

The European Neighbourhood Policy and its Impact on the Israel – European Union – United States Triangle

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We are no longer an isolated nation, and it is no longer true that the entire world is against us. We must rid ourselves of the feeling of isolation that has afflicted us for almost fifty years. We must join the campaign of peace, reconciliation, and international cooperation . . . lest we miss the train and be left alone at the station.

Yitzhak Rabin

I. INTRODUCTION

In a communication from the Commission of the European Community (EC) to the Council of the European Union (Council) and the European Parliament—*Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*¹ (the Initiative)—the EC spelled out the intention of the European Union (EU) to develop closer and more coherent economic, political, and social relations between the EU, its twenty-five Member States, those countries whose future accession to the European Union has been agreed upon, and others whose potential for entry has not yet been determined, on the one hand, and all of the EU's other neighbors, including the State of Israel, that currently have no prospect of membership in the EU, on the other hand.²

The objective of the Initiative is to share the benefits of an enlarged EU-25 with neighboring countries in order to contribute to increased stability, security, and prosperity for the EU and its neighbors.³ Under the proposed privileged relationship between the EU and its neighbors, the parties would promote economic and social development in border

1. *Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours from the Commission to the Council and the European Parliament*, COM(03) 104 final [hereinafter Initiative]. For an earlier position of the EU, see Commission of the European Communities, *Future Relations and Cooperation between the Community and the Middle East*, COM(93) 375 final.

2. These include Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Palestinian Authority, Syria, Tunisia, Ukraine, Moldova, Belarus, and Russia. The Initiative does not apply to the EU's relations with the remaining candidate countries (Turkey, Romania and Bulgaria) or to the countries of the Western Balkans. Later the Council decided to include Armenia, Azerbaijan, and Georgia in the ENP. See Press Release, Council of the European Union, 2590th Council Meeting, General Affairs and External Relations—General Affairs, 10189/04 (Press 195) 12 (June 14, 2004) (Provisional Version). See also Report, *Wider Europe—Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, Eur. Parl. Doc. COM (A5-0378 final) passim (2003) available at <http://www.2.europarl.eu.int/> [hereinafter Report on Wider Europe]; Beyond Enlargement: Commission shifts European Neighbourhood Policy into higher Gear (May 12, 2004), at http://www.europa.eu.int/comm/world/enp/index_en.htm.

3. Council of the European Union, *supra* note 2, at 11.

areas, work together to address common challenges in areas such as the environment, public health, and organized crime, ensure efficient and secure borders, and advance local people-to-people type actions.⁴ The proposed privileged relationship is to be founded on a mutual commitment to common values, primarily within the domains of rule of law, good governance, protection of human rights, promotion of good neighborly relations, and the principles of market economy, sustainable development, and poverty reduction.⁵ The EC Commission's Initiative was endorsed by the European Parliament⁶ and the Council of Ministers in 2003,⁷ and is now entitled the European Neighbourhood Policy (ENP).

This article is not intended to deal with the feasibility of successfully implementing the ENP, nor does it address its normative aspects from the European perspective.⁸ Instead, this article assumes that the parties will successfully implement the ENP, and on the basis of that assumption, attempts to provide a first, critical and interdisciplinary examination of the potentially significant impact of the ENP on the legal, economic, social, and trade landscape of the State of Israel, her citizens, economy, and on her relations with the EU and the United States.

The arguments advanced in this article are articulated in four parts. Part I, "Introduction," describes its objectives and relevance. Part II, "The European Union and the European Neighbourhood Policy," provides a brief account of the evolution of the European Union and its recently launched ENP. Part III, "The Implications of the European Neighbourhood

4. *Paving the Way for a New Neighbourhood Policy Communication from the Commission of the European Communities*, COM(03) final at 4-6, available at http://europa.eu.int/comm/world/enp/pdf/com03_393_en.pdf [hereinafter *Paving the Way*].

5. G. Verheugen, Speech 04/141, *The European Neighbourhood Policy*, Speech at the Prime Ministerial Conference of the Vilnius and Visegrad Democracies: "Towards a Wider Europe: The New Agenda," (Mar. 19, 2004) [hereinafter *Speech of Commissioner Verheugen*].

6. Report on Wider Europe, *supra* note 2, *passim*.

7. The General Affairs and External Relations Council welcomed in June 2003 the Initiative and invited the Commission to present a communication on the New Neighborhood Instrument. The European Councils at Thessaloniki (June 2003) and in Brussels (October 2003) endorsed these conclusions. See, e.g., *Council Conclusions on Implementation of the Wider Europe—New Neighbourhood Initiative* (October 13, 2003), at <http://www.europarl.eu.int/meetdocs/delegations/swit/20040211/21en.pdf> (last visited Nov. 29, 2004).

8. See, by analogy, Amitai Etzioni, *A Self-Restrained Approach to Nation Building by Foreign Powers*, 80(1) INT'L AFF. 1 (2004). Etzioni argues that nation-building by external powers is a difficult and costly task, unlikely to be accomplished. In his opinion, for practical and normative reasons, superpowers should pursue a more timid, self-restrained campaign of social-engineering. *Id.*

Policy—An Israeli Perspective,” analyzes the potential significant impact of the ENP on Israel’s legal, social, economic, and political landscape. Part IV, “Conclusions,” rounds off this analysis with the following conclusions: (1) The ENP provides a golden opportunity for the State of Israel, her citizens, and economy and (2) Israel should act with determination to realize the potential inherent in the ENP, otherwise, to use the late-Rabin’s metaphor quoted above, she might “miss the train and be left alone at the station.”

II. THE EUROPEAN UNION AND THE EUROPEAN NEIGHBOURHOOD POLICY

A. Substantive Aspects

The EU is regarded as the most complex and advanced regional political entity in the world. It is neither a traditional intergovernmental institution⁹ nor a purely supranational¹⁰ or infranational entity.¹¹ Its evolving legal order is therefore considered as *sui generis*.

The European integration program was at first perceived by some as a modest economic plan. In the course of the years, however, it became clear that a unique and successful attempt on the part of numerous nations with a long history of armed conflicts and diverse cultural, linguistic, legal, and economic traditions to be integrated under a separate and superior legal order was developing. This formed the basis of advanced economic, political, and social integration.¹²

9. “Intergovernmentalism” refers to the traditional structure of international organizations whereby each Member State retains its sovereign powers. See JOSEPH H.H. WEILER, THE CONSTITUTION OF EUROPE: “DO THE NEW CLOTHES HAVE AN EMPEROR?” AND OTHER ESSAYS ON EUROPEAN INTEGRATION 273 (1999). The focus is on negotiation, inter-state bargaining, and diplomacy. There is a relatively low level of institutionalization and a premium on informal and unstructured interaction. Formal sovereign equality and the loose reflexes of international law prevail. *Id.*

10. “Supranationalism” refers to advanced inter-state structure, the joining of which entails the loss of some sovereign powers. See *id.* at 12, 273. The material is often constitutional. The *modus operandi* is more structured, formal, and rule-bound. *Id.*

11. “Infranationalism” relies on experts’ know-how, manifested in a wide web of advisory committees. See *id.* at 272. It is characterized by the relative unimportance of the national element in the decision-making. Technical expertise, economic and social interests, and administrative turf battles shape the process and outcome rather than ‘national interest.’ Infranationalism strikes a balance between political intergovernmentalism and genuine legal supranationalism. Kenneth A. Armstrong, 8 EUR. L. J. 102, 145 (2002). Infranationalism moves beyond this dual structure in its disregard of the law/politics dichotomy and of the Member State/Community dichotomy. For a strong philippic of Infranationalism, see Weiler, *supra* note 9, at 284ff. For the interplay of these three forces, see Weiler, *id.* at 264ff.

12. See Weiler, *supra* note 9, at 10. The EC is an *avant garde* international organization introducing a new model for trans-national discourse. For a general survey

Thus the EU has deepened its fields of activity, while continuously tempering the sovereignty of its Member States. Today, the EU maintains a pan-European policy in various economic areas, a common currency, and a common catalogue of human rights.¹³ The heart of the EU has been and remains its Internal Market. In that market, with its population of over 450 million, the free movement of goods, services, capital, and people is, in principle, secured.

