU and Israel on the desirable type of relations in general, and the EU's role in Middle East peace-making in particular. Moreover, the expectations raised by the initial 'wider Europe' initiative on the Israeli side, along with EU-internal divergences on the 'right' approach toward Israel and the Israeli-Palestinian conflict, impacted on negotiations regarding the Action Plan. However, given that both sides eventually acknowledged the trade-offs that enhanced relations require, the Action Plan may, with the necessary caution, be considered an achievement. However, while its implementation will face considerable hurdles, emergence of a meaningful political cooperation will finally depend on the political will and, more importantly, a change of attitude on both sides.

Introduction

The last enlargement of the European Union (EU) brought about a reconsideration of the EU's relations to those states in its immediate periphery that will not enter the EU in the foreseeable future. The new policy, which the EU Commission first proposed as the 'wider Europe' scheme in March 2003, and which subsequently developed into the European Neighbourhood Policy (ENP),²⁰⁵ declares as its main objective to 'prevent the

²⁰⁵ See European Commission, *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, Communication from the Commission to the Council and the European Parliament, Brussels, 11 March 2003, COM(2003) 104 final; European Commission, *European*

emergence of new dividing lines between the enlarged EU and its neighbours and to offer them the chance to participate in various EU activities, through greater political, security, economic and cultural cooperation'.²⁰⁶ While relying on an explicitly *differentiated* approach, Brussels proposed that the envisaged cooperation within the ENP could go as far as 'everything but membership'.²⁰⁷

Among the states that are situated at the external borders of the enlarged EU, Israel has the most advanced economic status and the most developed type of political, social, and cultural relations with the EU. Hence, it is poised to benefit most from the ENP. The bilaterally negotiated Action Plan between Israel and the EU of December 2004, which was adopted by the EU-Israel Association Council in April 2005, sets the priorities of future cooperation within the ENP. The document certainly reflects Israel's 'advanced' status among the EU's neighbours, particularly if compared to the Action Plans negotiated with other countries.²⁰⁸ While the preamble explicitly refers to Israel's 'special status' in accordance with the EU's 1994 Essen Declaration²⁰⁹, the Action Plan defines, *inter alia*, the liberalisation of trade in services, the mutual opening of the public procurement market and greater freedom in the right of establishment of companies as priorities of future bilateral relations. Moreover, there are very specific references to numerous EU-internal programmes and policies that could be opened to Israeli participation. The sections on political cooperation, however, are far less precise. To be certain, a wider range of issues is covered, such as the fight against terrorism, human rights, proliferation of weapons of mass destruction (WMD), the fight against anti-Semitism and racism, and Middle East regional politics. Accordingly, EU officials

Neighbourhood Policy – Strategy Paper, Communication from the Commission, Brussels, 12 May 2004, COM(2004) 373 final.

²⁰⁶ See COM(2004) 373 final, p. 3.

²⁰⁷ R. Prodi, 'Sharing Stability and Prosperity', speech delivered at the Tempus MEDA regional conference at the Bibliotheca Alexandrina on 13 October 2003.

²⁰⁸ European Commission, 'Proposed EU/Israel Action Plan', Brussels, 9 December 2004, at http://www.europa.eu.int/comm/world/enp/pdf/action_plans/Proposed_Action_Plan_EU-Israel.pdf, accessed 20 December 2004. For other Action Plans in the framework of the ENP see http://www.europa.eu.int/comm/world/enp/document_en.htm, accessed 5 September 2005.

²⁰⁹ European Council, 'Extracts of the Conclusions of the Presidency of the Essen European Council, 9 and 10 December 1994', Bulletin of the European Union, Supplement 2/95, p. 28.

presented the bilateral Action Plan as a major breakthrough. In this vein, EU Commissioner for External Relations Benita Ferrero-Waldner stressed:

Israel clearly acknowledges the role of the EU in the Quartet and the need to take into account the viability of a future Palestinian state in counter-terrorist activities. Israel has never been willing to make such commitments in writing to any other partner. The same applies to the commitments Israel has entered into concerning WMD.²¹⁰

However, given the traditional divergences between Israel and the EU on the principles of political cooperation in general, and the EU's role in Middle Eastern politics in particular, a closer look at the text of the Action Plan raises serious doubts on whether both sides indeed agreed to the same issues. By focusing on wording and meaning(s), this paper will start by analysing the provisions of the bilateral Action Plan that refer to the envisaged bilateral cooperation. In order to assess the significance of the Action Plan, however, the document must obviously be put into the broader context of EU-Israeli relations. Hence, the subsequent sections focus on the development of EU-Israeli relations in recent years by paying particular attention to the worsening of bilateral relations since the collapse of the Peace Process in late September 2000. The paper subsequently assesses the development of bilateral relations against the background of the emerging 'wider European neighbourhood' policy, the implications for both the EU and Israel, and its impact on the bilateral negotiations associated with the Action Plan. We will conclude by arguing that although the Action Plan may be the reason for some very cautious optimism, the development of a meaningful political cooperation between the EU and Israel, along with the development of EU-Israeli relations in general, well depend on the political will of both sides and, above all, on a change of attitudes by both sides vis-à-vis the respective other.

²¹⁰ Benita Ferrero-Waldner, 'Press Conference to Launch First Seven Action Plans under the European Neighbourhood Policy, Brussels, 9 December 2004, Speech/04/529, available at http://www.europa.eu.int/comm/external_relations/news/ferrero/2004/sp04_529.htm, accessed 19 September 2005.

Enhanced Political Cooperation: Wording and Meaning

The Action Plan is meant to define the way ahead over the next three to five years of EU-Israeli relations in the framework of the ENP. According to this document, the latter offers Israel the ‘perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU’s Internal Market, and the possibility for Israel to participate progressively in key aspects of EU policies and programmes’. Special emphasis is put on the ‘upgrade in the scope and intensity of political cooperation’.²¹¹ In this vein, the Action Plan reiterates one of its key priorities:

Enhance **political dialogue and cooperation**, based on shared values, including issues such as facilitating efforts to resolve the Middle East conflict, strengthening the fight against terrorism and proliferation of Weapons of Mass Destruction, promoting the protection of human rights, improving the dialogue between cultures and religions, cooperating in the fight against anti-Semitism, racism and xenophobia.²¹²

Although, at first glance, this passage sounds promising, we take a closer look at the provisions of the Action Plan that specifically refer to EU-Israeli political cooperation. What does the document really say, and to which degree does the wording of the provisions permit diametrically different interpretations?

Shared Values, Democracy, and Human Rights

The provisions on ‘shared values’ in the Action Plan include the objective of promoting democracy and human rights, combating anti-Semitism, and fighting ‘racism and xenophobia, including Islamophobia’. In the following, however, the Action Plan lists a number of rather general concepts and intentions. In this vein, both sides commit themselves to work together in order to promote ‘the shared values of democracy, rule of law and respect for human rights and international humanitarian law’, to ‘promote and protect the rights of minorities’, to foster the evaluation and monitoring of policies on

²¹¹ EU-Israel Action Plan, p. 2.

²¹² *Ibid.*, p. 3, emphasis in the original.

gender equality and to develop a dialogue on policies for the disabled. While these propositions are quite unspecific to begin with, it is interesting that one provision referring in addition to international law and human rights is particularly elusive. Thus, the Action Plan states that both sides will ‘*[e]xplore the possibility* to join the optional protocols related to international conventions on human rights’.²¹³ While this statement might, *inter alia*, refer to the Optional Protocol to the International Covenant on Civil and Political Rights, which allows individuals to submit complaints to the Human Rights Committee (and which Israel has not signed), the expression ‘exploring the possibility’ is of course not a very committing one. Hence, against the background of repeated international criticism of Israel’s human rights violations in the Occupied Territories, and considering the controversy of whether the Geneva Conventions apply to the Occupied Territories (as most international lawyers maintain), or do not (as Israeli governments claim), the Action Plan’s provisions on human rights are strikingly elusive. This is even more so since Brussels has repeatedly affirmed the applicability of the 4th Geneva Convention, which governs the status of civilians under military occupation, to the West Bank and Gaza Strip.²¹⁴ A similar observation applies to the objective of working toward the protection of minorities’ rights. In fact, Israel’s 2003 amendment of the law on citizenship and entry into Israel attracted considerable criticism from international as well as Israeli human rights organizations. Despite the Israeli government’s justification of the amendment by security concerns, this law clearly discriminates against Arab Israeli citizens, who already suffer from a number of discriminatory practices. Yet while the EU’s Country Report on Israel, which served as the basis for the Action Plan, critically addresses the amended law²¹⁵, the Action Plan is conspicuously silent on this issue

The sections on the common endeavour to combat anti-Semitism are somewhat more concrete. In this context, the Action Plan explicitly refers to the Berlin Declaration of the

²¹³ *Ibid.*, p. 4, italics added.

²¹⁴ See, for example, European Council, *Declaration of the European Council on the Middle East*, Madrid, 26-27 June 1989, and European Council, *Declaration of the European Council on the Middle East*, Dublin, 25-26 June 1990.

²¹⁵ See European Commission, *European Neighbourhood Policy: Country Report Israel*, Commission Staff Working Paper, SEC(2004) 568, Brussels, 12 May 2004, p. 10.

OSCE of April 2004²¹⁶ and commits both sides to promote its implementation. To this end, a number of measures and activities are listed, such as the strengthening of the legal framework, the promotion of education on and remembrance of the Holocaust, the support for civil society and international organisations in their efforts to combat anti-Semitism, and the exchange of information among experts on best practices and educational tools. A number of similar provisions are reiterated in the following section, which deals with the fight against racism, xenophobia, and Islamophobia.

Regional Politics, and the EU's Role in Peacemaking

Under the headline of 'regional and international issues', the wording of the Action Plan becomes particularly interesting. Indeed, on the envisaged cooperation in the framework of the EU's CFSP and ESDP, the document explicitly mentions regional security, the fight against terrorism, the non-proliferation of weapons of mass destruction, regional issues 'in the Middle East and elsewhere',²¹⁷ conflict prevention, crisis management and peacekeeping. While this may be read as a commitment to cooperate more intensively in these fields and, with it, Israel's acknowledgement of an increased European role in Middle Eastern politics, quite another interpretation is possible. In fact, the document does not affirm that both sides *will* cooperate on the mentioned issues. Rather, the Action Plan states that 'dialogue and cooperation *should* be enhanced and intensified ... and *should include*'²¹⁸ the issues listed above.

A remarkable ambiguity also characterises the provisions that specifically refer to the Middle East diplomatic process. Under the heading of 'situation in the Middle East', the Action Plan indeed affirms the objective of 'reaching a comprehensive settlement of the Middle East conflicts [*sic!*]'; it also explicitly refers to the aim of co-operating with the EU 'on a bilateral basis and as a member of the Quartet'. Moreover, the document explicitly mentions aims and principles of solving the Israel-Palestine conflict, namely a 'permanent two-state solution with Israel and a Palestinian state living side by side in

²¹⁶ See OSCE, 'Berlin Declaration', April 2004, available at http://www.osce.org/documents/cio/2004/04/2828_en.pdf, accessed 2 September 2005.

²¹⁷ Action Plan, p. 5.

²¹⁸ *Ibid.*

peace and security, in accordance with the Roadmap.’ Additional objectives within this section include supporting the efforts of the Palestinian Authority (PA) in dismantling terrorist organisations and infrastructure, efforts to minimise the impact of (Israel’s) counter-terrorism measures on the civilian population, improving the socio-economic conditions for ‘all populations’ in addition to facilitating humanitarian assistance and the rehabilitation of infrastructure. Moreover, the document stresses the aim of fostering the PA’s transparency, accountability and democratic governance. However, at first glance, the quite detailed commitment to the principles of the Roadmap and the apparently explicit acknowledgement of the EU’s role in the diplomatic process is restricted by a sentence that *precedes* the mentioned paragraphs. Indeed, under the sub-heading ‘Situation in the Middle East’, the Action Plan states: ‘Strengthen political dialogue and *identify areas for further cooperation*’,²¹⁹ which is then followed by the points just mentioned. Yet, agreeing to cooperate on a number of issues, and agreeing to merely ‘identify’ areas for further cooperation on these issues may be the subject of quite different interpretations.

Non-Proliferation of WMD, Disarmament, and Regional Security

Regarding the issue of WMD non-proliferation, the Action Plan indeed states that both sides will cooperate ‘on non-proliferation of weapons of mass destruction, and their means of delivery including ballistic missiles, including through implementing UNSC resolution 1540/04’.²²⁰ Similarly, both sides agree to ‘[f]urther develop cooperation and coordination in the prevention of and fight against the illicit trafficking of WMD-related materials’ and to cooperate on the development of ‘effective systems of national export control, controlling export and transit of WMD-related goods, including WMD end-use control on dual use technologies and effective sanctions for breaches of export control’.²²¹ While the aim of controlling the *trafficking* and *transit* of WMD and related goods should not be a major point of controversy, it is certainly surprising that the Action Plan

²¹⁹ *Ibid.*, italics added.

²²⁰ UNSC Resolution 1540 of April 2004 calls upon states to abide to the non-proliferation treaties and take all necessary measures to prevent the proliferation of WMD and WMD-related goods, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N04/328/43/PDF/N0432843.pdf?OpenElement>, accessed 27 September 2005.

²²¹ Action Plan, p. 6.

explicitly refers to WMD non-proliferation—particularly considering Israel’s traditional ambiguity on its non-conventional capabilities and its deep reluctance to discuss the matter with other parties.²²²

The devil, however, is in the detail. In fact, the Action Plan at no point defines about *whose* WMDs both sides intend to talk. Hence, it may reasonably be argued that the bilateral cooperation shall address the non-proliferation of, say, Iran’s non-conventional weapons. More importantly, the Action Plan states that the WMD dialogue shall be based on two documents, which, however, are not enclosed. The first document, entitled ‘EU Strategy against Proliferation of Weapons of Mass Destruction’ of December 2003, commits the EU to unequivocally promoting a non-proliferation policy in its external relations; this document is available on the Internet.²²³ The second document, ‘Israel’s vision on the long-term goals of regional security and arms control process in the Middle East’ of 1992 is not, however, easily retrievable.²²⁴ Yet the date of the document already points to the position of Israel on regional security that emerged and developed during the multilateral Working Group on Arms Control and Regional Security (ACRS) of the Madrid process in the early 1990s. Throughout ACRS, Israel stressed that the objective of regional arms control was not to merely discuss the reduction and elimination of weapons but, rather, to focus on security concerns, perceptions, and interaction. Therefore, Israel argued in favour of starting with confidence-building measures in order to establish greater political trust and to adopt a step-by-step approach for eventually moving toward broader arms control measures, as the Israeli document clearly states.²²⁵ The document also stresses the linkage between arms control regimes and Middle East peacemaking,

²²² Israel has not signed the Non-Proliferation-Treaty (NPT), and it adamantly refused to include any reference to it in the 1995 Barcelona Declaration. See for example R. A. Del Sarto and A. Toviás, ‘Caught between Europe and the Orient: Israel and the EMP’, *The International Spectator* 36 (4), 2001, pp. 61-75.

²²³ European Union, *EU Strategy against Proliferation of Weapons of Mass Destruction*, 2003, available at <http://ue.eu.int/uedocs/cmsUpload/st15708.en03.pdf>, accessed 15 September 2005.

²²⁴ The original document, which is not easily available, is of January 1993, and not, as mentioned in the Action Plan, of 1992. It should be noted that as of September 2005, the Commission’s DG for External Relations had requested but no yet received the document from their Israeli counterparts.

²²⁵ *Israel’s Vision on the Long Term Goals for the Regional Security and Arms Control Process in the Middle East*, January 1993, p. 6. On this issue, see also Z. Maoz, E. Landau and T. Malz (eds), *Building Regional Security in the Middle East: International, Regional, and Domestic Influences*, special issue of *The Journal of Strategic Studies* (26) 3, 2003, pp. 137-154.

which must be supportive of each other.²²⁶ Moreover, while arms control accords shall include *all* states in the region, progress shall be achieved through ‘free and direct negotiations’, with co-sponsors and other extra-regional states playing a supportive role.²²⁷ In addition, after the first derailments of the Peace Process, Israel pointed out that peaceful relations and reconciliation among all the states in the Middle East were the *preconditions* for engaging in establishment of ‘a zone free of non-conventional weapons’, as Eytan Bentsur, former Director-General of Israel’s Ministry of Foreign Affairs, publicly stressed.²²⁸ In his speech, Bentsur also reaffirmed the modalities of such an endeavour, namely, ‘direct negotiations among all [the] members’ of the Middle East.²²⁹

Hence, Israel’s approach to regional security and disarmament couples any WMD dialogue to the resumption of a comprehensive peacemaking process in the Middle East or, according to other statements, even postpones it to an era in which a comprehensive peace settlement in the region has already been achieved. However, even then, it does not foresee any negotiating role of actors that are external to the region, such as the EU. The Action Plan’s subsequent references to the principles of the 1995 Barcelona Declaration relating to regional security, CBMs and WMD does not change much in this respect. In fact, it may also be argued that by agreeing on the Action Plan, the EU implicitly accepted Israel’s position on regional security and arms control.

The Fight Against Terrorism

Conversely, in the Action Plan’s provisions on combating terrorism, a relatively high degree of bilateral understanding shines through. On this issue, the stipulated cooperation covers the practical, political, and international aspects of fighting terrorism as well as the dilemmas that this campaign creates for democracies. Hence, both sides have agreed to

²²⁶ *Israel’s Vision*, 1993, p. 2.

²²⁷ *Ibid.*, p. 4.

²²⁸ E. Bentsur, ‘Israel’s Approach to Regional Security, Arms Control and Disarmament’, Statement by Eytan Bentsur, Director General of the Ministry of Foreign Affairs, before the Conference on Disarmament, Geneva, 4 September 1997, available at http://www.mfa.gov.il/MFA/MFAArchive/1990_1999/1997/9/Israel-s+Approach+to+Regional+Security-+Arms+Contr.htm, accessed 23 September 2005.

²²⁹ *Ibid.*

exchange views and experience on means and methods to counter terrorism while exchanging information on terrorist networks and their financing structures in Europe and the Middle East.²³⁰ In this endeavour, both sides also intend to join forces in supporting international, European, and regional organisations, thus increasing coordination on this issue.

In this context, one paragraph specifically refers to the UN's role in fighting terrorism. However, the explicit mention of UN Security Council Resolutions 1267 of 1999 and, in particular, of UNSC Resolution 1373 of 2001, is actually quite intriguing. The first resolution calls upon the former Taliban regime in Afghanistan to close all terrorist training camps and to turn over Osama Bin Laden to the appropriate authorities. The second resolution, adopted two weeks after 9/11, urges the international community to take action against international terrorism; however, it also explicitly affirms the right of individual or collective self-defence against international terrorism according to the UN Charter. Yet, the question of what qualifies as legitimate and proportionate self-defence against terrorism was not internationally disputed in the context of the US-led war on Iraq. The appropriateness of Israel's policy toward the Palestinians during the second *Intifada* and afterwards is likewise an ongoing point of controversy between Israel and the EU.

A second EU-Israeli disagreement that the Action Plan shrouds revolves around the definition of terrorist organisations. While the EU eventually included the *political wing* of Hamas on its 'black list' of terrorist organisations in 2003, thus responding to Israel's lobbying efforts, reports about secret contacts of EU officials with Hamas members in November 2004 profoundly disturbed the Israeli government. Considering Israel's fears that such contacts may increase the international legitimacy of Hamas, which is responsible for numerous terrorist attacks against Israel, the Action Plan's formulation is telling. Thus, both sides agree to 'encourage effective implementation, at all levels, of EU decisions to act against those included on the EU list of terrorist organisations'. Read

²³⁰ Action Plan, p. 7. It should be noted that another section of the Action Plan, namely that relating to cooperation in Justice and Home Affairs, contains a number of similar provisions.

between the lines, this represents reaffirmation of the Israeli position, which includes a scolding of EU policies in this regard.²³¹ Thus, while stipulating enhanced bilateral cooperation on the fight against terrorism, the Action Plan is nevertheless vague enough to accommodate different interpretations of crucial issues, such as the legitimate and appropriate means of fighting terrorism in concrete situations and the question of how to deal with an increasingly influential political wing of a terrorist organisation.

Multilateralism and International Fora

Finally, the Action Plan envisages stronger bilateral cooperation in international fora with the aim of promoting multilateralism. With reference to the UN, the document states that both sides will cooperate on 'UN reform and streamlining', which includes 'working toward normalization of Israel's status in international organisations and the reduction in number of Middle East resolutions'.²³² Seeking to promote multilateralism in Israel's foreign relations is certainly positive, particularly in view of Israel's rather limited experience with multilateral policies together with its observed hostility toward international organisations, particularly the UN General Assembly. However, while it should be noted that the EU itself is deeply divided on the issue of UN reform, it remains unclear how exactly the EU intends to influence the UN's output of resolutions on the Middle East, let alone whether such a policy is necessarily effective, or wise.

Thus, to sum up, the Action Plan refers to the key issues of bilateral political cooperation with an impressive degree of elusiveness that permits for very different interpretations. In particular, this concerns the EU's role in Middle East peacemaking, the non-proliferation of WMD, and Israel's policy toward the Occupied Territories against the background of Palestinian terrorist attacks. These subjects, however, are the most contested points within EU-Israeli relations. Thus, in order to assess the significance of the Action Plan, we put the document into a wider context by briefly exploring the development of EU-Israeli relations in recent years, especially since the EU's launching of the 'wider European Neighbourhood' policy in 2003-2004.

²³¹ *Ibid.* It may be argued that a dialogue with *Hamas* cannot be avoided in the long run, since it is governing a number of local councils in Gaza after the last municipal elections earlier this year.

²³² *Ibid.*

The EU, Israel, and the Middle East

Economic relations between the EU and Israel are well developed, yet political relations are deeply ‘troubled’.²³³ Although the Middle East conflict became Europe’s preferred area for developing a common foreign policy from the late 1970s on, Brussels’s positions were usually not to Israel’s liking. Thus, while the 1980 Venice Declaration that stressed the legitimate rights of the Palestinian people is, in retrospect, rather far-sighted, its call for the involvement of the PLO—which back then still called for Israel’s destruction—infuriated the Israeli government. Over the decades, the EC/EU repeatedly called upon Israel to freeze settlement activities in the Occupied Territories, to abide by international law according to UN Resolutions 242 and 338 and, particularly in the context of the first *Intifada*, to refrain from human rights violations vis-à-vis the Palestinian population. While Israel repeatedly accused the Europeans of a pro-Palestinian or pro-Arab bias, it remained reluctant to ignore Brussels’ greater diplomatic involvement in the Middle East.

In this context, Israel recurrently criticised the EU for employing *economic means* to achieve *political ends*. While such tactics in the framework of world politics are obviously not specific to the EU, let alone necessarily deplorable, EU-Israeli relations notably improved after the beginning of the Madrid and Oslo Peace Processes in the early 1990s.²³⁴ Indeed, the EU and Israel signed a new bilateral Association Agreement in November 1995, establishing free trade in industrial goods; in addition, from August 1996 on, Israel has been associated with the EU’s Research and Development Programme. At the same time, the Israeli government, under the late Itzhak Rabin, requested Europe’s financial assistance for its peacemaking efforts; the EU followed suit. The main power broker of Middle East peacemaking, however, was to remain the United States. Annoyed by being the main payer but not a main player in the peacemaking process, the EU nevertheless increased its backstage involvement in Middle Eastern politics over the years. However, even during the Oslo years, the quality of EU-Israeli political relations remained dependent on the fate of peacemaking. Thus, it was no

²³³ See, for instance, J. Peters and G. Dachs ‘Israel and Europe, the Troubled Relationship: Between Perceptions and Reality’, IEPN Discussion Paper, October 2004, Herzliya: Friedrich Ebert Stiftung.

²³⁴ See H. M. Sachar, *Israel and Europe: An Appraisal in History* (New York: Alfred A. Knopf, 1999).

coincidence that the Commission first raised doubts about the Israeli ‘origin’ of goods produced in the settlements and about the applicability of the bilateral free trade agreement referring to these products during the government of Binyamin Netanyahu, which coincided with the first serious derailments of the Peace Process. With the EU’s 1999 Berlin Declaration, the EU also started to call for the establishment of a viable and sovereign Palestinian state alongside Israel while continuing to acknowledge Israel’s security concerns and right to exist. The EU’s calls for the establishment of an independent Palestinian state were not, however, met with sympathy by the incumbent Israeli government. In particular, the letter of the former German ambassador to Israel, dated March 1999, while speaking on behalf of the German EU Presidency, which defined Jerusalem as *corpus separatum* in accordance with the UN partition plan of 1947 caused a diplomatic row. Reminding the EU of the dark chapters of history, Israel in fact accused the Europeans of putting the country’s security at risk.²³⁵

With the collapse of the Peace Process in late September 2000 and the beginning of the second Palestinian *Intifada*, political relations between Israel and the EU entered a serious downward slide. The EU did not accept Israel’s interpretation of the Israeli-Palestinian conflict that, particularly after 9/11, depicted it almost exclusively as a fight against terrorism. Unlike the Bush administration, which has largely ignored the conflict thus far, the EU repeatedly called upon Israel to stop the excessive use of force, end the extra-judicial killings, reverse the settlement policy and facilitate humanitarian assistance to the Palestinians, particularly in the aftermath of Israel’s re-occupation of Palestinian areas from 2002 on.²³⁶ Moreover, Brussels sought to engage the US administration in tackling the Israeli-Palestinian conflict through, for instance, policy coordination in the framework of the Middle East Quartet.²³⁷ The EU’s condemnation of Israel’s military incursions into Palestinian territory, which also led to the destruction of EU-financed infrastructure projects (such as the Gaza airport), met with Israeli intransigence, as did the EU’s mounting criticism of Israel’s construction of the security barrier, which Brussels

²³⁵ See ‘Reaction by Prime Minister Netanyahu and Foreign Minister Sharon on the EU Statement on Jerusalem, 25 March 1999’, at <http://www.mfa.gov.il/mfa/go.asp?MFAH0h7j0>, accessed 25 August 2001.

