

Reflections From the New Near Outside: An Israeli Perspective on the Economic and Legal Impact of EU Enlargement*

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I Introduction

The expansion of European Union membership from 15 to 25 on 1 May 2004, carries with it important political, economic and legal consequences going well beyond the territory of the enlarged Union. The obligations assumed by the ten New Member States (NMS) in the Treaty of Accession, impact pre-existing international commitments concluded by each of them with third countries, and restricts the ability of the NMS to conduct independent bilateral relations in key areas of national authority. Moreover, the full extension of membership duties and privileges to the NMS, acquired at the moment of accession, has significant indirect (and sometimes unanticipated) consequences for third countries. The latter are impacted by enlargement but have had no say in shaping the process or its outcomes. Of course, not only the size of the EU changed with the May 2004 enlargement round. Internally, enlargement informed both the timing and substance of the draft Constitutional Treaty prepared by the Constitutional Convention. Moreover, the inclusion and participation of the NMS in Union institutions and decision-making processes has invariably transformed the mechanics and culture of EU governance; making EU level constitutional reforms at once more compelling and more complex.

Externally, the post-enlargement weight and behaviour of the Union as a regional and international actor are set to alter too, with significant ramifications for virtually all countries and international organizations, but especially for those located on the peripheries of the expanded Union.

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The projection of the Commission is that the EU-25, with a combined population of more than 450 million and GDP of almost EUR10 000 billion, will ‘fundamentally increase the political, geographic and economic weight of the EU on the European continent’, enabling it to play an enhanced role in regional and global governance.¹ Concerned to prevent the emergence of potentially destabilizing dividing lines in the continent, the Union has already begun to develop a new European Neighbourhood Policy (ENP), that claims to offer Russia, the three western Newly Independent States (Belarus, Moldova and Ukraine), three southern Caucasus countries (Armenia, Georgia and Azerbaijan) as well as the nine southern Mediterranean countries and the Palestinian Authority (PA), a stake in the Single Market and enhanced cooperative relations with the EU, in return for domestic economic political and legal reforms.²

Existing literature on EU enlargement is overwhelmingly focused on examining the phenomena through the eyes of current Member States, candidate countries or Union institutions.³ This article adopts a novel perspective by drawing attention to the important implications of EU enlargement for third countries. To illustrate the diverse and complex implications of enlargement for non-member, non-candidate states, we use the example of Israel – a country affected by EU enlargement from outside the enlargement process per se and which now finds itself on the new doorstep of the expanded EU.

Section II assesses the consequences of the NMS abandoning existing bilateral Free Trade Agreements (FTAs) with Israel, in the context of their joining a common European trade regime, as well as the implications for Israel resulting from the extension of the Single Market and the Euro zone to the NMS.

Section III concerns the implications of enlargement for migration patterns between NMS and third countries and between third countries and the expanded EU. The extension of the free movement of persons and EU citizenship rights to the NMS, we argue, carries with it potentially far-reaching consequences for Israeli society, and provides a good illustration of an unanticipated impact of enlargement on both the EU and third countries.

¹ The Commission, Communication from the Commission to the Council and the European Parliament, ‘Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours’, COM(2003) 104 final, p. 3.

² The Southern Mediterranean countries covered by the ENP are: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Syria and Tunisia.

³ See, e.g., Richard E. Baldwin, Joseph F. Francois and Richard Portes, ‘The Costs and Benefits of Eastern Enlargement: The Impact on the EU and Central Europe’ (1997) 24 *Economic Policy*, pp. 125–176; Riccardo Faini and Richard Portes, *European Union Trade with Eastern Europe: Adjustment and Opportunities* (The Brookings Institution, Washington D.C., 1995); Paul Brenton and Stefano Manzoocchi (eds), *Enlargement, Trade, and Investment: The Impact of Barriers to Trade in Europe* (Edward Elgar, Northampton, Mass., 2002).