Moreover, the European integration campaign has been going through a continuous constitutionalization process, whereby its legal order has transformed from a set of legal arrangements binding upon sovereign states into a vertically integrated legal regime conferring judicially enforceable rights and obligations on all legal persons and entities.¹⁴

Parallel to these developments, the European Economic Community (later the EC/EU) has followed the path of enlargement. The six founding nations (Germany, France, Italy, the Netherlands, Belgium, and Luxembourg—1951/1957) were joined by Britain, Ireland, and Denmark (1973), Greece (1981), Spain and Portugal (1986), Austria, Finland, and Sweden (1995), and Cyprus, Malta, Poland, Hungary, the Czech Republic, Slovakia, Slovenia, Estonia, Latvia, and Lithuania (2004). Romania, Bulgaria, Croatia, and probably Turkey and the remaining Western Balkan countries are also likely to join the Union.¹⁵ Thereafter, the final borders of the European Union will be

of EC law, see STEPHEN WEATHERILL & PAUL BEAUMONT, *EC LAW* (2000). For in-depth analysis, see Federico G. Mancini, *The Making of a Constitution for Europe*, 26 COMMON MKT. L. REV. 595 (1989); Joseph H.H. Weiler, *The Transformation of Europe*, 100 YALE L. J. 2403 (1991); Federico G. Mancini and David T. Keeling, *Democracy and the European Court of Justice*, 57 MOD. L. REV. 175 (1994); ANTHONY ARNULL, *THE EUROPEAN UNION AND ITS COURT OF JUSTICE* (1999); Philip Allott, *European Government and the Re-branding of Democracy*, 27 EUR. L. REV. 60 (2002). For the EC and political science theory, see Markus Jachtenfuchs, *The Governance Approach to European Integration*, 39 J. COMMON MKT. STUD. 245 (2001). For the EC and international relations theory, see Mark A. Pollack, *International Relations Theory and European Integration*, 39 J. COMMON MKT. STUD. 829 (2001).

13. See Tal Sadeh, *Some Trade Effects of the EMU Process on Israel*, 10(1-2) ISRAEL AFFAIRS 156 (2004).

14. Ulrich Haltern, *Pathos and Patina: The Failure and Promise of Constitutionalism in the European Imagination*, 9 EUR. L. J. 14, 15 (2003).

15. For the impact of EU enlargement on Israel, see Alfred Tovias, *Israeli Policy Perspective*, 8 MEDITERRANEAN POL. 214, 221 (2003); Alfred Tovias & Inon Dafni, *From 15 to 21: The Impact of the Next EU Enlargement on Mediterranean non-Member Countries*, *Femise Paper* (2001), available at http://www.femise.org/PDF/Tovias_A_0301.pdf (last visited Mar. 22, 2004); Nellie Munin, *Wider Europe Neighborhood—A New Model for EU-Israel Relations?*, 31(122) ISR. TAX Q. 29, 33ff (2003) [Hebrew]; Alfred Tovias, *Exploring the "Pros" and "Cons" of Switzerland's and Norway's Model of Relations with the EU: What Can be Learned from these two Countries' Experience by*

drawn.¹⁶

The EU can look back with much satisfaction on its record in transforming a large part of Europe, once ravaged by wars and nationalist division, into an area of peace and prosperity. It must not, however, rest on its laurels. The removal of internal European borders must not be accompanied by the erection of new external dividing lines.¹⁷ The completion of the recent historic enlargement of the EU to include eight ex-Communist countries obliges the EU to define its relations with those neighbors who will not join it, at least in the short and medium run.¹⁸

The ENP is designed to address this need by declaring the intention on the part of the EU to create with its close neighbors a common area "of shared prosperity and stability,"¹⁹ a "pan-European and Mediterranean Region,"²⁰ founded on "partnership and joint ownership."²¹

That vision is also enshrined in the recently adopted *Treaty Establishing the Constitution for Europe*²² which intends to provide the EU with a

Israel, in Guy Harpaz (ed.) 11 Newsletter of the Israeli Association for the Study of European Integration 14 (2004).

16. Having said that, the Union wishes to accept Norway, Iceland, Liechtenstein and Switzerland as new Member States, but these countries remain reluctant. *See also infra* note 26.

17. *See* Speech of Commissioner Verheugen, *supra* note 5 ("An undivided Europe cannot be a united but inward-looking European Union that does not care about what happens beyond its borders").

18. *See* Sandro Gozi, *New Frontiers and New Policies in Europe*, 8(1-2) THE EUR. UNION REV. 43, 43-50 (2003). According to Gozi, Enlargement requires the EU to adopt a global and regional policy based on a new concept of "frontiers." Historically, this concept served to determine territory—to separate and oppose. The EU must forge a new concept of "frontiers," one that enjoys the power of attraction and of projection. In his opinion, a new neighborhood policy can provide a suitable framework for regulating the relationship of interdependence that exists between Europe and its neighbors. For the EU difficulties in formulating a coherent external policy, *see* Einat Dasberg, *Is there One Voice in the Field of Foreign Policy? The Case of the Israel-Arab Conflict*, (The Helmut Kohl Institute for European Studies, Working Paper No. 35. 2004).

19. For the background, *see* Munin, *supra* note 15, at 30; *see also* Romano Prodi, A Wider Europe—A Proximity Policy as a Key to Stability, Speech delivered at the sixth ECSA—World Conference, Jean Monnet Project, "Peace, Security and Stability—International Dialogue and the Role of the EU" (December, 2002) (transcript available in the University of San Diego School of Law Legal Research Center) ("I want to see a 'ring of friends' surrounding the Union and its closest European neighbours, from Morocco to Russia and the Black Sea. This encircling band of friendly countries will be a mixed bag").

20. *See* Report on Wider Europe, *supra* note 2, at 18.

21. Gunter Verheugen, *The European Neighbourhood Policy, former Commissioner for Enlargement*, at http://www.europa.eu.int/comm/world/enp/index_en.htm (last visited May 19, 2004); *see also* *What is the European Neighbourhood Policy (ENP)?* at http://www.europa.eu.int/comm/world/enp/policy_en.htm (last visited May 19, 2004) (The objective of the ENP is "to share the benefits of the EU's 2004 enlargement with the neighbouring countries in strengthening stability, security and well-being of all concerned").

22. *See* Article I-57: "The Union shall develop a special relationship with neighbouring States, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations

full-fledged constitutional apparatus.

The fears of "Fortress Europe," raised during the process leading to the creation of the Internal Market (late 1980s and early 1990s), may thus be replaced, in our context, with hopes of creating a 5100 kilometer long ring of friends from Morocco to Russia:

On 1 May 2004, the European Union will enter a new and historic phase. An enlarged Union of 25 countries, with a combined population of more than 450 million and GDP of almost €10000 billion, will fundamentally increase the political, geographic and economic weight of the EU on the European continent . . . Beyond the EU's borders, enlargement will change the shape of the EU's political and economic relations with other parts of the world. Enlargement gives new impetus to the effort of drawing closer to the 385 million inhabitants of the countries who will find themselves on the external land and sea border, namely Russia, the Western NIS and the Southern Mediterranean . . . Closer geographical proximity means that the enlarged EU and the new neighbourhood will have an equal stake in furthering efforts to promote trans-national flows of trade and investment as well as even more important shared interests in working together to tackle trans-boundary threats—from terrorism to air-borne pollution. The neighbouring countries are the EU's essential partners: to increase our mutual production, economic growth and external trade, to create an enlarged area of political stability and functioning rule of law, and to foster the mutual exchange of human capital, ideas, knowledge and culture...

Now we have to put an end to the artificial division of Europe, it is important not only to prevent the emergence of new dividing lines but to take the opportunity to enhance our relations with our new neighbours. This is the aim of the European Neighbourhood Policy.²⁴

In the words of EC Commission President Romano Prodi, the beneficiaries of the ENP are offered everything but institutions, *i.e.*, the possibility of adopting, in principle, large parts of the substantive regime of the EU, to the exclusion of full membership and of resultant participation in the institutional framework of the EU.²⁵ The possibility for some neighboring countries of full membership in the long-run is not, however, entirely ruled-out.²⁶ The ENP is indeed very ambitious. In return for proving

based on cooperation. 2. For this purpose, the Union may conclude and implement specific agreements with the countries concerned. . . These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. . . .", CIG 87/1/04 REV 1, Brussels, Oct. 13, 2004; O.J. 2004/C 310/01, Dec. 16, 2004.

23. Initiative, *supra* note 1, at 3.

24. Verheugen, *supra* note 21.

25. See Prodi, *supra* note 19.

26. See Report on Wider Europe, *supra* note 2, at 9. The ENP is not incompatible with certain countries' aspirations to join the EU. It can serve as an important instrument for enabling those countries to move towards applying to accede the EU. Prospective membership can actually serve as a strong incentive for participating in the ENP, as in

concrete progress and demonstrating shared values and effective implementation of political, economic, and institutional reforms on the part of the EU's neighbors, including aligning their legislation with the EC's *acquis communautaire*, the Commission promises its close neighbors "a significant measure of economic and political integration,"²⁷ enhanced political stability, security, sustainable economic development, and the reduction of poverty and social divisions:

The establishment at pan-European level of an open and integrated market functioning on the basis of compatible or harmonised rules and further liberalisation would bring significant economic and other benefits to both the EU and the neighbourhood. A political, regulatory and trading framework, which enhances economic stability and institutionalises the rule of law, will increase our neighbours' attractiveness to investors and reduce their vulnerability to external shocks. Further reciprocal market access through preferential agreements covering goods and services will have the greatest positive impact if accompanied by measures to facilitate economic activity.²⁸

B. Procedural, Institutional, and Financial Aspects

The ENP is based on several instruments. The *Strategy Paper* outlines the vision of the ENP and its main components. *Country Reports* assess the relevant bilateral relations, analyze the political, economic, social, and institutional landscape of the neighbor concerned, and describe the prevailing state of affairs in areas of particular interest to the ENP. (The EC Commission has already presented the Strategy Paper and Country Reports.²⁹) The *Action Plan*, based on the Strategy Paper and the relevant Country Report, will provide a tailor-made outline of reciprocal social, political, and economic commitments between the EU and the relevant neighboring state, covering political dialogue (to include the fight against terrorism, proliferation of weapons of mass destructions, and regional conflict resolution), economic and social development policy (based on legislative and regulatory approximation), trade, Justice, and Home Affairs.³⁰ This framework will be supported by a financial *European Neighbourhood Instrument*³¹ and by a *Wider Europe Task Force*.³²

the case of Ukraine. *Id. passim*.

