

THE EUROPEAN UNION, THE MEDITERRANEAN AND THE EUROPEAN NEIGHBOURHOOD POLICY: AN ISRAELI PERSPECTIVE

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1. Introduction

The European integration programme is a unique and ambitious 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. Indeed, the European Union (EU) can look back with much satisfaction on its record of transforming a large part of Europe, once afflicted by wars, nationalist divisions, Nazism and Fascism, into a region where peace, political moderation and protection of human rights prevail. The EU wishes to externalize its success. As Robert Kagan argues in *Power and Weakness*, "The transmission of the European miracle to the rest of the world has become Europe's new *mission civilisatrice*. Just as Americans have always believed that they had discovered the secret to human happiness and wished to export it to the rest of the world, so the Europeans have a new mission born of their own discovery of perpetual peace".¹

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¹ Robert Kagan, "Why the United States and Europe See the World Differently", 113 *Policy Review* (2002).

The European Neighbourhood Policy is one manifestation of that European desire. It was first introduced by the European Community (EC) Commission in the Communication *Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours* (the Wider Europe Initiative).² Under the Wider Europe Initiative, the Commission spelled out the intention of the 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 Union has been agreed and others whose potential for entry has not yet been determined, on the one hand, and all of the Union's other neighbours, including the State of Israel, that currently have no prospect of membership in the EU, on the other hand.³ The Wider Europe Initiative has been endorsed by the European Parliament⁴ and the Council of Ministers,⁵ and is now entitled the European Neighbourhood Policy (ENP).

The ENP is meant to integrate to some extent, yet to be determined, the economies of the neighbouring countries, both European and Mediterranean, to those of the enlarged EU-25, in order to contribute to increased stability, security and prosperity for the EU and its neighbours.⁶ Under the proposed privileged relations, the parties would promote economic and social development in border areas, work together to address common challenges in areas such as the environment, public health and

2 Brussels, March 11, 2003, Com(2003) 104 final.

3 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 Council of the European Union, 2590th Council Meeting, General Affairs and External Relations – General Affairs, Luxembourg, 14 June, 2004, 10189/04 (Press 195), Provisional Version, Press Release, 12. See also European Parliament, Report, *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, Com(2003) 104 - 2003/2018 (INI), Final A5-0378/2003, 5 November, 2003, at 9 and 17; *Beyond Enlargement: Commission shifts European Neighbourhood Policy into higher Gear*, Brussels, 12 May, 2004, appears in www.europa.eu.int/comm/world/enp/index_en.htm.

4 European Parliament Report, *supra* note 3.

5 See for example, the Council Conclusions on Implementation of the *Wider Europe – New Neighbourhood Initiative*, 13 October, 2003.

6 Council of the European Union, *ibid.*, at 10.

organized crime, ensure efficient and secure borders and advance local people-to-people type actions.⁷ In Romano Prodi's words, the beneficiaries of the ENP are offered everything but institutions, i.e., the possibility of adopting, in principle, a large corpus of the substantive regime of the EU, to the exclusion of full membership and of resultant participation in the institutional framework of the EU. The possibility of full membership in the long run is not, however, entirely ruled out.⁸

The EU further intends to utilize the ENP as a social engineering instrument, one that would promote economic construction, democracy, good governance, the rule of law, as well as civil, political, economic, social and cultural human rights in the neighbouring countries. This social engineering campaign is designed to pave the way to an easier resolution of the long-standing conflicts in the Middle East, in which the EU hopes to play a more meaningful role.⁹ Thus a link is created between internal reforms by the Mediterranean countries and the resolution of the Middle East conflict.

This paper is not designed to address the normative aspects of the ENP, but rather to critically examine some of the social, political, strategic, economic, institutional, financial and juridical obstacles and challenges that lie ahead for a successful implementation of the ENP as a social engineering and peace-promotion instrument for the Middle East.

The paper is structured along the following lines: Chapter One, "Introduction", describes its own purposes, Chapter Two, "The Evolution of the European Community/European Union", depicts the evolution of the European integration programme, Chapter Three, "The EU, the Middle East and the European Neighbourhood Policy", briefly introduces the reader to the ENP and places that

7 Communication from the Commission, *Paving the Way for a New Neighbourhood Policy*, Brussels, 1 July, 2003 Com(2003) 393 final.

8 See European Parliament Report, *supra* note 3, at 9.

9 See Dr. Yossi Beilin, former Israeli Minister of Justice in *Israel and Wider Europe*, Conference held in the Herzlia Interdisciplinary Centre, 17 February, 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 European Neighbourhood Policy remains one of the chief means by which the EU can contribute to that process. See also Ambassador Ron Curiel Deputy Director-General of the Israeli Ministry of Foreign Affairs, in charge of European Affairs, in the said Conference.

policy in the wider context of the EU-Middle East relations, Chapter Four, "The European Neighbourhood Policy as a Social Engineering Instrument", describes the intention of the EU to implement the ENP as a social engineering and peace-promotion instrument, Chapter Five, "The Obstacles and Challenges that Lie Ahead", analyzes the obstacles and challenges that lie ahead for a successful implementation of the ENP as a social engineering and peace-promotion instrument, while Chapter Six, "Summary and Conclusions", rounds up the analysis with some tentative conclusions.

2. The Evolution of the European Community/European Union

The EU is nowadays regarded as the most complex and advanced regional entity in the world. It is neither a traditional intergovernmental institution¹⁰ nor a purely supranational¹¹ or infranational entity.¹² Its evolving legal order is therefore considered as *sui generis*.

The European integration programme was at first perceived by some as a modest economic plan. In the course of the years, however, it became clear that there was developing an ambitious attempt on the part of numerous nations with a long history of armed conflicts and diverse cultural, linguistic, legal and economic traditions, to be

10 "Intergovernmentalism" refers to the traditional structure of international organisations 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* (1999), 273. The focus is on negotiation, inter-state bargaining, and diplomacy. There is a relatively low level of institutionalisation, and a premium on informal and unstructured interaction. Formal sovereign equality and the loose reflexes of international law prevail.

11 "Supranationalism" refers to advanced inter-state structure, the joining of which entails the loss of some sovereign powers. See Weiler, *ibid.*, at 12 and 273. The materia is often constitutional. The *modus operandi* is more structured, formal, and rule-bound.

12 "Infranationalism" relies on experts' know-how, manifested in a wide web of advisory committees. See Weiler, *supra* note 10, 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, "Rediscovering Civil Society: The European Union and the White Paper on Governance", 8 *European Law Journal* 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 10, at 284ff. For the interplay of these three forces, see Weiler, *supra* note 10, at 264ff.

integrated under a separate and superior legal order. The latter formed the basis of advanced economic, political and social integration.¹³

Thus the EU has deepened its fields of activity, while continuously tempering the sovereignty of its Member States. Today it maintains a pan-European policy in various economic areas, a common currency, and a common catalogue of human rights.¹⁴ Its heart 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.¹⁵

Parallel to these developments, the European integration campaign 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 and probably Turkey and

13 See Weiler, *supra* note 10, at 10. The EC is an *avant garde* international organisation introducing a new model for trans-national discourse. For a general survey of EC law, see Stephen Weatherill and Paul Beaumont, *EU Law* (3rd ed., 1999). For in-depth analysis, see Federico G. Mancini, "The Making of a Constitution for Europe", 26 *Common Market Law Review* 595 (1989); Joseph H.H. Weiler, "The Transformation of Europe", 100 *Yale Law Journal* 2403 (1991); Federico G. Mancini and David T. Keeling, "Democracy and the European Court of Justice", 57(2) *Modern Law Review* 175 (1994); Anthony Arnall, *The European Union and its Court of Justice* (1999); Philip Allott, "European Government and the Re-branding of Democracy", 27 *European Law Review* 60 (2002). For the EC and political science theory, see Markus Jachtenfuchs, "The Governance Approach to European Integration", 39(2) *Journal of Common Market Studies* 245 (2001). For the EC and international relations theory, see Mark A. Pollack, "International Relations Theory and European Integration", 39(5) *Journal of Common Market Studies* 829 (2001).

14 See Tal Sadeh, "Some Trade Effects of the EMU Process on Israel", 10(1-2) *Israel Affairs* 156 (2004).

15 Ulrich Haltern, "Pathos and Patina: The Failure and Promise of Constitutionalism in the European Imagination", 9 *European Law Journal* 14, at 15 (2003).

the Western Balkan countries are also likely to join the EU.¹⁶ The accession of Ukraine is also not ruled out.¹⁷ The final borders of the EU are then likely to be drawn.