The issues that flow from the greater geographical proximity produced by enlargement, are examined in section IV. In the case of Israel, Cypriot accession is of primary significance. We identify several immediate consequences and show how the new geographical intimacy between an EU Member State and a neighbouring third country is already producing pressures and incentives for enhanced bilateral and sub-regional cooperation.

Finally, section V examines the emerging ENP agenda, and the reactions of Jerusalem to the changing nature of the EU as a regional and international actor.

II Impact Resulting from an Enlarged Single Market and the NMS Acceding to the Existing EU–Israel Trade Regime

Viewed from Jerusalem, the extension of the Single Market to ten NMS entails both opportunities and challenges; while the withdrawal of the NMS from their bilateral Free Trade Agreements with Israel and their joining the EU–Israel trade regime, has precipitated a lively debate in Israeli policy circles on possible responses to the rule change.

The attitude of Israeli policy-makers and business leaders to the expansion of the Single Market has been predictably mixed. On the one hand, Ministry of Finance and Ministry of Foreign Affairs officials recognize the overall benefit stemming from the formation of an enlarged single economic space, operating under a common legal framework for commercial activities and harmonized technical regulations on product quality and content; a single pan-European trade policy, including unified administrative procedures; elimination by the acceding countries of discriminatory subsidies previously tolerated under WTO rules on transition economies; stricter application of intellectual property rules in Central and Eastern Europe, and the introduction in the NMS of EU public procurement rules.⁴

More broadly, Israeli policy-makers welcome the locking-in of economic reforms and political stabilization of this large geographic area stretching from the borders of Germany to the Black Sea. This is a clear positive externality brought about by enlargement, and one that will benefit all third countries, but especially those in the EU's close periphery.

At the same time, the extension of the Single Market is set to result in some trade diversion against Israel – though not as significant as the one caused by the accession of the southern European countries (Greece, Spain and Portugal) in the 1980s – and to adversely impact Foreign Direct Investment

⁴ J. Pelkmans and J.P. Casey, 'EU Enlargement: External Economic Implications', BEEP Briefing No.4, College of Europe, Brugge, 2003, p. 5.

(FDI) in Israel.⁵ Israeli policy-makers are nervous about the economic and political consequences of these changes, prompting internal debate about possible models for closer EU–Israel economic integration, as well as the opening of negotiations with Commission officials on enhanced economic and political relations.

1. Impact of the Enlarged Single Market

The May 2004 enlargement increases the geographical size of the EU by 19.4 per cent and total EU population by 16.7 per cent; while the increase in overall EU GDP is a mere 8.1 per cent.⁶ The increase in terms of population and geographical size is therefore substantial, whereas the expansion in the overall GDP of the EU is relatively modest. Post-enlargement, the average GDP per capita of the ten NMS will be only 48.6 per cent of the current EU average.⁷

Increases in both the geographical and demographic size are economically significant for Israel. For instance, Israeli exports of goods that enjoy a comparative advantage vis-à-vis Single Market economies (mainly fresh and processed foods, health, telecommunication and defence-related products) and whose demand is sensitive to demographic and geographical variables, will benefit from the expansion of the Single Market. The inclusion of Bulgaria and Romania, expected in 2007–2008, will further enhance these benefits.

According to Israeli agriculture and trade officials, the large increase in agricultural land governed by Single Market rules should also be seen as an important opportunity for Israel's sophisticated food and flower industries. Enlargement is conducive to an increase in food and flower production, especially if the Common Agricultural Policy (CAP) continues to support European farmers through market intervention rather than by direct income support.⁸

⁵ A. Tovias, 'From 15 to 21: The Impact of the Next EU Enlargement on Mediterranean Non Member Countries', FEMISE Research Program, Marseilles, October 2000 < www.femise.org/PDF/A_Tovias_1000.pdf >.

⁶ B. Nieuwenhuis, 'EU – The Fifth Enlargement', The European Commission, DG Enlargement, Information Unit (2003).

⁷ Ibid.