²³⁶ See, for example, European Council, ‘European Council Declaration on the Middle East’, Presidency Conclusions, 12-13 December 2002, Annex III, pp. 14-15.

²³⁷ I thank Nathalie Tocci for this observation.

criticises mainly on the grounds that it results in the confiscation of Palestinian territory. By pointing to its security needs in light of the ongoing Palestinian suicide attacks, Israel repeatedly rebuffed EU positions and declarations.²³⁸ In this vein, as a reaction to the EU's 2004 vote in the UN General Assembly calling on Israel to heed the ruling of the International Court of Justice and dismantle the security fence, Israeli Prime Minister Ariel Sharon told EU foreign policy chief Javier Solana quite unequivocally that since the EU voted against Israel on security-related matters, it could not expect to be involved in the Middle East diplomatic process.²³⁹ While European public opinion grew increasingly critical of Israeli policies—according to a 2003 poll, almost 60% of European citizens considered Israel as a major threat to world peace—an anti-European discourse took hold among Israel's political leaders as well as in the centre-right media.²⁴⁰ Anchored in a history-based suspicion of the Europeans and against the backdrop of recurrent anti-Semitic incidents in Europe, the EU's criticism of Israeli policies is often equated with anti-Semitism, although both phenomena are obviously not the same.²⁴¹

In October 2004, an Israeli government report that was leaked to the press predicted that the Middle East conflict would put the country on a collision course with the EU. The document also warned that, as Brussels was gaining power and influence, the EU would seek to isolate Israel internationally.²⁴² But in spite of repeated requests of the European Parliament and of single European politicians to suspend Israel's preferential trade status in view of its repressive policies toward the Palestinians, economic relations between the two sides actually developed even further over the years.²⁴³ While both sides signed

²³⁸ See R. A. Del Sarto, 'Israel's Contested Identity and the Mediterranean', *Mediterranean Politics* 8 (1), 2003, pp. 27-58.

²³⁹ See *The Jerusalem Post*, 23 July 2004.

²⁴⁰ See, for example, D. Newman and H. Yacobi, 'The Role of the EU in the Israel/Palestine Conflict', Draft, *Working Papers*, Series in EU Border Conflict Studies, No. 12, 2004, at <http://www.euborderconf.bham.ac.uk/publications/files/IsraelPalestineWP12.pdf>, accessed 23 September 2005.

²⁴¹ In addition, Israeli critics of the EU point to the internal divisions on EU foreign policy, which makes it inconsistent and therefore unreliable, along with its lack of military capabilities that could sustain any greater political role—for instance in the realm of peace-keeping.

²⁴² *The Financial Times*, 15 October 2004.

²⁴³ The UK Parliament's Committee on International Development called for a suspension of the EU-Israeli Association Agreement in February 2004, and the European Parliament followed in 2004. See *Financial Times Information*, *Global News Wire - Asia Africa Intelligence Wire*, 5 February 2004; and *Haaretz*, 2 April 2004.

agreements on Research and Development as well as on agriculture, Israel also started to participate in the European Galileo project in July 2004. Bilateral trade—the EU is still Israel’s largest trading partner—has also expanded over the last two years.²⁴⁴

Hence, the EU and Israel were still playing the ‘double game of economic passion and political hostility’, as Sharon Pardo has aptly put it.²⁴⁵ In the meantime, however, the EU launched the ENP that eventually led to the adoption of the bilateral Action Plan. Particularly when considering the EU’s quite extensive economic incentives, reflected in the document, the question arises of whether the Action Plan merely reflects the traditional pattern of EU-Israeli relations. Is it ‘business as usual’, or does the Action Plan suggest that patterns of EU-Israeli relations may change in the future? Is the Action Plan proof of new foreign policy principles of an enlarged EU, as laid out in the ENP Strategy Paper? In order to answer these questions, the next section briefly discusses the EU’s evolving position toward Israel in the context of the ‘wider European Neighbourhood’ policy, along with the latter’s response that, as we will see, impacted on the bilateral negotiations on the Action Plan.

From a ‘Wider Europe’ to the Action Plan

Upon the launching of the ‘wider Europe’ initiative, EU officials stressed Israel’s privileged status in view of its high economic status and democratic character. In this vein, former Commissioner of Enlargement Günter Verheugen, then in charge of the ‘wider European Neighbourhood’ policy, declared before an Israeli public in mid-2003:

I consider Israel to be a natural partner for the EU in the new neighbourhood policy. Although Israel is somewhat untypical of the countries that fall within our neighbourhood...our relations will be tailor-made and can range from the status quo to the type

²⁴⁴ See also *Globes* (Israel), 4 August 2004.

²⁴⁵ Sharon Pardo, ‘Narrowing Gaps’, *The Jerusalem Post*, 2 January 2004, p. 9.

of close interconnection that we have with countries like Norway or Iceland in the European Economic Area.²⁴⁶

The Israeli media welcomed the initiative, as did the Israeli government. Thus, Adar Primor stressed in *Haaretz* that a ‘wider Europe has extended a hand to Israel and is ready to turn it into the leading star of its new initiative.’ Similarly, the newspaper pointed out that a ‘wider Europe’ offered Israel the opportunity of becoming a ‘nearly European’ country without renouncing to any element of sovereignty.²⁴⁷ Similarly, Foreign Minister Silvan Shalom, speaking in front of the Brussels European Council in July 2003, praised the ‘visionary’ initiative, stressing that ‘[w]e in Israel feel that a new and warmer wind is blowing from the northern shores of the Mediterranean’.²⁴⁸ Israel highly appreciated the EU’s adoption of a case-by-case approach in particular and, together with it, departure from the regional approach inherent in the Euro-Mediterranean Partnership that Israel profoundly disliked. Moreover, EU officials had apparently conveyed the message to their Israeli colleagues that the future of EU-Israeli relations would no longer depend on progress in the Israeli-Palestinian Peace Process, as *Haaretz* reported.²⁴⁹

However, regarding interpretation of the principle of ‘positive conditionality’ that is inherent in the ENP, as well as its applicability to the Israeli case, quite different signals emanated from Brussels from the start. Thus, on the one hand, Verheugen suggested that the EU’s political demands, to be exchanged for economic incentives, was not pertinent to Israel, stating that ‘the menu of closer economic relations in exchange for better political and economic governance *that we are offering to many of your neighbouring countries* is clearly also in Israel’s interest.’²⁵⁰ But at the same time, former EU ambassador to Israel, Giancarlo Chevallard, declared that ‘progress in the peace process,

²⁴⁶ G. Verheugen, Speech delivered at a Conference on EU Enlargement and Israel, The Hebrew University, Jerusalem, 15 June 2003, at http://www.eu-del.org.il/special_ftt/EuEnlargement.doc, accessed 2 September 2005.

²⁴⁷ A. Primor, ‘The Leading Star of Wider Europe’, *Haaretz*, English edition, 21 July 2003.

²⁴⁸ Address by Deputy Prime Minister and Foreign Minister Silvan Shalom before the European Union Council of Ministers, Brussels, July 21, 2003, at <http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2003>, accessed 13 September 2003.

²⁴⁹ *Haaretz*, 10 July 2003.

²⁵⁰ Verheugen, 2003, *op. cit.*, italics added.

in particular the implementation of the Road Map, will facilitate the presentation of a convincing case for the substantial upgrading of bilateral relations'.²⁵¹ Similarly, in October 2003, Javier Solana made the point that the 'wider Europe' strategy should be used as a 'carrot' linked to the Middle East Peace Process.²⁵²

Certainly, from the Commission's initial 'wider Europe' initiative to the European Council's adoption of the ENP in 2004, the policy witnessed a number of adjustments, which partly reflected the divergent preferences of EU Member States along with financial constraints. Moreover, different positions within the EU Commission itself – as well as among EU Member States – on the most suitable approach toward Israel persist until today. Thus, advocates of Israel's privileged partnership with the EU expect greater European influence on the Israeli position in Middle East regional politics, along with a large European peacemaking role as a result of Israel's gradual integration into the EU's internal market. Conversely, sceptics fear that a privileged position for Israel could either not have the desired effect on Israel, or lead to a loss in EU credibility in the region or, in the worst case, both.

Irrespective of the ongoing EU-internal divergences, together with a number of persisting conceptual difficulties, the ENP nevertheless marks a shift within EU policy toward the Mediterranean and Middle East, as argued elsewhere.²⁵³ In addition to the new benchmarking approach, the ENP also reflects the ambitions of the enlarged EU to play a more influential role in world politics in general; we have also been witnessing greater enlarged EU assertiveness in defining its security and foreign policy interests. Peace in the Middle East is conspicuously among those interests, as the relevant documents on the

²⁵¹ G. Chevallard, 'Letter from the Ambassador', in *Newsletter of the Delegation of the European Commission to Israel*, July 2003.

²⁵² *European Report*, 15 October 2003.

²⁵³ R. A. Del Sarto and T. Schumacher, 'From EMP to ENP: What's at Stake with the European Neighbourhood Policy toward the Southern Mediterranean?', *European Foreign Affairs Review* 10 (1), 2005, pp. 17–38.

ENP – the European Security Strategy of December 2003 and the Strategic Partnership for the Mediterranean and the Middle East of early 2004 – unmistakably emphasise.²⁵⁴

Yet vis-à-vis Israel, the EU's attempts to offer incentives – while seeking to meet at least some of Israel's demands – were initially quite unsuccessful. In the Seville Declaration of 2002, Brussels adopted a more attenuated position by stressing that a settlement of the Israel-Palestine conflict shall be achieved 'through negotiations, and only through negotiations'. Instead of aiming at a different foreign policy profile from that of the United States, the EU had started to cooperate with the latter in the framework of the Middle East Quartet from 2002 onwards. Altogether, Brussels 'took what Israel considers more "balanced" positions both at EU summits and at the UN', as *Haaretz* put it.²⁵⁵ Moreover, the EU signed previously delayed agreements on R&D and agriculture with Israel, as noted above, placed the political wing of Hamas on its 'black list' of terrorist organisations. Last but not least, Israel was offered a privileged partnership within the 'wider Europe' scheme. However, this did not considerably alter Israel's position either toward the Palestinians, or toward the EU and its political ambitions. On the contrary, the EU and Israel continued to profoundly disagree on Israel's *Muqata* policy, which confined the late PA chairman Yassir Arafat to his compound. Israel's boycott of the then newly appointed successor to Miguel Angel Moratinos, and EU Special Representative for the Middle East Peace Process Marc Otte after he met with Arafat in early October 2003, caused growing anger in European capitals as well as in Brussels.²⁵⁶ At the same time, Israel became increasingly critical of the modalities of EU funding to the PA, and the use the latter made of the funds.

However, while both sides continued to argue on the usual issues, the EU became increasingly intransigent and, indeed, assertive. Thus, whether particularly wise or not, Brussels did not change its policy on Arafat—although the designation of a Palestinian

²⁵⁴ See European Council, 'A Secure Europe in a Better World', European Security Strategy, December 2003. On the Strategic Partnership for the Mediterranean and the Middle East, see the Council of Ministers' press release 7383/04 (Presse 80), 2572nd Council meeting – External Relations.

²⁵⁵ *Haaretz*, 4 November 2003.

²⁵⁶ See, for example, European Council, 'Presidency Conclusions', Brussels European Council, 12 December 2003.

prime minister with stronger powers somewhat reduced the tensions between Israel and the EU on this matter. In response to the statement from Jerusalem that the EU's imbalanced positions on the security fence prevented Israel from conceding Brussels a more prominent role in Middle East peacemaking, EU foreign policy chief Solana coldly declared in July 2003 that the EU will play a greater role in the Middle East 'whether Israel likes it or not'.²⁵⁷

The EU's new intransigence—or, alternatively, eagerness to defend its foreign policy interests—also marked the lengthy negotiations on the Action Plan with Israel, which lasted for one and a half years. The EU plainly insisted on a written Israeli commitment to a formal European role in Middle East peacemaking in return for economic concessions in the realm of the free movement of goods, services, and capital, along with the opening of various EU programmes to Israel. In addition, the EU adamantly demanded Israel's written acceptance of a number of principles that were to guide the political process in the Middle East, such as the Roadmap, the two-state solution and WMD non-proliferation. Expectedly, the Israeli negotiators—presumably no less intransigent than their European counterparts and also very well informed of the various EU programmes of interest to Israel—sought to avoid any precise political commitment, whether vis-à-vis the Palestinians, the wider Middle East, or the Europeans. Thus, Israel relied on the 'wider Europe' vision of EU-Israeli relations – maintained, for instance, by Verheugen – which implied upgrading of economic relations with no (or only few) strings attached, whereas the EU had decided to apply a rather strict interpretation of the principle of 'positive conditionality' to the case of Israel.²⁵⁸ In view of these conflicting strategies and interests and, above all, the unfulfilled hopes and expectations on both sides, the enormous difficulties of the bilateral negotiations on the Action Plan—which nearly broke down a number of times—should come as no surprise. For instance, it took a

²⁵⁷ *The Jerusalem Post*, 20 August 2005.

²⁵⁸ In fact, within the EU's Neighbourhood policy, the principle of conditionality was watered down from the original 2003 'wider Europe' proposal to the 2004 ENP Strategy Paper, arguably because the policy incentives were reduced, the best example being the dropping of the 'carrot' of the free movement of people. However, an opposite development occurred with regard to Israel: Initially, there was no mentioning of 'conditions', but that changed gradually.

whole month to come up with appropriate formulations on the WMD issue on which both sides would eventually agree.²⁵⁹

Moreover, the Action Plan had to reconcile quite different positions among EU Member States themselves. For instance, some Nordic countries and others wanted far clearer language on political issues, such as an explicit Israeli commitment to adhere to International Law, mention of the Geneva Conventions, or references to the IJC ruling on the separation barrier. Similarly, some EU Member States sought to obtain an explicit Israeli commitment to refrain from the ‘un-proportionate use of force’. Britain, on the other hand, insisted on the WMD issue notwithstanding Israel’s deep aversion to the idea, whereas other countries, notably some new EU Member States, advocated a more reconciliatory attitude to Israel, along with a far less explicit wording of the Action Plan. However, internal divisions about how to proceed in relation to the EU in general, and negotiations on the Action Plan in particular, also characterised the Israeli side. Thus, the above-mentioned document issued by Israel’s Foreign Ministry in October 2004, which warned of a ‘collision course’ with the EU, confirmed Israel’s increasing acknowledgement of the new allures of a larger, richer and more powerful EU. Given that Ministry of Foreign Affairs officials claimed that the secret document represented a minority view within the Ministry²⁶⁰, in view of the document’s dissenting opinion regarding Israel’s negotiating strategy, the document brought to the fore very different Israeli preferences regarding the future of EU-Israeli relations.

Under these conditions, it is surprising that Israel and the EU eventually succeeded in agreeing on a document at all. The highly elastic formulations of the Action Plan on the most contested issues were undoubtedly the price of reaching an agreement. Thus, it is certainly true that the Action Plan’s *text* on political cooperation does not mean much given that, as we have seen, both sides maintain very different interpretations of the relevant provisions. However, the ambiguous language of the document also permits both sides to present it as a clear achievement for their own side while downplaying the

²⁵⁹ *The Jerusalem Post*, 13 December 2004.

²⁶⁰ *Financial Times*, 15 October 2004.

concessions granted. Indeed, facing an increasingly sceptical European public, Brussels has stressed Israel's official acceptance of a greater EU's involvement in peacemaking along with the principles of the Roadmap and the WMD dialogue.²⁶¹ Israeli officials, on their part, have underscored the enormous economic advantages of the Action Plan before a critical Israeli public. Hence, Israeli has declare that the agreement will give Israel the 'keys to enter a very exclusive club'²⁶² while minimising its political significance. Not surprisingly, Israel in particular has downplayed its commitment regarding the dialogue on WMD by stressing that the agreement did not change the basic parameters of the country's positions. In this context, Israeli officials once more stressed that any WMD regime first necessitates the establishment of a comprehensive Middle East peace settlement.²⁶³

Perhaps more importantly, the experience of negotiating the Action Plan and eventually reaching an agreement may have had the advantage of 'clearing the air'. The lengthy negotiations certainly evidenced the intentions, interests, sensibilities, and deal-breakers of both sides. Israel and the EU certainly know as a result what is at stake in EU-Israeli relations. Moreover, both sides are well aware of what the specific vague formulations of the Action Plan actually *mean*. Contested issues and priorities have been put on the table, so to speak, and we may assume that after adopting the Action Plan, both sides may find it more difficult to backtrack on specific issues. Of course, the Action Plan remains a non-binding document and may thus, as Alfred Tovias and Amichai Magen have pointed out, be criticised as a 'wish list'.²⁶⁴ In view of its ambiguities, *implementing* the Action Plan will undoubtedly constitute an even greater challenge than adopting it; we can therefore expect intensive bargaining and numerous negotiation rounds. Of course, it is much harder to predict the outcome of future negotiations and, accordingly, whether a meaningful 'enhanced political cooperation' will ever become an integral part of EU-

²⁶¹ Benita Ferrero-Waldner, 'Press Conference', 9 December 2004, *op. cit.*

²⁶² Director General of Israel's Foreign Ministry, Ron Prosor, quoted in *The Jerusalem Post*, 17 December 2004.

²⁶³ *The Jerusalem Post*, 13 December 2004.

²⁶⁴ A. Tovias and A. Magen, 'Reflections from the New Near Outside: An Israeli Perspective on the Economic and Legal Impact of EU Enlargement', *European Foreign Affairs Review* 10 (3), 2005, pp. 399–425; quote on p. 418.

Israeli relations. While this scenario certainly depends on a number of factors, the Action Plan has certainly evidenced the (new?) rules of the game of EU-Israeli relations.

Conclusions and Policy Recommendations

Although the EU-Israel Action Plan of December 2004 states that upgrading the ‘scope and intensity of political cooperation’²⁶⁵ shall be a key aspect of EU-Israeli relations in the years ahead, the document *per se* is impressive not because of its content but, rather, because of the conspicuous ambiguity of the provisions dealing with political issues. Considering the different strategies and fundamentally different preferences of the (enlarged) EU and Israel regarding the future of bilateral relations, the Action Plan is in fact a real masterpiece of diplomacy. Formally, both sides succeeded in agreeing on the way ahead; nonetheless, the document permits each side to maintain the most suitable reading of its advantages and compromises. While this finding does obviously not bode well for the implementation of the Action Plan in the future, it is at least useful for justifying the agreement before the respective domestic constituencies that are increasingly critical of the other side.

From Europe’s perspective, the Action Plan may certainly be criticised for not being more precise on the political commitments it demands from Israel in return for participation in the EU’s internal market. Moreover, by not permitting mention of several contested issues in the Action Plan, the EU may be accused of ignoring its own rules and principles—particularly given that the enlarged EU aims at developing a higher and more coherent foreign policy profile. Thus, the discrepancy between the EU’s laudable rhetoric (which demands respect for human rights and international law) and acceptance of some very general and ambiguous phrases in a concrete document with Israel may seriously undermine the EU’s credibility.

From Israel’s perspective, the document may be criticised for alluding to a number of contested political issues that Israel considers to be none of the EU’s business. Thus, Israel may have been too tempted by the ‘carrots’ of economic integration without being

²⁶⁵ Action Plan, p. 2.

certain whether these carrots will ever be part of a meal. Similarly, the Israeli side may be criticised for having accepted at least some of the EU's political ambitions without knowing whether the EU will ever be able to play the foreign policy role it so desires.

However, the question of whether the Action Plan is nothing but a meaningless document reflecting the usual patterns of EU-Israel relations or, conversely, it is an achievement in view of the difficult political relations between the EU and Israel, relates back to the philosophical question of whether the glass is half empty or half full. What is certain is that during the one and a half years of negotiations on the Action Plan, the different interests, priorities, and limits of compromise were spelled out by both sides. Hence, we may assume that during the negotiations, the major benefits that enhanced political and economic cooperation could yield for both sides, but also the compromises demanded from each side, came clearly to the fore. Notwithstanding the vagueness of the Action Plan, both sides know exactly what is at stake.

Of course, especially at first, the EU gave very different signals regarding the applicability of the ENP's principles to the Israeli case; EU-internal differences about the most appropriate policy vis-à-vis Israel and the Middle East conflict persist until today. While these inconsistencies are obviously linked to the institutional constraints of EU external relations, the prolonged negotiations with Israel on the Action Plan indicate that the enlarged EU has begun to insist on at least some of its new external relations principles. Although that may still not be far-reaching enough for some critics, increased European assertiveness and 'streamlining' in matters of foreign policy is discernible. At the same time, Israeli policymakers apparently have begun to give greater thought to the future of EU-Israeli relations, particularly to the risks of its further deterioration. Yet, EU-Israel relations still maintain very different preferences regarding the future of bilateral relations. Thus, both sides are certain that implementing the Action Plan will be even more difficult than agreeing to it.

Based on these findings, we may cautiously formulate a number of policy recommendations while considering that the future of EU-Israeli relations; the scope and

intensity of political cooperation in particular will depend on a number of factors. The first factor relates to the institutional development of EU foreign policy making. The EU may well have started to display the typical allures of a foreign policy actor, including a clearer definition of its interests and greater assertiveness in promoting them. But in spite of the recently created figure of the EU foreign policy High Representative, and notwithstanding some far-reaching recent developments in the realm of security and defence policy, the institutional structures of EU foreign policymaking still do not match the EU's international ambitions. Considering the negative referenda on the proposed constitution, which would have somewhat strengthened the EU's international image through the creation of a 'Union Minister for Foreign Affairs', the institutional deficiencies of EU foreign policymaking are likely to persist. This implies that EU policy vis-à-vis Israel and Middle East peacemaking will continue to represent the lowest common denominator of the rather divergent preferences of its 25 Member States. However, even the lowest common denominator can be better matched to the EU's various external relations instruments at hand than has been the case so far.²⁶⁶ In addition to a considerable increase in the ENP's financial means, this would, ideally, also include clear prioritisation of the EU's interests and policy goals, which is often lacking, and a greater firmness in promoting those priorities. Seeking to simultaneously attain all the foreign policy objectives that the EU has been formulating is an almost impossible endeavour—even for a full-fledged foreign policy actor, which the EU is not. With regard to EU-Israeli relations, a prioritisation of interests and priorities would certainly be useful, particularly in view of the extensive range of issue areas covered by the Action Plan.

Second, given that the most important point of controversy between the EU and Israel revolves around Middle East peacemaking, the development of bilateral relations is expected to continue to depend on the fate of the Peace Process. After Israel's withdrawal from the Gaza Strip, EU-Israeli relations are, not surprisingly, friendlier in tone. The post-disengagement scenario certainly gives the EU an opportunity to prove its political

²⁶⁶ On this issue, see for example N. Tocci, *The Widening Gap Between Rhetoric and Reality in EU Policy Toward the Israeli-Palestinian Conflict*, CEPS Working Document No. 217, January 2005.

commitment to the area with the instruments at hands. Thus, while pledging about €280 million for assisting the economy, infrastructure, and institutions in the Gaza Strip in accordance to the priorities identified by the Quartet, the EU has repeatedly called for resuming the peace process and full implementation of the Roadmap. In this context, the EU's increasing policy coordination with the United States in the framework of the Quartet is a positive development given that US political predominance in the area is unlikely to change in the near future. Of course, the EU's financial assistance to the Gaza Strip after disengagement is not only important for the Palestinians themselves but also for Israel. Hence, it would be beneficial for EU-Israeli relations if Israel would acknowledge this fact in public. However, the EU and other donors are well advised to draw the lessons from the experience with international assistance to the PA acquired during the Oslo years.²⁶⁷ It will thus be important to first clarify with Israel the modalities of Gaza's economic and institutional development, given that Israel will seek to balance its security concerns with the basic requirements of Gaza's economic recovery, such as open borders. In this context, the current talks between Israel and the EU on a possible European mission to assist and monitor customs and border crossings at the Gaza-Egyptian border are certainly relevant.

Finally, the most important factor to determine the future of EU-Israeli relations, and with it implementation of the Action Plan is trust. As the nature of EU-Israeli relations clearly indicates, Israel does not have confidence in the Europeans when it comes to what it perceives as its vital security concerns—irrespective of the EU's continuous commitment to Israel's right to a secure existence. Ironically, the schizophrenia in EU-Israeli relations has proven false the common assumption that trade and economic cooperation is the best confidence-building measure by default. Hence, the EU should engage in policies that are poised to create and increase trust, but obviously without renouncing its convictions.

Given the historical legacy of relations between Europe and Israel, and the understandably high sensitivity of the latter in this matter, effectively combating any form

²⁶⁷ On this issue, see for example A. Le More: 'Killing with Kindness: Funding the Demise of a Palestinian State', *International Affairs*, 81 (5), 2005, pp. 983-1001.

of anti-Semitism in Europe is crucial. In addition, deployment of an EU mission to the highly problematic border between the Gaza Strip and Egypt may constitute an important ‘confidence-building measure’—while European experience with realities ‘in the field’ may also increase the legitimacy of EU foreign policy in the region, along with Brussels’ sense of reality.