The EU can look back with much satisfaction on its record of transforming a large part of Europe, once afflicted by wars, nationalist divisions, Nazism and Fascism, into a region where peace, stability, political moderation and protection of human rights prevail. Indeed, it was Commissioner Verheugen who described the EU as "arguably the greatest success story of the second part of the 20th Century".¹⁸

The EU, must not, however, rest on its laurels. The removal of internal borders must not be accompanied by the erection of new, external dividing lines.¹⁹ The completion of the recent historic enlargement of the EU obliges it to define its relations with those neighbours who will not join it, at least in the short and medium run, as Member States. This is the very basic objective of the ENP, a theme to be explored below.

3. The EU, the Middle East and the European Neighbourhood Policy

The Arab-Israeli conflict is one of the first themes addressed under the framework of the European Political Cooperation.²⁰ In the Venice Declaration of 1980, the then EEC had already proposed a "two states solution" to the Israeli-Palestinian conflict and asserted that Europe must play a "special role" in that respect.²¹ Yet the impact of

16 For the impact of enlargement on Israel, see Alfred Tovias, "Israeli Policy Perspective" 8 *Mediterranean Politics* 213, 221 (2003); Nellie Munin, "Wider Europe Neighbourhood – A New Model for EU-Israel Relations?" 31(122) *Israel Tax Quarterly* 29, at 33ff (2003) [Hebrew].

17 European Parliament, Report, *Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours*, Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, Com(2003) 104- 2003/2018 (INI), Final A5-0378/2003, 5 November, 2003, at 9.

18 "EU Enlargement and the Union's Neighbourhood Policy, Speech by G. Verheugen, at the Diplomatic Academy Moscow 27 October, 2003.

19 See Speech of Commissioner Verheugen, *ibid.*: "An "undivided Europe" cannot be a united but inward-looking European Union that does not care about what happens beyond its borders".

20 For analysis, see Elena Aoun, "European Foreign Policy and the Arab-Israeli Dispute: Much Ado about Nothing?" 8 *European Foreign Affairs Review* 289, 289 (2003).

21 Venice Declaration, *Bulletin of European Communities Commission*, No. 6, 1980, p.7.

the EEC in the Middle East during these years was barely felt.²² Significant developments at the end of the 1980s and at the beginning of the 1990s raised expectations for a more active and successful involvement on the part of the EU.²³

Current bilateral relations between the EU and the countries in the Middle East and North Africa are governed by respective Association Agreements.²⁴ Under these agreements, each party granted the other preferential economic, commercial and technological status. The core of the Agreements is a free trade area for industrial goods. A legal framework for liberalisation of trade in agricultural goods, of services and of movement of capital is also provided.

Regionally, relations are governed by the Barcelona Process, launched in 1995 to regulate and advance the economic, political and social relations between the EC and its Member States, on the one hand, and the twelve non-EC Mediterranean countries of that time (including at that time Cyprus and Malta), on the other hand.²⁵

The ENP is designed to upgrade those bilateral and regional relations between the EU and its prospective neighbouring countries in the Middle East and North Africa (as well as to upgrade relations with the neighbouring countries in Europe), bringing the neighbouring countries much closer to the EU.²⁶

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.²⁷

22 Aoun, *supra* note 20, at 289 and 297.

23 *Ibid.*

24 The only country that yet has not signed such an agreement is Syria.

25 See *Barcelona Declaration adopted at the Euro-Mediterranean Conference*, November 27-28, 1995, Barcelona, November 28, 1995, final version.

26 See Sandro Gozi, "New Frontiers and New Policies in Europe", 8(1-2) *The European Union Review* 43 (2003).

27 G. Verheugen, Commissioner for Enlargement, The European Neighbourhood Policy official web Site – www.europa.eu.int/comm/world/enp/index_en.htm, visited on the 19 May, 2004.

The ENP declares the intention on the part of the EU to create with its close neighbours a common area "of shared prosperity and stability,"²⁸ a "pan-European and Mediterranean Region",²⁹ founded on "partnership and joint ownership".³⁰ That vision is also enshrined in the *Draft Treaty Establishing the Constitution for Europe*,³¹ and in the actual *Provisional Consolidated Version of the Draft Treaty Establishing a Constitution for Europe*,³² intended to provide the EU with a 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 km ring of friends:

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

28 See Romano Prodi, President of the Commission: "...I want to see a "rings of friends" surrounding the Union and its close European neighbours, from Morocco to Russia and the Black Sea. This encircling band of friendly countries will be diverse". "A Wider Europe - A Proximity Policy as a Key to Stability, speech delivered at the sixth ECSA - World Conference on Peace, Security and Stability - International Dialogue and the Role of the EU, Jean Monnet Project, Brussels 5-6 December, 2002.

29 See European Parliament Report, *supra* note 3, at 18.

30 G. Verheugen, Commissioner for Enlargement, The European Neighbourhood Policy official web site – www.europa.eu.int/comm/world/enp/index_en.htm, visited on 19 May, 2004. See also www.europa.eu.int/comm/world/enp/policy_en.htm, visited on 19 May, 2004.

31 CONV 850/03, adopted by consensus by the European Convention on 13 June and 10 July, 2003, and submitted to the President of the European Council in Rome, 18 July, 2003, Article 56, Title VIII.

32 The Draft adopts Article 56, quoted *ibid*. See Conference of the Representatives of the Governments of the Member States, Brussels, 25 June, 2004 (OR. fr), CIG 86/04, Provisional Consolidated Version of the Draft Treaty Establishing a Constitution for Europe.

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.³³

The ENP, at least at face value, is very ambitious. In return for proving concrete progress, demonstrating shared values and effective implementation of political, economic and institutional reforms on the part of the EU's neighbours, including aligning their legislation with the EC's *acquis communautaire*, the Commission promises its close neighbours "a significant measure of economic and political integration",³⁴ 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 institutionalizes 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.³⁵

The ENP is based on the *à la carte* principle. Under it, the relevant neighbouring country may, in principle, select the components of the Internal Market consistent with her own interests, while rejecting other components which might harm those interests. This contrasts with the concept of full membership in the EU, under which the acceding country is required to adopt the Community's *acquis, en bloc*.

Another feature of the ENP is the differentiated, tailor-made principle. Contrary to the Barcelona Process, in which the EU treated all twelve non-EC Mediterranean countries of that time *en bloc*,³⁶ the ENP is based on the differentiated principle, whereby the EU's treatment of each of its neighbours would vary in accordance with

33 The Initiative, *supra* note 2, at 3.

34 *Ibid.*

35 The Initiative, *supra* note 2, at 9.

36 For the deficiencies of that Process from an Israel perspective, see Tovias *supra* note 16, 216ff.

each neighbour's particular needs, objectives, economic development and rate of progress.³⁷

4. The European Neighbourhood Policy as a Social Engineering and Peace-Promotion Instrument

The attempt of a foreign power to conduct social engineering and nation-building campaigns are multi-faceted tasks. One aspect of those tasks is the unification of diverse ethnic groups within a state. Another dimension places emphasis on improvement in governance by implementing the rule of law, fighting corruption, installing democracy, while a third aspect focuses on economic construction.³⁸

Those three aspects may be relevant in the Middle East context. The Middle East is afflicted by structural social, political and economic problems. These include, according to the EU, deficits in governance, marginalisation of women, poor implementation of international human rights conventions, insufficient independence of legal and judicial systems, low status of non-governmental organisations, unevenly dispensed education, authoritarianism and poor economic and social performance.³⁹ These structural problems hamper the development of democratic values, prosperity, the protection of human rights, and peaceful resolution of conflicts.

Europe too had to face significant political, economic and social problems in the aftermath of World War Two. As stated above, the EEC and then the EC and the EU served as efficient instruments, enabling Europe to cure itself from its own problems, and thereby to become stabilized.

37 See EC Commission, *supra* note 3: The Action Plans will be differentiated, i.e. tailor-made to reflect the existing state of relations with each countries, its needs and capacities as well as common interests. See also "EU enlargement and the Union's Neighbourhood Policy", Speech by G. Verheugen, at the Diplomatic Academy Moscow, 27 October, 2003, 6: "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".

38 Amitai Etzioni, "A Self-restrained Approach to Nation Building by Foreign Powers", 80(1) *International Affairs* 1, 2 (2004).

39 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, at 4.