27. *See id. passim*.

28. Initiative, *supra* note 1, at 9.

29. *See* European Commission, *supra* note 2.

30. *See* in particular Articles 2.2-2.6, *id.*

31. *See* Paving the Way, *supra* note 4, at 8-12 (proposing a two-step approach). The initial phase (2004-2006) will focus on improving coordination between the various financial instruments concerned within the existing legislative and financial framework. In the second phase (2006 onwards), a new legal instrument is to be proposed, addressing the common challenges and needs identified in the ENP. *Id.*

32. *See* Commission decides on further steps to develop its Wider Europe policy, IP/03/963 (July, 2003), at http://europa.ue.int/rapid/start/cgi/guesten.ksh?p_action.

Recently, the Council endorsed the Commission's Strategy Paper³³ and Action Plans were formulated between the EU and Jordan, Moldova, Morocco, Tunisia, Ukraine, Israel, and the Palestinian Authority.³⁴ Following their approval by the Council, the respective Cooperation or Association Councils will be invited to endorse the Action Plans and to ensure their implementation and monitoring.³⁵ A first review of implementation of the Action Plans will be undertaken within two years of their adoption.³⁶

The Action Plan with the State of Israel has actually been endorsed by the Commission, the Israeli government, and by the EC-Israel Association Council.³⁷ The EU-Israel Action Plan, which involves "significant measure of economic integration and a deepening of political co-operation" provides for enhanced dialogue and co-operation, increased economic integration, enhanced co-operation in justice and home affairs, greater integration of Israel to EU programs and schemes, and improved people-to-people interactions.³⁸

The State of Israel, a European country in economic terms and an Asian one in geographic terms, is torn from a psychological perspective between East and West—between Europe, the United States, and the Orient. How does the State of Israel fit into the ENP? How will the ENP affect the State of Israel, and her citizens, companies, social infrastructure, and relations with the EU, its Member States, and citizens? How will the ENP affect U.S.-Israel relations?

getfile=gf&doc=IP/03/963%7C0%7CRAPID&lg=EN&type=PDF (last visited May 19, 2004).

33. Council of the European Union, *supra* note 2, 10–13.

34. For the text of the Action Plans between the EU and various countries, *see* http://www.europa.eu.int/comm/world/enp/document_en.htm (last visited January 16, 2005).

35. The Association Councils were established by the respective Association Agreements. They meet at ministerial level, at least once a year. Their task is to examine any major issue arising within the framework of the relevant Association Agreement and any other bilateral or multilateral issue of mutual interest.

36. Council of the European Union, *supra* note 2, 10–13.

37. For the text of the proposed EU-Israel Action Plan, *see* http://www.europa.eu.int/comm/world/enp/pdf/action_plans/Proposed_Action_Plan_EU-Israel.pdf (last visited Jan. 16, 2005).

38. *Id.*

III. THE IMPLICATIONS OF THE EUROPEAN NEIGHBOURHOOD POLICY—AN ISRAELI PERSPECTIVE

A. EU-ISRAEL RELATIONS—BACKGROUND

For obvious reasons, the relations of Israel and her citizens with Europe were always complex and charged.³⁹ Yet, Israel and the then European Economic Community established diplomatic relations as early as 1959, and in 1975, they concluded their first free trade area agreement.⁴⁰ In 1994 the EU announced in Essen, Germany its willingness to establish special relations with Israel (hereinafter Essen Declaration),⁴¹ and indeed, in the course of time, Israel succeeded in overcoming the aforesaid difficulties, insofar as economic relations were concerned. The EU is in fact Israel's chief trading partner.⁴²

Current bilateral relations between Israel and EC members are governed by the 1995 Association Agreement between the EC and its Member States (the Association Agreement).⁴³ Regionally, relations are

39. For analysis, see WHITHER EU-ISRAELI RELATIONS? COMMON AND DIVERGENT INTERESTS (Ephraim Ahiarim & Alfred Tovias eds., 1995); MOSHE HIRSCH, EYAL INBAR AND TAL SADEH, THE FUTURE RELATIONS BETWEEN ISRAEL AND THE EUROPEAN COMMUNITIES—SOME ALTERNATIVES (1996); EUROPE AND ISRAEL: TROUBLED NEIGHBORS (Ilan Greilsammer & Joseph H.H. Weiler eds., 1998).

40. For background, see MICHAEL ROM, IN THE PATH OF ISRAEL'S INTERNATIONAL COMMERCIAL POLICY: GSP AND THE EUROPEAN COMMON MARKET (1998) [Hebrew]; Avi Primor, *Israel and the EC*, in EUROPEAN LEGAL TRADITIONS AND ISRAEL 459 (Alfredo M. Rabello ed., 1994); Chava Shachor-Landau, Israel and the EC on the Eve of the Maastricht Agreement, in EURO. LEGAL TRADITIONS AND ISRL. *supra*, at 445; Daphna Kapeliuk, *A Legal Analysis of the Free Trade Agreement of 1975 between the European Community and the State of Israel*, 27 ISRL. L. REV. 415 (1993); Talia Einhorn, *The Role of the Israeli Courts in Promoting Free Trade—A Critical Study in View of the EC-Israel FTA*, 12 BAR-ILAN L. STUD. 165 (1995) [Hebrew]; Inon Dafni, *Israel and the European Union—The Current Picture and Expectations for the Future*, 27(107) ISR. TAX Q. 49 (2000) [Hebrew].

41. See Commission of the European Union, "Extracts of the Conclusion of the Presidency of the Essen European Council, December, 9–10, 1994," Bulletin of the European Union, Supplement 2/95: "The European Council considers that Israel, on account of its high level of economic development, should enjoy special status in its relations with the European Union, on the basis of reciprocity and common interest. . ."

42. For official Israeli statistics, see http://www.mof.gov.il/museum/hebrew/wider_europe.pdf.

43. Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, on the one part, and the State of Israel, of the other part, Official Journal L 147, June 21, 2000, p. 0003–0171. For analysis, see NELLIE MUNIN, THE EU AND ISRAEL: STATE OF THE PLAY 145–226 (2003) [Hebrew]; Arie Reich, *From Diplomacy to Law: The Juridicization of International Relations in the Framework of GATT and Israel's Free Trade Agreements*, 22 TEL-AVIV L. R. 351, 398–403 (1999) [Hebrew]; Eyal Inbar, *Improving Israel-EU Relations: the European Economic Area as a Possible Model*, 5(1) ISR. AFF. 109 (1998); Tal Sadeh, *The European Union and Israel: The Customs Union Alternative*, 5(1) ISR. AFF. 87 (1999); Alfred Tovias, *Mapping Israel's Policy Options regarding its Future Institutionalized Relations with the EU* (Center for European Policy Studies, Working Paper No. 3, 2003),

governed by the Barcelona Process, which was launched in 1995 to regulate and advance the economic, political, and social relations between the EC, its Member States, and the twelve non-EC Mediterranean countries of that time (including Cyprus and Malta).⁴⁴

Under the Association Agreement, each party granted the other preferential economic, commercial, technological, and research status. The core of the Agreement is a free trade area for industrial goods. A legal framework for enhanced cooperation in research and for liberalization of trade in agricultural goods, of services, and of movement of capital is also provided.⁴⁵

The Association Agreement must not, however, be perceived merely as an economic instrument. It also sets out the basis for, *inter alia*, legal, political, and cultural cooperation and dialogue. For example, the Association Agreement refers to the mutual objective of promoting peace, security, and regional cooperation and to the need to advance stability, prosperity, understanding, and tolerance in the Mediterranean region.⁴⁶

The establishment of close ties with the EU was considered one of Israel's greatest diplomatic achievements.⁴⁷ Yet, the potential of the Essen Declaration, like the Association Agreement itself, has not been fully realized.⁴⁸ The same applies to the Barcelona Process.⁴⁹ Even

available at http://www.shop.ceps.be/bookdetail.php?item_id=1005; Moshe Hirsch, *The 1995 Trade Agreement between the European Communities and Israel: Three Unsolved Issues*, 1(1) EUR. FOREIGN AFF. REV. 87 (1996); Inon Dafni, *The Association Agreement between Israel and the European Union* 29(114), ISR. TAX Q. 7 (2001) [Hebrew]; Boaz Hirsch, *The Institutional Framework in Israeli-European Union Relations and its Contribution to the Trade Relations*, 29(114) ISR. TAX Q. 11 (2001) [Hebrew].