Moreover, while coherent application of ‘positive conditionality’ not only to Israel but also to other EU ‘neighbours’ in the area would increase the EU’s credibility, Brussels’ insistence on the respect for human rights and democratic governance vis-à-vis the Arab parties covered by the ENP would most probably raise Israel’s trust in the EU. Israel, on the other hand, which ‘likes not liking Europe’, as one observer put it,²⁶⁸ would be well-advised to acknowledge the advantages of the EU’s offer, while at least conceding the Europeans the benefit of the doubt. The EU certainly has made mistakes, its policies are recurrently inconsistent and sometimes even out of touch with Middle East realities. Brussels may be extremely critical of Israel’s policy toward the Palestinians, and it may have a precise vision of Middle East peacemaking that may not be to Israel’s liking. However, this does not mean that EU policies are automatically motivated by bad intentions vis-à-vis Israel, or that they are not legitimate. Neither does it mean that European criticism is inevitably motivated by an anti-Israel, or anti-Semitic, bias. Hence, if the EU-Action Plan is to become more than a meaningless document, it is necessary that political leaders on both sides develop the necessary political will and, more importantly, the appropriate attitude vis-à-vis the other side.

²⁶⁸ I. Levin, ‘Security bridge to Europe?’, *Globes* (Israel), 13 May 2005.

Combating Anti-Semitism: Monitoring the EU-Israel Action Plan

Yonatan Touval

Abstract

Over every discussion of anti-Semitism in Europe in the last few years hovers the question of Israel and its place in the Jewish world in the wake of the second *Intifadah*. The sharp rise in anti-Semitic attacks in the years following September 2000 has already led some Jewish leaders to speak of a hateful atmosphere, comparable to that of the 1930s. Nevertheless, the link between the attacks and the Israeli-Palestinian conflict suggests that this is not the anti-Semitism of yesteryear but a new kind of anti-Semitism—one that has already become known as “the new anti-Semitism.” For these reasons, and given that a significant number of these attacks are interlarded with expressed hatred for Israel, an effective response to these attacks may well call for a joint European-Israeli effort. Thus, in consideration of the European Neighbourhood Policy (ENP), Israel and the European Union have decided to include a special paragraph in the EU-Israel Action Plan expressing their joint commitment to combating anti-Semitism. This article outlines the background to this special paragraph in the Action Plan, and recommends several concrete measures that the parties can undertake in the context of this joint commitment.

Background

Over any discussion of anti-Semitism in Europe in recent years hovers the question of the image of Israel and its place in the Jewish world in the wake of the second *Intifadah*, the Palestinian uprising that broke out in the West Bank and Gaza Strip in September 2000. With the scenes of horrific violence between Israel and the Palestinians broadcast from the Middle East on a daily basis, a sudden and sharp rise in anti-Semitic attacks began afflicting the European continent. The countries affected most noticeably were France

and Belgium. But an increase in the number of attacks was also registered in Great Britain, the Netherlands and other EU Member States.

The sheer number of attacks evoked an eerie feeling in certain communities that led some Jewish leaders to speak of a hateful atmosphere, comparable to that of the 1930s. At the same time, however, the link between the attacks and the Israeli-Palestinian conflict suggested that this was not the anti-Semitism of yesteryear, but a new kind of anti-Semitism—one that soon became known as “the new anti-Semitism.”

This is not the place to analyse the value of this new term, nor its similarities to and differences from the classical form of European anti-Semitism, which reached its climax in the 1930s and 1940s. Suffice it to say that in addition to what we have known in the past, the last few years saw a rising tide of acts and attacks against Jewish communities throughout the European Union and, furthermore, that this rising tide is somehow linked to the Israeli-Palestinian conflict. Whether the link is a causal one, a pretext, an excuse (or all three) is hard if not impossible to tell; it is certainly beyond the scope of this article. What should be said is that, in contrast to the anti-Semitism of the past, which predated the establishment of the State of Israel and to which Israel was the Zionist answer, the new form of anti-Semitism exists and operates in relation with the State of Israel.

Given, moreover, that a significant number of the anti-Semitic attacks in the past few years were undertaken by Muslims or Arabs harbouring a deep hatred for Israel, Israel cannot remain indifferent to these attacks; conversely, Europe’s response to these attacks cannot ignore the Israeli factor. This means, among other things, European cooperation with Israel in the efforts to combat anti-Semitism. At stake in this form of cooperation is Israel’s self-identity as the State of the Jewish People and, no less profoundly, the core identity of Europe. As Romano Prodi, President of the European Commission, said in an important speech titled ‘A Union of Minorities’: ‘[the Jews] are the first, the oldest Europeans.’ Referring to the Jews as ‘Europe’s archetypal minority,’ Prodi went on to elaborate on his vision for Europe as a ‘Union of minorities,’ and underscored that for

these reasons, ‘racism, xenophobia and anti-Semitism are a clear violation of all that the European Union stands for.’

Against this background and in the context of the European Neighbourhood Policy (ENP), Israel and the European Union have decided to include a special paragraph in the EU-Israel Action Plan detailing the means and ways of combating anti-Semitism.

Anti-Semitism in EU Member States

Although the number of anti-Semitic incidents seems to have levelled off in the past year or two, it is worth describing the phenomenon in three key European Union Member States—France, the United Kingdom, and Germany—which are home to the EU’s largest Jewish communities.

France

Anti-Semitic incidents of all kinds were particularly high in France between 2002 and 2005. The annual report of the National Consultative Committee of Human Rights (March 2005) estimated that racist and anti-Semitic acts reached exceptional and disturbing levels in 2004 although the number of incidents has levelled off since. Nevertheless, the Committee estimated that even if the attacks had declined and were not as patently linked to the *Intifadah* (which has also officially ended in the meantime), the problem was expected to affect French society for the longer term.

Just how much has the anti-Semitic tide levelled off remains a question, however, especially following the brutal murder of Ilan Halimi in February 2006, a murder that President Chirac as well has attributed to anti-Semitism. Moreover, the case of Ilan Halimi underscores how much the media play a role in our judgment of the pervasiveness of anti-Semitism. Thus, for instance, we must recognize that there was a conscious effort to lower the coverage of anti-Semitic attacks in France following the scandal of the simulated anti-Semitic aggression perpetrated in the subway on 9 July 2004 by a psychologically disturbed, non-Jewish woman.

On the official level, certain highlights should be noted, especially as they pertain to French-Israeli relations and to official tensions over the question of anti-Semitism. In an important speech delivered on 7 July 2004, President Chirac condemned anti-Semitism and linked it to the Holocaust as well as to other phenomena such as Islamophobia and racism. A few days later, however, then-Prime Minister Ariel Sharon made a statement in which he appealed to France's Jewish community to make *aliyah* (immigrate) in the wake of the wave of anti-Semitism materializing in France.

Sharon's statement was not well received in France; it underscored the tensions that the issue of anti-Semitism creates in relations between the two states. After all, if Chirac's speech highlighted the extent to which anti-Semitism was perceived by the French government to be a problem, it also stressed the extent to which Chirac viewed it as an internal issue. Sharon's comments flew in the face of these assumptions, calling on Jewish citizens of the French Republic to seek asylum in Israel. The statement also embarrassed many Jewish community leaders in France. In what was perhaps an unprecedented event, several representatives of Jewish community institutions publicly criticized Israel in return.

The United Kingdom

When speaking of Britain, perhaps no incident received as much attention in the past few years as that of Prince Harry's coming to a fancy dress party in a Nazi uniform. Whether we can label this incident 'anti-Semitic' or not (it certainly manifested an enormous amount of insensitivity, not to say bad taste), the incident captures something of the public atmosphere in the United Kingdom. The highly anti-Semitic incidents to have occurred include, *inter alia*, the accusation against a Jewish journalist of behaving like a concentration camp guard, by Ken Livingstone, the mayor of London, and Labour Party chiefs using a "flying pigs" metaphor to describe Jewish opposition leader Michael Howard and the Jewish shadow chancellor Oliver Letwin. Caricatures of Howard as Shylock have also been published.

The line between anti-Jewishness and anti-Israeliness has become, as elsewhere in the European Union, increasingly blurred. Thus, for instance, two prominent Jewish members of the Executive of the National Union of Students resigned due to what they felt were the Union's anti-Israel actions and the distribution of anti-Semitic leaflets at their annual conference; a conference at the School of Oriental and African Studies was titled 'Resisting Israeli Apartheid,' suggesting that Israel was a racist pariah; and Mordechai Vanunu, the man convicted and imprisoned in Israel for divulging nuclear secrets, was elected rector of Glasgow University. It should not come as a surprise that during this period, *The Daily Telegraph* could publish a poll indicating that the British public considered Israel one of the least attractive countries in the world.

Perhaps most deplorably, the Association of University Teachers (AUT) declared a boycott of Israeli academics and of two Israeli universities. Fortunately, these boycott calls, which were repeated in the spring of 2005, also triggered vigorous counter-protests by Jewish as well as non-Jewish scientists; even a *Times* editorial condemned the act. The boycott was subsequently repealed after the decision was overturned by a two-thirds majority of AUT members.

The high-profile nature of these incidents aside, Britain has also seen a sharp increase in low-profile anti-Semitic incidents since 2002. According to one report, 375 anti-Semitic acts were registered in 2003, and 532 in 2004. Violent incidents against individuals also increased by 54% during this period. According to one study by the Community Security Trust (CST), Britons of Muslim descent instigated 60% of these incidents, while radical right-wingers were behind the other 40%.

Germany

When speaking of the period of 2000-2005 in Germany, it is important to note at the outset that the Jewish community in this country has been one of the fastest growing in the world thanks to the immigration annually of thousands of Jews from the former Soviet Union. In effect, the number of Jewish immigrants from the former Soviet Union

to Germany in 2002, which was around 19,000, exceeded the number of immigrants to Israel, around 18,000.

The positive immigration to Germany, however, should not obscure the fact that, like France and the United Kingdom, Germany too saw a sharp rise in anti-Semitic attacks after 2000. These included desecration of cemeteries, synagogues and other Jewish institutions. Moreover, a particularly vile form of racism and anti-Semitism could be found in the propaganda of the extreme-right party, the *Nationaldemokratische Partei Deutschlands* (NPD). This party sets itself apart from other German parties with its use of openly anti-Semitic rhetoric, which was especially pervasive in the campaign for the June 2004 European elections.

In contrast to France and the United Kingdom, however, official German policy has continued to be, for historical reasons, demonstrably pro-Israeli. At the same time, the Germany government has acted resolutely to curb anti-Semitic attacks, while also developing several important Holocaust commemoration projects. The most important of these is the National Shoah Memorial, which opened in Berlin on 10 May 2005 around the time of the 60th anniversary of the defeat of Nazi Germany in World War II. This is Germany's first monument dedicated to all the Jews murdered across Nazi-occupied Europe.

From the Association Agreement to the Action Plan

The first formal recognition of the fight against anti-Semitism as an area for joint action was included in the Association Agreement (AA) between Israel and the EU, signed in 1995. However, the AA clause was never implemented. Against the rising tide of anti-Semitism through EU Member States, Israel and the European Union decided to include a special paragraph in the EU-Israel Action Plan in 2004.

The European Union Monitoring Centre on Racism and Xenophobia (EUMC)

Nevertheless, the EU established the European Union Monitoring Centre on Racism and Xenophobia (EUMC) already in 1998. This Centre, which received its mandate from the

European Commission, is the body charged with the day-to-day handling of hate crimes in the EU, including racism and anti-Semitism. The Centre's main objective is to provide creditable information and comparative data on such crimes in order to assist EU institutions in forming an effective strategy for fighting anti-Semitism. To this effect, the EUMC developed a data and monitoring system called REXAN. Its objective is to allow ongoing monitoring and analysis of racist and xenophobic incidents throughout the EU, and includes complicated criteria for allowing comparison across time as well as across Member States.

Among the most important projects initiated by the Centre is its project on anti-Semitism (2002-2003). A major objective of this project was to develop a theoretical basis aimed at evaluating present data in order to improve monitoring in the future. As part of the project, all reports detailing anti-Semitic incidents during this period were put together and compiled in a report, titled *Manifestations of Anti-Semitism in the EU 2002-2003*.

Although the report's first draft was initially suppressed by the Commission, it was later published by other non-associated bodies. The final draft was officially published by the EUMC in March 2004; is the most comprehensive report ever published on anti-Semitism in Europe. It not only details manifestations of anti-Semitism in EU Member States over a two-year period, it also outlines recommendations to counter the phenomenon. The report shows that the largest group of perpetrators of anti-Semitic activities is comprised of young, disaffected, white Europeans. However, such activities also stem from the extremist fringe of Europe's rapidly growing Muslim minority.

The importance of this report lies in laying the foundations for creating a database for monitoring and evaluating anti-Semitism in the EU. The EUMC found this task difficult to perform because not all Member States do regular and systematic monitoring and when they do, they do not do so in the same way. Thus, in countries such as France and Germany, there are official governmental bodies charged with monitoring whereas in other Member States, the EUMC had to include only non-governmental organizations that focus on such activities. In addition, the EUMC faced another problem regarding the

definition of what constitutes an anti-Semitic incident, which at that time was obviously vague and subject to interpretation, both cultural and official.

Perhaps for these reasons, the report reflected an internal bias and cited a greater number of incidents of anti-Semitism in countries in which the authorities were more sensitive to these types of acts. These countries included Germany, France, Belgium, the Netherlands and United Kingdom. At the same time, the higher number of incidents in these countries may also have reflected greater diligence in recording.

The Framework Decision on Racism and Xenophobia

In November 2001, the Commission put forward a Framework Decision on racism and xenophobia. This Framework Decision has three aims: (1) to make racism and xenophobia punishable by law by introducing effective, proportionate and dissuasive criminal penalties; (2) to improve and encourage judicial cooperation by removing potential obstacles; and (3) to define anti-Semitic acts, including any public denial or trivialization of the Holocaust, as crimes punishable by law. However, this Framework Decision has yet to be implemented by all 25 EU Member States.

Just before the opening of the EU-Israel ENP Action Plan negotiations in February 2004, the President of the European Commission, Romano Prodi, together with the European Jewish Congress and the Congress of European Rabbis, held for the first time ever a seminar on anti-Semitism in the EU. Prodi proposed an action plan aimed at strengthening existing EU legislation making anti-Semitism and denial of the Holocaust criminal offences across the EU.

The OSCE and the ODIHR

The Organization for Security and Cooperation in Europe (OSCE), in cooperation with the EU, has held several conferences on anti-Semitism, racism, xenophobia and discrimination. Held in Berlin (April 2004) and Brussels (September 2004), its meetings condemned the increase in incidents and urged authorities to investigate acts of violence.

The Berlin Declaration of the Second OSCE Conference (28-29 April 2004) committed the OSCE participating States to do the following:

- Collect and maintain reliable information and statistics about anti-Semitic and other hate crimes committed within their territory, report such information periodically to the OSCE Office for Democratic Institutions and Human Rights (ODIHR), and make this information available to the public.
- Endeavour to provide the ODIHR with the appropriate resources to accomplish the tasks agreed upon in the Maastricht Ministerial Decision on Tolerance and Non-Discrimination.

Since then, the OSCE has actively supported its 55 participating States in combating all forms of racism, xenophobia, anti-Semitism and discrimination. The OSCE cooperates and co-ordinates its activities in this field with other European and UN organizations such as the European Commission against Racism and Intolerance, the EUMC, and the UN Committee on the Elimination of Racial Discrimination.

OSCE institutions promoting tolerance and non-discrimination include the Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR), which collects and distributes information and statistics on hate crimes in the participating States; promotes best practices and disseminates lessons learned in the fight against intolerance and discrimination; and provides assistance to participating States in drafting and reviewing legislation on crimes fuelled by intolerance and discrimination.

The ODIHR's Tolerance and Non-Discrimination programme is currently developing a system to manage this information and to make it available through its website during 2006. In order to share and promote practical initiatives and provide information on issues related to tolerance and non-discrimination throughout the OSCE region, the website will give one-point access to:

- Information received from the OSCE states, NGOs and other organizations.

- Country pages providing one-point access to country initiatives, legislation, national specialized bodies, statistics, and other information.
- Thematic pages with information related to different key issues.
- International standards and instruments.
- Information from intergovernmental organizations including country and annual reports.

The European Constitution

Of all these events, the rejection of the European Constitution could turn out to have the most far-reaching consequences for the fight against anti-Semitism. What Europe's ruling political elites, most intellectuals and leading newspapers had praised as the indispensable and best legal-political foundation of the new supra-national Europe, was killed by popular will. The reasons for the Constitution's rejection were shared by the public in many Member States. They comprised fear of globalisation, opposition to the entry of new members, particularly Turkey, and a pervasive popular distaste of the perceived undemocratic, elitist and centralized nature of European decision-making.

Only time will tell whether this was the beginning of the end of an epoch, as many commentators concluded immediately after the rejection, or a temporary delay in an irreversible process of unification.

For the Jews of Europe who, as a group, began to interact with European institutions only recently as reluctant latecomers, prodded by American Jewish organizations, few changes were expected. The fight against anti-Semitism that European institutions committed themselves to pursuing is likely to go on and be pursued with equal if not greater vigour at national levels. For European Jewish communities, therefore, rejection of the European Constitution could bring on complex and mixed consequences. Much will depend on whether these communities grasp the new opportunities that may be opening up.

The ENP Action Plan

With the increase in anti-Semitic incidents witnessed over the last few years, and the desire to upgrade relations between Israel and the EU in the context of the European

Neighbourhood Policy (ENP), the two sides decided to increase cooperation in this area, and focus greater effort on their joint fight against anti-Semitism and racism. Accordingly, in December 2004, the EU-Israel Association Council endorsed the EU-Israel ENP Action Plan. The Action Plan stipulated that the parties focus on fighting anti-Semitism. For the first time, the parties also agreed to direct actions to protect Yiddish and Ladino, the two historic languages of European Jewish communities,.

The AP chapter on Combating anti-Semitism is worth quoting in full:

Combating Anti-Semitism

Recognizing the significance of the 'Berlin Declaration' of the OSCE (April 2004) and with the aim of promoting its implementation, the two sides agree to:

- Jointly review the implementation of the recommendations on combating anti-Semitism of the EUMC and other European bodies, with a view to working together on monitoring and education.
- Support the work on anti-Semitism of the EUMC and of the ODIHR (Office for Democratic Institutions and Human Rights), as mandated by the OSCE Berlin Conference.
- Strengthen the legal framework at all levels to combat anti-Semitism.
- Combat hate crimes, which can be fuelled by anti-Semitic propaganda in the media and on the Internet.
- Promote the further development of educational programmes for combating anti-Semitism.
- Promote remembrance of, and education about the Holocaust
- Encourage and support international organizations and NGO efforts in combating anti-Semitism.

- Encourage development of exchanges among experts in appropriate for best practices and experiences in law enforcement and education.

The EU will continue its efforts to ensure that the condemnation of anti-Semitism will become a part of international norms through, *inter alia*, appropriate UN resolutions.

Fight against racism and xenophobia, including Islamophobia

- Support the work of the EUMC (European Monitoring Centre on Racism and Xenophobia);
- Promote in Europe and in Israel education about the importance of tolerance and respect for all ethnic and religious groups;
- Combat hate crimes, which can be fuelled by racist and xenophobic propaganda in the media and on the Internet;
- Strengthen the legal framework at all levels to combat racism and xenophobia, including Islamophobia.”

Recommendations

As the Action Plan is still a declaration of principles rather than a well-organised framework for concrete activities, there is an urgent need for implementation of these recommendations:

1. The EU, European Jewish Communities, and Israel should agree on a uniform definition of anti-Semitism. *This is crucial, if the parties committed to combating anti-Semitism are to share a common understanding of what it is that they are fighting.*
2. The EU, European Jewish Communities and Israel should work to improve coordination as well as cooperation in their activities against anti-Semitism. *This must be done at all levels, both governmental and non-governmental, and should include cultural and educational cooperation as all as technological and intelligence cooperation.*

3. Research and development of technological measures aimed at assisting in the fight against anti-Semitism. *The main area for such work is the Internet.*
4. The professional training of experts on ways and means for combating anti-Semitism. *This reflects the need to create and disseminate specialised knowledge on what succeeds and what fails in the fight against anti-Semitism. One basic format for such training is seminars and workshops.*
5. Establish professional teams and advisers to combat anti-Semitism in every EU Member State. *Once experts are trained, their placement in organisational settings designed to draw on their expertise and put it to maximum use is crucial.*
6. Establish, inside the European Commission, a unit charged with combating anti-Semitism that will work through networks of professionals in all EU Member States. *A centralized unit inside the European Commission is crucial for maximal coordination and cooperation of networks of professionals and experts throughout the EU.*
7. All EU Member States, candidate countries and acceding countries, should be members of the Task Force for International Cooperation on Holocaust, Education, Remembrance and Research. *Inclusion of candidate countries and acceding countries in this Task Force is an important and effective measure for combating anti-Semitism in countries that have not yet joined the EU.*
8. Developing appropriate education programmes on the fight against racism, anti-Semitism and xenophobia. *Together with formal policies and organisational measures, education remains the most important tool for combating anti-Semitism.*
9. Work toward full implementation of the 2001 Framework Decision on Racism and Xenophobia. *Beyond the specific need to implement this particular Decision, such implementation is crucial if EU policies are to be respected and enforced.*
10. Reform the penal code of all EU Member States in order to toughen penalties on anti-Semitic crimes; work to ensure law enforcement. *The legal and penal codes must be put to greater use when combating hate crimes in general and anti-Semitism in particular.*
11. Include the fight against anti-Semitism in all future neighbourhood agreements. *The inclusion of such a paragraph would send a strong message on the centrality of this issue to the Union's profound concern for human rights.*

12. Raise awareness of and develop tools to deal with anti-Semitism on the Internet. *The assumption here is that in addition to the other measures outlined above, there is need to reach wider audiences. The Internet is the fastest growing medium for mass communication and a fertile ground for the transmission of anti-Semitic messages.*
13. Develop television programmes aimed at increasing awareness of anti-Semitism, racism and xenophobia among of EU citizens. *To reach wider audiences, the mass media, such as television, should be considered a useful tool.*

Conclusion

The sharp rise in anti-Semitic attacks in the years after September 2000 and the expressed link between these attacks and the Israeli-Palestinian conflict suggest that an effective response to these attacks may well call for a joint European-Israeli effort. In the context of the European Neighbourhood Policy (ENP), Israel and the European Union have indeed decided to include a special paragraph on the issue in the EU-Israel Action Plan. Their joint commitment to combating anti-Semitism will thus soon be put to the test. As the Action Plan currently remains a declaration of principles rather than a precise agenda of concrete activities, specific policy recommendations should be translated in concrete programmes. Among the main recommendations proposed in this paper are:

- Agreement by the EU, the European Jewish Communities and Israel on a uniform definition of anti-Semitism.
- Reformation of the penal code of all EU Member States to toughen penalties for anti-Semitic crimes and improve enforcement.
- Professionalisation of experts regarding the ways and means of combating anti-Semitism and the creation of such professional teams in every EU Member State.
- Establishment of a special unit charged with combating anti-Semitism inside the European Commission that will work through networks of professionals in all EU Member States.
- Required membership in the Task force for International Cooperation on Holocaust, Education, Remembrance and Research by all EU Member States, candidate countries and acceding countries.

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The Madrid Quartet: An Effective Instrument of Multilateralism?

Costanza Musu

Abstract

The 2004 EU-Israel Action Plan emphasises the need for ‘cooperation between Israel and the EU at international fora, as a way to promote effective multilateralism’. The Action Plan also reasserts the importance of the Quartet and the need for Israel ‘[to work] together with the EU, on a bilateral basis and as a member of the Quartet, with the aim of reaching a comprehensive settlement of the Israeli/Palestinian conflict’.

The objective of this Discussion Paper is to evaluate the activities of the Quartet and its role in the Israeli-Palestinian peace process, and to establish if the Quartet has become an instrument for the promotion of effective multilateralism, one of the main goals of the EU-Israel Action Plan.

Participation of the Quartet to the peace process underlines the commitment of the international community to the achievement of an equitable settlement of the conflict. The paper focuses on the concept of ‘multilateralism’, and tries to establish if the Quartet creates a genuine multilateral framework for the negotiations. It argues that ultimately, what the Quartet really offers is a multilateral ‘control framework’ for bilateral negotiations and that these bilateral negotiations are supposed to aim at implementing pre-established steps agreed upon by the Quartet without the parties to the conflict. The paper argues that this contradictory nature of the Quartet’s action has prevented it until now from becoming an effective instrument of multilateralism.

Introduction

On 10 April 2002, Colin Powell announced the formation of a Madrid ‘Quartet’, reviving the agenda of the 1991 Madrid conference with the UN Secretary-General, the EU High

Representative for Common Foreign and Security Policy (Javier Solana), and the Russian Foreign Minister (Igor Ivanov). The focus of this approach was pursuit of a two-state solution to the Israeli-Palestinian conflict with the active engagement of outside actors. In other words, the State Department had decided to pursue a multilateral approach to the peace process; cooperation with European governments was to be a key factor.

Since its creation, the Quartet has been an intermittent protagonist in the peace process, mainly with the elaboration of the 'Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict'. The approach had been given for dead, especially when the bilateral track of negotiations – with the US as sole mediator or at least facilitator – seemed to be the only active track. This was especially so on the numerous occasions when violence escalated and the international community seemed unable, or unwilling, to play a constructive role in helping the parties to reach a settlement.