Now the EU wishes to "export" its successful campaign pursued under the European integration programme to other parts of the world, creating a linkage between structural reforms and peace and stability. In the words of Romano Prodi:

Our continent has been transformed. It was once a cauldron boiling over with conflicts. And today Europe is a powerhouse for peace, generating stability and prosperity beyond its borders. The Union has brought us one of the longest periods of peace in our history. And it has set an example that gives hope to millions around the world. Our success shows we have found a model that works. A model to draw on in managing relations between states in our neighbourhood and even beyond.⁴⁰

The same approach is currently displayed *vis-à-vis* the Middle East. Under the ENP, Europe perceives social, political and economic reforms in the Mediterranean, on the one hand, and the resolution of the Middle East conflict on the other hand, as intertwined.

There is much force and wisdom in this line of thinking. As Hazan argues, what happens within a state makes a difference in accounting for variations in the relations between states. The establishment of a democratic regime can contribute to stable pacific relationship between states, as democracies do not tend to wage wars with other democracies.⁴¹

Some argue that the democratization of the Middle East cannot be achieved in isolation from the resolution of the Arab-Israeli conflict and *vice versa*.⁴² The failures to resolve the Middle East conflict serve as an excuse for autocratic regimes to

40 Speech by Romano Prodi, President of the European Commission, on "Europe and Peace" at the University of Ulster (Derry) 1 April, 2004: http://europa-eu-un.org/articles/fi/article_3372_fi.htm.

41 Reuven Hazan, "'Fostering Democracy through Parliamentary Cooperation: European Lessons from the Middle East?'," in Klaus Boehnke (ed.), *Israel and Europe – A Complex Relationship* (2003), 75, at 96, who analyzes the construction, administration and maintenance of parliament in the process of democratization in the Middle East.

42 See, for example, Amichai Magen, "Building Democratic Peace in the Eastern Mediterranean: An Inevitably Ambitious Agenda", Working Paper Number 9, Stanford Institute for International Studies (2004), at 115.

postpone political, social and market reforms.⁴³ Moreover, there exists a strong link between comprehensive security and peace, on the one hand, and open, democratic societies, on the other. The pursuance of social and other forms, can, according to this line of thinking, advance peace, and *vice versa*:

Democratic transformation in the region is ultimately the sole hope for achieving the conditions of true security and peace. The West needs to pursue peace in order to support democratisation, and to pursue democratisation in order to support peace. Separating the question of the Arab-Israeli conflict from the one about lack of human rights, good governance, democracy, the rule of law and market economies in the Middle East, therefore, misses the crucial interconnectedness of the two issues – democracy and peace – to the detriment of both peace-making and governance reform efforts. The chronic absence of the “normative dimension” from peace-making efforts in the Middle East has been a fundamental failure of past strategies, particularly in the Israeli-Palestinian arena. The old “land for peace” formula needs, in other words, to be complemented with a “reforms for peace” agenda.⁴⁴

One aspect of the ENP is precisely the desire to complement the “land for peace” formula with a “reforms for peace” agenda. In return for its willing to open its economic gates, under the aegis of the ENP, the EU expects its neighbouring countries to adopt the basic values of the EU (peace, the rule of law, democracy and the protection of human rights and freedoms) and for that purpose to pursue political, economic and institutional reforms.⁴⁵ A clear *quid pro quo* is thus being created. Demonstrated progress in the political, economic, juridical and social fronts on the part of the EU neighbours is an essential precondition for their ability to reap the economic benefits offered by the ENP.⁴⁶

In that way the EU intends to use the ENP as a social engineering instrument, promoting social, political, and economic reforms (including, in particular, the

43 *Ibid.* Magen further argues that experience of the Euro-Mediterranean Partnership shows that Arab reference to lack of progress in the Middle East Peace Process has consistently served to thwart the Barcelona Process.

44 Magen, *supra* note 42, at 115.

45 For a theoretical analysis of the attempts of the West to “export” Western values, see by analogy, Etzioni, *supra* note 38.

46 See speech by Commissioner G. Verheugen, Speech 04/141, Prime Ministerial Conference of the Vilnius and Visegrad Democracies: “Towards a Wider Europe: The New Agenda”, Bratislava, 19 March, 2004: The closer we move together in our political dialogue, the more we shall be able to do in economic areas as well.

promotion of democracy, good governance, the rule of law, as well as civil, political, economic, social and cultural human rights). The EU hopes that this social engineering programme will, in turn, ease the way for the resolution to the Middle East conflict, in which the EU intends to play a more meaningful role.⁴⁷

That intention on the part of the EU to promote democracy, good governance, the rule of law, human rights and peaceful resolutions of conflicts in the Middle East should not be examined in isolation. Rather, it should be seen as part of its overall strategic approach in external relations.⁴⁸ The EU is keen to translate its economic power into political influence and hegemony and to use that influence to promote its aforesaid underpinning values. Europe wants to become not merely a payer, but also a player. A central theme of this is the promotion of societal reforms, democratization, respect for human rights and peaceful resolution of regional conflicts. Such intentions on the part of the EU are relevant also with respect to the State of Israel, as analyzed below.

In Europe there are those who put their faith in the EU's ability to contribute to the resolution of the Middle East conflict. Ambassador Giancarlo Chevallard, for example, believes that as friends of Israel, financial supporters of the Palestinian Authority and respected partners of most of the Arab nations, the EU can contribute positively to the peace process.⁴⁹ Ambassador Otto von der Gablentz too holds that "The Middle East does not require quick-action policies but rather "process politics".⁵⁰

This ambitious European vision is likely to encounter social, political, strategic, economic, institutional, juridical and financial obstacles and challenges. The remainder of this paper is devoted to an examination of them.

5. The Obstacles and Challenges that Lie Ahead

47 See the words of Dr. Yossi Beilin, *supra* note 9.

48 See, for example, the Commission's Communication of 8 May, 2001 on the *European Union's Role in Promoting Human Rights and Democratisation in Third Countries* – Com(2001) 252 final.

49 Ambassador Giancarlo Chevallard, "The European Union's Relations to Israel", in Bianca Kühnel (ed.), *Troubled Waters: Europe and its Relations with the United States and Israel* (2003), 13 at 16.

50 Otto von der Gablentz, "Beyond the Road map: A Renewed Europe and Israel", in Kühnel, *ibid*, 19, at 23.

5.1. Inherent Difficulties in Social Engineering Campaigns

5.1.1. The Need to Overcome Deep-Seated Moral and Social Cultures, Structures, Forces and Traditions

Social engineering and nation-building policies pursued by foreign powers are generally very multi-faceted and difficult to execute. According to Amitai Etzioni, these policies can rarely be accomplished and tend to be very costly in terms of economic, political and human lives. In his opinion, over-ambitious societal engineering campaigns are likely to fail as they seek to overcome prevailing social forces and long-established moral and social cultures, societal structures and traditions. Such campaigns try quickly to undo deeply ingrained cultural and psychological predispositions, strong emotional ties and religious beliefs.⁵¹ Etzioni further argues that external powers are particularly hampered in promoting societal changes, as they often adopt unsuitable theories of social engineering, suffer from limited understanding of local cultures, and are unwilling to make the sacrifice involved. Moreover, societies and nations are usually built in opposition to external powers, not by them.⁵² Some of Etzioni's observations are particularly applicable to our context, as demonstrated below.

5.1.2. The Barcelona Process

The Barcelona Process was launched in 1995 as, *inter alia*, a political and security partnership aimed at creating "a common area of peace and stability", an economic partnership aimed at "creating an area of shared prosperity", and a social partnership, aimed at bringing closer the peoples of the region.⁵³ The Preamble to the Barcelona Declaration states that the parties are "convinced that the general objective of turning the Mediterranean basin into an area of dialogue, exchange and cooperation guaranteeing peace, stability and prosperity requires a strengthening of democracy and respect for human rights, sustainable and balanced economic and social development". The parties indeed undertook "to develop the rule of law and democracy..to respect human rights and fundamental freedoms".

51 Etzioni, *supra* note 38, at 4.

52 *Ibid.*, 4-5.

53 *Supra* note 25.

Put differently, the Barcelona Process included a social engineering dimension. Yet after almost ten years of operation, the achievements of the Barcelona Process are very modest. The Barcelona Process did not trigger the desired societal changes in the Middle East. After all, it is one thing to declare very impressive normative intentions, it is much more difficult to overcome deep-seated emotional ties and religious convictions.

An examination of the relationship between the EU and the State of Israel can provide yet another vivid example for the difficulties facing the EC, when it attempts to generate a social and political engineering campaign.