44. For the Barcelona Process and its implications for Israel, see Barcelona Declaration adopted at the Euro-Mediterranean Conference, November 27–28, 1995, at http://europa.eu.int/comm/external_relations/euromed/bd.htm. For comment, see MUNIN, *supra* note 43, at 151–161.

45. See Commission Staff Working Paper, European Neighbourhood Policy, Country Report, Israel, COM(04) 373 final at 24 [hereinafter Country Report, Israel]. The State of Israel participated in the 4th and 5th Framework Program for Research and Technological Development. In June 2003, the agreement associating Israel to the 6th Framework Program was signed. Israel and the Commission initiated in March 2004 the agreement on Galileo, Europe's satellite radio navigation program. *Id.*

46. See Preamble and Article 1 of the Association Agreement.

47. Sasson Sofer, *Towards Distant Frontiers: The Course of Israeli Diplomacy*, 10(1–2) ISR. AFF. 1, 7 (2004).

48. For a thought-provoking analysis of Israel's failure to materialize the economic potential in its relations with the EU, see Einhorn, *supra* note 40.

49. See Country Report, Israel, *supra* note 45, at 4. Due to its relatively high level of economic development, Israel does not benefit from bilateral financial support under

worse, the strategic political relationship since the Six Day War (1967) has largely been characterized by mutual suspicion and tension.⁵⁰

B. Economic and Trade Implications of the European Neighbourhood Policy

The ENP may serve as a vehicle for upgrading Israel-EU economic relations. It may be seen as an offer by Brussels to Jerusalem of full or partial integration into the European Internal Market, enabling Israel to establish herself as a genuine European state in economic terms.

The ENP may allow, should the parties so wish, Israel's companies to enjoy the EU's four fundamental economic freedoms (goods, services, capital, and people) and to join some pan-European policies, including transport, education, energy, and environmental protection.⁵¹

What is especially promising for Israel regarding the ENP is the fact that, contrary to the Barcelona Process in which the EU treated, in principle, all twelve non-EC Mediterranean countries of that time *en bloc*,⁵² the ENP is based on the differentiated, tailor-made principle whereby the EU's treatment of each of its neighbors would, in principle, vary in accordance with each neighbor's particular needs, objectives, economic development, and rate of progress.⁵³ This principle allows Israel a privileged position, as compared with other non-EC partners of

MEDA. However, it is eligible for MEDA funds earmarked for regional co-operation. While initially Israel participated in a number of projects, following the outbreak of the second Intifada, it has become increasingly difficult for the country to find partners in the Mediterranean area. Yet, Israel participates in Euro-Med Youth (promoting people-to-people contacts and co-operation between actors of civil society and NGOs in the youth field), Euro-Med audiovisual, and Euro-Med heritage programs.

50. See Rosemary Hollis, *The Politics of Israeli-European Economic Relations*, 1(1) ISR. AFF. 118 (1994); Emmanuel Navon, *EU and Israel: An Historical Perspective* (1973–1993), in 10 NEWSLETTER OF THE ISRAELI ASSOCIATION FOR THE STUDY OF EUROPEAN INTEGRATION 15 (Guy Harpaz ed., 2003); TROUBLED WATERS: EUROPE AND ITS RELATIONS WITH THE UNITED STATES AND ISRAEL (Bianca Kühnel ed., 2003) [hereinafter *Troubled Waters*].

51. See, e.g., the environmental policy, as analyzed by Inbar, *supra* note 43, at 121. For analysis of potential areas of cooperation under the ENP, see Munin, *supra* note 15, at 34ff.

52. For the deficiencies of that Process from an Israel perspective, see Munin, *supra* note 43 at 154ff; Tovias, *supra* note 15, 216ff.

53. See European Commission, *supra* note 2 ("The Action Plans will be differentiated, i.e. tailor-made to reflect the existing state of relations with each country, its needs and capacities as well as common interests."); see also Gunter Verheugen, EU enlargement and the Union's Neighbourhood Policy, Speech at the Diplomatic Academy Moscow (Oct. 27, 2003), available at http://www.europa.eu.int/comm/world/enp/index_en.htm. ("Our Wider Europe—New Neighbourhood Policy will take full account of the differences in relations with each of our neighbours. . . So do their relationship with us. Ukraine is not Egypt and Israel is not Moldova. . . Hence differentiation is a key notion in our neighbourhood policy. Our relations also reflect different sets of common interests, and a different extent of values shared").

the ENP, making her the frontrunner in the negotiations under the ENP. This was recently acknowledged by the EC Commission's *Strategic Guidelines on Human Rights and Democratisation with Mediterranean Partners*,⁵⁴ the EC Commission's *Country Report on Israel*,⁵⁵ the Initiative, the EU-Israel Action Plan, and European political leaders.⁵⁶ This position could enable Israel to translate advanced technological and economic status into substantial economic advantages.

There is, however, a negative aspect to that differentiated, tailor-made principle. The *en bloc* principle, which formed the basis of the Barcelona Process, was intended to advance coherent economic, political, and social cooperation in the Middle East and North Africa. The tailor-made approach would reinforce bilateral relations and may therefore come at the expense of regional coherence and solidarity, so needed in the Middle East.

Does the adoption of the ENP, therefore, manifest the intention of the EU to abandon its regional approach, as embodied in the Barcelona Process? Is the Barcelona Process dead? The Council, Commission, and the European Parliament are adamant that this is not the case. In their opinion, the ENP will supplement the Barcelona Process. The ENP is meant, according to their various communications, to include a regional dimension that would encourage regional and sub-regional

54. Commission of the European Communities, Communication from the Commission to the Council and the European Parliament, *Reinvigorating EU Actions on Human Rights and Democratisation with Mediterranean Partners*, Strategic Guidelines, Brussels 21.05.2003 COM(2003) 294 final, 5. Compared to the other MEDA partners, Israel presents distinct characteristics. It functions as a well established parliamentary democracy, with an effective separation of power, a functioning system of governance, and an active participation of non-governmental organizations and civil society in all aspects of political and social life. *Id.*

55. See Country Report, Israel, *supra* note 45. Israel is a democratic state with associated political rights, respect for the rule of law, and a flourishing civil society. Israel has ratified most of the core UN Human Rights Conventions. Israel also presents a high proportion of educated women, and their representation in the public administration has increased over the last few years. Economically, Israel has evolved into a knowledge-based economy, with internationally competitive service and industrial sectors. Israel's workforce is one of the most skilled in the world, and its education system is well developed. The Israeli economy is mostly diversified and competitive. The Israeli Antitrust Authority is strong, active, and independent. The financial sector is highly developed, the venture capital market is very strong, and business regime is generally non-discriminatory for foreign direct investments. But *see infra* note 101.

56. See, e.g., Initiative, *supra* note 1, at 7 ("Israel is the richest of the EU's neighbours (€ 19578), with Lebanon (€ 5284) second richest, albeit at a considerably lower level of GDP, and Russia some way behind both countries (€ 2382)"); *see also* Prodi, *supra* note 19.

cooperation. That regime would accordingly exist side by side with the Barcelona Process and would support it.⁵⁷

The recently adopted EU-Israeli Action Plan attempts to allay these concerns. It provides in particular that the parties will develop trade promotion between Israel and other Euro-Mediterranean partners and complete all the necessary procedures for enabling Israel to participate in the Pan-European-Mediterranean cumulation of origins, as a part of the efforts to widening the Euro-Mediterranean links.⁵⁸

The impressive words contained in these communications about the importance of the Barcelona Process cannot hide the true colors of the Middle East landscape. It is not yet clear how the ENP will succeed in promoting bilateral, made-to-measure relations with each and every EU neighbor, without adversely affecting the regional dimension of the EU's relations with the Middle East and North Africa. It also remains to be seen whether the ENP can live side by side with the Barcelona Process and in what ways they would interact.

57. See General Affairs and External Relations, Eur. Par. Ass., 2501st Sess., Doc. No. 8220 at 7 (2003). There is a need to take account of the specific situations within the individual partners and relations with them, while strengthening cooperation and interdependence. *Id.*; see also EC Commission, *supra* note 2. The ENP also strongly encourages regional and sub-regional cooperation. By further developing various forms of cross-border cooperation, the EU and its partners can work together to ensure that regions benefit from EU enlargement. In the South, the ENP will also encourage the participants to reap the full benefits of the Euro-Mediterranean Partnership, notably through the promotion of infrastructures, interconnections, and networks, and to develop new forms of cooperation with their neighbors. *Id.* See also Verheugen, *supra* note 53, at 6. (The ENP should ensure coherence and include the regional dimension. It is obvious that our neighbors differ largely. There are issues related to proximity, which are largely common, or have a regional dimension. Ensuring that enlargement will not affect negatively human contacts along our borders is a task we face with practically all of our neighbors. The same is true for co-operation in the area of border management. Interconnection of energy, transport, and telecommunications networks has strong regional aspects); see also Verheugen, *supra* note 5 (in the Mediterranean we do not intend to replace the Barcelona Process by any aspect of the Neighborhood Policy. On the Contrary, the Barcelona Process should benefit from the Neighbourhood Policy. It will provide fresh momentum by measuring progress against benchmarks within a given and limited timeframe); see also Report on Wider Europe, *supra* note 2, at 6, 7, 22 ("Good Neighbourly relations between the two sides of the Mediterranean sea-border are of even greater importance for the enlarged Europe. The EU must also revive and reaffirm its links with its Mediterranean neighbors and the Middle East." *Id.* Additionally, the Commission "considers that it should be the task of the European Union to develop with these countries and regions a comprehensive and effective neighborhood concept, capable of furthering the search for more effective solutions to the problems posed by interdependence and globalization." *Id.* The ENP "endorses the aim that the new Initiative should not override the existing framework for relations with [the eastern and southern] regions but supplement them." *Id.* at 22).