The Quartet has been praised for its 'multilateral' nature that officially brings other actors – particularly the European Union – into the Peace Process in addition to the 'old' actors, i.e., Israel, the Palestinians and the US as mediator, it was also despised for its inability to bring about a breakthrough in the negotiations.²⁶⁹ Surely the EU had played an increasingly important role in the Peace Process since the Madrid Conference, but participation in the Quartet arguably gave the European role greater political relevance and resonance. The EU's presence was particularly welcomed by the Palestinians, who saw it as a potential counterbalance to an America they perceive as permanently biased in favour of Israel. Conversely, the creation of the Quartet met with a less enthusiastic reception in Israel, where multilateralism is seen as a means to impose unwelcome decisions, and the EU is perceived as a less-than-friendly actor.

²⁶⁹ See for example James B. Steinberg, *An Elective Partnership: Salvaging Transatlantic Relations*, Survival, vol. 45, no. 2, Summer 2003, pp. 113–146, The International Institute for Strategic Studies; Reyhler, L., & Van Dijk, N. (2004), 'The Common Foreign and Security Policy of the European Union and the Wider Middle East', 14th International Conference on the Persian Gulf (17 & 18 Feb. 2004) available at <http://soc.kuleuven.be/ieeb/publications/vandijk.htm>; 'The Mediterranean in the New Strategic Environment', Spanish Institute for Strategic Studies, Cuadernos de Estrategia 125-B, Working Group 3/03. Available at <http://www.ieee.es/archivos/subidos/CE/CE%20125B.PDF>.

In 2004, after long negotiations the European Union in the context of the European new Neighbourhood Policy, agreement was reached with Israel on an Action Plan (AP) that covers a time frame of three years and is aimed at building the foundations for developing EU-Israel relations still further. In delineating the Priorities for Action, the Plan underlines how ‘both parties are committed to join efforts to combat common security threats, to promote peace and stability in the Middle East, to support the work of international multilateral frameworks and cooperate in these for a’. Furthermore, the AP states that among its objectives are that of promoting ‘cooperation between Israel and the EU at international fora, as a way to promote effective multilateralism’.²⁷⁰

The Action Plan emphasises the need to achieve progress in the Peace Process between Israel and the Palestinians. In the section dedicated to the future actions, *it* identifies the following as an area for further cooperation:

[To work] together with the EU, on a bilateral basis and as a member of the Quartet, with the aim of reaching a comprehensive settlement of the Israeli/Palestinian conflict and a permanent two-state solution with Israel and a Palestinian state living side by side in peace and security, in accordance with the Roadmap, and the obligations of the parties set out in it.

The objective of this Discussion Paper is to evaluate the activities of the Quartet and its role in the Israeli-Palestinian Peace Process and to establish if the Quartet has become an instrument for the promotion of *effective multilateralism*, one of the goals of the EU-Israel Action Plan. The paper will analyse the rationale behind the creation of the Quartet, its activities and ultimately its effectiveness. It will focus particularly on the role of the EU and on Israel’s perception of the Quartet as a new actor in the Peace Process.

The paper is structured as follows:

- Outline of the major events that led to the creation of the Quartet in 2002;

²⁷⁰ See the EU-Israel Action Plan, available at http://ec.europa.eu/comm/world/enp/pdf/action_plans/israel_enp_ap_final_en.pdf.

- The role of multilateral negotiations in the Arab-Israeli peace process;
- The Quartet as an instrument of multilateralism
- Concluding remarks and policy recommendations.

Creation of the Madrid Quartet: A Brief Historical Overview (2000-2002)

The Peace Process and Creation of the Quartet

After the failure of the July 2000 Camp David summit between Ehud Barak and Yassir Arafat, the situation between Israel and the Palestinians deteriorated rapidly. In September 2000, the Second *Intifada* – also known as the *Intifada Al-Aqsa* – exploded, and a vicious cycle of Palestinian violence and Israeli retaliation began. In October 2000, in a last attempt to bring peace to the region before the end of his administration, President Clinton convened a peace summit in Sharm-el-Sheikh, where he met with representatives of Israel, the PNA, Egypt, Jordan, the UN and the EU. At the summit, a decision was made to appoint a Fact-Finding Commission with the task of proposing recommendations to end the violence, rebuild confidence and resume the negotiations. The Commission was to be chaired by former US Senator George Mitchell and included EU CFSP High Representative Javier Solana, Turkish President Suleyman Demirel, the Norwegian Foreign Minister Thorjorn Jagland, and former US Senator Warren B. Rudman.

The Sharm-el-Sheikh (or Mitchell) Committee presented its report in April 2001 to the new president of the United States, George W. Bush. The new administration (at least until September 11) showed relatively little interest in the Middle East while deliberately disengaging from the previous administration's detailed involvement as main mediator between Arab states and Israel.

The Bush Administration felt particularly strongly about differentiation on the Middle East, where – from their perspective – Clinton's overactive diplomacy had demeaned the presidency without achieving a settlement. They were committed to much more 'selective

engagement' in global diplomacy, to what Richard Haass, the new head of policy planning in the State Department, called 'à la carte multilateralism' in July 2001.²⁷¹

In June 2001, after having vetoed a UN Security Council resolution to establish a UN observer mission, Bush dispatched CIA Director George Tenet to the Occupied Territories to negotiate a ceasefire plan. Hamas and the Islamic Jihad, however, rejected the plan, arguing that it failed to address the root of violence.

The terrorist attacks of 11 September 2001 forced a change in American policy. In order to secure the 'coalition against terrorism', the US had once again to concentrate on the Arab-Israeli peace process. Bush declared his support for a Palestinian State, and in November 2001 retired Marine Corps General Anthony Zinni was appointed as senior adviser to work toward a ceasefire as well as to implement the Tenet plan and the Mitchell Committee Report. Zinni's mission, however, failed like the previous ones, as violence continued to escalate.

In April 2002 Colin Powell, the US Secretary of State, met in Madrid with the representatives of the European Union, the United Nations, and Russia. The so-called 'Madrid Quartet' emerged with a common agenda partly based on the 1991 Madrid Peace Conference's agenda: a peace settlement based on an equitable resolution to the conflict, security for Israel and the Palestinians, and a major effort to address the looming humanitarian crisis within the Palestinian community. The focus of this approach was pursuit of a two-state solution to the Israeli-Palestinian conflict, accompanied by the active engagement of outside actors.²⁷²

²⁷¹ Richard Haass, Head of the Policy Planning Staff in the Bush State Department, quoted in Stein K.W., 'The Bush Doctrine: Selective Engagement in the Middle East', in *Middle East Review of International Affairs*, Vol. 6, No 2, June 2002, available at <http://meria.idc.ac.il/journal/2002/issue2/jv6n2a5.html>.

²⁷² see Musu, C. and Wallace W., 'The Focus of Discord? The Middle East in US Strategy and European Aspirations' in Peterson J. and Pollack M.A. (eds.): *Europe, America, Bush: Transatlantic Relations After 2000*, Routledge, 2003.

In a communiqué issued in New York in September 2002, the Quartet announced that it was working with the parties and consulting key regional actors on a three-phase implementation ‘roadmap’ that could achieve a final settlement within three years.²⁷³

The European Union: From the Common Strategy on the Mediterranean Region to Membership in the Quartet

To quote Allen and Smith, ‘2000 was not a good year for the EU in the Middle East, despite the fact that a number of Arab states expressed a preference for much stronger EU involvement in the peace process’.²⁷⁴ The main reason for this estimate was the deadlock in the negotiations after Camp David. In June 2000, the European Union had approved the new Common Strategy²⁷⁵ on the Mediterranean Region. The document, drafted before the failure of the Camp David talks, when hopes were still high that a settlement would be reached, foresaw a possible contribution of the Member States to the implementation of a final and comprehensive peace agreement between the Israeli and the Palestinians.²⁷⁶ In paragraph 15 it declared: ‘The EU will, in the context of a comprehensive settlement, and upon request by the core parties, give consideration to the participation of Member States in the implementation of security arrangements on the ground’.²⁷⁷ The breakdown of the Peace Process, however, rendered the EU’s commitment useless in the short term, as the possibility of a ‘comprehensive settlement’ became more remote.

The failure of the Camp David talks also influenced the Barcelona Process negatively: Lebanon and Syria refused to attend the fourth Euro-Mediterranean conference of foreign ministers in Marseilles in September 2000, and the EU had to halt any attempt to sign a

²⁷³ Communiqué issued by the Quartet, New York, 17 September 2002 available at http://www.un.org/news/dh/mideast/quartet_communique.htm.

²⁷⁴ Allen, D. and Smith, M., ‘External Policy Developments’, *Annual Review of the EU 2000-2001*, *Journal of Common Market Studies*, Vol. 39, Blackwell Publishers 2001. Pp. 107.

²⁷⁵ The Treaty of Amsterdam introduced the Common Strategy as an additional foreign policy instrument. The Common Strategy can be defined as a framework that defines what the main EU interests in a region are, and by what general means they might be pursued. See Calleya, S. in ‘*The Common Strategy of the European Union in the Mediterranean Region*’, Select Committee on European Union (Sub-Committee C), Ninth Report:, House of Lords Reports, London, 2001.

²⁷⁶ See Musu, C., in ‘*The Common Strategy of the European Union in the Mediterranean Region*’, Select Committee on European Union (Sub-Committee C), Ninth Report:, House of Lords Reports, London, January 2001.

²⁷⁷ European Council, *Common Strategy of the European union on the Mediterranean Region*. European Council, Feira, June 2000. Paragraph 15.

Charter of Peace and Stability for the Mediterranean as the Arab participants were not prepared to discuss the issue; hence, no agreement was possible. Ultimately, economic cooperation could not prove conducive to a political settlement.

In 2001 tensions arose between the EU and Israel as the Israeli army, in retaliation for Palestinian terrorist attacks, proceeded in the systematic destruction of Palestinian infrastructure, most of which had been paid for by the EU, and due to the fact that Israel continued to export goods manufactured in the Palestinian Territories (the so-called problem of the 'rules of origin') to the EU. When Israel halted payment of tax revenues to the Palestinian Authority, the EU approved a series of replacement loans and, in response to the 'rules of origin' problem, threatened to withdraw the preferential tariffs that Israel enjoyed. The threat, however, remained as such;²⁷⁸ in general, EU actions did not show great incisiveness.

Arguably, the failure of the Camp David talks and the collapse of the peace process left the EU unable to react in a co-ordinated and effective fashion. Notwithstanding Solana's participation in the October 2000 Sharm-el-Sheikh Peace Summit, the Mitchell Committee and the uninterrupted behind-the-scenes diplomatic activity of both the High Representative and Special Envoy Moratinos, the EU's contribution to ending the violence in the area was not particularly effective. In 2002, after a number of clashes among Member States, which were unable to agree on a common strategy for the Peace Process, and after a failed diplomatic mission during which the CFSP High Representative and the Spanish Presidency were not allowed by Israel to meet Arafat in

²⁷⁸ The official Commission Website offers an explanation of EU policy in this respect: in the section The EU & the Middle East: Position & Background, it states that: 'The EU's policy is based on partnership and cooperation, and not exclusion. It is the EU's view that maintaining relations with Israel is an important contribution to the Middle East peace process and that suspending the Association Agreement, which is the basis for EU-Israeli trade relations but also the basis for the EU-Israel political dialogue, would not make the Israeli authorities more responsive to EU concerns at this time. It is also a well-known fact that economic sanctions achieve rather little in this respect. Keeping the lines of communication open and trying to convince our interlocutors is hopefully the better way forward.' See http://europa.eu.int/comm/external_relations/mepp/faq/index.htm#6.

Ramallah,²⁷⁹ the EU finally decided to renounce launching an independent peace plan and to back the US peace initiative that led to the creation of the Madrid Quartet. The EU hoped that participation in the Madrid Quartet would gain the EU more visibility and influence in the Peace Process, and would provide Europe with a tool for influencing American policies as they were formulated.

The Role of Multilateralism in the Arab-Israeli Peace Process: From the Madrid Conference to the Madrid Quartet

Before focusing on the role played by the Quartet in the Peace Process, it is worth recalling briefly what role multilateral negotiations have played in the Peace Process over the past 15 years.

There has always been an underlying tension between bilateralism and multilateralism in the negotiations. The Israeli diplomatic approach – supported by the United States – has been by and large geared to affording the utmost priority to bilateral contacts, possibly supported by an external party acting as facilitator. Bilateral contacts have been considered by Israel not only necessary, but almost a precondition for each set of talks.²⁸⁰ The origin of Israel's diplomatic strategy lies, arguably, in part on the willingness to discuss different issues separately, to optimising negotiating power and potential leverage, and in part on the crucial objective of meeting with counterparts in a context where mutual recognition and mutual acceptance as legitimate interlocutors are indubitable.

On issues tied to the Peace Process between Israel and the Arab states and between Israel and the Palestinians, American and Israeli positions have been aligned. According to the American vision, the United States' function should be that of facilitating talks and negotiations between the two parties, not imposing predetermined solutions. A

²⁷⁹ Soetendorp, B., 'The EU's Involvement in the Israeli-Palestinian Peace Process: The Building of a Visible International Identity', in *European Foreign Affairs Review*, 7: 283-295, 2002 Kluwer Law International. Pp. 292-293.

²⁸⁰ A senior Israeli diplomat interviewed in Rome underlined that 'Israel wants face to face talks. Negotiation with Egypt and later with Jordan started both with bilateral contacts, and saw the involvement of the Americans only in a second phase. The same happened in Oslo, where the Norwegians acted only as messengers; the American themselves were called in when talks were well under way'.

description of America's perception of its role in the peace process has been given by Middle East expert Stephen Cohen:

In...the Arab-Israeli conflict there is such a struggle of wills within the competing parties, and between the competing parties, and the forces for and against change are so evenly balanced, that only a third party...can swing things toward compromise. That is America's role...The parties themselves are always going to be focused on the immediate costs of doing something because the positive outcomes seem remote or even unlikely to them.²⁸¹

This role of the US as facilitator is also the one favoured by Israel, who does not welcome the idea of a mediator who wants to enforce its strategy against the will of the negotiating parties. Furthermore, the United States as well as Israel do not actually consider the UN an appropriate forum for debating issues that are the object of direct negotiations between Arabs and Israelis. Israel has a deep-seated mistrust of the UN, stemming from years of tense relationships, and an almost equally intense suspicion of Europe, which has often been accused of being decidedly pro-Arab. Diametrically different is the Palestinian stance, which favours EU and UN involvement in the Peace Process, seeing them as guarantors of Palestinian rights and as a counterbalance to the role of the US, perceived as excessively pro-Israeli.

The European Union's diplomatic approach to the Peace Process has differed significantly from that of Israel and the United States. Europe has followed a well-defined policy with clearly identifiable guidelines: Focus on immediate results rather than on the process and the negotiations, reiterated appeals to United Nations resolutions and international law, repeated emphasis on the need for issues on the floor to be treated globally, within the context of international peace conferences. The EU, possibly also as a result of its own 'multilateral framework' and the habit developed by the Member States of negotiating over every important issue, has favoured a multilateral approach to the Peace Process, emphasising the need for the international community's greater role in

²⁸¹ Quoted in Friedman, T.L., 'Passion for Peace', Op-Ed, *New York Times*, 28 June 2003.

the negotiations. This different approach has created a rupture between the EU and both Israel and the United States.

The Madrid Conference

In October 1991 a Middle East Peace Conference was convened in Madrid. The Letters of Invitation to the Conference were issued by both the United States and the Soviet Union as co-sponsors of the event, but it was clear that this was primarily an American initiative: The United States had become the sole guarantor and manager of security in the region, and was determined to take on a primary role in the peace negotiations. The delegations invited were those of Israel, Lebanon, Syria, Egypt and Jordan; the Palestinian delegation was to be included in the Jordanian one. The European Community was invited as an observer alongside the Gulf Cooperation Council and the United Nations.

The EC had long claimed that to solve the Arab-Israeli conflict, a Peace Conference should be convened in order to reach a comprehensive settlement between all the parties involved in a multilateral framework. It therefore insisted on being included in the Conference as a full participant rather than as an observer. However, it met with the stern opposition of Israel, who did not trust European governments and did not want to accept the EC as an additional mediator.²⁸² In the eyes of the Israeli government, the EC had made three tactical errors that doomed its role as an acceptable mediator in the peace process.²⁸³

- It demanded that Israel make concessions to the Palestinians in advance of direct peace negotiations between the parties;
- It made concessions to the Palestinians that prejudged Israeli interests in advance of direct peace negotiations; and
- It insisted on the United Nations as the appropriate forum for negotiations toward a comprehensive peace settlement, knowing that this was unacceptable to Israel.

²⁸² However, in 1992, Israel lifted its veto on full EC participation in the Madrid Middle East Peace negotiations when the Labour Government took office, and consented to have the EC join the multilateral working groups in exchange for the EC's commitment to updating the 1975 EC-Israel Cooperation Accord.

²⁸³ Ginsberg, R.H., *The European Union in International Politics. Baptism by Fire*, Rowman and Littlefield Publishers, Boulder 2001. P. 107.

The US was also not particularly keen on having another mediator to deal with, as in its view this would only complicate the relations with the negotiating parties; it thus preferred to retain the process firmly in its hands.

After the Madrid Peace Conference, a double tier of negotiations opened: *bilateral* talks between Israel and Arab states, and *multilateral* talks involving the conflict's immediate protagonists (Egypt, Israel, Jordan and the Palestinians) and the Arab states from the Gulf and the Maghreb, as well as a number of extra-regional participants (US, Russia, EU, Japan, Canada and Norway).

The bilateral negotiations were based on direct talks between the parties, in which neither the United States nor the European Union would have a direct role. In actual fact, while the role of Europe was limited essentially to participation in a revolving troika of 'observers' to monitor the talks' development, the American role was significantly more important: The US not only met with the parties separately to discuss the issues at stake, but also had the possibility of setting forth proposals aimed at supporting the dialogue. Furthermore, following the conclusion of the Peace Conference, over a dozen formal rounds of bilateral talks were hosted by the US Department of State in Washington.

The multilateral negotiations, opened in Moscow in 1992, focused on more technical issues that crossed national borders. The EU played a relevant role in these as gavel holder of the Regional Economic Development Working Group (REDWG). The United States, on the other hand, presided over the Water Working Group and, jointly with Russia, the working group charged with the most sensitive issues: Arms Control and Regional Security.

While the bilateral talks between Israel and the Arab states meant to address issues of mutual recognition, peace, territorial withdrawal, border demarcation, security arrangements and the political rights of the Palestinians, the multilateral talks were meant to provide a forum for the parties to address a range of economic, social, and

environmental issues that extended across national boundaries and whose resolution was essential for long-term regional development and security. As Joel Peters put it, 'If the bilaterals were to deal with problems inherited from the past, then the multilaterals would focus on the future shape of the Middle East...It was hoped that developments on the multilateral level would serve as confidence-building measures that would then facilitate progress at the bilateral level – that is, that functional cooperation would eventually spill over into regional peace'.²⁸⁴

The Oslo Process

During these negotiations – which were producing neither appreciable results nor progress in the Peace Process –direct bilateral contacts between Israelis and Palestinians were initiated behind the scenes in Oslo: The European Community was left out of these talks, but so was the United States. Both were informed of the results achieved only toward the conclusion of the negotiations. The essence of the so-called 'spirit of Oslo' has been described by one of the negotiators:

For those involved in the initial discussions in Norway the goal was to work toward a conceptual change which would lead to a dialogue based, as much as possible, on fairness, equality and common objectives. These values were to be reflected both in the character of the negotiations – including the personal relationships between the negotiators – and in the proffered solutions and implementation.”²⁸⁵

The outcome of the intensive diplomatic negotiations that took place in Oslo was an exchange of mutual recognition documents between Israel and the PLO, and the signing of a Declaration of Principles (DOP) that would serve as the framework for the various stages of the Israeli-Palestinian negotiations. The venue chosen for the signing of the DOP was Washington, DC. This venue was significant as it underlined the important role

²⁸⁴ 'Can the multilateral Middle East talks be revived'? By Joel Peters, *Middle East Review of International Affairs*, Volume 3, No. 4 - December 1999. Available at <http://meria.idc.ac.il/journal/1999/issue4/jv3n4a6.html#Author>.

²⁸⁵ Pundak, R., 'From Oslo to Taba: What Went Wrong?' *Survival*, 43(3), Autumn 2001, pg. 21.

played in the Peace Process by the US. The US may not have taken direct part in the talks, but it nonetheless remained the sole mediator acknowledged and accepted by the PLO as well as by Israel. The role of Europe, represented at the ceremony by the EU President and by the President of the Commission, was limited to issuing statements of support.

The fact that the ‘official’ negotiations resulting from the Madrid Peace Conference and the ‘unofficial’ negotiations in Oslo overlapped for a period of time is a clear example of the enduring tension between bilateralism and multilateralism in the Peace Process. If, on the one hand, specific favourable circumstances (such as the ones created by the end of the Cold War and of superpower rivalry in the Middle East as well as by the redefinition of the regional balance of power as a consequence the Gulf War) encourage an increased involvement of the international community in the conflict, on the other hand, the main actors’ preferences seem to remain engaging in direct bilateral talks with the external support of the United States. This has proved to be the case for Israel, but arguably also for the Palestinians who, despite viewing positively the role of the UN and of the EU, still see the United States as the only reliable actor able to ‘deliver’ when it comes to negotiating crucial issues.

The Barcelona Process

In the wake of the optimism created by the first positive results of the Oslo process, the EU attempted to create another framework to favour dialogue and cooperation in the Mediterranean, a region that, for the EU, comprises not only the Maghreb but also the Mashreq, including Israel and the Palestinian Authority.

In the years 1991-1995, the EU progressively reassessed its Mediterranean policy with the objective of developing an overall concept on relations with the region as a whole, encompassing security, economic development and social justice. The EU’s long-term strategic approach to the Mediterranean region was focused on four objectives:²⁸⁶

²⁸⁶ See Behrendt, S. and Hanelt, C.H., *Bound to Cooperate – Europe and the Middle East*, Bertelsmann Foundation Publishers, Gutersloh 2000. Pp. 13-15.

1. Promotion of democratisation because, in the European experience, democratic structures have proven to be efficient instruments of conflict resolution within states and effective in diminishing the risk of conflicts erupting between states;
2. Promotion of economic development and integration, an objective based on the assumption that free market economies and liberalised international trade relations improve overall standards of living;
3. Construction of a framework of effective regional institutions that could provide mechanisms for the peaceful resolution of conflicts;
4. Favouring a broader cultural dialogue underpinning all levels of political, economic and social interaction in order to promote a Mediterranean identity on which more stable cross-regional relations can be based.

It is with these objectives in mind that the EU, at the 1995 Barcelona Conference, initiated the Euro-Mediterranean Partnership (EMP) between the then 15 EU Member States and 12 Mediterranean Partners: Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Syria, Tunisia, Turkey and the Palestinian Authority.

To use the words of Commission Vice President Manuel Marin, "...The Euro-Mediterranean Partnership provided for the first time a clear geopolitical and economic scenario for a priority region in the Union's foreign policy, and it designed a far-reaching double structure at both the multilateral and bilateral level...".²⁸⁷ Thus, the Barcelona Process was meant from the beginning to be independent from but parallel to the Middle East Peace Process. The Peace Process would achieve the political breakthrough; the Barcelona Process would set up the real conditions for long-term stability and economic development. It would also offer a multilateral forum for the parties involved in the Peace Process to meet in a different context from that of the difficult and controversial negotiations on political and security issues. However, it soon became apparent that the formal separation between the Partnership and the Peace Process could not serve to

²⁸⁷ See 'The Role of the European Union in the Middle East Peace Process and its Future Assistance', *Executive Summary of the Communication to the Council of Ministers and the European Parliament made by Manuel Marin, Vice President of the European Commission*, European Commission, 26 January 1998. Available in French at <http://www.medeas.be/site.html?lang=en&page=10&doc=296>.

prevent the *de facto* linkages emerging between the processes, and that any progress in the field of Mediterranean regional cooperation was continuously hampered by the difficulties encountered in the Peace Process. Stated differently, the EU's aspiration to keep the economic cooperation and development isolated from the spill over effects of a stalemate in the Peace Process proved to be an illusion.

The Quartet: An Effective Instrument of Multilateralism?

From the analysis conducted in the previous paragraph, it would appear clear that multilateralism has so far not been especially successful or effective in the context of the Middle East Peace Process and Israeli-Palestinian negotiations. Before proceeding to analyse in greater detail the Quartet as an instrument of multilateralism and to question its effectiveness, it is worth giving some consideration to the concept of multilateralism itself. Only then will it be possible to draw some meaningful conclusions and to formulate policy recommendations.

In 1990, Keohane defined multilateralism as 'the practice of coordinating national policies in groups of three or more states',²⁸⁸ a definition that Ruggie described in a 1992 article as 'nominal' and basically incomplete.²⁸⁹ According to Ruggie, the distinctive aspect of multilateralism is that it coordinates relations among three or more states in accordance with certain *principles*. This inclusion of principles in the definition of multilateralism suggests that the beliefs required for multilateral cooperation are as central to its function as are its more formal tenets.

Multilateralism is a demanding organisational form, particularly because it requires parties to a conflict to refrain from defining their strategy on the basis of immediate national interests, to abandon a *quid pro quo* attitude in approaching their interaction with their counterpart and to accept the idea that the benefits of this interaction may be

²⁸⁸ Keohane, Robert O. 'Multilateralism: An Agenda for Research.' *International Journal*, 45 (Autumn 1990).

²⁸⁹ Ruggie, John. 'Multilateralism: The Anatomy of an Institution.' *International Organization*, 46, 3 (Summer 1992).

realized only in a relatively distant future. Participants have to renounce temporary advantages and ad hoc coalitions and also avoid policies based on situational exigencies.