5.1.3. EU-Israel Relations – Some Social, Psychological and Juridical Obstacles

For obvious reasons, the relations of Israel and its citizens with Europe were always complex and charged.⁵⁴ Yet Israel and the then European Economic Community established diplomatic relations as early as in 1959 and in 1975 they concluded their first free trade area agreement.⁵⁵ In 1994 the European Union announced in Essen, Germany its willingness to establish special relations with Israel,⁵⁶ and indeed, in the course of time, Israel succeeded in partially overcoming the aforesaid difficulties,

54 For analysis, see Ephraim Ahrim and Alfred Tovias (eds.), *Whither EU-Israeli Relations? Common and Divergent Interests* (1995); Moshe Hirsch, Eyal Inbar and Tal Sadeh, *The Future Relations between Israel and the European Communities - Some Alternatives* (1996); Ilan Greilsammer and Joseph H.H. Weiler (eds.), *Europe and Israel: Troubled Neighbors* (1998).

55 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 Alfredo M. Rabello (ed.), *European Legal Traditions and Israel* (1994), 459; Chava Shachor-Landau, "Israel and the EC on the Eve of the Maastricht Agreement", in Alfredo M. Rabello, *ibid.* at 445; Daphna Kapeliuk, "A Legal Analysis of the Free Trade Agreement of 1975 between the European Community and the State of Israel", *27 Israel Law Review* 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 Law Studies* 165 (1995) [Hebrew]; Inon Dafni, "Israel and the European Union - The Current Picture and Expectations for the Future", *27(107) Israel Tax Quarterly* 49 (2000) [Hebrew].

56 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...".

insofar as economic relations were concerned. The EU is in fact Israel's chief trading partner.⁵⁷

Those strong economic ties are founded upon impressive bilateral and regional legal relations, embodied, respectively, in the 1995 Association Agreement between the EC and its Member States, on the one hand, and the State of Israel, on the other hand,⁵⁸ and in the Barcelona Process.

The Association Agreement holds colossal economic benefits to the State of Israel. Yet its significant economic potential was never fully realized. One of the main reasons for that failure is the widening psychological gap between the parties and their inability to overcome what Etzioni termed as "long-established moral and social cultures, societal structures and traditions".

Some interesting research concluded recently established that Israel and most European states have substantially different cultures. Israel and those European states ascribe different weight to autonomy, egalitarianism and hierarchy values, and these differences may account for the current policy conflicts between the EU and Israel.⁵⁹

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

58 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 especially, Nellie Munin, *The EU and Israel: State of the Play* (2003), 145-226 [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 Law Review* 351, 398-403 (1999) [Hebrew]; Eyal Inbar, "Improving Israel-EU Relations: the European Economic Area as a Possible Model", 5(1) *Israel Affairs* 109 (1999); Tal Sadeh, "The European Union and Israel: The Customs Union Alternative", 5(1) *Israel Affairs* 87 (1999); Alfred Tovias, "Mapping Israel's Policy Options regarding its Future Institutionalized Relations with the EU", CEPS (Center for European Policy Studies) (2003); Moshe Hirsch, "The 1995 Trade Agreement between the European Communities and Israel: Three Unsolved Issues", 1(1) *European Foreign Affairs Review* 87 (1996); Inon Dafni, "The Association Agreement between Israel and the European Union" 29(114), *Israel Tax Quarterly* 7 (2001) [Hebrew]; Boaz Hirsch, "The Institutional Framework in Israeli-European Union Relations and its Contribution to the Trade Relations", 29(114) *Israel Tax Quarterly* 11 (2001) [Hebrew].

59 Anat Bardi and Lilach Sagiv, "The EU and Israel: Comparison of Cultures and Implications", in Boehnke, *supra* note 41, 13.

Moreover, as Tovias puts it, Israel is caught between its geographic location and economic status.⁶⁰ Israel a European country in economic terms, and an Asian one in geographic terms, is torn, psychologically, between East and West, between Europe, the United States, and the Orient.

Furthermore, neither Israel nor its citizens can always deal with Europeans in a rational manner, due to the Holocaust. For those and other reasons, Israel and many Israelis consistently perceive Europe as biased against them:⁶¹ "The attitude of a number of European countries..has proven once again to Israel that it is impossible to trust Europe. ...This behaviour can only further reduce Europe's role in relation to that of the United States regarding any settlement with the Palestinians".⁶²

From a European perspective, it is sometimes difficult to accept Israel's nationalism. After all, Europe is in the midst of dismantling national borders, while Israel is in the process of establishing them.⁶³

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

60 Alfred Tovias, "Israel and the Barcelona Process: The First Five Years", in Boehnke, *supra* note 41, 37, at 40.

61 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) *Israel Affairs* 123, at 147ff (2004).

62 Zalman Shoval, former Israeli Ambassador to Washington, Agence France Presse, 12 February, 2003, Jerusalem, as quoted in Aoun, *supra* note 20, at 310.

63 See Hedva Ben-Israel, "Summing Up", in Kühnel, *supra* note 49, at 93.

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 decried, by supposedly post-nationalist Europeans, as cultivating an outdated principle of nationalism which the rest of the world has shaken off...⁶⁴

The Young Israeli state, born out of two thousand years of Diaspora and continuously faced with external threats, has naturally been grounded on strong nationalistic feelings. The pursuit of almost total self-reliance, the practice of exclusive sovereignty, the importance given to land and control of borders as well as to military rather than civilian components of security are core principles of the State of Israel. The European countries have, on the contrary, developed the EU to make those very principles obsolete, by pooling national sovereignties, abolishing borders and establishing the EU as a civilian rather than a military world player.⁶⁵

Although Israel, according to the EU, 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,⁶⁶ two major problems still prevail: The issue of reconciling the declared Jewish nature of the State of Israel with the rights of Israel's non-Jewish minorities and the violation of human rights in the context of the occupation of the Palestinian territories.⁶⁷ These problems hamper in the opinion of the EU the resolution of the Middle East conflict.

The EU may use the ENP as an instrument to exert some pressure on Israel on those two fronts. As Magen argues, the ENP can embody a bold offer of a qualitatively enhanced economic, political and strategic relationship, in the context of a withdrawal from Gaza and the eventual peace deal with the Palestinians.⁶⁸

Yet, the EU may discover that the aforesaid different perceptions between her and Israel, coupled with deep-seated prejudices, ignorance, and mutual mistrust, may prove to constitute the most significant stumbling block to any attempt on the part of the EU to generate societal, political and social reforms in Israel.⁶⁹ Due to this

64 See *ibid.*, at 102-104.

65 Ambassador Giancarlo Chevallard, *supra* note 49, at 15.

66 EC Commission, *supra* note 39.

67 *Ibid.*

68 See Magen, *supra* note 42, at 129.

69 Ambassador Chevallard, *supra* note 49.

widening psychological gap, Europe's vision of greater involvement in the Middle East may not be welcomed in Israel. Some may fear that any additional step towards integration with Europe might tilt the delicate balance between Western and Levantine elements of Israeli society.⁷⁰ For others, the ENP may reinforce popular, deep-seated prejudices about European interference in Israel's internal affairs.

In order to overcome those difficulties, the European Union, its Member States and citizens should embark on a deep and frank dialogue, designed to reduce mutual suspicion and ignorance.⁷¹ For that purpose they should first critically explore the recent manifestations of anti-Israeli and anti-Jewish feelings in Europe.

From an Israeli perspective, it is desirable to open without delay an internal, Israeli dialogue that will clarify the issue of the State of Israel's self-image and its place in the Middle East, in Europe and in the global village.⁷² The Israeli media, academia, and civil society should play a key role in that respect.⁷³ Israel and Israelis should thus first study the reasons for the growing antagonism displayed in Europe towards the

70 Tovias, *supra* note 16, at 218.

71 See Fania Oz-Salzberg, "Images of Europe: An Israeli Perspective", presented in the Intercultural Dialogue, European Commission, Brussels, 20 March, 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...", otherwise, Europe will not be able to serve as a true mediator of cultures, an honest broker between contending rivals. For further analysis of this theme, see the September 2003 issue of *Eretz Hacheret* (A Different Country) [Hebrew], dedicated to this issue. See also Richard Gillespie, "Reshaping the Agenda? The Internal Politics of the Barcelona Process in the Aftermath of September 11", 8(2-3) *Mediterranean Politics* 21 (2003).

72 See Raffaella Del Sarto and Alfred Tovias, "Caught between Europe and the Orient: Israel and the EMP", 36(4) *International Spectator* 61 (2001).

73 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, 27 November, 2003, to be published in Guy Harpaz (ed.) 11 *Newsletter of the Israeli Association for the Study of European Integration* (2004). See, also the Conference held on the 12 March, 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 49, 5, at 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.