58. See *supra* note 37, at Article 2.3.2.

On a different note, the ENP may further expose the Israeli market to European competition.⁵⁹ This, in turn, may create economic problems for those Israeli companies who are not yet prepared for intensified international competition.⁶⁰ Israel should assist those industries to prepare themselves for the intensified competition likely to result from the ENP.⁶¹

Notwithstanding these issues, it is clear that the ENP may prove to be instrumental in Israel's economic development and growth⁶² and may assist in the reduction of Israel's chronic trade deficit with the EU.⁶³

The ENP may also place Israel at the heart of Europe's economy. It is nowadays very difficult for a small country like Israel with its small economy and population, scarce resources, and unique geo-political landscape to thrive economically without joining a regional trading block. Ultimately, the ENP may pave the way for the economic participation of Israel in the Internal Market, thereby providing the State of Israel with the much needed economic regional backing. This raises the question as to how the ENP will affect the economic relations between the United States and Israel, a theme to be explored below.

C. Legal Implications of the European Neighbourhood Policy

Israel and the EU should choose the legal and institutional framework under which their enhanced relations under the ENP are to be governed. Fruitful research has been conducted, mainly in the United States, on the influence of institutional structures on the performance of the economies that they attempt to regulate.⁶⁴ That research is relevant in our context.

Some scholarly work has already been devoted to that multifaceted institutional choice of the legal and institutional framework under which

59. See Tal Sadeh, *Israel and a Euro-Mediterranean Internal Market*, 9(1) MEDITERRANEAN POL. 29 (2004).

60. It remains to be seen how strong commercial Israeli entities, such as financial institutions, will react to the possibility of further exposure to European competition.

61. For possible monetary implications for the State of Israel, see Inbar, *supra* note 43, 114.

62. See the analogy with the countries of the European Free Trade Association. Inbar, *supra* note 43, at 114.

63. For analysis of that deficit, see Tal Sadeh, *Israel and a Euro-Mediterranean Internal Market—A Survey of Existing Barriers to Trade and Possible Remedies*, in EURO-MEDITERRANEAN INTEGRATION—THE MEDITERRANEAN'S EUROPEAN CHALLENGES 189ff (Peter Xuereb ed., 2002) [hereinafter EURO-MEDITERRANEAN INTEGRATION].

64. See Nobel Prize Laureate, DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (1990).

the enhanced relations under the ENP are to be governed. *Tovias*,⁶⁵ *Sadeh*,⁶⁶ *Munin*,⁶⁷ and *Reich*⁶⁸ are cases in point. The main options include the retention of the current framework under the Association Agreement,⁶⁹ the Turkish custom union model,⁷⁰ the model governing Swiss-EU relations,⁷¹ the more sophisticated regime established with the countries of the European Free Trade Association (Norway, Iceland, and Liechtenstein, but not Switzerland) under the aegis of the European Economic Area (EEA),⁷² or a combination thereof.⁷³ Within this context, a decision is to be taken whether the existing dispute settlement mechanism under the Association Agreement is to be retained or rendered more juridical.⁷⁴

Needless to say, each of those various legal and institutional options may have political implications in terms of loss of sovereignty. The

65. *Tovias* (2004), *supra* note 15.

66. *Sadeh*, *supra* note 43.

67. *Munin*, *supra* note 43, at 171ff.

68. Arie Reich, *Wider Europe and Israel*, Public Speech given at the Conference held by the Israeli Ministry of Foreign Affairs (Sept. 7, 2003).

69. The 1995 Association Agreement is comprehensive, providing a wide scope for enhanced cooperation and integration in numerous economic and non-economic areas.

70. Under that model, Israel would be required to adopt the EU's tariff legislation. For analysis, *see Sadeh*, *supra* note 43.

71. For the Swiss Model and its implications for Israel, *see Tovias*, *supra* note 15. The EU-Swiss model is a bilateral, piecemeal arrangement, comprising several sectarian arrangements, each of which provides for enhanced integration between the parties in certain given areas. For certain difficulties in that model, *see David Allen & Michael Smith*, *External Policy Developments*, 41 J. COMMON MKT. STUD. 97, 103 (2003) (Annual Review).

72. Initiative, *supra* note 1, at 15. For the EEA agreement, *see* [1994] O.J. L3/36. For analysis, *see Toledano A. Laredo*, *The EEA Agreement: An Overall View*, 29(5) COMMON MKT. L. REV. 1203 (1992). For a legal and institutional analysis, *see Carl Baudenbacher*, *The EFTA Court—an Example of the Judicialisation of International Economic Law*, 28 EUR. L. REV. 880 (2003). Under that model, Iceland, Norway, and Liechtenstein are granted almost unfettered access to the EU's Internal Market. They do not, however, take part in the EU's political integration. Those countries had to adopt large portions of the EU's *acquis*. A complex institutional framework is provided, tackling the legislative, executive, and judicial aspects of EEA law. Under that framework, these countries are granted some limited voice in the decision-shaping of EU legislation. For analysis, *see Laredo*, *supra*; *Baudenbacher*, *supra*.

73. For analysis of Israel's options, *see Munin*, *supra* note 43, at 171ff. For further comment, *see Tovias*, *supra* note 15; *Tovias*, *supra* note 43; *Sadeh*, *supra* note 43, argued in 1999 that a custom union with the EU will be more efficient for Israel as compared with a free trade agreement. Inbar argued that a simple duplication of the EEA model is neither feasible nor desirable. He offered a less institutionalized and more incremental model of a "European Israel Economic Area." He argued that Israel should not agree to a decision-shaping process that will reduce its autonomy in shaping its own future. *See Inbar*, *supra* note 43, at 13–14.

74. For this theme in general, *see Reich*, *supra* note 43. For the said dispute settlement regime, *see Reich*, *id.* at 401–403. For analysis of the situation under the aegis of the European Economic Agreement, *see Baudenbacher*, *supra* note 72.

actual choice would therefore be predominately a political one. In that regard, the EU sends conflicting messages. The original Initiative included numerous references to the desire of the EU to bring its relations with its neighbors very close to those enjoyed by Norway, Liechtenstein, and Iceland under the EEA framework. It must be stressed that the EEA model is the EC's most far-reaching and advanced mode of integration with third-countries. The references to the EEA model could have been interpreted as a preference for that model as the prospective legal framework under which bilateral relations between the EU and its neighbors are to be governed. Later documents of the Commission, European Parliament, and the Council on the ENP, however, refrained from referring to Norway, Liechtenstein, and Iceland, or to the EEA model. It is submitted that such change is not due to an unwitting omission on the part of the EU.

Moreover, it is not clear whether bilateral relations between the EU and Israel could still be founded on the existing Association Agreement. It is submitted that the reliance on the legal framework of the Association Agreement carries many advantages. The Association Agreement is comprehensive enough to encompass the upgraded relations between the EU and Israel. Moreover, any attempt to replace it may cause significant legal and political difficulties, slowing the process of implementing the ENP.

The stance of the EU in that regard is inconsistent. An earlier Communication by EC Commissioner Verheugen expressed a preference for relying on the existing legal and institutional framework.⁷⁵ The Commission's Strategy Paper on the other hand calls for the replacement of the prevailing legal and institutional mechanism with "European Neighbourhood Agreements."⁷⁶ It is submitted that for the reasons analyzed above, the earlier option is preferable in the EU-Israel context, and indeed, the EU-Israel Action Plan envisages that at least in the short-term, relations would continue to be founded on the existing Association Agreement.