Such an approach has yet to be embraced by either the Israelis or the Palestinians. The individualist paradigm of international relations, according to which states interact in a rational, self-interested way, may help us explain why this is the case. Arguably, states' preferences for unilateralism, bilateralism or multilateralism can be considered *derived preferences*, i.e., they derive directly from the states' *substantive preferences* with regard to crucial issues such as power, security or wealth. We can therefore expect states to engage in multilateralism when they anticipate substantial benefits from the process, and to turn to unilateralism or bilateralism when this serves their purposes better.²⁹⁰

It derives logically that Israel, expecting to benefit more significantly from bilateralism (as in the case of negotiations with Egypt, Jordan or the Palestinian Authority) or from unilateralism (as in the case of the withdrawal from Lebanon or from the Gaza Strip), has largely avoided engaging in multilateralism that, from its perspective, did not serve its substantive preferences (i.e., survival of the State of Israel and security against hostile neighbours). It has however agreed to engage in multilateral negotiations on the few occasions when circumstances suggested that clear benefits were to be gained. Israel's agreement to participate to the Madrid Conference in 1991, for example, was arguably prompted by two factors: First, Saddam Hussein's bombing of Israeli territory with scud missiles had led Israel to reconsider its security needs; the Israeli government became aware that physical control of the territory through occupation was no longer a guarantee of military security; it was thus compelled to reconsider its strategy and the possibility of starting talks with the Palestinians. Second, the end of the Cold War meant that Israel no longer represented a strategic asset to the US in the confrontation between superpowers. It was therefore in its interests to avoid antagonising the United States – its main ally – and to support the peace initiative.

²⁹⁰ Lisa Martin, The Rational State Choice of Multilateralism, in J. Ruggie (ed.), *Multilateralism Matters: the Theory and Praxis of an Institutional Form*, Columbia University Press, 1993; Mark A. Pollack, Unilateral America, Multilateral Europe?, in Peterson J. and Pollack M.A. (eds.), *op. cit.*

As for the Palestinians, they in turn have also favoured the framework that best served their substantive preferences: bilateral talks when they were expected to deliver results, multilateral institutions as a crucial instrument of legitimisation of their cause, and finally unilateralism, mainly in the form of armed struggle against a counterpart seen as a mortal enemy.²⁹¹

As discussed above, the European Union has long favoured a multilateral approach to the Peace Process, insisting that such a framework is best suited to create the conditions for real progress. European internal divisions and political weakness and American pressures have resulted in this view being taken into consideration only sporadically. The creation of the Quartet can be seen as one of these occasions as it *officially* brings other actors (i.e. the EU, the UN and Russia) into the negotiations in addition to the Israelis, the Palestinians and the ‘traditional’ mediator, the US. Participation of the Quartet in the Peace Process underlines the international community’s commitment to achieving an equitable settlement of the conflict.

However, based on the previous discussion on the concept of multilateralism, an interesting question arises: Does the Quartet create a multilateral framework for the negotiations? Furthermore, does the Quartet try to promote multilateralism as an *organising principle* of the peace process?

Arguably, what the Quartet really offers is a multilateral ‘control framework’ for bilateral negotiations. These bilateral negotiations are supposed to aim at implementing pre-established steps agreed upon by the Quartet.

The text of the Preface to the Roadmap confirms this view:

The following is a performance-based and goal-driven roadmap, with clear phases, timeliness, target dates, and benchmarks aiming at progress through reciprocal steps by the two parties in

²⁹¹ A unilateral declaration of statehood on the part of Arafat’s PA was blocked by a combined American and European diplomatic effort in 1999.

the political, security, economic, humanitarian and institution-building fields, under the auspices of the Quartet....A settlement, negotiated between the parties, will result in the emergence of an independent, democratic, and viable Palestinian state living side by side in peace and security with Israel and its other neighbours....A two-state solution to the Israeli-Palestinian conflict will only be achieved through an end to violence and terrorism...and through Israel's readiness to do what is necessary for a democratic Palestinian state to be established, and a clear, unambiguous acceptance by both parties of the goal of a negotiated settlement as described below....²⁹²

If the Quartet appears to open the peace process to multilateralism, in substance it creates a somewhat contradictory framework: Final goals and intermediate steps have been approved by the Quartet and then presented to the parties to the conflict who are supposed to implement them. Yet, the role of direct negotiations and the importance of achieving a negotiated settlement between the parties is clearly acknowledged.

In the Roadmap, the Quartet called for a series of steps to be undertaken by the Palestinians and the Israelis. In particular, it called for Palestinian democratisation, a new Palestinian leadership, local elections, a written constitution, uniform and centralized security organs, and a crackdown on terrorism. As for Israel, it was to withdraw to the pre-*Intifada* lines, freeze settlement activity, and relieve humanitarian and living conditions of the Palestinian people. The Roadmap attempted to create a performance-based timetable (subsequently said to be non-binding), with 'phases' for the construction of a provisional state, followed by negotiations for a final accord. Furthermore, it envisaged the organisation of an international conference to facilitate the final status talks and an international monitoring mechanism to supervise and determine performance in the progress from one phase to the next.

²⁹² See http://europa.eu.int/comm/external_relations/mepp/faq/roadmap.pdf.

The two main parties to the conflict were not, however, involved in developing the Roadmap, and both have been trying to redefine it in one way or another. The time frame originally proposed by the Quartet (i.e., a final accord by 2005) has long since passed. One of the main reasons for this failure is that some of the steps envisaged by the Roadmap have proved to be unattainable in the proposed sequence: the Palestinian Authority, for example, declares that it needs to build its capabilities before taking on its obligations of dismantling the terrorist infrastructure. This in turn means that Israel feels it has to take difficult steps before the desired guarantees on security issues.

The contradictory nature of the Quartet's actions is partly at the root of its less than brilliant record of successes: Both the Israeli and the Palestinians turn to the Quartet and to the Roadmap to the extent they see fit to safeguard their interests, but both do not hesitate to return to traditional negotiation schemes (i.e., Israel and the Palestinian Authority with the US as mediator) and negotiate important points that the Roadmap may not address to their satisfaction. The US itself, despite being a member of the Quartet, has had a mixed attitude toward it, almost fuelling the suspicions that it had contributed to its creation in order to respond to external pressures (mainly from the European allies) while simultaneously aiming to maintain an undisputed role as the sole mediator accepted by both parties.

If the peace plan proposed by the Quartet is to become successful, the first essential step should be to involve the main parties in the definition of the various phases and specific steps to be undertaken. Only under these conditions will the Israelis and the Palestinians feel that they can truly be committed to the plan rather than pressurised into accepting externally imposed solutions.

For all, indeed, the ultimate goal is the permanent resolution of the conflict. This is a goal that can only be achieved if both sides agree to make changes or even sacrifices for their own, albeit not immediate, benefit. In this framework, the guarantees offered by the Quartet's commitment to the peace plan would become crucial and finally render progress feasible.

Conclusions and Recommendations

The objective of this article was to evaluate the activities of the Quartet and its role in the Israeli-Palestinian Peace Process and to establish whether the Quartet has become an instrument for the promotion of effective multilateralism, one goal of the EU-Israel Action Plan.

The analysis conducted leads to the conclusion that the Quartet has not been effective so far in promoting multilateralism in the Peace Process. Despite having been welcomed by the EU as a symbol of a rapprochement between American and European positions on the issue of the Peace Process, the Quartet has created an ambiguous structure that cannot be truly defined as multilateral.

In order for the Quartet to become effective, the perception of the principle of multilateralism held by main actors has to change. The EU has been progressively integrating this principle in its approach to international affairs for the past 50 years, but this vision is not shared by the parties to this conflict.

Israel has been wary of the Quartet's involvement in the Peace Process and has expressed numerous reservations with regards to the peace plan proposed in the Roadmap. Its preferences remain that of dealing with the Palestinian Authority in a bilateral framework while avoiding as much as possible interference from third parties beyond the United States.

The recent victory of Hamas (which is included on the list of terrorist organisations in the EU and the US) in the Palestinian elections has heightened Israel's feeling of insecurity. It now needs reassurance that the international community will not support the Palestinian Authority financially if this means supporting an organisation that organises terrorist attacks on Israeli soil.

The victory of Hamas has highlighted divergences within the Quartet itself. If the EU and the US have frozen – albeit temporarily – economic support to the PA and refused to deal directly with Hamas until it recognises Israel’s right to exist, Russia (also a member of the Quartet) has invited members of the Hamas leadership to Moscow for talks. Events such as this cannot but undermine the credibility of the Quartet as a coherent actor

The goal of promoting multilateralism as an organising principle of the peace process is a long-term one: If multilateral cooperation is to be successful, its different actors need to understand that they are working toward greater future benefits that will require certain sacrifices to be made, to varying degrees, by all the actors involved. The various parties will have different roles to play in cooperative efforts, given their different needs and capabilities. Based upon these differences, the benefits of cooperation will seem more immediate to some actors than to others.

The current stalemate between Israel and the new Palestinian leadership makes achievement of this goal in the immediate future extremely difficult, with the likelihood of the two parties engaging in cooperative efforts very low. The most effective policy that the Quartet (and the EU as a crucial member of the Quartet) can follow now is that of devising original solutions to practical problems that can slowly reveal the potential benefits of including external actors in the negotiation process to the parties to the conflict.

The EU should use its role in the Quartet to bridge the gap that has divided it from Israel for many years and to start building up credibility as an actor involved not only in the financial dimension of the Peace Process but also – if to a lesser extent – in the security dimension, which remains the crucial one.

In November 2005, the Quartet was instrumental in the conclusion of an “Agreement on Movement and Access” between Israel and the Palestinian Authority, which included agreed principles for the operating the Rafah crossing between Gaza and Egypt. On 21 November 2005, the EU Council welcomed the Agreement and agreed that the EU

should undertake the Third Party role proposed in the Agreement. It therefore decided to launch the EU Border Assistance Mission at Rafah, named EU BAM Rafah, to monitor the operations of this border crossing. The operational phase of the Mission began on 30 November 2005 and will have a duration of 12 months.²⁹³ This limited initiative, whose final success is still uncertain, is unprecedented in nature: For the first time, EU military personnel, under the command of an Italian general, will supervise an area of security concern for Israel.²⁹⁴

Only a few months ago, such a proposal would have been unthinkable. The EU has long voiced its wish to be involved more directly in the security dimension of the Peace Process. But, as already detailed, Israeli and American opposition had rendered this by and large unfeasible. In the particular circumstances created by Israel's withdrawal from Gaza, the EU was better suited to carry out the task of supervising the Rafah crossing; American assurances contributed to convincing Israel to accept the EU's offer. Arguably, such a development was partly made possible by the EU's membership in the Quartet, which created a formal framework for the EU's role by tying it to the US role, thus easing Israel's deep-seated reservations regarding EU involvement. The EU should now use this as a starting point to slowly upgrade its involvement in the security dimension of the Peace Process while coordinating its actions with the other members of the Quartet to ensure cohesiveness and coherence of policies.

The handling of the stalemate created by the Hamas victory will be crucial for consolidation of the EU's role in the Peace Process. If the EU wants to pursue its goal of promoting effective multilateralism, it will have to succeed in a daunting task: Maintaining a firm stance on the support of Israel's right to exist in security while at the same time preventing a serious political and humanitarian crisis in the Palestinian Authority. This will have to be done in coordination with the US and the other members

²⁹³ See <http://www.consilium.europa.eu/showPage.asp?lang=en&id=979&mode=g&name>.

²⁹⁴ The EU BAM differs deeply in nature from the so called TIPH, i.e. the Temporary International Presence in the City of Hebron, which is a civilian observer mission in the West Bank city of Hebron and is staffed by personnel from Denmark, Italy, Norway, Sweden, Switzerland and Turkey. See <http://www.tiph.org/>.

of the Quartet as only the credibility that derives from successful management of this crisis can lay the foundations for a future relevant role of the Quartet in the peace process.

With a Stroke of a Pen:

Israel's Image in the European Media

Katharina von Münster

Abstract

Almost 60% of Europeans view Israel as a danger to world peace according to a controversial Euro barometer poll carried out in 2003. Though the methodology of this survey was criticised, some were quick to blame the media for these results. Certainly, the media are a very important source of information. But do the media contribute to a strengthening of dialogue between Europe and Israel as envisioned in the Action Plan, or the reverse? This article will discuss the possibilities and limitations of the media as instruments to promote the European-Israeli dialogue.

Introduction

‘Whatever we know about our society, even about the world we live in, we know through the mass media’ says sociologist Niklas Luhmann.²⁹⁵ The media are often the first source of information for news from abroad. ‘The media function to provide information, education, and entertainment. The media can also, through representation and analysis, influence people’s perception of the world, provide a space as part of education information, and break down (or strengthen) boundaries between people’ summarises Deidre Kevin.²⁹⁶ In the field of foreign policy many perceive the mass media as among the most important resources for policy makers.²⁹⁷

One of the goals the EU-Israel Action Plan has set for itself is deepening relations; in other words, breaking down boundaries between people. This objective is to be achieved through promoting dialogue between civil societies, ‘cultures and religions’, and officials

²⁹⁵ N. Luhmann: *Die Realität der Massenmedien*, Opladen: Westdeutscher Verlag, 1.

²⁹⁶ D. Kevin, *Europe in the Media: A Comparison of Reporting, Representation, and Rhetoric in National Media Systems in Europe* (Mahwah, NJ/ London: Lawrence Erlbaum 2003) p. 35.

²⁹⁷ H.M. Kepplinger, *Ereignismanagement*, (Osnabrück: 1992), S.29.

in various fields including politics, economy, security and environment. But before individuals actually meet face to face, it is often the mass media that inform people about the respective 'other'. The knowledge that people on both sides have acquired via the media will most likely influence the inter-societal dialogue that the Action Plan aims to promote. Thus, the media undoubtedly play a vital role in relations between Europe and Israel. However, the Action Plan refers to a problematic side of the media when it states the necessity of combating anti-Semitism, racism and xenophobia in the media. Here, a rather negative facet of the role of the media is acknowledged. So, the question arises: 'If and what role can the media play in achieving the objective of promoting dialogue between the EU and Israel as stated in the Action Plan?

The European media are frequently criticised for being biased and presenting Israel in a bad light, portraying it as Goliath and the Palestinians as David.²⁹⁸ Sometimes, the media even face charges of anti-Semitic incitement. One example is the recent ruling of a court in France that found authors of an opinion piece in *Le Figaro* guilty of using defamatory language against Israel and Jewish people.²⁹⁹ This might have been a singular and extreme case. However, if we believe the results of the very controversial survey conducted among Europeans in November 2003, which stated that about 60% of the sample viewed Israel as a great source of danger, one might ask how the media play into those attitudes.³⁰⁰

Israel is mentioned almost daily in newspapers throughout Europe – but mostly in the context of the conflict between Israel and the Palestinians. 'Bad news is good news' – this unofficial paradigm often dominates reporting not only on Israel. Thus, the pictures and images arriving from the Middle East³⁰¹ since the outbreak of the second *Intifada* (the *Intifada Al-Aqsa*) in autumn 2000 are rather grim. The news consumer is confronted with

²⁹⁸ See: e.g. www.honestreporting.com, www.camera.org, www.mediatenor.com, www.pmw.org, T. Gross, New Prejudices for Old (*National Review Online* 21.9.2001) www.nationalreview.com/comment/comment-gross110101.shtml.

²⁹⁹ J. Henley, *Le Monde* editor 'defamed Jews' (*The Guardian* 4.06.2005).

³⁰⁰ As Gisela Dachs and Joel Peters mention rightly in their paper for IEPN the image of Europe in Israel is not very favorable either.

³⁰¹ Referring in this paper only to Israel and the Palestinian territories.

photographs of suicide bombings, rocket attacks, tank fire, stone throwers and children dying. Altogether, this has created an image of an apparent vicious cycle of violence.

No wonder people feel abhorred and distance themselves. However, the media has also written about diplomacy and negotiations taking place. After analysing news reports of European quality papers from the last five years and drawing on the author's own experiences and observations after interviewing journalists, this article discusses the limitations of the press coverage of Israel in the EU. In particular, it highlights the weaknesses of the reporting in not contributing to an enhanced understanding but rather in stereotyping the events. On the one hand, highlighting limitations is aimed at helping media professionals find ways to overcome them. On the other hand, this analysis is directed at the broader audience that has to be aware of the media's limitations. In conclusion, this analysis attempts to frame the role of the media as instruments of dialogue.

The first section of this article discusses the mechanisms of media production. This is especially relevant for giving the audience some insight into the limitations of news production. In the next section, the article analyses reporting on Israel in the European media during the last five years.³⁰² The analysis draws on the results of a recent study of German media and on an examination of the press coverage by other European outlets, such as the centre-left Spanish *El Pais*, the conservative *Frankfurter Allgemeine*, the left-of-centre British daily *The Guardian*, and the conservative French *Le Figaro*.³⁰³ Since a comprehensive analysis of all newspaper articles in the last couple of years is beyond the scope of this article, it will focus on the reporting of selected events. These are the visit of then opposition leader Ariel Sharon to the Temple Mount in September 2000, the death of the Palestinian child Mohammed Al-Durra, the bombing of the discotheque near the Dolphinarium in Tel Aviv in June 2001 and the withdrawal of Israel from Gaza in August 2005. The analysis focuses on reports and photographs. Editorials, commentaries or caricatures and other forms of opinion pieces are not examined. The article concludes

³⁰² At some points, reporting on Palestinians will also be analysed but a full comprehensive analysis is beyond the scope of this article.

³⁰³ Sunday editions are not included in the analysis.

with a discussion on the limits and opportunities of improving media reporting and its role as an instrument of dialogue in European-Israeli relations.

What's News: How the Media Works

The Middle East is one of the regions most extensively covered in the European media. There are multiple reasons for this coverage: historical, political, geographical and psychological, to name just a few. 'The Middle East is a place where we have known the characters for many years and we want to see how they develop' explains one foreign correspondent in explaining the interest in news from Israel and the Palestinian territories. About 350 foreign journalists are permanently stationed here. The area is relatively small, making it easy to get to know the terrain and its people. Thus, compared to other regions such as Africa or South America, where one correspondent has to cover half or more of the continent, conditions here are quite comfortable. In peak periods, the number of journalists can reach more than 1,000, as was the case during Israel's withdrawal from the Gaza Strip.

Even though the 'region is actually over-represented', as one correspondent stated, relatively little information is distributed on Israel beyond the conflict. The majority of articles written on Israel narrowly focus on the conflict. Virtually all of the correspondents the author spoke to would like to write more about other subjects, but their editors rarely accept such an option. This brings us to the question: What's news? Taking as a given that the media are the first source of information for the majority of people, it is important for the audience to understand the media's working mechanisms in order to comprehend the limitations of their reports.

Journalists are often called 'gatekeepers'. But the decision about what type of news comes through the gate is influenced by many factors. One is newsworthiness. Time and space is limited – information from abroad is abundant. A newsworthy article needs to fulfil several criteria:³⁰⁴ it needs to include new facts, which does not necessarily mean

³⁰⁴ See J. Galtung, J. & M. H. Ruge, *The Structure of Foreign News. The Presentation of the*

that the topic is new. ‘When it bleeds it leads’ or ‘Bad news is good news’ – these slogans paraphrase another guiding principle of the media – the focus on negative events. Furthermore, the story should be relevant to a number of people and be relatively easy to comprehend. Long-term structural developments receive less attention than do short-term events. Bluntly speaking, the Israeli-Palestinian conflict, where all the characters are known already, where readers apparently do not need much background information and where there are negative events frequently take place, certainly fulfils all the criteria of a newsworthy story. Furthermore the region is geographically close to Europe. Historically and politically, Europe has been involved in this region’s affairs for centuries. The audience supposedly knows the basic facts more or less and deems it important to follow the events.

But even if a story fulfils the criteria of newsworthiness, journalists ‘have to make innumerable decisions about which details to include and which to exclude’.³⁰⁵ These decisions are guided by journalistic principles such as objectivity, fairness and impartiality. However personal background and knowledge also influence the selection process. Foreign correspondents are usually stationed in a location for a couple of years. They do always have much knowledge of the country they are going to. In Israel, there are quite a few permanent correspondents. However, staying too long in one country and dealing constantly with the same subjects runs the risk of identifying too strongly with one of the parties. Most if not all foreign Western journalists in the region speak English, some of them speak Hebrew, others Arabic, but rarely both. When collecting information for a story, a journalist will rely on several sources.

A very important source are the leads set by the local media, whether radio, TV or other newspapers. This is especially true for the major news agencies, which are under constant time pressures. This ‘means that news language is frequently recycled’.³⁰⁶ News releases are another important source. However, reporters hardly print the information as they

Congo, Cuba and Cyprus Crises in Four Norwegian Newspapers, *Journal of Peace Research*, 2 (1965), 64-91.

³⁰⁵ W.P.Davison, *Mass Media: Systems and Effects* (New York: Praeger, 1976), 91.

³⁰⁶ A. Bell, *The Language of News Media* Oxford: Basic Blackwell 1991, 58.

have received from the public relations department but check the facts first. They speak to eyewitnesses or people involved in the event or, finally, travel to the place of the event. Often, foreign journalists work with so-called *stringers*. These are local people who provide them with information from places hard to get to, for instance, the Gaza Strip. However, journalists also depend on the cooperation of their sources when gathering facts for a story. Thus, it is sometimes easier to receive information from one side than from the other, which can be reflected in the article. Altogether, it has to be said that a story is often put together with second- or third-hand information, especially when time pressures are great. Furthermore, during editing, which includes cutting, tightening, clarifying and reordering, some information will be lost.

News stories also have a certain structure that help explain some of the limitations of media reporting. *Hard news* reports, more than *soft news* reports, are constructed according to a routine. Hard news is the type of news that happens at the moment. Soft news refers to features and other types of articles that provide more in-depths analysis. Hard news stories usually start with a strong lead containing all the major details of the event. The story needs to be sold at the beginning. A good lead does not contain more than 20 to 30 words, meaning that the writer does not have much space. The headline, usually written by the editors, needs to be even shorter, easy to comprehend and punchy. Regarding shortness and comprehensiveness, almost the same goes for sub-headlines, by-lines and photo captions.

The lead often carries at least two events, linked by temporal conjunction. The most recent usually goes first. ‘The result is placed before the action which caused it’.³⁰⁷ Thus, an article on the Israeli-Palestinian conflict might start with Israeli soldiers destroying the house of a suicide bomber after a deadly attack on Israeli civilians. The reaction of the Israeli army comes before the action of the terrorist. This is, however, not done on purpose; this order follows the rules of journalism. In quality newspapers especially, the reader will usually find more detailed descriptions of the events in the subsequent paragraphs of the report.

³⁰⁷ A. Bell (note 12)153.

Similar rules also apply to the selection of pictures. ‘A picture is worth a thousand words’ goes the saying that summarizes one important function of a photograph. At best, it tells the readers a ‘micro-story’, introducing them to the article’s topic. It needs to be storytelling, powerful, dramatic and stand out against the competitors.³⁰⁸ But certainly even the best photo will always present only part of reality. And the impact it has on the respective viewer may differ.

When talking about news production, one should not forget the part of the reader, i.e., how news is received. As Davison rightly stated: ‘No two individuals are affected exactly the same way by what they see, or read, or hear.’³⁰⁹ Readers do not remember all information, especially as there is an overflow of information nowadays. They select, transform and reconstruct the information anew.³¹⁰ They are also selective about the weight they give to certain information. Thus, news is ‘subjectively selected and subjectively listened to’.³¹¹ The same news report will draw different reactions from various readers, and, indeed, the report itself may be interpreted much differently.³¹²

This section has attempted to shed some light on the way the news is produced together with the pressures and constraints that go with it. In the next section, press coverage of Israel will be analysed while taking into account the above-mentioned aspects.

Israel in the European Media

If one takes the media as the first sources of information on Israel for most Europeans, then the majority of information that the European audience receives on Israel is certainly related to the Israeli-Palestinian conflict. The reasons for the ‘newsworthiness’ of this conflict were already discussed in the last section. Though reports on Israel also appear

³⁰⁸ R.L. Rasmussen, *Arriving at Judgments in Selecting Photos*, *Nieman Report*, Fall (2002) pp. 67-70, 69.

³⁰⁹ W.P. Davison (note 11), p.1.

³¹⁰ G. Ruhrmann, Ereignis, Nachricht und Rezipient, in K.Merten / S.J. Schmidt / S. Weischenberg (eds.), *Die Wirklichkeit der Medien*, (Opladen: Westdeutscher Verlag 1994) pp- 236-256.

³¹¹ J. Herbert, *Journalism in the digital age: Theory and Practice for Broadcast, Print and On-line Media* (Oxford: Reed Educational and Professional Publishing 2000), p.65.

³¹² D. L. Altheide, *Qualitative Media Analysis*, *Qualitative Research Methods Series 38*. (Sage: Thousands Oaks, 1996) p.10.

that are not related to the conflict, Israel (as well as the Palestinians) is mainly presented against the backdrop of the conflict. One might be led to think that this makes the role of the media as instruments for dialogue in European-Israeli relations questionable. The way the conflict is presented certainly can contribute to broader understanding or the opposite – it can lead to stereotyped thinking or, in the worst case, fuel anti-Semitism, racism and xenophobia, as stated in the Action Plan. Thus, the following analysis will focus on the weaknesses of media coverage of Israel since 2000 and suggest ways for enhancing the role of the media as instruments of dialogue.