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.⁷⁴

In addition to these social and psychological difficulties, the social engineering campaign envisaged under the ENP may encounter juridical problems. The ENP envisages significant "convergence of economic legislation" and of "legislative and regulatory approximation"⁷⁵ on the part of the EU neighbouring countries in general, and on the part of Israel, in particular.⁷⁶

Bringing Israel's laws closer to those of the EU can be of much benefit to the State of Israel. The areas of environmental protection and competition law are two cases in point.⁷⁷

Yet not the whole corpus of EU laws and regulatory regimes applies to Israel's economic, social and cultural landscape.⁷⁸ 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".⁷⁹

Moreover, this juridical campaign on the part of the EU may encounter, yet again, deep-seated cultural and psychological predispositions, emotional ties and religious

74 Chevallard, *supra* note 49; Ambassador Otto von der Gablentz, *supra* note 50, 19, 23.

75 European Neighbourhood Policy, Strategy Paper, COM(2004)373 final (12.5.2004), 9, 14-15, 16 and 23.

76 Article 55 of the Association Agreement already provides for the legal basis for approximation of laws between the parties.

77 See Damien Geradin and Nicolas Petit, "Competition Policy and the Euro-Mediterranean Partnership", 8 *European Foreign Affairs Review* 153 (2003).

78 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 Herzilia Interdisciplinary Centre, 17 February, 2004. A case in point may be the antitrust legislation, see Michal Gal, *Competition Policy for Small Economies* (2003). See also See address by Arie Reich, "The European Neighbourhood Policy and its Potential Impact on the Commercial and Consumer Law of EU Neighbouring Countries", a paper was presented at the 12th Biennial Meeting of the International Academy of Commercial and Consumer Law, that took place in Riga (11-14 August, 2004).

79 From the first of twelve Lowell Lectures delivered by Oliver Wendell Holmes Jr. on 23 November, 1880, which were the basis for the Common Law.

beliefs. Furthermore, the adoption by Israel of significant parts of the EU's economic, financial and trade laws might limit Israel's economic independence. Hence, Israel, like the other beneficiaries of the ENP, is likely to treat with caution the concept of approximation of laws.

5.2. The Exclusive Reliance on Instruments of "Soft Power"

5.2.1. The Power Deficit of the EU, or "Europe is from Venus, America is from Mars"

It was Huntington who predicted that the European Union would be the single most important move against American hegemony.⁸⁰ Yet currently, the EU suffers, as a major global power, from what may be termed a power deficit. The ability of European countries, individually or collectively, to project decisive force into other regions of conflict is negligible.⁸¹

Instead, the EU relies mainly on what was termed by Nye as instruments of "soft power".⁸² The EU attempts to translate its ever-growing economic leverage into a diplomatic tool. It positions itself as a civil and civilizing power that uses instruments of persuasion, strategic dialogue, free trade agreements, regional projects and financial incentives and rewards to "export" peace and democratization.⁸³

In fact, Europe is moving, as Kagan describes it, beyond power into a self-contained world of laws and rules and transnational negotiation and cooperation. It is entering a post-historical paradise of peace and relative prosperity, the realization of Kant's "Perpetual Peace".⁸⁴ In this paradise, the emphasis is on negotiation, diplomacy, and commercial ties, on international law over the use of force, on engagement and

80 Samuel P. Huntington, "The Lonely Superpower," *Foreign Affairs* (March-April 1999).

81 Kagan, *supra* note 1.

82 Helmut Hubel, "EU-rope and the Recent Conflicts in the Greater Middle East", in Kühnel, *supra* note 49, 87, at 89.

83 Aoun, *supra* note 20, at 299.

84 Kagan, *supra* note 1.

seduction and persuasion over coercion, on multilateralism over unilateralism, and on process over result.⁸⁵

This postmodern, supranational European system "does not rest on a balance of power" but on "the rejection of force".⁸⁶ The "*raison d'état* and the amorality of Machiavelli's theories of statecraft...have been replaced by a moral consciousness" in international affairs".⁸⁷

Per contra, the United States remains, according to Kagan, mired in history, exercising power in the anarchic Hobbesian world where international laws and rules are unreliable and where true security and the defence and promotion of a liberal order still depend on the possession and use of military might.⁸⁸

How can Israel, a country that is involved in a continuous armed conflict, place its trust in the soft power instruments of the EU? Would that power deficit on the part of the EU prevent it from successfully utilizing the ENP as a social engineering and peace promotion instrument?

5.2.2. The Implications of the EU's Power Deficit – An Israeli Perspective

According to some, the power deficit on the part of the EU will prevent it from successfully utilizing the ENP as a social engineering and peace promotion instrument. Elena Aoun, for example, argues that the EU is unable and unwilling to assume the role of a significant world power due to its inability to resort to coercion. Such inability prevents it from leveraging both Israel and the United States, and this, in turn, largely accounts for its inability to contribute to the Middle East peace process:⁸⁹ "As the EU attempts to export its own standards by way of negotiations and pledges of assistance, it speaks a language of responsibility, of law and of reason. Yet

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ Robert Cooper, *The Observer* (7 April, 2002).

⁸⁸ Kagan, *supra* note 1.

⁸⁹ Aoun, *supra* note 20, at 289-290 and 310.

this language does not always make sense to the actors involved in lethal conflicts and who are not as "rational" as Europe would like them to be".⁹⁰

Steinberg adds his voice to that critical school of thought. In his opinion, Europe's Kantian ideology and faith in the unlimited ability of diplomacy to resolve conflicts through the Versailles model of peace conferences and formal agreements is unrealistic. In his view, in the Hobbesian Middle East, where force is employed for political and ideological objectives, "constructive dialogue" and trade incentives are ineffective. Europe's Kantian ideology lacks an intellectual and substantive framework for responding to the use of deadly violence and for distinguishing between illegitimate use of force for aggression and legitimate self-defence. This, coupled with "idealist utopianism, simplistic analyses, fictitious history, distorted images of Israeli society and cognitive dissonance that result in the failure to examine evidence that is inconsistent with the dominant ideology", have resulted in Europe's diplomatic impotence in the Arab-Israeli conflict.⁹¹ Pirouz and Leonard put this in a rather cynical manner: "The EU's "constructive engagement" approach – hoping that economic liberalisation will bring about political change – is unlikely to disturb the sleep of the autocratic rulers".⁹² Hence EU policies based on the slogans of Kantian idealism need to be tempered, according to Steinberg, by Hobbesian realism.⁹³

Such an approach is also prevalent in certain Israeli political circles. Former Israeli Prime Minister Ehud Barak is of the opinion that European countries cannot contribute much to conflict resolution due to their modest investment in military capabilities.⁹⁴ In his opinion "Only the United States can bring Israel and Syria together".⁹⁵

90 *Ibid.*, at 310.

91 G. Steinberg, "Kantian Pegs into Hobbesian Holes: Europe's Policy in Arab-Israeli Peace Efforts", a paper presented in the conference "The EU in Regional and Bilateral Dispute Settlement", organized by the Israeli Association for the Study of European Integration in cooperation with the Friedrich Naumann Foundation, The EU-Israel Forum, The German Innovation Centre and the Interdisciplinary Centre, Herzlia, 24-25 October, 2004, at 8 and 20.

92 Rouzbeh Pirouz and Mark Leonard, "How to Change the Middle East", *Financial Times*, 15 September, 2003.

93 Steinberg, *supra* note 91.

94 *Haaretz*, 13 October, 2004.

95 Tovias, *supra* note 60, at 43.

It is submitted, however, that one should be cautious about dismissing the reliance on soft power instruments by the EU as utterly ineffective. As demonstrated below, soft power instruments may indeed prove themselves at times very effective, even in the Israeli context.

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.⁹⁶ Israel thus decided, as of the early 1970s, to place its strategic trust almost exclusively in Washington. This can be attributed to the strong Jewish American lobby, U.S. military and financial might and the United States' willingness to employ it for Israel's benefit, as compared with Europe's lack of coherent foreign and security policy and military capabilities.

Armed with the United States' military and financial backing, coupled with a demonstrated willingness to use American veto power in the Security Council in matters relating to Israel, Israel felt that it could pursue independent political policies *vis-à-vis* the EU.