75. See Verheugen, *supra* note 5. "By themselves the action plans will not create any new legal obligations. The existing Partnership and Co-operation Agreements and Association Agreements will continue to form the legal basis for our relations with the partners. The Neighbourhood Policy sets out a comprehensive framework. This allows us to focus attention and create motivation and this will bring added value compared to current agreements and processes." *Id.*

76. See European Commission, *supra* note 2.

The ENP envisages significant approximation of laws and regulatory regimes on the part of the EU neighboring countries.⁷⁷ Bringing Israel's laws closer to those of the EU can bring much benefit to the State of Israel.⁷⁸ The areas of environmental protection and competition law are two cases-in-point.⁷⁹

Yet, it was Oliver Wendell Holmes who once noted that the law "embodies the story of a nation's development through many centuries and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics."⁸⁰ Indeed, not the whole of the corpus of EU laws and regulatory regimes fits Israel's unique economic, social, and cultural landscape.⁸¹ Furthermore, the adoption by Israel of large parts of the EU's economic, financial, and trade laws might limit Israel's economic independence. Israel should therefore estimate *ex ante* the price that it would be required to pay in terms of loss of national sovereignty. The concept of approximation of laws should be dealt with cautiously. In fact, an examination of the recently adopted EU-Israel Action Plan indicates that the Israeli approach in that respect is indeed rather cautious.⁸²

In that respect, the flexible, *à la carte* nature of the ENP is reassuring. Under the ENP, Israel would be able, in principle, to select the components of the Internal Market consistent with her own interests (for example, further liberalization in trading of services), while rejecting other components which might harm those interests (for example, the legal obligation to permit free movement of persons).⁸³ The Israeli public and private sectors must therefore continue to conduct meticulous

77. European Neighbourhood Policy, Strategy Paper, COM(2004) 373 final (12.5.2004), 9, 14-16 and 23. Article 55 of the Association Agreement already provides for the legal basis for approximation of laws between the parties.

78. For example, adopting EU legislation may improve the standards and effectiveness of regulation and law enforcement in some areas.

79. See Damien Geradin & Nicolas Petit, *Competition Policy and the Euro-Mediterranean Partnership*, 8 EUR. FOREIGN AFF. REV. 153 (2003).

80. From the first of twelve Lowell Lectures delivered by Oliver Wendell Holmes Jr. on November 23, 1880, which were the basis for the Common Law. OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1 (1881).

81. See the speech of Professor Uriel Procaccia, who analyzed the difficulties and disadvantages of the approximation of Israeli private legislation to that of the EU, Israel and Wider Europe, Conference held in the Herzliya Interdisciplinary Center, Feb. 17, 2004.

82. A case in point is the area of trade defense measures. Israel could have attempted to waive the use of antidumping measures and other trade defense measures in the parties' reciprocal trade relations, but has not done so. See Guy Harpaz, "Dumping" *the Antidumping Instrument in the Trade Relations between the European Union and the State of Israel?—The European Union Perspective* J.W.T. (2005) (forthcoming).

83. As to the issue of free movement of persons from Israel's perspective, see Inbar, *supra* note 43, 118ff; see also Vered Dar, *Work Permits for Foreigners in the High-Tech Sectors*, 28(112) ISR. TAX Q. 31 (2001) [Hebrew].

groundwork in order to map out those elements of the Internal Market that are positive and negative from Israel's point of view.⁸⁴

On a different note, the ENP would place the Israeli Parliament, the Knesset, under great pressure. The need to adopt a large corpus of the EU's economic and regulatory *acquis* would pose an unprecedented challenge for a parliament that is growing more and more partisan. Israel should seek to learn from the experience gained in the ten acceding countries.

The completion of that legislative project would in some respects change the nature of existing Israeli law, bringing it closer than ever to that of the EU *acquis*.⁸⁵ Significant changes may be expected, *inter alia*, in the legal regime pertaining to external trade (in industrial goods,⁸⁶ agricultural goods,⁸⁷ and services⁸⁸) and to intellectual property,⁸⁹ research and development,⁹⁰ standards,⁹¹ environmental protection,⁹² animal protection,⁹³ public procurement,⁹⁴ and competition law.⁹⁵

The Israeli executive and judiciary should prepare themselves for the prospective significant change of Israeli laws. It remains to be seen how the Israeli judiciary, renowned for its independent, activist stance and

84. See the words of Adv. Uriel Lin (Chairperson of the Israeli Chamber of Commerce) in GLOBES, Feb. 26, 2004, at 27 [Hebrew] (warning against any neglect of the interests of Israel's commercial sector in the context of the ENP, the Israeli daily business paper).

85. See *infra* notes 86–95.

86. Sadeh, *supra* note 63, at 189ff.

87. *Id.* at 206ff.

88. See Mark Luben, *Further Integration in Trade in Insurance Services between Israel and the EU*, 31(121) ISR. TAX Q. 50 (2003) [Hebrew]; Sadeh, *supra* note 63, at 210ff; see also *Europe Our Sister*, GLOBES, Feb. 24, 2004, at 4 (Interview conducted with Dan Catarivas, Deputy Director-General of International Affairs, Israeli Ministry of Finance, by the Israeli daily business paper). Catarivas is of the opinion that the service sector is one of the chief areas for upgrading current economic relations.

89. Sadeh, *supra* note 63, at 230ff.

90. *Id.* at 235ff.

91. For a detailed analysis, see ELIYAHU HADAR, THE EUROPEAN UNION AND ITS ACTIVITIES IN PRODUCT CERTIFICATION, STANDARDIZATION AND ACCREDITATION, especially 355ff (2002) [Hebrew]; see also The EU Demand to Align Israeli Standards in Relation to Cars to those of the EU, GLOBES, Mar. 1, 2004, at 18 [Hebrew].

92. Hadar, *id.*, at 339ff; Inbar, *supra* note 43, at 121.

93. See Guy Harpaz & Rachel Frid, *Case Note—The Israeli Supreme Court Judgment on Force-Feeding of Geese*, 10(1) INT'L TRADE L. & REG. N-2-3 (2003) (commenting on the impact of EU law on Israeli law in that regard).

94. Sadeh, *supra* note 63, at 224ff.

95. Though attention is drawn to the fact that current Israeli provisions on cartel and abuse of monopoly position are already similar to Article 81 and 82 of the EC Treaty.

erudite judgment would be willing to be influenced by EU legislation and case-law.

D. Political and Strategic Implications

The ENP may also carry significant political and strategic implications, as it may entail enhanced cooperation with the EU in important fields and policies, such as Justice and Home Affairs, foreign policy, and security.⁹⁶ The European Union is willing to open its economic gates to Israel not merely out of the goodness of its heart but also because the EU is keen to translate its economic power into political influence and hegemony. Europe wants to become not merely a payer, but also a player. In fact, the ENP stipulates that the European Union is willing to open its economic gates to Israel (and to the other partners) in return for the adoption of shared values (democracy, good governance, rule of law, and the protection and promotion of human rights) and an effective implementation of political, economic, and institutional reforms.⁹⁷ A clear linkage is thus being created. Demonstrated progress in the political front on the part of the EU neighbors is an essential precondition for their ability to reap the economic benefits of the ENP.⁹⁸

Indeed, the EU intends to use the ENP as a social engineering instrument, one that promotes democracy, good governance, rule of law, as well as civil, political, economic, social, and cultural human rights. The EU also hopes that the ENP will reinforce its involvement in the Middle East peace process.⁹⁹ In these respects, the ENP should be seen not merely as an economic instrument, but rather as an assertion by the EU of its intention to promote the aforesaid values and objectives as part of its overall strategic approach in external relations, in general, and in

96. Annette Jünemann, *Security Building in the Mediterranean after September 11*, 8(2-3) MEDITERRANEAN POL. 1 (2003).

97. For a theoretical analysis of the attempts of the West to "export" Western values, see Marcello Pera, *Israel, Europe and Islam*, in *Troubled Waters*, *supra* note 50; see also Etzioni, *supra* note 8.

98. See Verheugen, *supra* note 5. "The closer we move together in our political dialogue, the more we shall be able to do in economic areas as well." *Id.*

99. See comments of Dr. Yossi Beilin, former Israeli Minister of Justice, at the Conference on Israel and Wider Europe held in the Herzlia Interdisciplinary Center (February 17, 2004). Beilin was of the opinion that enlargement of the EU renders it more and more difficult for the EU to contribute to peace in the Middle East. The ENP remains one of the chief means by which the EU can contribute to that process. *Id.*; see also the words of Ambassador Ron Curiel, Deputy Director-General of the Israeli Ministry of Foreign Affairs, in charge of European Affairs, in said Conference. *Id.* For the EU's difficulties in maintaining a balanced approach, see Rory Miller, *The PLO Factor in the Euro-Israeli Relations, 1964-1992*, 10(1-2) ISR. AFF. 123, at 147ff (2004). As to the ability of the EU to contribute to peace settlements, see, by analogy, Katerin Yennari, *Building Bridges in Cyprus—The Role of the European Union in the Reconstruction of the Two Communities*, 15/2 THE CYPRUS REV. 81 (2003).

the Middle East, in particular.¹⁰⁰

This European vision of greater involvement in the Middle East may not be welcomed in Israel. Although the EU acknowledges the fact that Israel is a thriving democracy, it is still critical of her record in the West Bank and Gaza Strip and of her treatment of Israeli minorities.¹⁰¹ The EU would want to use the ENP as an instrument to exert some pressure on Israel in those fronts.

Hence, in order to implement the ENP and to reap its economic benefits, Israel would have to pay certain political prices.¹⁰² Israel would be required to pay greater attention to criticism, voiced by Brussels and in some of Europe's national capitals, of some of Israel's more controversial political and security policies, and to adjust some of these policies.¹⁰³ Israel would also be expected to allow EU representatives to make contributions to the peace negotiations between Israel and her neighbors.