Sharon's Visit to the Temple Mount

A major weakness media analysts of the German Press³¹³ have found is the very negative image being transferred to the reader of Israel and Israelis in general as well as the Palestinians in the media coverage of European newspapers. Siegfried Jäger and Margarete Jäger claim that some newspaper reports might even contribute to racism and anti-Semitism. The study analysed major quality papers in Germany, covering the political spectrum from conservative to leftwing, starting with events surrounding Sharon's political demonstration at the Temple Mount. The weekly magazine *Der Spiegel* in particular is criticised for portraying Israel as brutal, reckless and violent.³¹⁴ Ariel Sharon, the authors say, is stereotyped as a hardliner, a warmonger, a tactician and slaughterer. The renowned conservative daily *Frankfurter Allgemeine* speaks at one point of 'Israeli elements' with regard to Israeli soldiers.³¹⁵ This metaphor certainly dehumanises people. *Der Spiegel* is criticised for writing that Israeli soldiers 'shoot to kill' during confrontations with Palestinians.³¹⁶ This is indeed the journalist's interpretation. In conclusion, the authors say that the reporting encourages resentment toward both parties.³¹⁷

Though the Palestinians were not the focus of their study, the authors mention that they are also portrayed in a negative way, as backward, hysterical and alien. A typical image

³¹³ S. Jäger, M. Jäger: *Medienbild Israel: zwischen Solidarität und Antisemitismus* (Münster: Lit 2003).

³¹⁴ S. Jäger, M. Jäger (note 19), p. 69

³¹⁵ Ibid., p.53.

³¹⁶ Ibid., p.68.

³¹⁷ Ibid., p.133.

in photos is that of stone-throwing Palestinians versus Israeli soldiers. Very rarely are different images displayed. Thus, it seems that soldiers represent the Israeli way of thinking and dealing with the situation and stone-throwing Palestinians represent Palestinian society – a vicious cycle of violence with no way out. Apparently, the parties are so irrational that only help from the outside can solve the conflict.³¹⁸

Other European newspapers describe the situation in similar terms, often stereotyping the parties and framing the conflict in a particular way. *Le Figaro*, the *Guardian* and *El Pais* all cover the events extensively with reports and photos. *Guardian* correspondent Suzanne Goldenberg stresses the religious aspect in her article on 30 September 2005, making it appear as a clash of religions and a conflict that is somewhat impossible to solve. The report starts: ‘The most hallowed ground in the holy city – and the volatile core of the Israeli-Arab conflict – was doused in blood yesterday...’ The photo of an injured Palestinian being carried away and the phrase ‘doused in blood’ possibly lead the reader to think that it is only one side – the Palestinians – that bears the brunt. She describes in detail the Palestinian version of the events, quoting civilians and officials; only a few lines are given to the Israeli government spokesman.

El Pais correspondent Ferran Sales also frames the conflict in religious terms: ‘Israeli police kill five Palestinians in the religious heart of Jerusalem’³¹⁹ says the headline on the front page. The reasons are not given. Next to it there is a photo showing an Israeli soldier shouting at a bleeding Palestinian. ‘The battle for Jerusalem’³²⁰ goes the headline on page 2, reminding one of the Crusaders. In both instances, the religious aspect of the conflict is underlined.

In both *El Pais* and *Le Figaro* we find a typical summary and linking of events: ‘More than 30 injured in Jerusalem and the autonomous territories after a wave of Palestinian anger provoked by Likud leader Ariel Sharon...Meanwhile, one Israeli soldier died

³¹⁸ Ibid., p.53.

³¹⁹ ‘La policia israeli mata a cinco palestinos en el corazon religioso de Jerusalem’.

³²⁰ ‘la ‘batalla’ de Jerusalem’.

during a bomb attack',³²¹ writes the *El Pais* correspondent. It is furthermore mentioned in *Le Figaro* that the attacker shouted '*Allah Akbar*'.

In *El Pais*, Israel bears most of the blame for the situation. On 2 October 2000, the front page shows a photo of an Israeli soldier gripping the arm of a young Palestinian. The headline says: 'The Israeli repression brings the number to dozens of dead in the Palestinian *intifada*'.³²² On page 2 there appears a picture of Israeli soldiers facing stone-throwing Palestinian youth. The article on page three starts with a sentence collectively blaming Israelis 'Tonight the Israelis blocked all accesses to the Palestinian territories'.³²³ Palestinians, though presented as the weak party, are not shown in a very positive light, either. They appear mostly in photos as stone-throwing, shouting youth. References to what the mainstream of both societies think, e.g., public opinion poll results, are neglected. In another article, the US requests quiet to continue the Peace Process. The conflicting parties do not seem to have this desire.

In conclusion it can be said that the reporting by European newspapers on the events of September 2000 is sometimes not as objective and distanced as one might expect. Derogatory terms such as 'Israeli elements' have to be avoided. In some articles, the Israeli point of view is hardly presented, thereby ignoring the principle '*Audiatur et altera pars*'. One has to acknowledge, though, that it is sometimes a problem for a journalist to find a spokesperson in a short time. There is also the problem of limited space but one can certainly avoid collective attributions such as 'the Israelis blocked'. There might be many Israelis who oppose the specific policy. In general, there are problems attached with what image the reader gets from reading the reports and looking at the photos. Palestinian stone-throwers versus Israeli soldiers – David versus Goliath – are the dominant images obtained.

³²¹ 'Mas de 30 heridos se registraron ayer en Jerusalem y en los territorios autonomos en una oleada de colera palestina, provocada por la visita que Ariel Sharon, el lider del Likud, efectuo al explanada de las mezquitas, el tercer lugar santo del islam, en el corazon de la ciudad santa de Jerusalem. Mientras sucedian estos incidentes, un soldado israli moria en un atentado con bomba perpetrado la noche anterior en Gaza por un comando palestino.'

³²² 'La represion israeli eleva a decenas los muertos en la Intifada palestina'.

³²³ 'Anoche los israelis bloquearon todos los accesos a los territorios palestinos'.

The Death of Mohammed Al-Durra

The next media event examined is the death of the young Palestinian Mohammed Al-Durra. The boy, caught in crossfire between Israeli soldiers and Palestinians, was killed on 30 September 2000. It was first thought, and the Israeli army did not deny it in the beginning, that an Israeli soldier shot and killed the boy. However, as later investigations revealed, it was probably stray bullet from the Palestinian side that hit Mohammed. Nonetheless the picture with the child desperately trying to hide behind his father's back went around the world. It became a symbol of Palestinian suffering.

Even though it could have been expected that media would side with Palestinians, they were quite critical to both sides say Jäger and Jäger.³²⁴ But, by trying to be fair and balanced, both sides are again portrayed in a negative light. This strengthens the image that both sides are irrational. Jäger heavily criticise *Der Spiegel*, especially for the headline 'Rockets against stone throwers' (9 October 2000).³²⁵ Such headlines reinforce the David versus Goliath stereotype.

Representing the Israeli version of events is often left to a few selected groups such as soldiers, politicians, settlers³²⁶ and some left-wing Israelis.³²⁷ They do not necessarily represent general public opinion as presented in opinion polls. A point criticised especially in the reporting by *Die Welt* is that the authors hide behind authorities, using many direct and indirect quotes. Jäger and Jäger say that even though the author might not agree with what the person being interviewed says, the reader takes the quotation at face value.³²⁸ Taking a positive approach, *Die Welt* does try to provide a different reading of the dramatic situation by not blaming solely one side for the death of the young boy, but by presenting it as a tragic accident.³²⁹

³²⁴ S. Jäger, M. Jäger (note 19), p.191.

³²⁵ Ibid., p.147.

³²⁶ The use of terms such as settlers, settlements, occupied territories, militants, radicals is not discussed here. This terminology is widely used in international media.

³²⁷ Ibid., p.153.

³²⁸ Ibid., p.170.

³²⁹ Ibid, p.176.

Le Figaro's lead on 2 October 2000 reads: 'These children are dying for Jerusalem'.³³⁰ Again, the religious element of the conflict is reinforced. One might even think of the child crusaders centuries ago. Also problematic are two pictures with Mohammed al Durra. The first photo shows him hiding behind his father and the second shows him being hit. This is a very shocking and emotive picture; printing it shows a lack of sensitivity on part of the editor. Furthermore it might even contravene the ethics of journalism, such as respect for human dignity as laid down, for instance, in Resolution 1003 of the Council of Europe³³¹ and in many national journalistic codes of conduct. The photos as well as the above-mentioned headline enforce the stereotype that both parties are reckless in achieving their goals, shown by not caring for the lives of their children. These pictures especially stereotype the Israeli army even though the photos cannot prove who caused this fatality. The stereotyping continues during the following days, with photos typically depicting fleeing Palestinian gunmen and stone-throwing Palestinians.

During the following days, a variety of articles of different quality provide news but also background information. On 4 October 2000, a journalist reports on the mood of Israeli society though referring mainly to the political left. The report is titled 'Israel in shock'.³³² The picture next to it is somewhat unrelated. It depicts a group of Palestinians carrying a bleeding man. The day after, a typical news report reinforces the David versus Goliath image: 'Molotov cocktails versus bullets'.³³³ Another article talks about how internal struggles in the Palestinian Authority are fuelling the violence. Furthermore, there is an interview with the President of the Jewish Council in France, Henri Hajdenberg, on the situation. It is not clear why he is interviewed. He can certainly be interviewed as any other politically active representative of a French organisation on the conflict. However, if it is not explained why he is chosen, this might reinforce the stereotype that because of his being Jewish rather than a French citizen in the first place, he is somehow connected to the conflict.

³³⁰ 'Ces enfants qui meurent pour Jérusalem'.

³³¹ Council of Europe, Parliamentary Assembly, Resolution 1003, 1.07.1993.

³³² 'Israël sous le choc'.

³³³ 'Des cocktails Molotov contre des balles'.

David versus Goliath – this image dominates reporting by the *Guardian*. ‘From their concrete fortress the Israeli gunners who inflicted the death that has become the symbol of these days of blood and rage, opened up with anti-tank missiles yesterday – blasting away hopes of an end to violence in the Middle East’, writes correspondent Suzanne Goldenberg on 2 October 2000; she continues: ‘Rami became their target. So did the ambulance driver....’ The blame is put squarely on Israel, especially the army, which appears as a bunch of lawless gunmen deliberately shooting innocent civilians.

The images of either Israeli or the Palestinians do not improve much during the next days. Photos typically depict soldiers against stone-throwers. Certain images are also applied to some politicians. Ariel Sharon is described in very negative terms, beginning with the headline: ‘Ariel Sharon: The bloodstained past that inflames Palestinians’. He is defined in the article as a bulldozer, hardliner, super hawk and hero for some Israelis. Goldenberg picks up mostly negative biographical details. His political development is not fully presented, e.g., that he once belonged to the Labour Party. Labelling a politician in such a one-sided way makes it difficult to describe changes in his policy. In hindsight, this is especially true for Sharon.

Goldenberg’s wording is not very sensitive at times. Certainly, journalistic language should be vivid, but in the right place. Sentences such as: ‘The death toll from six days of violence stood at 55:43’ are inappropriate and disrespectful to the victims. This is not a sporting match. A more ‘balanced’ death toll could mean more Israelis losing their lives. Seen from this perspective, the following quote of a Palestinian doctor treating wounded people is also problematic: ‘Even in London, in Romania, and in Yugoslavia, I never saw anything like that.’ Thus, the reader understands that the Israeli army is more brutal than any army worldwide. A short paragraph on the army’s response ends with a quote by the same doctor saying that ‘the Israelis are shooting at our people and our children, not with the aim of injuring, but for killing’. This statement put at the end weighs more than any other statement. The headline of another article – ‘Praise for strong-arm tactics despite deaths’ – implies again that the army is cruel and reckless and does not care about deaths.

‘Crisp, clear, dramatic, meaningful quotes give a story more interest’ stresses a journalists’ textbook. However, they should be carefully selected, as the previous and other examples illustrate. In another event at the time, the *Guardian* quotes an Israeli representative of the left-wing organisation Gush Shalom, who refers to attacks of Jewish Israelis on Arab Israelis in Nazareth by saying: ‘What is happening in Nazareth is a pogrom, bearing all the hallmarks’. After living in Israel, one knows that such comparisons and other references to the Holocaust are quite common in political debates. However in the European context, this is not the case. Such comparisons reverberate much stronger than in Israeli society.

Sometimes, the very emotive news reports in the *Guardian* also provide a lot of information, enabling the reader to get a broader picture of the situation. On 3 October 2000, excerpts of articles from Arab and Israeli newspapers are printed. This gives the reader the opportunity to have access to different versions of the events. Arab and Israeli sources are quoted within lengthier articles from other papers, but not to this extent. On 4 October 2000, there is an article in the *Guardian* on public opinion in Israel; it discusses amongst other things the tensions between Jewish and Arab Israelis. Furthermore, it states that the public in general supports military action, though it does not say why. Nonetheless it is a good attempt to give more background information on what the different sectors of Israeli society think. During the following days, there are reports on the reactions of the Arab countries and on the mood of Israelis during Yom Kippur, revealing the fears and anxieties of Israeli society.

The death of Mohammed Al-Durra is not covered as extensively in *El Pais* as in other European newspapers. A small article about Al-Durra and his father, accompanied by a photograph, is titled: ‘The testimony of a TV camera’.³³⁴ This implies that the camera documents exactly what is taking place, i.e., Israeli soldiers shooting the Palestinian boy, though it actually shows only a small part of the whole scene and nobody knows where exactly the fateful bullet came from. Another misleading photo shows an Israeli civilian leaning on a tank. The man is described as a Jew from the Gilo neighbourhood in

³³⁴ ‘*El testimonio de un camara de television*’.

Jerusalem. As in other articles, the term Jew is used here as a synonym for Israeli, which it is not. Furthermore it is not clear why the man is standing there. One interpretation could be that the civilian is in charge of the tank or may use the tank as he wishes. Other articles the following days focus on negotiations. Israel is primarily blamed for the deterioration of the European-Mediterranean dialogue. The European-Mediterranean dialogue is mentioned in this paper probably because it is important to Spain as a European and Mediterranean country.

To sum up, the reporting surrounding the death of Mohammed Al-Durra paints a grim picture of the situation. And this is probably justified. However, both sides are negatively stereotyped. Some of the journalists seem to lack the necessary distance. Thus, their articles tend to have a negative bias. Nonetheless there are a few pieces that give the reader valuable information beyond the hard news.

The Suicide Bombing at the Dolphinarium

Twenty Israeli teenagers died when a Palestinian suicide bomber blew himself up in front of a discotheque near the Dolphinarium in Tel Aviv on 1 June 2001. Again, Jäger and Jäger criticise how this event is presented in German newspapers, that is, as one in a 'chain of violence'.³³⁵ Both sides are characterised in a negative way. On one side are Sharon and the Israeli settlers, on the other side, Arafat and the Palestinians.³³⁶ Only the intervention of a third party can apparently break the vicious cycle of violence.³³⁷ Jäger and Jäger also criticise the fact that the victims of the bombing are hardly mentioned in some papers. Instead, many focus on the visit of the German foreign minister Joschka Fischer and his attempts to mediate between the parties.³³⁸

Le Figaro leads on 2 June with the headline 'Carnage in Tel Aviv'.³³⁹ There is no picture accompanying the article on the front page. Only on page 3 is there a picture of injured Israelis and medics taking care of them. The article mentions that this has been one of the

³³⁵ S. Jäger, M. Jäger (note 19), p.310.

³³⁶ Ibid., p. 311.

³³⁷ Ibid., p. 312.

³³⁸ Ibid., p. 257.

³³⁹ 'Carnage a Tel Aviv'.

gravest attacks since September 2000. The following day there is a typical news item, putting the Israeli actions first even though being a response to the suicide bombing: 'Yesterday evening Israel announced the start of a military operation against the Islamic Jihad and Hamas after a suicide attack at a discotheque on the sea shore of Tel Aviv on Friday evening that left 20 people dead'.³⁴⁰ However, as mentioned before this is a typical example of how news items are structured and not specific to the Israeli-Palestinian issue.

Nonetheless, Israel often seems to be the one determining an action or non-action. 'Israel close to war' is the headline of one news report.³⁴¹ The focus is often on Israeli, not Palestinian action. Then there is a graph showing all suicide attacks that have been carried out against Israelis. A statistic lists the number of people killed in suicide bombings since 1994. However these two items might not represent the full picture. Many suicide bombings could be stopped before they were being carried out. These information is not considered newsworthy and thus not part of the report. A short article reports on the speculation that Israel is going to expel Arafat. One article focuses on the Palestinians discussing the situation in the PLO.

Quotations are used here and there and some might be considered problematic, such as the one from Hizbullah-TV: 'The right of the Palestinian people to defend itself against aggression, occupation and colonisation and in continuing the *Intifada* is its legitimate right.'³⁴² It is presented without any comment. This quote could be considered problematic if one assumes that readers take this statement at face value. Quotes such as these reveal ideology and thinking and thus provide better understanding of the events. However not all propaganda, especially if it is totally out of context, should be cited.

The Guardian also leads on 2 June 2001 with the suicide bombing on its front page. Goldenberg delivers a very detailed description of the dreadful scene at the discotheque

³⁴⁰ 'Israël a annoncé hier soir une offensive militaire contre les organisations intégristes palestiniennes Djihad islamique et Hamas, après l'attentat suicide qui a fait vingt morts, vendredi soir, près d'une discothèque du bord de mer à Tel-Aviv.'

³⁴¹ 'Israël au bord de la guerre'.

³⁴² 'Le droit du peuple palestinien a se défendre face à l'agression, l'occupation et la colonisation, et à poursuivre l'intifada, un de ses droits légitimes.'

by using radio reporting and eyewitness accounts. Other attacks on Israeli civilians are mentioned. There is no picture accompanying the report. Two days later we find a large photograph of the suicide bomber on the front page, subtitled 'The face of a 22-year-old suicide bomber who killed 19 Jewish youngsters'. Jewish instead of Israeli is used also in another headline and it is not clear why because civilians in Israel, regardless of their religious, ethnic or national background, might have been affected by the attack. Actually, as an article on page 8 states that one girl was not Jewish, at least not recognised as such by the religious authorities.

The feelings of the victims' relatives are the focus of another report. The headline runs 'Immigrants lose hope as they bury children'. A smaller article tries to analyse the motives of the suicide bomber: 'Bomber went to West Bank for a better life'. Then there are a few links to websites of Israel's Ministry of Foreign Affairs and the Palestinian information organisation. The next day we find an article on page 12: 'Militia coaxed into Arafat ceasefire'. There is also a photo of an Israeli soldier examining a Palestinian car. The caption says that Palestinian areas have been blocked but not why. Another article gives the reader an overview on the factions in the PA.

Unlike the other European newspapers, *El Pais* does not manage to cover the suicide bombing in time. Only three days after the bombing, there is a headline saying: 'Sharon orders an offensive against the Palestinians despite the ceasefire by Arafat',³⁴³ implying that Sharon ignores the ceasefire. On page 2, the headline goes 'Sharon orders the Israeli military to attack Palestinian leaders'.³⁴⁴ Reading only the headlines, the reader gets the impression that it is only Sharon acting and the Palestinians reacting. The suicide bombing is not mentioned at all in the headlines. There is, however, a picture of a grieving Israeli family. At the end of one report the reader learns what measures Israel has taken: the territories are put under curfew; offices of PLO are closed, F16 flying over Gaza. Then the article continues by announcing a couple of other military measures by

³⁴³ 'Sharon ordena una ofensiva contra los palestinos pese al alto el fuego de Arafat'.

³⁴⁴ 'Sharon ordena al Ejército de Israel que ataque a los líderes integristas palestinos'.

Israel 'as if all this was not enough,'³⁴⁵ implying that the reaction of Israel to the suicide bombing is exaggerated. Another article talks about the situation in Ramallah and the feelings of its inhabitants. Except for the photograph, there is no mention of the feelings of parents and friends of the victims of the suicide bombing.

In brief, the suffering of the victims of the bombing and their relatives was neglected in some of the papers. Many papers focused on the Israeli reaction. German newspapers gave a lot of attention to the attempts of its foreign minister to calm the situation in the wake of the attack.

Withdrawal from Gaza

One of the major media events in the region in 2005 certainly was the Israeli withdrawal from Gaza. More than 500 journalists were allowed to enter to the Gaza Strip during the evacuation of the settlements. All European papers reported extensively, extra correspondents were flown in. The *Frankfurter Allgemeine* dedicated almost equal space to the Israeli withdrawal as to the Palestinian reaction. One feature described the history of Jews/Israelis living in Gaza. It also showed the different political stands among the Israeli settlers being moved out. Photos depicted Israelis moving out of their homes and crying and shouting young people being carried away by Israeli soldiers. The day after, there was an article on the reaction of the Israeli public to the evacuation. Other articles dealt with the Palestinian version of the events, their hopes and expectations.

The Guardian published at least two major reports on its homepage every day from the start of the withdrawal. It described in detail the situation of the people being removed from their houses. It gave a balanced picture of the protests and the majority of the settlers, who were leaving quietly. Vice Prime Minister Ehud Olmert was quoted extensively about the meaning of leaving the settlements. The day after, an overview of what the Israeli public thinks about the withdrawal was given; in another article, reactions of the Arab world were summarized. However, in general, not much information was

³⁴⁵ 'Por si todo ello no fuera suficiente, la oficina de informacion del Ejercito alertaba ayer a todo el mundo...'.

given about the Palestinian reaction.

Le Figaro also reported very extensively on the withdrawal, after assigning at least three correspondents. Several articles described the scene of the evacuation and the mood of the Israeli settlers being removed. Personal stories were told. Photographs depicted clashes between Israeli soldiers and evacuees. An article on Sharon tried to explain his change of politics. The Palestinian perspective was mentioned in a couple of articles and two Palestinian politicians and members of the government, Mahmoud Abbas and Mohammed Dahlan, were portrayed.

El Pais also focused on the evacuation and the proceedings. The Palestinians were hardly mentioned. One interview was done with a settler who then lived in four-star hotel. It was not revealed that the living conditions of large families were not that comfortable in a hotel, especially taking into account that this was, though temporarily, exchanged for a home they had to leave. The reader could, however, obtain a good impression of the grief and anger of the settlers. In general, *El Pais* reported less.

The Guardian, *Le Figaro* and *El Pais* repeatedly used the term ‘Jewish settler’ instead of ‘Israeli settler’, such as in the lead of an article in the *Guardian* on 15 August 2005: ‘For the most diehard Jewish settlers’. As stated previously, ‘Jewish’ is not exactly a synonym for Israeli and reinforces the notion of a religious conflict. Furthermore, the people were not removed because they were Jewish but because they were Israelis and the State of Israel had decided that Israeli settlers would be evacuated from Gaza.

To sum up, all papers printed detailed reports on the evacuation, the feelings of the settlers, the clashes of some of them with the police. The Palestinian version of events was not equally presented in all papers. Only one day after the end of the Gaza withdrawal, the attention given to this topic declined sharply.

Conclusions and Recommendations

There are many channels of communication between Europe and Israel; the Action Plan

aspires to establish even more and strengthen the existing ones. But before people actually meet face-to-face or talk to each other via telecommunication, the press, television and radio are the daily transmitters of information. This paper has focused on press coverage of Israel in European quality papers. Quality papers still enjoy the greatest trust among the audience compared to other media. As this article has shown, the reporting has its strengths and weaknesses. Before discussing what can be done to improve reporting, it is worth looking at both the positive and negative aspects.

All the European papers analysed here have reported extensively on Israel, although mostly in the context of the Israeli-Palestinian conflict. Beyond the hard news, there were many pieces in the period observed here that provided the reader with background information. Unlike television or radio coverage where news often has to be covered in one or two minutes, newspaper reports have more space in which to elaborate. Press correspondents usually have more time to research their stories, enabling them to go more into depth and give different perspectives. Thus, at best, readers get a report providing them with information that broadens their understanding.

Even though all papers have attempted to give a balanced and fair description of the situation, there are weaknesses in the way events are reported that might lead to stereotyping. One of the weaknesses is the focus on the action taking place. Reflection on long-term developments is not frequently found in news reporting. There is certainly a limit on what dailies can report. With potential news from more than 190 countries, only a few items can be selected. Nonetheless, since the Israeli-Palestinian conflict is such a prominent issue and Israel geographically so close to Europe as well as economically and politically intertwined, it would probably be in the reader's interest if there were more pieces on Israeli society, economic and social issues.

Words are a journalist's main tool. Wording should be thoughtful and carefully crafted. There needs to be greater awareness about the use of certain terminology. Concepts such as the Holocaust, pogrom, and apartheid state should be avoided. Even though opinion pieces do not have to be as balanced as hard news, journalists in any case should not

detach themselves from the basic values of democratic societies. In regular hard news reports, journalists should refrain from interpreting and commenting on events.

Words create images.³⁴⁶ Frequently, using the David versus Goliath image as done in some of the papers certainly does not help to better explain the conflict but, rather, it reinforces stereotypes. The Israeli-Palestinian conflict is not about the good against the bad. This way of reporting simplifies the layers of conflict that journalists should at least attempt to uncover. Pictures of stone-throwing Palestinians versus Israeli soldiers also oversimplify reality. Furthermore, pictures negatively labelling both sides are too often displayed, sometimes in total isolation from the text. It is the task of editors to choose adequate photos that contribute to greater understanding and not just confirm stereotypes.

Labels like bulldozer, warmonger or hawk stereotype a person and are not always appropriate. The same goes for collective attributions. Not always can labels or collective attributions be avoided. There is not always enough space for a more detailed description. Especially in headlines, labels are used because they are short, capture a great of information and are easy to comprehend. But they should not oversimplify or be laden with emotion. As mentioned, the Sharon case is also a good example of the problems of labelling. When Sharon decided to carry out the disengagement, journalists had a hard time explaining this change because they had already labelled him.