An extreme example for that stance was the Israeli government reaction to the "two state solution' embodied in the EEC's Venice Declaration of 1980 (as translated by the present author):

Only a memory of the sea will survive the Venice Declaration. The Declaration calls on us, and other nations, to cooperate in the peace process with the Arab S.S. named "The Organisation for the Liberation of Palestine."⁹⁷

The Israeli government referred to the PLO's stance in the following manner:

Since Mein Kampf was written, the entire world, including Europe, has not heard anything more explicit about the aspiration to destroy the Jewish State and Nation. Several European states are prepared to underwrite, and even to guarantee militarily, the concept of "peace" shared by that organisation of murderers. This will disgust anyone who remembers anything, and who is aware of the results of the guarantee

96 Sasson Sofer, "Towards Distant Frontiers: The Course of Israeli Diplomacy", 10(1-2) *Israel Affairs* 1, 6 (2004).

97 Resolution Number 796, *Israeli Reaction to the Decision of the European Countries in Venice*, 15 June, 1980.

given to Czechoslovakia in 1938, after Sudetenland was ripped from her, also in the name of self-defence. Israel does not ask for any guarantee of her security from any of the peoples of Europe. Israel is capable of defending herself....Any person of goodwill or freeman who peruses this document will see it as a Munich-like surrender, the second in our generation, to dictatorial blackmail and as encouragement for all those who are subverting the Camp David accords and who aspire to ensure the failure of the Middle East Peace Plan.⁹⁸

However, over the course of the years it became clear that due to the EU's ever-increasing size, economic and political weight and importance, a dichotomy between Israel's collaborative policies towards the United States and non-cooperative, inconsiderate policies towards Europe could no longer be maintained. 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.⁹⁹

The reality that the EU's arsenal of soft power can prove to be very effective is gradually permeating the corridors of power in Jerusalem. As Benjamin Netanyahu, a former Prime Minister and a renowned pro-American politician puts it:

It is no secret that in the past twenty years we have invested a major political effort in our relations with the US and not without significance. But it is also true that in the same period pro-Arab views have made headways among European opinion leaders. And it will not do to just brush aside the unfavourable voices. As Europe's political and economic clout grows, so will its status in world affairs and its influence will be felt in the policies of other nations.¹⁰⁰

It is nowadays indeed very difficult for a small country to thrive in economic terms without joining a regional economic block. This applies *a fortiori* to Israel, due to its small economy and population, scarce resources and unique geo-political landscape. The possibility that Israel "shall dwell alone and shall not be reckoned among the nations" does not represent a viable option. Israel needs regional economic backing.

98 *Ibid.*

99 Sofer, *supra* note 96, at 7.

100 Quoted in Rosemary Hollis, "The Politics of Israeli-European Economic Relations" 1/1 *Israel Affairs* 118 (1994).

Israel further understands that the EU in general, and the 1995 Association Agreement and the ENP in particular, may in fact partially satisfy that need.

Thus the EU can pursue "carrot and stick" policies towards Israel. The participation of Israel in the EU research and development scheme is a case in point. Ultimately, the ENP may pave the way for the *de facto* economic participation of Israel in significant parts of the Internal Market, thereby providing the State of Israel with the much needed economic, regional backing. Under the ENP, the State of Israel may enjoy greater accessibility to what is gradually becoming the largest economic market in the world, thereby establishing herself as a genuine European state in economic terms.

As a corollary, Israel's dependence on the EU would increase. Israel is gradually coming to terms with these developments, appreciating the importance of the EU as a "soft" power, global player. Israel further appreciates that in order to reap the economic benefits of the ENP, she 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. Israel would also be expected to allow EU's representatives to make their contribution to the peace negotiations between Israel and her neighbours.

A recent case that vividly demonstrates Israel's gradual change of perceptions over the EU abilities is the resolution of the dispute over the legal treatment of products exported to the EU from the Golan Heights, East Jerusalem, the West Bank and the Gaza Strip, which came under Israel's control following the Six Days War (1967) (**The Territories**).¹⁰¹

101 For the dispute and its implications, see Moshe Hirsh, "Rules of Origin as Foreign Policy Instruments?", 26 *Fordham International Law Journal* 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) *European Journal of International Law* 591 (2003); Tal Sadeh, "Israel and a Euro-Mediterranean Internal Market - A Survey of Existing Barriers to Trade and Possible Remedies", in Peter Xuereb (ed.), *Euro-Mediterranean Integration - The Mediterranean's European Challenge* (2002), 189ff. For the solution to the dispute, see Guy Harpaz and 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", *International Trade Law and Regulation* (2004) (forthcoming); Guy Harpaz, "The Dispute over the Treatment of Products Exported to the European Union from the Golan Heights, East Jerusalem, the West Bank and the Gaza Strip - The Limits of

Since 1998, the two parties have been in direct conflict over the legal treatment of products exported to the EU from Israeli settlements in the Territories. Israel consistently argued that due to its *de facto* control of the Territories, these products are produced in Israel's customs territory, that they are therefore to be subjected to the Association Agreement, and hence are entitled to preferential treatment in accordance with its provisions. The EU, on the other hand, propounded that *de jure* the Territories do not belong to the State of Israel, that Israel's occupation of the Territories is illegal under public international law, and that products exported from them to the EU should not therefore benefit from the preferential treatment under the Association Agreement. The Association Agreement does not provide a territorial definition of the State of Israel and hence neglects to provide a direct, legal resolution of the dispute.¹⁰²

After futile diplomatic and technocratic negotiations, the EC Commission published an *Avis* in 2001, declaring that products exported from the Territories are not eligible to preferential treatment under the Association Agreement and are therefore to be subjected, retroactively, to tariff liability.¹⁰³

Israel was infuriated with the EU stance, claiming that it constitutes an illegitimate use of its economic might in order to influence a regional political dispute. The EU stance was perceived in Jerusalem and in broad circles of Israeli society as an illegitimate interference in the dispute over Israel's final borders, a dispute that should, accordingly, be settled directly by the Israelis and Palestinians under the aegis of the Israeli-Palestinian peace process.

In support of her view, Israel referenced the stance taken by the United States, which does not, in principle, recognize Israel's occupation of the Territories, but still admits, under her 1985 Free Trade Agreement with Israel, custom-free goods exported from the Territories. Israel also argued that the main victims of the EU stance are actually

Power and the Limits of the Law", *Journal of World Trade* (forthcoming).

102 See Article 83 of the Association Agreement.

103 Official Journal of the European Communities, 2001/C 328/04, 23 November, 2003.

Palestinian workers employed in Israel's factories in the Territories.¹⁰⁴ Yet Israel, like the EU, attempted to ascribe a technical character to their dispute, defining it as a difference of opinion over rules of origin.

Prima facie, the dispute was not particularly significant for the State of Israel. Israel's industrial base in the Territories is limited in scope. Industrial exports from the Territories to the EU are estimated at merely €100 million per annum (customs liability for such exports is estimated at merely €7 million per annum), a small fraction of Israel's overall exports to the European Union (over €6 billion per annum).

Yet the dispute clouded economic as well as political relations between the two parties, adversely affecting Israel's ability to realize the significant trade potential of the Association Agreement. The dispute furthermore created tariff uncertainty in relation to the whole corpus of Israel's exports to the EU, raising fears that those exports would either be banned or subjected to tariff liability. The dispute, furthermore, led for European calls for the suspension of the Association Agreement and for private embargoes imposed on Israeli products. It also constituted a stumbling block to the possibility of Israel's enjoyment of pan-European cumulation of rules of origin, perceived as beneficial to Israel's textile industry. Moreover, the dispute contributed to the prejudices, ignorance and mutual mistrust that are growing between the parties.¹⁰⁵

On the 5th of August, 2004, the parties reached a technical solution to the dispute. Under that solution, Israel would specify in the certificate of origin that she issues for goods exported to the EU, the geographic location of their production (e.g., Israel, Barkan [Barkan is in the West bank – G.H.]). She will not, however, specify, as such, whether the goods originated from the Territories or not.

104 See the words of Ehud Olmert, Minister of Trade and Industry and Deputy Prime Minister, in an address before the Annual Meeting of the Israeli Association for the Study of European Integration, Hebrew University, 15 April, 2004.

105 See Ambassador Giancarlo Chevallard, *supra* note 49, at 14. For further analysis, see A. Timm, "Germany – USA – Israel: Current Attitudes and the Historical Legacy", in Kühnel, *supra* note 49, at 77.

This solution may allow the EU to instruct the twenty five national customs authorities of its Member States, on the basis of the geographic location specified in the certificate of origin, to provide preferential treatment to goods exported from Israel proper (defined by the territorial borders on the eve of the Six Days War (1967)), but to impose tariffs on goods exported from the Territories. Put differently, the solution allows the EU to give *de facto* meaning to its non-recognition of the Territories as part of the State of Israel.