100. See European Commission, *supra* note 54, at 7; The Commission's Communication of May 8, 2001 on The European Union's Role in Promoting Human Rights and Democratisation in Third Countries—Com(2001) 252 final; The Commission's Communications to prepare the 4th and 5th Euro-Mediterranean Conferences of Ministers in Marseilles (November 2000—6/09/00, Com(2000) 497) and Valencia (April 2002—Sec(2002) 159 final; Guidelines EU Policy towards Third Countries on the Death Penalty, General Affairs Council, Luxembourg (June 29, 1998); Guidelines to EU Policy towards Third Countries on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, General Affairs Council, Luxembourg (Apr. 9, 2001); EU Guidelines on Human Rights Dialogues, Council of the EU (Dec. 13, 2001).

101. See European Commission, *supra* note 54. ("Israel's compliance with internationally accepted standards of Human Rights is unsatisfactory. Two important specific areas need to be tackled. Firstly, the issue of reconciling the declared Jewish nature of the State of Israel with the rights of Israel's non-Jewish minorities. Secondly, the violation of Human Rights in the context of the occupation of the Palestinian territories."); see also Country Report, Israel, *supra* note 45, at 8-12. The EU urged the Government of Israel, in exercising its right of self-defense, to exert maximum effort to avoid civilian casualties and take no action that aggravates the humanitarian and economic plight of the Palestinian people. It has called on Israel to abstain from any punitive measures that are not in accordance with international law, including extrajudicial killings and destruction of houses. The construction of a Separation Barrier causes serious economic and social consequences for the Palestinian population. As to Israel proper, Israeli legislation contains laws and regulations that favor the Jewish majority. The Arab minority suffers from discrimination in many areas including budget allocations, official planning, employment, education, and health. In terms of access to justice, problems exist for migrant workers and for activities in the occupied territories. *Id.* But see *supra* note 55.

102. For analysis, see Roderick Pace, *The European Union's Policies to Enhance Security and Stability in the Mediterranean Region: The Role of Fundamental Human Rights and Democratic Freedoms*, in EURO-MEDITERRANEAN INTEGRATION, *supra* note 63, at 74.

103. *Id.*

Recent events may reflect Israel's growing willingness to take some first steps in that direction. A case in point is the resolution of the dispute between the EU and the State of Israel over products originating from the Golan Heights, the West Bank, the Gaza Strip that are exported to the EU.¹⁰⁴ Another telling example of Israel's gradual change of perceptions over the EU is the EU-Israel Action Plan itself. Under the Action Plan, Israel undertook far-reaching political commitments. Israel, for example, undertook to work "together with the EU ... with the aim of reaching comprehensive settlement of the Israeli/Palestinian conflict and a permanent two-state solution with Israel and the Palestinian state living side by side in peace and security..." and to minimize "the impact of security and counter-terrorism on the civilian population."¹⁰⁵

Yet the grant of enhanced voice to the EU may prove to be very difficult for so many Israelis to come to terms with. Israel has always had a difficulty in maintaining a single international identity wholly consistent with its own national values and interests as well as with international norms.¹⁰⁶ It remains to be seen whether the successful implementation of the ENP can accomplish both of those sometimes conflicting aims.

E. Social Implications

Lawyers and economists tend to identify, respectively, the legal and economic obstacles to a better future in Israel's relations with the EU. Yet, the main obstacles are in fact psychological and sociological. Israel is a European country economically and an Asian country geographically.

104. For the dispute and its implications, see Moshe Hirsh, *Rules of Origin as Foreign Policy Instruments?*, 26 FORDHAM INT'L L.J. 572 (2003); Christian Hauswaldt, *Problems under the EC-Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip under the EC-Israel Association Agreement*, 14(3) EUR. J. INT'L L. 591 (2003). For the solution to the dispute, see Guy Harpaz & Rachel Frid, "An Agreement Reached over the Legal Treatment of Products Exported to the EU from the Golan Heights, East Jerusalem, the West Bank and Gaza Strip," 10/6 INT'L TRADE LAW AND REGULATION N-32 (2004); Guy Harpaz, *An Agreement over the Legal Treatment of Products Exported to the EU from the Golan Heights, East Jerusalem, the West Bank and Gaza Strip—The Limits of Power and the Limits of the Law* 38/6 J.W.T 1049 (2004).

105. See *supra* note 37. Compare with Israel's response to the two-state solution manifested in the EEC Venice Declaration of 1980, as analyzed by DASBERG, *supra* note 18, at 30. For a critical stance of the EU's involvement in the Middle East conflict, see Gerald M. Steinberg, *Learning the Lessons in the Failed Peace Process and the EU's Barcelona Framework*, in KÜHNEL, *supra* note 50, at 69. Steinberg describes that policy as consisting of "lofty declarations and unrealistic goals." *Id.* For a more favorable account, see Helmut Hubel, *'EU-rope' and the Recent Conflicts in the Middle East*, in KÜHNEL, *supra* note 50, at 87.

106. Sofer, *supra* note 47, at 1.

Hence, some may fear that any additional step towards integration with Europe might tilt the delicate balance between Western and levantine elements of Israeli society.¹⁰⁷

The ENP may also reinforce popular, deep-seated prejudices about European intervention in Israel's internal affairs. Indeed, it is deep-seated prejudices, ignorance, and mutual mistrust that may prove to constitute the most significant stumbling block to any further progress between the parties.¹⁰⁸ It is therefore desirable to open without delay an internal, Israeli dialogue that will clarify the State of Israel's self-image and its place in the Middle East, Europe, and the global village.¹⁰⁹ The Israeli media, academia, and civil society should play a key role in this dialogue.¹¹⁰

Israel and Israelis should thus first learn the reasons for the growing antagonism displayed in Europe towards the State of Israel. They should then engage the EU, its Member States, and citizens in a deep and frank dialogue, designed to reduce mutual suspicion and ignorance.¹¹¹ The European Union, its Member States, and its citizens should contribute to that dialogue.¹¹² For that purpose they should first critically explore the

107. Tovias, *supra* note 15, at 218.

108. See Ambassador Giancarlo Chevallard, *The European Union's Relations to Israel*, in KÜHNEL, *supra* note 50, at 13–14. For further analysis, see A. Timm, *Germany—USA—Israel: Current Attitudes and the Historical Legacy*, in KÜHNEL, *id.* at 77.

109. See Raffaella Del Sarto & Alfred Tovias, *Caught between Europe and the Orient: Israel and the EMP*, 36(4) INT'L SPECTATOR 61 (2001).

110. As to the role of the press, see the address of Gideon Remez, in a conference of the Israeli Association for the Study of European Integration, November 27, 2003, published in Guy Harpaz (ed.) 11 Newsletter of the Israeli Association for the Study of European Integration 15 (2004); see also the Conference held on the March 12, 2004 at the Tel-Aviv University on Europe's media coverage of Israel. As to the Israeli academia, see Bianca Kühnel, *Forward*, in KÜHNEL, *supra* note 50, at 5, 7; see also the establishment of different forums such as the Israel-EU Forum and the Posen Research Forum for Jewish, European, and Israeli Political Thought at the University of Haifa. See also the large number of academic discussions on this topic, for example, the call for papers by the EU-Israel Forum and the Israeli Association for the Study of European Integration on the Wider Europe Initiative.

111. Chevallard, *supra* note 108; Ambassador Otto von der Gablentz, *Beyond the Road Map: A Renewed Europe and Israel*, in KÜHNEL, *supra* note 50, at 19, 23.

112. See Fania Oz-Salzberg, *Images of Europe: An Israeli Perspective*, presented in the *Intercultural Dialogue, European Commission, Brussels* (Mar. 20, 2002). According to Oz-Salzberg, Europeans tend too often to ignore the fact that European Judaism was a crucial co-founder of liberal democracy and of modern social sensitivity. She further argues that the EU and Europeans fail to conduct a genuine dialogue. According to Oz-Salzberg, Europe should not content itself with speaking to a handful of statesmen: "If you insist on placing Israelis among your 'others,' please read your history again. And then please start listening to us and talking back to us. Look us in the eye..."

recent manifestations of anti-Israeli and anti-Jewish feelings in Europe.¹¹³

Bridging the psychological gap between the parties is by no means a light task. It is sometimes difficult for a body such as the EU to accept Israel's national stance. After all, Europe is in the midst of dismantling national borders while Israel is in the process of establishing them.¹¹⁴

F. U.S.-Israel Relations and Israel's Place in the Sun

Throughout its history, the Zionist Movement and then the State of Israel sought to establish close relations with the nations that dominated the Middle East.¹¹⁵ For many years the State of Israel was wise enough to maintain close economic relations with both Europe and the United States. In fact, in 1985 she signed a Free Trade Agreement with the United States, thus becoming the first country to have free trade agreements with those two major global trading players.¹¹⁶ Would the

otherwise, Europe will not be able to serve as a true mediator of cultures, an honest broker between contending rivals. *Id.* For further analysis of this theme, see the September 2003 issue of ERETZ HACHERET (A Different Country) [Hebrew], dedicated to this topic; see also Richard Gillespie, *Reshaping the Agenda? The Internal Politics of the Barcelona Process in the Aftermath of September 11*, 8(2-3) MEDITERRANEAN POL. 21 (2003).