Journalists have also to be careful about using terminology and metaphors related to war or natural catastrophes, such as 'wave of violence' or 'vicious cycle of violence'. The repeated use of these phrases leaves the impression that nothing can be done to change the situation. The same goes for overtly framing the conflict in religious terms, which might lead to misunderstanding the conflict is a clash of religions that apparently is unsolvable. The language of sports, such as 'the death toll stood at 55:43' is certainly inappropriate. Nonetheless, journalistic language would be very dull without any figures

³⁴⁶ Tal, Eliayhu Israel in the Medialand: A Study of the International Media's Coverage of the Uprising (*Intifada*) in Judea, Samaria and the Gaza Strip - December 1987 to August 1988 (Tel Aviv: Tal Communication, 1988.)

and metaphors. What is needed on the journalist's side is sensitivity and thoughtful use of language.

As said before, reporting unfortunately focuses on the negative most of the time. Of course, the world should not be painted in rosy colours. However, it would deepen the readers' understanding if issues of Israeli and Palestinian life other than those directly related to the conflict were to receive more attention. Looking at typical press photos and reading captions and headlines, the reader might get the impression that Israeli society is a warrior society and overwhelmingly religious. Headlines, though they have to be short and punchy, need to be comprehensive and balanced, meaning that all relevant information is included. Not all readers have the time to read the whole story and some just browse through.

A lot of reporting consists of previously reported speech and other people's accounts since journalists cannot always be on the spot. These direct or indirect quotes are subsequently embedded in the story. Quotations make a story livelier. Nonetheless quotes should be selected carefully and avoid giving voice to the most exaggerated or most extreme opinion. Minority or extremist views should not be presented as if they were the general consensus. This draws an unbalanced picture of the society.

It is however, a principle of good journalism to present the reader with different viewpoints. Giving the reader some carefully selected references for where to turn for more information, as the *Guardian* does, by providing links to homepages of regional newspapers or other source of information is an idea worth considering for other European papers as well. There might be concerns about a language barrier, since most of these sources are in English, Hebrew or Arabic. But most readers will probably be able to handle the English sources.

Finally, this article also wants to draw attention to the reader. News consumers should be aware of several things when reading a newspaper report. It is too easy to put all the blame on the media for the opinion poll findings showing negative results. First of all, the

reader should be aware of the constraints of media production. Journalists have a limited amount of time and space. An account of the history of the conflict cannot be given in every article. When looking at a photo or television image, the recipient should be aware that it is always only a fraction of the whole picture.

If readers do not feel well informed, they should go to the library, use the Internet, speak to people – in short: gather different viewpoints. However, they have to be critical toward the sources and be aware of the strengths and weaknesses of the channel of information used. As much as the journalist, the reader should be open and curious, not always choosing information that fits best into his view of the world. Generally there is no black and white. Finally, whenever readers are not satisfied with the reporting, they can write a letter of criticism to the author or editor. These letters are read and might even reach the chief editor's desk. Lastly after reading a well-researched and well-written report, the journalist will be happy to receive a positive response.

To achieve the above-stated objectives and enhance the media's role as instruments of dialogue in EU-Israeli relations, this article suggests a two-pronged approach. First, to raise awareness among journalists that the issues discussed in this article can be achieved in different ways. Face-to-face meetings are one option. Though the ethics and principles of good journalism are taught in journalism schools, new generations of European journalists should be given the chance to go to Israel and meet people from different walks of life and diverse political backgrounds. Some European countries like Germany already have such exchange programmes.

It might also be worth sending a group of journalists from different European countries to give them the opportunity to exchange information on standards and principles. Comparing the bilateral relations of each participant's country with Israel and its possible impact on coverage might also lead to interesting insights. Even though the participants might never be stationed as correspondents in Israel, they may have to deal with the subject as sub-editors or editors.

Established journalists – editors, foreign correspondents, and photographers – should also be involved in such meetings. They do not necessarily have to go to Israel. Israeli journalists could also go to different European countries. Yearly conferences involving European and Israeli, and possibly Palestinian journalists could be set up. The European Union has already taken the first step in initiating the so-called Europe-Israel Media Dialogue Seminar. Editors of Israeli and major European newspapers participated in the first event, which took place in Israel in 2004. At the end of 2005, another seminar was held in Spain. Such initiatives should be expanded and involve press representatives of all old and new EU Member States. Representatives of the various media monitoring organisations established should participate in such meetings and provide the necessary input. Both the image of Israel in European media coverage as well as the image of Europe in Israeli media coverage should be discussed on a regular basis. Instruments could be developed to monitor standards of news reporting and the use of language. Finally such a conference could award a prize for fair, accurate and informative reporting on the Middle East.

Second, readers and future readers need to be educated. Such education programmes could be part of the people-to-people contacts that the Action Plan intends to promote. However, readers are a very heterogeneous group. Face-to-face meetings are certainly crucial here as well. Encounters between youth, young professionals, teachers and politicians, among others, are to be encouraged. Through such meetings, participants are confronted with stereotyped thinking about the ‘other’. They have a chance to take a look beyond the headlines and get a picture that, though more complex, is closer to reality. Furthermore, it is important to teach the younger generation from early on how to critically use the media. Such a subject is already included in some school curricula but it should be taught in all European schools. The limitations of media reporting need to be clear to everyone.

Finally, many of the points raised in this article apply to reporting not only from Israel but also from abroad in general. Thus, a constant and constructive public debate on the standards of media reporting and the role of the media in society will be necessary for

years to come.

Annex I

Proposed EU-Israel Action Plan

Introduction

The enlargement of the European Union on 1 May 2004 brought about a historical shift for the Union in political, geographic and economic terms. The EU and Israel are now closer together than ever before and, as near neighbours, will reinforce their political and economic interdependence. Enlargement offers the opportunity for the EU and Israel to develop an increasingly close relationship, going beyond cooperation, to involve a significant measure of economic integration and a deepening of political cooperation. The European Union and Israel are determined to make use of this occasion to enhance their relations and to promote stability, security and well-being. The approach is founded on partnership, joint ownership and differentiation. It will contribute to the further development of our strategic partnership.

The European Neighbourhood Policy of the European Union sets ambitious objectives based on commitments to shared values and effective implementation of the political, economic, social and institutional actions agreed to in this Action Plan.

Israel and the EU will strive to intensify political, security, economic, scientific and cultural relations, and shared responsibility in conflict prevention and conflict resolution.

The Presidency's conclusions at the Essen Council in December 1994 already stated that: 'The European Council considers that Israel, on account of its high level of economic development, should enjoy special status in its relations with the EU on the basis of reciprocity and common interest....' The EU has concluded an Association Agreement with Israel. The EU and Israel, together with the other Mediterranean partners, have been working together in the framework of the Barcelona process. This AP will contribute to

the fulfilment of the Essen declaration as we shape the future path and framework of the EU-Israel relations.

The EU and Israel share the common values of democracy, respect for human rights and the rule of law and basic freedoms. Both parties are committed to the struggle against all form of anti-Semitism, racism and xenophobia. Historically and culturally, there exist great natural affinity and common heritage. Thus, we strive to build bridges and networks.

Israel has a functioning market economy and a well-developed public administration and public services. This foundation makes Israel well placed to further develop its relationship with the EU, including in the framework of the ENP.

The level of ambition of the EU-Israel relationship will depend on the degree of commitment to common values as well as the mutual interests and the capacity of each party to implement jointly agreed priorities. The pace of progress of the relationship will acknowledge fully the efforts and concrete achievements in meeting those commitments.

This Action Plan is a first step in this process. It covers a time frame of three years. Its implementation will help fulfil the provisions in the Association Agreement (AA), build ties in new areas and encourage and support Israel's objectives for further integration into European economic and social structures. It will also build solid foundations for further economic integration based on the adoption and implementation of economic and trade-related rules and regulations with the potential to enhance trade, investment and growth. It will furthermore help to devise and implement policies and measures to promote economic growth, employment and social cohesion, to reduce poverty and to protect the environment, thereby contributing to the long-term objective of sustainable development.

An important goal of the Action Plan is to encourage cooperation on non-proliferation of weapons of mass destruction and the fight against terrorism, as well as prevention and resolution of conflicts in the region and beyond.

This Action Plan will also provide the opportunity and basis for increased legislative cooperation and exchange of views, with an aim to explore the possibility of approximation of laws in appropriate areas. Israel already participates in some Community programmes, notably the Sixth Framework Programme, on a similar basis as the members of the European Economic Area (EEA).

As part of this Action Plan and in preparing for its first review, the EC will undertake an overall examination of all other Community programmes and bodies, with the objective of opening them to Israeli participation. This will be subject to mutual interest, and where required, to financial contributions by Israel as well as alignment of its legislation as required to participate in the relevant programme.

Israel and the EU will cooperate closely in implementing this Action Plan.

New Partnership Perspectives

The European Neighbourhood Policy opens new partnership perspectives:

- The perspective of moving beyond cooperation to a significant degree of integration, including through a stake in the EU's Internal Market, and the possibility for Israel to participate progressively in key aspects of EU policies and programmes.
- An upgrade in the scope and intensity of political cooperation.
- The opportunity to explore the possibility of approximation of economic legislation, the opening of economies to each other, and the continued reduction of trade barriers which will stimulate investment and growth.
- Where the need to align Israeli legislation with EU norms and standards in certain areas has been identified and agreed upon, targeted support and advice will be made available through a mechanism such as TAIEX.
- The Commission is developing a new European Neighbourhood and Partnership Instrument (ENPI), which will provide targeted assistance to Israel to support, where appropriate, the actions identified in the present document and also covering cross-

border and transnational cooperation between Israel and the Member States. There will also be infrastructure investment support through the European Investment Bank.

- Within the overall objective set out above, gradual opening and/or reinforced participation in relevant Community programmes promoting, *inter alia*, industrial, cultural, scientific, educational, and environmental links.
- Deepening trade and economic relations, extending them to cover, *inter alia*, the service sector, particularly financial services, and to provide the conditions for increasing investment and exports.

The objective of this Action Plan is to build the foundations for developing EU-Israel relations further. The advisability of any new contractual arrangements will be considered in due time. The Commission has suggested that this could take the form of a European Neighbourhood Agreement. In the meantime, the Association Agreement remains the framework for cooperation, while the AP represents a declaration of mutual objectives and commitments.

Priorities for Action

This Action Plan sets out a comprehensive set of priorities in areas within the scope of the Association Agreement and beyond. Among these priorities, particular attention should be given to:

- Enhance *political dialogue and cooperation*, based on shared values, including issues such as facilitating efforts to resolve the Middle East conflict, strengthening the fight against terrorism and proliferation of Weapons of Mass Destruction, promoting the protection of human rights, improving the dialogue between cultures and religions, cooperating in the fight against anti-Semitism, racism and xenophobia.
- Increase economic integration particularly with the EU, *inter alia*, by developing **trade** and investment flows, by liberalising trade in services, in particular financial services with a view to preparing for participation in the EU market, as well as deepening and enhancing the existing **economic dialogue** and identifying areas relevant for regulatory approximation with EU legislation based on shared objectives.

- Strengthen co-operation on **migration**-related issues, fight against **organised crime**, including trafficking in human beings and **police and judicial co-operation**.
- Promote co-operation in transport, energy and telecom networks: in the **transport** field, in particular co-operation in the Galileo initiative and in the areas of air, maritime and road safety; in the **energy** sector, exploring gradual convergence toward the principles of the EU internal electricity and gas markets, development of energy networks and regional cooperation; in the **science and technology** area, promote the information society through the use of new technologies and electronic means of communications by businesses, government and citizens, as well as strengthening scientific and business links.
- Strengthen the **environmental** dimension of public policy and EU-Israel co-operation: promotion of sustainable development policies and actions, including on climate change and water pollution.
- Strengthen links and co-operation in ‘**people-to-people**’ contacts in education, culture and audio-visual, civil society and public health.

Progress in meeting these priorities will be monitored in the sub-committees to be established under the Association Agreement. On this basis, the EU and Israel will review the content of the Action Plan and decide on its adaptation and renewal. After three years, decisions by Israel and EU may be taken on the next step in the development of bilateral relations, including the possibility of new contractual links. This could take the form of a European Neighbourhood Agreement whose scope will be defined in the light of progress in meeting the priorities set out in the Action Plan.

Actions

Political Dialogue and Cooperation

Israel and the EU are committed to achieve closer political cooperation and dialogue on the basis of their common values: the respect for human rights and fundamental freedoms, democracy, good governance and international humanitarian law. Both parties are committed to join efforts to combat common security threats, to promote peace and stability in the Middle East, to support the work of international multilateral frameworks

and cooperate in these fora. The EU and Israel are also firmly committed to promote regional cooperation, as a way to address the challenges of a trans-boundary nature.

Shared Values

Democracy, Human Rights and Fundamental Freedoms

- Work together to promote the shared values of democracy, rule of law and respect for human rights and international humanitarian law.
- Explore the possibility to join the optional protocols related to international conventions on human rights.
- Promote and protect rights of minorities, including enhancing political, economic, social and cultural opportunities for all citizens and lawful residents.
- Promote evaluation and monitoring of policies from the perspective of gender equality.
- Promote a dialogue on policies for the physically and mentally disabled.

Combating Anti-Semitism

Recognizing the significance of the ‘Berlin Declaration’ of the OSCE (April 2004) and with the aim of promoting its implementation, the two sides agree to:

- Jointly review the implementation of the recommendations on combating anti-Semitism of the EUMC and other European bodies, with a view to working together on monitoring and education.
- Support the work on anti-Semitism of the EUMC and of the ODIHR (Office for Democratic Institutions and Human Rights), as mandated by the OSCE Berlin Conference.
- Strengthen the legal framework at all levels to combat anti-Semitism.
- Combat hate crimes, which can be fuelled by anti-Semitic propaganda in the media and on the Internet.
- Promote the further development of educational programmes for combating anti-Semitism, promote remembrance of and education about the Holocaust.
- Encourage and support international organisations and NGO efforts in combating anti-Semitism.

- Encourage development of exchanges among experts in appropriate fora on best practices and experience in law enforcement and education.
- The EU will continue its efforts to ensure that the condemnation of anti-Semitism will become a part of international norms through, *inter alia*, appropriate UN resolutions.

Fight against Racism and Xenophobia, including Islamophobia

- Support the work of the EUMC (European Monitoring Centre on Racism and Xenophobia).
- Promote in Europe and in Israel education about the importance of tolerance and respect for all ethnic and religious groups.
- Combat hate crimes, which can be fuelled by racist and xenophobic propaganda in the media and on the Internet.
- Strengthen the legal framework at all levels to combat racism and xenophobia, including Islamophobia.

Regional and International Issues

Cooperation under CSFP/ESDP, Crisis Management

While retaining the central focus of the political dialogue in the context of the Association Council, the dialogue and cooperation should also be enhanced and diversified, at all official levels, as appropriate, and should include the following issues:

- Strategic issues and regional security.
- The fight against terrorism.
- Non-proliferation of weapons of mass destruction and their means of delivery, both to state and non-state actors.
- Regional issues in the Middle East and elsewhere.
- Cooperation in the international fora.
- Dialogue between cultures and religions.
- Concrete measures in the fight against anti-Semitism.
- Concrete measures in the fight against racism, and xenophobia, including Islamophobia.

- Conflict prevention and crisis management, including cooperation on research and policy planning.
- Civil protection and peacekeeping.
- International development cooperation, humanitarian aid and networking to allow rapid reaction for disaster relief and other emergency situations that may arise worldwide.

Situation in the Middle East

Strengthen political dialogue and identify areas for further cooperation on:

- Progress toward a comprehensive settlement of the Middle East conflicts.
- Working together with the EU, on a bilateral basis and as a member of the Quartet, with the aim of reaching a comprehensive settlement of the Israeli/Palestinian conflict and a permanent two-state solution with Israel and a Palestinian state living side by side in peace and security, in accordance with the Roadmap, and the obligations of the parties set out in it.
- Supporting efforts by the PA to dismantle all terrorist capabilities and infrastructure; and ensuring a complete and unconditional cessation of terrorist activities and violence.
- While recognising Israel's right of self-defence, the importance of adherence to international law, and the need to preserve the perspective of a viable comprehensive settlement, minimising the impact of security and counter-terrorism measures on the civilian population, facilitate the secure and safe movement of civilians and goods, safeguarding, to the maximum possible, property, institutions and infrastructure.
- Improving economic and social conditions for all population.
- Further improving access and coordination to facilitate the implementation and delivery of humanitarian and other forms of assistance and facilitate the reconstruction and rehabilitation of infrastructure.
- Pursuing efforts to support and facilitate reforms, transparency, accountability and democratic governance in the Palestinian Authority, and the consolidation of all security services; promote a climate conducive to the resumption of cooperation in all areas.

- Taking concrete actions against incitement to hatred and the use of violence from all sources.

Non-Proliferation of Weapons of Mass Destruction and their Means of Delivery, including Ballistic Missiles

The EU and Israel will develop their dialogue and cooperation in this context on the basis respectively of the ‘EU Strategy against proliferation of weapons of mass destruction (December 2003)’ and ‘Israel’s Vision on the Long-Term Goals of Regional Security and Arms Control Process in the Middle East (1992)’, as appropriate. Accordingly, they will:

- Cooperate on non-proliferation of weapons of mass destruction, and their means of delivery including ballistic missiles, including through implementing UNSC resolution 1540/04, fully complying with and implementing at national level their existing international obligations and consider the promotion of adherence, implementation, accession and strengthening of other relevant international instruments, export control regimes or regional arrangements.
- Further develop cooperation and coordination in the prevention of and fight against the illicit trafficking of WMD-related materials, including within the framework of international fora.
- Cooperate on developing effective systems of national export control, controlling export and transit of WMD-related goods, including WMD end-use control on dual use technologies and effective sanctions for breaches of export controls.
- Improve overall coordination in the non-proliferation area and the scope for cooperation in addressing this challenge.
- Promote incrementally regional peace and security through, *inter alia*, the relevant provisions in the Barcelona Declaration of 1995, including those relating to CBMs and weapons of mass destruction.

Illicit Trafficking of Military Equipment

- Further develop cooperation in the fight against transfer of military equipment to terrorists and the illicit trafficking of small and light weapons.

Combating Terrorism

- Strengthen EU-Israel cooperation in the fight against and prevention of terrorism.
- Exchange views and experiences on means and methods used to counter terrorism and to improve counter-terrorism capacity, including in third countries.
- Exchange views on the dilemmas and concerns of democracies in their fight against terrorism while ensuring the safeguarding of human rights in that pursuit, and protecting the rights of those targeted and affected by acts of terror.
- Cooperate to reinforce the role of the UN in the multilateral fight against terrorism, including through the implementation of UNSC Resolutions 1373/01 and 1267/99, of the UN Convention for the Suppression of the Financing of Terrorism and of the relevant international conventions.
- Enhance cooperation in all relevant international, European and regional fora to strengthen international solidarity and coordination in countering terrorism, including through the application of the standards laid down in the FATF recommendations on terrorist financing especially regarding the financing of groups supporting and engaging in violence and terror.
- Exchange information on terrorist groups and their support networks, in particular those acting in Europe and in the Middle East and take concrete actions at all levels against such groups in accordance with international and national law.
- Encourage effective implementation, at all levels, of EU decisions to act against those included on the EU list of terrorist organisations.
- Strengthen national measures and cooperate to prevent terrorists from acquiring weapons of mass destruction capabilities.

International Organisations

- Promote cooperation between Israel and the EU at international fora, as a way to promote effective multilateralism.
- Promote cooperation on issues such as the fight against immunity of authors of genocide, war crimes and any other crime against humanity.

- Cooperate on UN reform and streamlining by, *inter alia*, working toward normalisation of Israel's status in international organisations and the reduction in number of Middle East resolutions.
- Work to allow Israel to increase its contribution to effective multilateralism by means of the application of its expertise in appropriate activities of international organizations.

Regional Cooperation

- Promote dialogue on a range of issues of regional importance identified in this Action Plan, in particular on environment, energy, transport, science and technology and people-to-people contacts.

Economic and Social Cooperation and Development

Identify the scope and modalities for Israel to participate in relevant EU programmes, and in this context identify the scope for legislative approximation where required by the relevant programme.

Social Situation, Employment, Poverty Reduction

Implement the provisions of the Association Agreement as regards the development of a dialogue and cooperation on social matters of mutual interests.

Promote Best Practices on Social Problems of Post-Industrial Societies

- Promote dialogue, cooperation and formulation of policies between relevant bodies on social issues of mutual interest such as poverty alleviation, domestic violence, drug abuse and alcoholism and social exclusion.
- Exchange experience on pension and welfare policies including health care and care for the elderly.
- Exchange experience on labour policies and labour relations, including disabilities issues.
- Explore avenues of cooperation in international fora.
- Promote the participation of Israeli experts in selected European fora.

Economic Cooperation and Structural Reforms

Develop Cooperation on Economic Reforms

- Widen and deepen the economic dialogue framework existing under the Association Agreement and incorporate a platform for action where the parties jointly explore and exchange experience and views on economic and policy issues of mutual interest, both on the macro-economic and structural fronts.
- Develop EU-Israel cooperation on structural economic reforms, including privatisation and pensions.

Sustainable Development

Promotion of Sustainable Development

- Promote the adoption of sectorally sustainable development strategies.
- Exchange of information regarding role and function of a national commission for sustainable development.
- Share experience between the Commission and Israel about sustainable development strategies.

Trade-Related Issues, Market and Regulatory Reform

Movement of Goods

Promote Trade Relations

Establish a Structured and Comprehensive Dialogue to Promote Trade and Investment between Israel and the EU

- Analyse trends in trade relations between the EU and Israel and promote solutions (e.g., industrial cooperation initiatives).
- Establish a business community dialogue, including representatives of the private sector.
- Progress with further liberalisation of trade.
- The parties will establish a mechanism with specific procedures for dispute settlements related directly to economic and trade provisions of the Association Agreement.

- The Parties will examine the evolution and structure of trade with a view to improve reciprocal market access for processed agricultural products.
- Develop cooperation on e-commerce issues by tasking the relevant sub-committee with analysis and exchange of information on regulatory frameworks and development of markets. Particular attention will be given to the issue of digital signatures within the framework of Directive 99/93 with a view to developing the scope for cooperation and assessing the need for negotiations.

Develop Regional Trade Links

- Complete all procedures necessary to enable the participation of Israel in the Pan-Euro-Mediterranean cumulation of origin.
- Exchange information on the future development of rules of origin, including systems of cumulation.
- Support the development of trade promotion between Israel and other Euro-Mediterranean partners, such as Jordan, and work toward the facilitation of Palestinian trade.
- Continue the facilitation of customs procedures, administrative cooperation and relations with economic operators in accordance with the Palermo recommendations.

Customs-Related Issues

- Increase cooperation in the area of customs control of pirated and counterfeit goods.
- Explore possible scope for cooperation and modernisation of the customs service, including IT matters.
- Promote cooperation with other agencies at the border (e.g. Border Guards, Police, veterinary and phyto-sanitary services).
- Strengthen administrative cooperation to combat irregularities and fraud in customs and related matters.
- Identify ways and means to enhance cooperation within the framework of joint customs enforcement, as catered for by Protocol 5 to the Association Agreement, including improved identification of particular enforcement issues and priorities as

well as review of current working methods, with a view to upgrading cooperation and assistance to the highest possible standards.

- Initiate a dialogue on technical exchanges and joint initiatives to exploit the full potential of the existing provisions, including, the early participation by Israel in joint operational exercises as foreseen in the extension to Israel, for this purpose, of the Anti-Fraud Information System (AFIS).
- Develop EU-Israel cooperation with regard to the risk-based customs control ensuring safety and security of goods imported, exported or in transit, and explore possible definitions of standards for certification of operators (exporters and transporters) intervening in commercial exchanges.

Technical Regulations, Standards and Conformity Assessment Procedures (EU Harmonised Areas)

Facilitate Market Access of Industrial Products

- Accelerate progress toward bilateral negotiations leading to an ACAA, taking into account the specific nature of the Israeli economy and building upon the Palermo Action Plan.
- Examine the scope for Israel's participation in relevant European networks and bodies.
- Cooperation in the field of legislation on liability for defective products and general product safety, including market surveillance.
- Promote cooperation in the field of consumer protection, including the modalities for possible Israeli participation in the RAPEX alert system.

Elimination of Restrictions and Streamlined Administration (EU Non-Harmonised Areas)

Facilitate the Movement of Goods and Improve Administrative Cooperation

- Designate a central contact point to facilitate information flows and cooperation with economic operators.

Sanitary and Phyto-Sanitary Issues

Improve Cooperation on Sanitary and Phyto-Sanitary Matters as well as on Food Safety

- Explore possible areas of cooperation between Israel and the European Commission in the field of sanitary and phyto-sanitary issues (e.g. legislation, implementing practices), while taking into account the different conditions prevailing on both sides.
- Exchange of information on and, as appropriate, explore the possibility to increase convergence of Israeli legislation with EU legislation on sanitary (live animals and animal products) and of phyto-sanitary issues (plant hygiene, plant variety and quality).
- Identify the scope for increased convergence, as appropriate, of food legislation in compliance with EU food safety principles. Exchange of views regarding foodstuff-labelling requirements in order to assess the possibility of adapting Israeli legislation.
- Exchange of views on the setting-up of an animal and plant identification and traceability system.
- Exchange of information regarding, the placing on the market of substances dangerous to human health, including plant protection products and the ensuring of monitoring of residues of these substances in live animals, animal products and plant products for food and feed.