The success of the EU to impose its own solution must be examined in wider contexts. As Broude argues, the dispute settlement provisions of most of the EC's free trade agreements with third parties contribute to the maintenance and management of the EC's regional economic and political pre-eminence, by encouraging and perpetuating non-judicialized, bilateral diplomatic dispute settlement in which the EC enjoys distinct advantages.¹⁰⁶

Another lesson to be learned from the dispute and its settlement pertains to the limits of international and regional law. Israel could have, in principle, brought the dispute before the dispute settlement mechanism provided under the Association Agreement. Israel was actually backed by some legal opinions holding that the EU approach to the dispute was incompatible with WTO law as well as with the provisions of the Association Agreement.

Thus, *prima facie*, the option of bringing the dispute before an international dispute settlement mechanism was a viable one. The dispute settlement mechanism under the 1995 Association Agreement is much more juridical and effective than that provided under the previous 1975 free trade agreement between the parties.¹⁰⁷

The improvement in the dispute settlement mechanism must be seen in its wider context, namely the move from power-based diplomacy to rule-based diplomacy, as

106 Tomer Broude, "From *Pax Mercatoria* to *Pax Europea*: How Trade Dispute Procedures Serve the EC's Regional Hegemony", a paper presented at the conference on "The EU in Regional and Bilateral Dispute Settlement", organized by the Israeli Association for the Study of European Integration in cooperation with the Friedrich Naumann Foundation, The EU-Israel Forum, The German Innovation Centre and the Interdisciplinary Centre, Herzlia, 24-25 October, 2004.

107 See Article 75 of the Association Agreement, as analyzed by Reich, *supra* note 58, at 401-403.

Jackson coins it,¹⁰⁸ and the gradual juridification of international and regional trade law, as Reich terms it.¹⁰⁹

For a small country like Israel, the move from power-based diplomacy to rule-based diplomacy and the juridification of international and regional trade law are to be welcomed. Such developments could have provided Israel with an objective, legal immunity from strong, subjective, economic and political pressures exerted on her by the EU.

Israel nevertheless has refrained from activating the dispute settlement procedure. She has feared international legal intervention on the issue of her borders. She was also reluctant to use adversarial legal tools that could further adversely affect her economic and political relations with the EU. Instead she adopted an EU-led solution to the dispute. The dispute was thus settled in accordance with the respective, unbalanced economic and political powers of the parties, as opposed to the rule of (international and regional trade) law. Europe has not discarded the "balance of powers" approach, as argued by Kagan. It is just that the European balance of powers is based on different, soft parameters. (Soft) power-based diplomacy is thus still alive and kicking.

Israel's willingness to replace its long-standing stance with a EU-sponsored solution manifests her growing recognition of the dynamic regional and global realities and her readiness to accept that the ever-increasing importance of the EU, both economically and politically, constrains her own powers in our global, interdependent world.

Thus, the reliance by the EU on instruments of soft power proved to be very effective in the above dispute. The same process may repeat itself in the context of the EU objection to Israel's separation fence/wall. Actually, the negotiations between the EU and Israel under the aegis of the ENP are likely to result in a much more modest outcome than the one expected when the Wider Europe Initiative was first launched.

108 See the introductory parts of John. J. Jackson, *The World Trading System, Law and Policy of International Economic Relations* (MIT: Cambridge, Massachusetts, 1997).

109 Reich, *supra* note 58.

That outcome may be attributed, *inter alia*, to the EU's discontent with recent Israeli actions in the Territories.

Despite the "hard" power deficit of the EU, the increase of its economic and other soft powers and Israel's resultant growing dependence on the EU would force Israel to be more attuned to Brussels's political demands and her soft power instruments, a reality so difficult to come to terms with by numerous Israelis, especially those belonging to nationalistic circles.¹¹⁰

5.2.3. Trans-Atlantic Relations

It was Robert Kagan who asserted that Europe's new Kantian order could flourish only under the umbrella of American power exercised according to the rules of the old Hobbesian order.¹¹¹ This conclusion may apply in our context too. The increasing use of soft powers by the EU does not mean that the EU can act alone in the Middle East, relying solely on instruments of soft power. Good trans-Atlantic cooperation in our region is required.

Yet relations between the EU and the United States are rather complex, following in particular the current Iraq war. The difficulties between the two render the solution of the Middle East conflict more difficult.¹¹²

The EU, relying on soft power instruments, and the United States, relying more on coercive instruments, must learn to act together in order to bring peace in the Middle East.¹¹³ They have to reconstruct, in the words of Chris Patten "the indispensable

110 For example, Ron Nachman, Mayor of the city of Ariel in the West Bank was quick to link in a radio interview with Reshet B (6 August, 2004) the EU stance with the practice of discriminating against Jews in the Holocaust.

111 Kagan, *supra* note 1.

112 See Richard Youngs, "European Policies for Middle East Reform: A Ten Point Action Plan", The Civility Project, Working Paper No. 1, The Foreign Policy Centre (2004): "Where differences with the US are overstated genuine opportunities for joining forces may be lost, and the danger arises of Middle Eastern states being able to play the US and European states off against each other...".

113 See Magen, *supra* note 42, at 116-117 and 119: Close and sustained cooperation between the US and EU Member States is essential if an effective peace and reform strategy for Israel-Palestinians/Eastern Mediterranean is to materialize. Just as America cannot go it alone with "hard power", Europe is unable to deal with the multiple threats emanating from its volatile eastern and southern peripheries by itself.

partnership” towards building a democratic peace in the Middle East.¹¹⁴ Until that happens, it would be very difficult for the EU to successfully utilize the ENP as a social engineering and peace-promotion instrument in the Middle East. After all, history teaches us that the EU is very careful to present itself, in the Middle East context, as complementing the United States rather than competing with it.¹¹⁵ In that respect, it would be interesting to see what the fate of President's Bush initiative on the Greater Middle East would be,¹¹⁶ and how that initiative will interact with the ENP.

5.3. The Incoherence of the Common Foreign and Security Policy

In order to facilitate significant societal changes in the Middle East, the EU must speak in one voice and pursue decisive, effective and coherent policies. Yet, the Common Foreign and Security Policy (CFSP) in general, and the policies of the EU towards the Middle East in particular, are far from matching this description.¹¹⁷

It was Robert Kagan who termed the EU foreign policy as "probably the most anaemic of all the products of European integration".¹¹⁸ Despite the gradual harmonisation and institutionalization of the CFSP,¹¹⁹ the Member States of the EU continue to possess unequal and different abilities and resources, as well as divergent positions on the world scene, foreign policy-making methods and diplomatic traditions.¹²⁰ Consequently, the CFSP has, by and large, remained intergovernmental in character and the EU "will continue to be a predominately inward-looking political actor. Its economic and political resources for a far-reaching *Ostpolitik* will remain

114 Chris Patten, EU External Relations Commissioner, "Europe and America – has the Transatlantic Relationship run out of Road?", Lady Margaret Hall, Oxford, 13 February, 2004, as quoted in Magen, *ibid.*, at 117.

115 Aoun, *supra* note 20, at 289 and 297.

116 See <http://www.ustr.gov/new/fta/middleeast.htm>.

117 See *supra* note 9.

118 Kagan, *supra* note 1: EU foreign policy initiatives tend to be short-lived and are rarely backed by sustained agreement on the part of the various European powers.

119 See, Ambassador Otto von der Gablentz, *supra* note 50.

120 Aoun, *supra* note 20, at 296.

fairly limited, and ... political behaviour in that direction will be more reactive than a display of strong political leadership".¹²¹

Europe's inability to speak with one voice and her incapacity to form a coherent policy towards the Middle East weakens her positions in the context of the ENP, forcing it to adopt policies that reflect the lowest common denominator: "The Europeans are strong when it comes to politics and declarations, however when there is a concrete opportunity to do something and help alone, they shy away".¹²²

Europe's inability to speak with one voice further strengthens the enemies of peace, allowing extremists in the Arab world and in Europe to question the legitimacy of Israel's existence, and extremists in Israel to dismiss European input as anti-Semitic, anti-Israeli, and hence irrelevant.¹²³

5.4. The European Neighbourhood Policy as a Made-to-Measure Instrument

As stated above, the ENP is based on the differentiated, tailor-made principle, whereby the EU's treatment of each of its neighbours would vary in accordance with each neighbour's particular needs, objectives, economic development and rate of progress.¹²⁴ This principle places Israel in a privileged position, as compared with other non-EC partners of the ENP, making her the frontrunner in the negotiations under the ENP. This reality was acknowledged by the EC Commission *Strategic*

121 H. Kramer, "The European Community's Response to the "New Eastern Europe", 31 *Journal of Common Market Studies* 213, 221 (1993).