113. See Timm, *supra* note 108.

114. See Hedva Ben-Israel, *Summing Up*, in KÜHNEL, *supra* note 50, at 93. Ben-Israel links some of Europe's negative attitudes towards Israel with Europe's perception of nationalism. *Id.* at 102-04.

Interested parties have presented Israel's defensive policies as actually being an extreme expression of nationalism, militarism, and chauvinism—all these facts together have created a climate of opinion in which it is often said that Israel embodies the concept of nationalism, epitomises particularism, xenophobia, and hatred of the others, at the time when the rest of the world is shaking off all remnants of nationalism, becoming global, living in friendship and peace with neighbours, eliminating national territorial borders, and forgetting old rivalries. . . . The Jews, in conclusion, have always had a close if uneasy relationship with nationalism. Ancient Israel is regarded as the cradle of nationalism. Subsequently, for 2000 years Jewish national identity became disembodied and theologised. After their emancipation in the nineteenth century, when some Jews tried to integrate into the nations among which they lived, it was nationalism in the exclusive kind which caused their rejection. When they despaired of integration and assimilation and chose to describe themselves as cosmopolitan, universalist, citizens of the world, harbingers of world brotherhood, they drew fire to themselves as rootless as disloyal, as seditious wanderers who change identities as others change clothes. When they chose to be a real nation striving for self-government, it was doubted, if they were fit for it. When they succeeded in this last project and now try to defend it, they are decied, by supposedly post-nationalist Europeans, as cultivating an outdated principle of nationalism which the rest of the world has shaken off . . .

Id. But compare with Amnon Rubenstein, *A Shared Vision*, 16 AZURE 47 (2004).

115. Sofer, *supra* note 47, at 6.

116. For general comment on the Agreement and on certain aspects of it, see Avraham Azrieli, *Improving Arbitration under the U.S.-Israel Free Trade Agreement: A Framework for a Middle-East Free Trade Zone*, 67 ST. JOHN'S L. REV. 187 (1993); Allan S. Galper, *Restructuring Rules of Origin in the U.S.-Israel Free Trade Agreement*:

ENP change Israel's place in the sun?

By joining the ENP, Israel would enjoy some of the economic advantages of the Internal Market without being required to pay the full price exacted for full membership in the EU. Joining the EU would have meant the adoption by Israel of the EC Common Commercial Policy towards third countries. This would require, in turn, that Israel discard the 1985 Free Trade Agreement between herself and the United States. Israel, however, sees the ENP as complementary to, rather than a substitute for, its relations with the United States. Joining the ENP would satisfy Israel's wishes in that respect. This would enable her, to an extent yet to be determined, to join Europe's Internal Market while retaining, in principle, an independent commercial policy towards third countries and, thus, the said privileged trade relations under the aegis of the Free Trade Agreement with the United States.

Nonetheless, the ENP may have negative implications for the economic relations between the State of Israel and the United States. One of the main objectives of the 1985 United States-Israel Free Trade Agreement was to improve the competitiveness of U.S. exporters to Israel, as compared with EU exporters: "The economic advantage to the United States of a free trade area is the elimination of relatively high tariff barriers on nearly one-half of the United States exports to Israel and removal of the EC duty-free competitive advantage in the Israeli market, particularly in industrial products which directly compete with the EC."¹¹⁷

The ENP runs counter to that objective. The ENP would in fact entail the alignment of Israel's standards to those of the EU, the approximation of some of Israel's laws and regulatory regimes to those of the EU and as a result, improved accessibility to Israeli markets for European exporters. Those developments would render Israel's economy more integrated to that of the EU, at the expense of Israel's economic relations with United States. After all, Israel's trade potential is not unlimited and the trading game is to some extent a zero-sum one. U.S. officials complain that Israel's trade surplus with the United States "subsidizes" Israel's chronic trade

Does the EC-Israel Association Agreement Offer an Effective Model?, 19 FORDHAM INT'L L. J. 2028, 2030 (1996); Sandra Ward, *The U.S.-Israel Free Trade Area: Is it GATT Legal?*, 19 GEO. WASH. J. INT'L L. & ECON. 199 (1985).

117. H.R. REP. NO. 64, 99th Cong., 1st Sess. 2 (1985), reprinted in 1985 U.S.C.C.A.N. 64.

deficit with the EU.¹¹⁸ Those American concerns are only likely to be exacerbated upon the successful implementation of the ENP. It remains to be seen how the United States will address these developments and concerns. This question has gained added force in the light of the recent initiative of President Bush on the Greater Middle East (MEFTA).¹¹⁹

One must also examine carefully the impact of the ENP on the strategic and political relations of the State of Israel with the United States.¹²⁰ Could the aforesaid potential adverse economic implications in regard to Israel-U.S. relations adversely affect Israel-U.S. strategic relations? Could one claim that the ENP will contribute to developing a more intimate relationship with the EU and its Member States, thereby narrowing Israel's acute political dependence on the United States?¹²¹

Israel has, as of the early 1970s, placed its strategic trust almost exclusively in Washington. The strong Jewish American lobby, U.S. military and financial might, and the United States' willingness to put such might to use in favor of Israel, as compared with Europe's lack of coherent foreign and security policy and military capabilities, will ensure that Israel would do her best not to allow the ENP to adversely affect its strategic relations with the United States. Put differently, upgraded economic relations with Europe under the ENP are not likely to produce a dramatic change on the strategic front. At least in the short and medium term, Israel would continue to look chiefly to Washington and not to Brussels for strategic dialogue and support. In that regard, Israel walks a tightrope. As Sofer puts it, the greatest challenge of Israeli diplomacy in world politics is balancing the asymmetry of its intimate strategic ties with the U.S. and her close economic ties with Europe.¹²²

IV. CONCLUSION

The position of Israel in the globe is a unique one. As Sofer notes:

There has always been a sense of exclusiveness about Israel's place in the world. As a small nation, a democracy and the only Jewish state, Israel is indeed, a unique international actor. Israel is also one of the few states not

118. See GLOBES, Feb. 22, 2004 [Hebrew] (Ambassador Zalman Shoval, former Israeli ambassador to Washington and currently the President of Israel-U.S. Chamber of Commerce, who also complained against the discriminatory treatment of American firms in Israel, as compared with European firms).

119. See www.ustr.gov/Trade_Agreements/Regional/MEFTA/Section_Index.html (last visited Apr. 5, 2005).

120. See Inbar, *supra* note 43, at 116ff. Inbar predicts that the U.S. will not oppose the upgrading of Israel's relations with the EU. *Id.*; see also Kenneth W. Stein, U.S. and EU Disagreement about managing the Middle East, in KÜHNEL, *supra* note 50, at 41.

121. See Tovias, *supra* note 15, at 227.

122. Sofer, *supra* note 47, at 7.

formally affiliated with any regional bloc; equally, it does not belong to any pact or alliance...¹²³

This state of affairs can and should be changed. In an era of globalization and in light of Israel's special features, the possibility that Israel "shall dwell alone and shall not be reckoned among the nations" does not represent a viable option. Rather, Israel should enhance its relations with third countries on the bilateral, regional, and multilateral levels.¹²⁴

A case-in-point, in relation to regional cooperation and integration, is Israel's relations with the European Union. In 1994, the European Union announced its willingness to establish special relations with Israel. This objective has not been fully realized. The 1995 Association Agreement between the EC and its Member States, on the one hand, and the State of Israel, on the other hand, suffered the same fate.

The European Neighbourhood Policy, launched by the European Union in relation to its non-acceding neighbors, renews hope for better relations between the EU and the State of Israel. This article attempted to provide a critical and interdisciplinary examination of the potentially significant impact of the ENP on the legal, economic, social, and trade landscape of the State of Israel, her citizens, her economy, and her relations with the EU and the United States.

The ENP holds out colossal economic and other advantages to Israel; it may thus influence Israel's legal and economic landscape, rendering Israel a more European country in economic and legal terms. Such changes may, however, come at the expense of Israel-U.S. economic relations.

The ENP and the recent geo-political events in the Middle East and in Europe have opened a window of opportunity. Israel must act with determination to realize the great potential inherent in the ENP. Otherwise, to use the late Rabin's metaphor quoted above, she might "miss the train and be left alone at the station." If Israel acts wisely this time, and if the European Union fulfils its part, it is probable that we will witness the beginning of a wonderful relationship between Israel and the EU. The sooner that happens, the better.

123. Sofer, *supra* note 47, at 1.

124. For Israel and the bilateral and multilateral fronts, see Marcia Harpaz, *Israel's Policy Towards the Doha Round: An Insider Perspective*, in *THE WORLD TRADE ORGANIZATION AND THE STATE OF ISRAEL: LAW, ECONOMICS AND POLITICS* (ARIE REICH (ed.) (forthcoming)).