Agriculture

- Explore the scope for cooperation between EU and Israeli accreditation bodies (*inter alia*, on issues related to organic agriculture).
- Increase cooperation in the field of international marketing standards for fruits and vegetables.

Right of Establishment, Company Law and Services

Improve the Environment for Business Operations

Promote Greater Freedom in the Areas of Establishment and Foreign Investment

- Continue to promote a suitable environment for companies.
- Widen the scope of the Association Agreement to improve the investment climate and creation of an investment framework favourable to foreign direct investment covering all economic sectors. Such a framework shall examine the possibility of including new provisions on transparency, MFN/NT treatment and others.

Company law

- Promote, to the extent possible, implementation of the principles in relevant international rules and standards in the fields of accounting and auditing.
- Promote the mutual exchange of information on rules and standards in the fields of auditing and accounting.

Services: Promote Liberalisation of Trade in Services

- Promote the opening of bilateral negotiations on liberalisation of services with Israel. This will be done while taking into account the specific nature of the Israeli economy, the overall objectives set in the conclusions of the Euro-Med Ministerial meetings and the objectives set in the draft Framework Protocol for Liberalisation of Services among Euro-Mediterranean partners (known as ‘the Istanbul Protocol’), notably mutual recognition of professional services.
- Closer cooperation in policy and regulatory issues.

Financial Services

- Continue to ensure effective implementation of independent supervisory authorities in accordance with internationally recognised standards (e.g. G10, IAIS, IOSCO, IASB).
- Strengthen cooperation between the EU and Israel on regulation, supervision and financial stability and examine the possibility of convergence with a prudential regulatory/supervisory framework equivalent to the underlining principles of those existing in the EU while taking into account Israel’s right to maintain and set benchmark standards and regulations.
- Carry out an assessment of the scope for legislative approximation with a view to inclusion of this sector in a FTA and ultimately Israel’s participation in the European Single Market for financial services.

Movement of Persons, including Movement of Workers and Coordination of Social Security

Implement the Provisions under Article 64 and 65 of the Association Agreement as regards the Coordination of Social Security

- Preparation for a decision of the Association Council, in line with Article 65, concerning the ways and provisions for implementation of the objectives in Article 64.

Other Key Areas

Taxation

Increase Awareness of International and European Taxation Standards in Order to Facilitate

Israeli Participation in the European Internal Market

- Complete, where appropriate, the network of bilateral agreements between Israel and EU Member States on avoidance of double taxation.
- Examine the scope for common definition of the transactions covered by the Directives on merger, parent subsidiary, savings, interests and royalties.
- Promote exchange of views on the principles of the Code of Conduct for Business Taxation with a view to creating an equitable environment for business operators.
- Promote exchange of views between Member States and Israel on the application of reciprocity under the 13th VAT Directive to the Israeli zero VAT rate.

Competition Policy

- Facilitate Transparency and Control of State Aid.
- Exchange of information regarding state aid (including exploration of EU and Israeli definitions and agreement of common definitions on which information-exchange will be based).
- Exchange information on state monopolies, public enterprises and enterprises with special or exclusive rights.
- Support the work carried out on state aid in the framework of the Barcelona Process.
- Define the modalities through which sectors, which are to participate in the Internal Market, are compatible with the EU state aid system.

Intellectual, Industrial and Commercial Property Rights

- Enhance dialogue on the promotion of IP issues, including, for example, data protection, enhancement of enforcement through a dialogue with prosecutors and other relevant entities, etc.

Public Procurement

Enhance access to one another's public procurement markets

- Ensure effective and regular communication by tasking the relevant sub-committee to identify obstacles to public procurement access, *inter alia*, through seminars and dialogue with relevant operators and authorities.
- Act on the information provided in the above action aiming at improving effective access to one another's public procurement markets and expand the scope of respective commitments.

Statistics

Increase Awareness of EU and International Statistical Methods in Relevant Statistical Areas, and Examine the Possibility of Further Harmonisation

- Elaborate a strategy for increased awareness of European standards in the relevant statistical areas, including foreign trade.
- Enhance cooperation with relevant Commission services.
- Improve cooperation on establishment of statistics on trade in services and migration statistics.

Enterprise Policy

Creation of a Suitable Environment for SMEs and Entrepreneurial Activity

- Promote the implementation of the Euro-Mediterranean Charter for Enterprise adopted by Industry Ministers in Caserta in October 2004.
- Cooperate in implementing the work programme of the Working Party on Euro-Mediterranean Industrial Cooperation for 2005-06.
- Establish a structured and comprehensive dialogue on industrial and enterprise policy including the improvement of the business environment.
- Facilitate enhanced industrial cooperation, in particular between businesses.

- Associate Israel to EU initiatives to stimulate competitiveness in the tourism sectors (e.g., exchange of information, participation in networks and studies) in accordance with Article 54 of the Association Agreement.

International Development Cooperation

- International development cooperation: favourable consideration will be given to extending Israeli participation in the award of contracts under certain EC development programmes; similarly, Israel will grant reciprocal access.

Cooperation in Justice and Home Affairs

Overall Objectives

- Enhance cooperation and coordination in Justice and Home Affairs in order to respond to challenges faced by democratic societies.
- Identify the scope for Israel to participate in relevant EU programmes, and in this context identify the scope for legislative approximation, where required by the relevant programme.

Migration Issues (Including Legal and Illegal Migration and Asylum)

Effective Management of Migration Flows

- Exchange of information and dialogue concerning (legal) migration.
- Exchange of information and dialogue concerning integration of migrants: best practices, evaluation, joint studies.
- Discuss the issues of management of migration flows, and cooperate to increase the effectiveness of measures designed to prevent or curb the flow of illegal immigration, including cooperation with the Border Police.
- Exchange of information concerning illegal immigration, including transit migration.
- Observation and analysis of the migratory flows; participation in the EUROMED migration research network.
- Identify the conditions to invite Israel as participant/observer in activities organised in the framework of EU programmes on migration issues (ARGO, AENEAS).

Asylum

- Exchange information and best practices in the field of asylum policy.

Specific Actions to Combat Terrorism in the JHA Field

Strengthening Cooperation to Combat Terrorism

- Develop cooperation to strengthen the fight against the financing of terrorism.
- Develop cooperation between law enforcement agencies to combat terrorism.
- Develop judicial cooperation in the context of combating terrorism.

Fight against Organised Crime, Including Trafficking in Human Beings

Exchange of Experience and Foster Mutual Cooperation on the Basis of Relevant International Instruments in the Fight against Organised Crime

- Work toward ratification and implementation of the UN Convention on Trans-National Organised Crime and its protocols on smuggling, trafficking and firearms.
- Intensify the fight against trafficking in human beings, including through an exchange of information regarding preventive measures.
- Inform the consultative ‘Experts Group on Trafficking in Human Beings’ of the interest of Israel to cooperate more closely with the EU in this area and encourage the Group to invite, where appropriate, Israeli representatives.
- Exchange of information and dialogue on general standards for trafficking in human beings and explore the scope for participation of Israel in the activities under the AGIS programme.
- Exchange of information on criminal offences, legislation and case law; victims’ rights; Member States’ and Israeli legislation and modus operandi; enhance public awareness; foster cooperation with countries of origin and transit.
- Exchange of information on the patterns of organised crime involved in trafficking, the characteristics of victims, target client populations and the connections between prostitution and trafficking.
- Enhance police and judicial cooperation in witness protection programmes.

- Exchange of information on appropriate attitudes toward victims for policemen, border personnel, prosecutors and judges, specific training modules for personnel working in shelters for victims.
- Exchange of information on the fight against cyber-crime.
- Identify the scope for Israel's participation in Council of Europe activities and regional working groups against economic crimes, corruption, organised crime, trafficking in human beings and cyber-crime.

Drugs

Mutual Exchange of Experience and Enhancement of Mutual Cooperation on the Basis of Relevant International Instruments on the Fight against Drugs

- Exchange of information on strategies to combat the drug phenomenon.
- Strengthen coordination between authorities competent for dealing with the different aspects of the drug phenomenon.

Money Laundering, Financial and Economic Crime

Reinforce Efforts and Cooperation against Money Laundering and Financing of Terrorism

- Enhance cooperation between law enforcement agencies and cooperation between Israel and relevant services of EU Member States (including specialised bodies at the European level).
- Mutual exchange of information and practices between Israel and EU on supervision and monitoring methods; exchange of information and cooperation between national law enforcement authorities and agencies; combating the financing of terrorism.
- Identify the scope for Israel's participation in EU and Council of Europe specialized working groups in this area (e.g., Money Val).

Police and Judicial Cooperation

Mutual Exchange of Knowledge and Enhancement of Mutual Cooperation on the Basis of the Relevant International Conventions

- Exchange of technical, operational and strategic information between the EU, EU Member States and Israeli law enforcement, including extradition and mutual legal assistance.
- Data protection: explore the possibility to join the Council of Europe Convention on protection of individuals with regard to automatic processing of personal data (Strasbourg, 28 January 1981).
- Promote possibilities and conditions for cooperation and exchange of information with the European Judicial Network in criminal matters.
- Explore the possibilities and conditions for cooperation and exchange of information with the European Judicial Network in civil matters.
- Explore the possibility to develop cooperation between Israel and Eurojust.
- Enhance cooperation between Israeli agencies and EUROPOL.
- Cooperate in training of judges, prosecutors and lawyers.
- Cooperation in the field of police training between Israel and European police academies and colleges, as well as with CEPOL.
- Exploring the possibilities for participation in EU initiatives in the field of prevention of organised crime, crime prevention and forensic science (ENFSI).
- Exchange of information on the use of IT and other high-tech equipment to support criminal investigations.

Transport, Energy, Information Society, Environment and Science and Technology

Transport

Cooperation on Transport and Infrastructure Policy

- While underlining the importance of a national sustainable transport policy, Israel will examine the possibility for further approximation of legislative and regulatory frameworks with European and international standards, in particular for safety and security.
- Participate in the planning exercise for transport infrastructure in the Mediterranean.
- Participate in the identification of priority regional infrastructure projects.
- Participate in initiatives and programmes for sustainable transport.

- Exchange information and cooperate on issues of infrastructure financing (e.g., public/private partnerships, shadow-tolling); establish financing strategies for priority infrastructure projects.
- Development of cooperation in the Galileo and other similar initiatives.

Cooperation on Selected Measures and Reforms in the Road and Rail Transport Sector

- Explore strategies for improving road safety. Explore the possibilities for closer cooperation in areas of road safety, including intelligent transport systems and services and increased participation in relevant Community programmes.
- Increased policy dialogue on the development of integrated inter-modal public transport systems as well as combined transport.
- Exchange of views and experience on the rail regulatory framework, including the setting of technical standards.
- Explore the benefits of regional cooperation with a view to promote efficiency of land transport services.

Cooperation on Selected Measures and Reforms in the Aviation sector

- Explore the possibility for adjusting bilateral aviation agreements concluded with Member States in order to include the Community designation clause; exchange of information on the possibility of an EU-Israel global aviation agreement.
- Explore the possibility for involvement in the Single European Sky and closer cooperation in the area of aviation safety.
- Proceed toward a mutual recognition agreement with the EU in the field of acceptance of certification findings (airworthiness).
- Cooperate on aviation security matters (common rules to combat international terrorism).

Cooperation on Selected Measures and Reforms in the Maritime Sector

- Deepen cooperation in maritime security by focusing on the SOLAS/ISPS Code implementation requirements.
- Closer cooperation on maritime safety, including port state control.

- Explore the possibility for cooperation with EMSA.
- Further develop cooperation with EU and Mediterranean partners in the framework of IMO and participate in the new regional project on maritime safety (SAFEMED).
- Participate in regional cooperation in the field of maritime policy, ports and short sea shipping.
- Closer cooperation on statistical issues.

Energy

Cooperation on Energy Policy

- Enhance the dialogue on energy policy in the context of the preparation of an Israeli Energy Master Plan (e.g., workshops).
- Take steps toward Israel's participation in the Intelligent Energy-Europe programme.

Further Develop Competitive Markets through Working toward the Principles of the EU Internal Electricity and Gas Markets

- Explore the possibility of legal and regulatory convergence toward the principles of the EU internal electricity and gas markets.
- Promote the exchange of experience in pursuit of electricity market reform in Israel.
- Identify the scope for providing advice regarding the legal and regulatory framework in the electricity and gas sectors.

Progress Regarding Energy Networks

- Assess the scope for connecting Israel to the Trans-European/Mediterranean electricity, gas and oil networks, including Israel being part of inter-regional studies.
- Develop gas transmission and distribution systems.
- Exchange of know how on security and safety of energy networks/infrastructure.

Further Progress on Energy Efficiency and Use of Renewable Energy

- Cooperate in sustaining current efforts to improve energy efficiency and to promote the use of renewable energy sources in pursuit of the target set by Israel, i.e., at least

2% by 2007 and at least 5% by 2016 of electricity to be produced from renewable energy sources.

- Identify the scope for further harmonisation, where appropriate, with EU energy efficiency legislation (minimum efficiency standards, appliance labelling).
- Take steps toward participation in EU activities relating to Energy Efficiency and use of Renewable Energy (e.g., conferences and workshops).

Regional Cooperation

- Develop regional cooperation on, *inter alia*, electricity and gas, energy and renewable energy sources and networks (including Euro-Mediterranean) and cooperation pursuant to relevant agreements (e.g., Israel-EU-P.A).

Information Society

Further Progress in and Exchange of Views on Electronic Communication Policy and Regulation

- Continue the development of a comprehensive regulatory framework including licensing, access and interconnection, numbering, Universal Service and users' rights, protection of personal data and privacy, cost-orientation of tariffs.
- Establish an independent regulatory authority.
- Explore ways for cooperation with working groups of the Independent Regulators Group in the EU or with regulatory authorities of EU Member States, as appropriate, on issues of common interest.

Further Progress in the Development and Use of Information Society Applications

- Promote use and exchange of views on new technologies and electronic means of communication by businesses, government and citizens in areas such as e-Business (including standards for e-signatures), e-Government, e-Health, e-Learning and e-Culture.
- Promote cooperation in regional and global e-Strategies, including continuity of Israeli participation in pilot projects of the regional EUMEDIS programme and preparation of

the second phase of World Summit on the Information Society (WSIS) in Tunisia in 2005.

- Exchange of views on issues such as safer use of the Internet, deployment of broadband infrastructure, introduction of third generation mobile telephony and other advanced communication technologies and services, as well as setting-up training programmes in these fields.
- Explore the possibility of having an exchange of views on information and network security in the framework of the recently established ENISA (Article 24 of the Founding Regulation).
- Implement the joint projects under the IST part of the 6th Framework Programme and encourage participation of Israeli entities in the next call for proposals under this programme.
- Build on Israel's participation in the Minerva Plus project and the emerging experience of the National Representatives Group on Digitisation Policies in EU Member States.

Environment

Ensure Good Environmental Governance

- Strengthen the administrative capacity of the Ministry of the Environment and other relevant institutions.
- Promote communication strategies and availability of environmental information to the public, *inter alia*, through exchange of information between the Commission and Israel.

Taking Action for Prevention of Environmental Deterioration, Protection of Human Health and Achievement of Rational Use of Natural Resources in Line with the Commitments of the Johannesburg Summit

- Review the national waste master plan to ensure an integrated approach to waste management, including prevention of waste, reduction at source and energy production from waste.

- Exchange of information between Israel and the Commission on air quality and air pollution issues, including the Clean Air for Europe Programme.
- Prevent pollution of water, particularly through enhanced water pollutant emission reporting, drawing on the experiences within the EU Water Framework Directive.
- Enhance cooperation between relevant authorities on prevention of air pollution and pollution of water resources.
- Exchange of information between Israel and the Commission on best practices on water reuse.
- Exchange of experience on protection of biological diversity and the rural landscape, with special attention to the relevant migratory species.

Enhance Cooperation on Environmental Issues

- Enhance cooperation to ensure commitments by the parties with regard to provisions under the Kyoto Protocol and the UN Framework Convention on Climate Change.
- Taking account of specific national circumstances, work toward ratification and acceptance of the Protocols and Amendments to the Barcelona Convention.
- Identify possibilities with neighbouring countries for enhanced regional cooperation.
- Explore the modalities for Israel's participation in relevant European Environment Agency activities.
- Enhance exchange of information with Israel on issues of mutual interest, including environmental taxes, eco-management as well as on spatial information.
- Promote involvement of environmental NGOs and explore mechanisms to enhance their active participation, including regional cooperation.
- Sharing experience gained in the implementation of Strategic Environmental Impact Assessment.

Science and Technology, Research and Development

Promote Further Cooperation in Science and Technology

- Promote further integration of Israel in the European Research Area, including approximation of Science and Technology policies.

- Reinforce Israel's participation in regional S&T cooperation within the Euro-Mediterranean area and facilitate ties between Israeli experts and their regional colleagues.
- Promote a dialogue on science and society issues, including questions related to ethics.
- Promote further cooperation in the fields of bio-technology and space. Promote further cooperation on space-related matters with European actors including ESA, where appropriate, and on specific projects of mutual interest in the space domain.

People-to-People Contacts

Education, Training, and Youth

Creation of a 'European Higher Education and Vocational Training Area', Increased Mobility of Teachers and Students

- Establish a policy dialogue between the EU and Israel in the field of education and training.
- Further promote Israel's participation in Community Programmes (Tempus, Erasmus-Mundus) promoting mobility and exchange of academic staff and students.
- Explore possibilities to extend cooperation in the areas of school education, vocational education and training as well as adult education.
- Begin talks with the aim to reach a bilateral agreement on higher education.
- Developing a mechanism for coordinating the respective EU and Israeli systems of study credits, with a view to facilitating the exchange of students in the future.
- Promote dialogue on special challenges in education (inter alia disabilities, gender equality issues, special needs, etc.).
- Promote dialogue on the role of ICT and IST in education and e-learning.
- Explore the scope for training in the fight against racism and anti-Semitism, including issues related to Holocaust awareness and remembrance.
- Promote the exchange of young professionals between Israeli and European bodies.

Enhance Cooperation in the Field of Youth and Sport

- Promote youth exchanges and cooperation in the field of non-formal education and intercultural dialogue.

- Promote cooperation in programmes aimed at increasing awareness among youth of the dangers of drugs and narcotics Culture and audio-visual issues.

Enhanced Cultural Cooperation

- Enhance Israel's participation in the relevant cultural cooperation programmes of the Euro-Mediterranean partnership.
- Promote exchange of views on policies promoting culture, audio-visual policy and regulatory issues.
- Promote closer cooperation on inter-faith dialogue, preservation of historical institutions, religious freedom (including in observance), religious tolerance and including in the education systems.
- Promote cooperation in the field of cultural and linguistic heritage, including, where possible, protection of minority languages (e.g., Yiddish and Ladino).
- Promote cultural exchanges.
- Develop a dialogue on cultural diversity, including the relevant negotiation in UNESCO.

Civil Society Cooperation

Promote Civil Society Cooperation

- Development of EU-Israeli links between civil society organisation and NGOs (e.g., symposia, workshops).
- Develop a work programme including organisation of a symposium for 2005 involving intellectuals, politicians, experts and journalists with a view to considering how best the EU and Israel can develop civil society links, cultural contacts and people-to-people exchanges.
- Promotion of regular dialogue on civil society issues.
- Encourage empowerment of consumers and protection of their legitimate economic interests.

Public Health

Increase the Level of Health Security and Epidemiological Safety in Israel Based on Global Standards, Taking into Account EU Legislation and Cooperation, with the Support of the WHO.

- Relate Israel's information system regarding the health indicator process underway in the EU.
- Integrate Israel in the EUPHIN health information and knowledge system.
- Exchange information and know-how on health indicators and data collection regulations.
- Encourage dialogue on health policy issues.
- Invite Israeli authorities as observers in meetings of the Network of Competent Authorities.
- Take measures to integrate Israel in the EUPHIN system.
- Examine the scope for Israeli participation in the EU Health Forum through umbrella organisations.

Communicable Disease Surveillance and Health Security

- Participation in Communicable Disease Networks and dedicated surveillance networks.
- Develop laboratory networking.

Joint Review

The Action Plan will be submitted for formal adoption within the framework of the Association Council between the EU and Israel. The Action Plan will guide the work between the EU and Israel. Should the need arise, on the EU side, for specific measures necessitating legally binding decisions, the Commission will recommend to the Council the adoption of the necessary negotiating directives.

The joint bodies established under the Association Agreement will advance and monitor the implementation of the Action Plan. The first review of the implementation of the Action Plan will be undertaken within two years of its adoption.

The Action Plan can be regularly amended and/or updated to reflect progress in addressing the priorities.

Annex II

Authors' Biographies

Dr. Raffaella A. Del Sarto is a Marie Curie Research Fellow at the Mediterranean Programme, the Robert Schuman Centre for Advanced Studies, European University Institute, Florence, Italy. She obtained her Ph.D. in International Relations from the Hebrew University of Jerusalem. Her research interests are EU-Mediterranean relations, Middle Eastern regional politics, EU foreign policy-making, security and identities, International Relations theory and international organisations.

Moshe Dovrat earned an M.A. in Economics and M.B.A. from the Hebrew University, Jerusalem. In the early 1970s, he was a senior staff member in Israel's Department of Budget, the Ministry of Finance and the Bank of Israel. He is a former Director General of the Ministry of the Economy and Planning, and Director General of the Investment Center, Ministry of Industry and Trade. Now in private business, he founded a reverse mortgage financing company catering to senior citizens.

Dr. Gonzalo Escribano earned a Ph.D. in International Economics at the Madrid Complutense University. He is currently full professor of Political Economy in the Spanish Open University, Madrid. He specialises in the International Political Economy of EU-Mediterranean relations and has published over 40 articles on the subject. He is a member of the FEMISE network and a contributor to the Spanish Real Instituto Elcano de Relaciones Internacionales.

Dr. Yehudit Kahn, is Lecturer in Economics, Haifa University and Acting Head, the Economics and Management Department, Tel Hai Academic College. Her research specializations include Middle East Economics and Regional Economics.

Dr. Amit Mor, an energy specialist, is the CEO of Eco Energy Ltd. He earned his Ph.D. in Energy, Environmental and Mineral Economics at Pennsylvania State University. The topic of his dissertation was *Natural Gas Projects in the Developing World: An Empirical Evaluation of Merits, Obstacles and Risks*. He earned B.A. and M.A. in Economics, Finance and Psychology at the Hebrew University of Jerusalem.

Dr. Nellie Munin, Advocate, is a private legal and business consultant and former Minister of Economic Affairs in the Israeli Mission to the EU (1999-2003). She specialises in international trade law, European studies and taxation.

Katharina von Münster studied political science at the University of Leipzig, London School of Economics and Political Science and the Free University Berlin, focusing on the Middle East. She received her M.A. in Political Science in 2004. She is currently the Coordinator of the International Youth Meeting Center Beit Ben Yehuda, Jerusalem.

Dr. Costanza Musu, is Assistant Professor of International Relations at Richmond American International University, London. She has been a consultant for the Military Center for Strategic Studies (CeMiSS) in Rome and is the Book Review Editor of the journal *Mediterranean Politics*, published by Routledge. She obtained her Ph.D. from the London School of Economics and Political Science and participated as a Post-doctoral Jean Monnet Fellow at the European University Institute (EUI) in Florence.

Dr. Roby Nathanson, Economist, Chair of the Macro Center for Political Economy (formerly the Israeli Institute for Economic and Social Research) also serves as visiting lecturer, the Academic College of Tel Aviv-Yafo, attached to Tel Aviv University.

Dr. Sharon Pardo, Advocate, earned his LL.B. and LL.M. from the University of Sheffield and Ph.D. from the University of Ghent. He is Executive Director of the Centre

for the Study of European Politics and Society, Ben-Gurion University of the Negev and a Senior Fellow at the International and European Research Unit, University of Ghent.

Shimon Seroussi is a graduate of the Tel Aviv University, where he earned a B.A. in Statistics and an MA in Economics. He specializes in project financing and investment management, including economic consulting and preparation of business plans and company valuations.

Dr. Shlomo Shpiro, Director of the Center for International Communications and Policy (CICP) at Bar-Ilan University, is a graduate of the universities of Jerusalem, Salford and Birmingham. He researched and taught at leading universities in Europe before joining Bar-Ilan University in 1998. He specialises in security, intelligence and international communications.

Dr. Stephan Stetter, Lecturer in International Relations and Middle East Politics and Society at the Institute for World Society Studies, Department of Political Science, Faculty of Sociology, the University of Bielefeld, holds a Ph.D. on EU-Middle East policies from the London School of Economics and Political Science. His main research interests are Middle East politics and society, theory of international relations and EU foreign policy, particularly Euro-Mediterranean relations. Dr. Stetter is one of the two EU coordinators of the IEPN and is also involved in other academic and civil society projects spanning Europe with the Middle East.

Mr. Yonatan Touval is a researcher with the Economic Cooperation Foundation, a think tank based in Tel Aviv. His main area of specialization is the Peace Process and the European Union.

Dennis Tunda is a graduate of the International School of Management in Germany, where he earned an M.A. in Management and Auditing.

Dr. Lior Zemer, Lecturer in Law, the University of Leicester and Boston University, is a former legal assistant to Judge J.D. Cooke of the CFI and Judge S. von Bahr of the ECJ. He has earned an LL.B. (Sheffield), LL.M. (HU); M.ST (Oxford) and Ph.D. (Osgoode Hall, Toronto).