122 Zohar Peri of the Israeli Ministry of Trade and Industry, *Jerusalem Post*, 3 August, 1995.

123 Claude Kandiyoti, "Europe-Israel Relations", in Kühnel, *supra* note 49, 9, at 10.

124 See EC Commission, *Beyond Enlargement: Commission shifts European Neighbourhood Policy into higher Gear*, Brussels, 12 May, 2004, appears in www.europa.eu.int/comm/world/enp/index_en.htm: The Action Plans will be differentiated, i.e. tailor-made to reflect the existing state of relations with each countries, its needs and capacities as well as common interests. See also "EU enlargement and the Union's Neighbourhood Policy", Speech by G. Verheugen, at the Diplomatic Academy Moscow, October 27, 2003, 6: "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".

Guidelines on Human Rights and Democratisation with Mediterranean Partners,¹²⁵ the EC Commission's *Country Report on Israel*,¹²⁶ the Wider Europe Initiative, and European political leaders.¹²⁷ 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 in general. The EU is faced with a real dilemma. As Former Israeli Prime Minister Shimon Peres puts it:

I know that it will be extremely hard to proceed with the structuring of a new Middle East as long as we shall not see new realities as a result of the bilateral negotiations. Yet the bilateral negotiations will not hold water unless we have a new Middle East.¹²⁸

125 Commission of the European Communities, Communication from the Commission to the Council and the European Parliament, Reinigorating 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, an active participation of non-governmental organizations and civil society in all aspects of political and social life.

126 See Commission Staff Working Paper, *European Neighbourhood Policy, Country Report, Israel*, [COM(2004)373 final], Brussels, 12.5.2004, SEC(2004) 568: 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.

127 See, for example, the Initiative, *supra* note 2, 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)".

128 Shimon Peres, 1 September, 1992, as quoted in Magen, *supra* note 42, at 113.

Does therefore the made-to-measure feature of the ENP 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 cooperation. That regime would accordingly exist side by side with the Barcelona Process and would support it.¹²⁹

The impressive words contained in these communications about the importance of the Barcelona Process cannot hide the true colours 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 neighbour, 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 somewhat unsuccessful Barcelona Process and in what ways they would interact.¹³⁰

5.5. Institutional and Financial Aspects

129 See Council – open debate, Wider Europe – New Neighbourhood, April 14, 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. See also EC Commission, *supra* note 3: 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 neighbours; EU enlargement. See also speech by Commissioner G. Verheugen, *supra* note 46: In the Mediterranean we do not intend to replace the Barcelona Process by any aspect of the Neighbourhood 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 the pages 6, 7 and 22 of the European Parliament Report, *supra* note 3: 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. A comprehensive and effective neighbourhood concept, capable of furthering the search for more effective solutions to the problems posed by interdependence and globalization. The ENP should not override the existing framework for relations with the eastern and southern regions but supplement them.

130 See Magen, *supra* note 42, at 130: To encourage sub-regional cooperation between Israel, the Palestinians, Jordan and Egypt, the EU should also contemplate measures such as granting the four cumulative rules of origin, and stating that Arab countries that make peace with Israel will also be able to join the cumulative rule of origin regime for purposes of export into the Single Market.

Social engineering campaigns are costly.¹³¹ The social and economic engineering project designed under the aegis of the ENP cannot be successfully implemented without an efficient and coherent institutional and financial apparatus. Indeed, fruitful research that has been conducted, mainly in the United States, teaches us the influence of institutional structures on the performance of the economies that they attempt to regulate.¹³²

The ENP is based on the following instruments and institutional apparatuses. 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 neighbour concerned, and describe the prevailing state of affairs in areas of particular interest to the ENP. (The EC Commission has already presented a strategy Paper and Country Reports.) The Action Plan, based on the Strategy Report and the relevant Country Report, will provide a specific outline of reciprocal social, political and economic commitments between the EU and the relevant neighbouring state, covering political dialogue, economic and social development policy, trade, and justice and home affairs.¹³³ This framework will be supported by a financial European Neighbourhood Instrument,¹³⁴ and by a Wider Europe Task Force.¹³⁵

Recently, the Council endorsed the Commission's Strategy Paper,¹³⁶ and invited the Commission to finalize exploratory talks on the draft action plans first with Jordan,

131 See Ezioni, *supra* note 38, at 13: In 1948, U.S. aid sent to the sixteen European countries received under the Marshall Plan was thirteen percent of the entire U.S. budget.

132 See the Nobel Prize Laureate North, Douglass C. North, *Institutions, Institutional Change and Economic Performance* (1990).

133 Commissioner G. Verheugen, *supra* note 46.

134 See the Communication from the EC Commission, *supra* note 7: A two-step approach is proposed. An 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.

135 See "Commission decides on further steps to develop its Wider Europe policy", IP/03/963, Brussels (July, 2003, appeared in www.europa.eu.int/comm/world/en/news/09072003_en.htm, visited on the 19 May, 2004.

136 Council of the European Union, *supra* note 3, 10-13.

Moldova, Morocco, Tunisia, Ukraine, Israel and the Palestinian Authority. According to the Council, formal proposals for action plans should be submitted in the very near future. 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. A first review of implementation of the action plans will be undertaken within two years of their adoption.¹³⁷

The lack of substantial funding and "management deficit" were among the chief reasons for the failure of the Barcelona Process.¹³⁸ The EU currently devotes most of its external financial assistance to the absorption of the new acceding countries and of the prospective Member States, including Turkey. It is therefore unlikely that it would find the required financial resources needed for the social engineering campaign in the Middle East.¹³⁹ Unless the EU devotes much more generous resources to the ENP, its lack of substantial funding and "management deficit" may adversely affect its ability to implement the ENP as a social engineering instrument.

6. Summary and Conclusions

The European integration programme is a 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. Indeed, the EU can look back with much satisfaction on its record of transforming a large part of Europe, once afflicted by wars, nationalist divisions, Nazism and Fascism, into a region of peace, stability, political moderation and protection of human rights. The EU, does not, however, rest on its laurels. Instead it wishes to externalize its success. The European Neighbourhood Policy is one weapon in the EU arsenal of soft power instruments aimed at advancing this cause.

137 For analysis of the existing financial regime, see Patrick Holden, "The European Community's MEDA Aid Programme: A Strategic Instrument of Civilian Power?" 8 *European Foreign Affairs Review* 347 (2003).

138 See Holden, *ibid.*: The MEDA Programme has been providing financial and technical assistance to most of the countries engaged in the European Mediterranean Partnership. Due to some political and financial constraints, MEDA cannot be regarded as a fully developed, targeted strategic instrument.

139 MEDA I (1995-1999) allocated 685 million Euro per annum, as compared with 764 million Euro per annum under MEDA II (2000-2006), see Holden, *supra* note 137.

This paper was not intended to address the normative aspects of the European Neighbourhood Policy. Instead, it critically examined the obstacles and challenges that lie ahead for a successful implementation of the European Neighbourhood Policy as a social engineering and peace-promotion instrument for the Middle East. Within this framework, the paper identified and analyzed numerous and significant political, strategic, financial, economic, sociological and juridical challenges and difficulties.

The Middle East is too volatile, complex and unpredictable to permit a prediction of whether the EU will overcome those difficulties and meet those challenges. Thus, the paper restricts itself to the following conclusions.

The EU would have to commit itself to the ENP and back it with impressive vision and strong and effective political and financial apparatuses. Nonetheless, the success of the European Neighbourhood Policy as a social engineering and peace-promotion instrument largely depend on the peoples and leaders of the region.

Ten years since it was launched, David Allen and Michael Smith wrote that the Barcelona Process needs peace in the Middle East more than the Middle East peace process needs the Barcelona Process.¹⁴⁰ It is submitted that in ten years time the same might be said about the European Neighbourhood Policy, unless the peoples and leaders of the Middle East prove to be courageous and visionary enough to break the vicious circle of violence and bring to an end one of the most long-standing, unresolved regional conflicts in the world. The EU can, at best, serve as a facilitator in that process, complementing in that respect the United States. If, on the other hand, Israel fails to meet that challenge, it may quickly find itself, as a recent leaked report prepared by the Israeli Ministry of Foreign Affairs established, in a collision course with the EU.¹⁴¹ In such a scenario, Israel might feel the full brunt of the EU "soft" power.

140 David Allen and Michael Smith, "External Policy Developments", 41 *Journal of Common Market Studies* 97, 106 (2003).

141 See *Haaretz*, 13 October, 2004.