⁸ Robert W. Ackrill, 'CAP Reform 1999: A Crisis in the Making?' (2000) 38/2 *Journal of Common Market Studies*, pp. 343–53; Elmar Rieger, 'The Common Agricultural Policy: External and Internal Dimensions' in Helen Wallace and William Wallace (eds), *Policy Making in the European Union* (4th edn, Oxford University Press, Oxford, 2000), pp. 179–210; Tim Josling, *Can the CAP Survive Enlargement to the East?* in John Redmond and Glenda Rosenthal (eds), *The Expanding European Union. Past, Present, Future* (Lynne Rienner, Boulder, 1998), pp. 89–106.

The competitive advantage of investors from other EU Member States (particularly from the Netherlands and Germany) in the agricultural sectors of the NMS is dampened by restrictions on the purchase of land in the latter. For instance, the accession agreement between Poland – the largest and most agriculturally important NMS – and the EU provides for a transition period of twelve years for the acquisition of agricultural and forest land by other EU residents; while for other acceding countries the transition period is also a substantial seven years (in some cases five years). For Israeli entrepreneurs in the fields of food and flower production, the expansion of the Single Market, and especially the CAP, to Central and Eastern Europe holds opportunities for expansion that are at present somewhat on a par with European competitors, because of the substantial transition periods concerning acquisition and control of agricultural land.

Still, such net gains and opportunities will not offset broader trade and investment diversion against Israel and the erosion of trade preferences, resulting from extension of the Single Market to the NMS.

Since its inception in 1957, the European Community (and later EU) has been Israel's largest trade partner. This has not changed over time, because as the share of the EU in Israeli exports has decreased, its share in the latter's imports has increased (see Table 1).

Table 1. Percentage of Israeli exports to and imports from the EU, 1975–2003

	Exports to the EU* (%)	Imports from the EU* (%)
1975	42	27
1985	35	30
1995	31	52
2003	27	41

* EU-12 for 1973–1985 and EU-15 for 1995–2003

Source: Statistical Abstract of Israel

As economic integration deepened within the Community and its membership expanded, Israel has sought to reduce trade diversion and erosion of preferences by pursuing progressively closer trade relations with its neighbouring regional bloc.

This goal was only partially achieved by the EC–Israel trade agreements of 1970 and 1975, and by the 1995 EU–Israel Association Agreement. Through periodical upgrading of trade relations, Israel has managed to mitigate the

detrimental impacts of trade diversion and erosion of preferences, but only partially. Indeed, trade diversion resulting from the creation and deepening of the Single Market and the erosion of trade preferences resulting from extension of the Single Market to competitors has over the past two decades, consistently worsened Israel's trade position vis-à-vis the EU. The decrease in the share of total Israeli exports to the EU market, from 42 per cent in 1975 to a mere 27 per cent in 2003, is indicative of this trend.

With the accession of the ten NMS further trade diversion will occur, though its immediate impact is not expected to be as great as the one produced by the accession of Greece, Spain and Portugal in the 1980s. Whereas the inclusion on these southern European countries in the Community, and the subsequent completion of the Single Market in 1992, led to significant trade diversion against Israel – especially in the then highly important agriculture and tourism sectors – the extension of the Single Market to the ten NMS is expected to be detrimental mainly to the less crucial light industry sectors in Israel.⁹

Table 2. Share of the EU-15 and the EU-25 in Israel's foreign trade: trade balance (2001 figures)

	Share of total exports	Share of total imports	Net export (X-IM)
EU-15	0.262723011	0.417943307	-6 283 573
EU-25	0.279494325	0.425543514	-6 049 273
Candidates	0.016771314	0.007600207	234 300

Source: Statistical Abstract of Israel

The expansion of the Single Market will also increase Israel's trade dependence on the EU, reaching 35.4 per cent.¹⁰ Israeli decision-makers are concerned about the political ramifications of this growing dependence. Indeed, in discussing the expected consequences of enlargement, Israeli finance, trade and foreign affairs officials frequently note that the growth in trade dependency will make Israel more vulnerable to EU anti-dumping

⁹ For more detailed results see Tovias, note 5 above.

¹⁰ In exports, using 2001 figures, Israel's dependence would increase by 1.7 percentage points. This is explained mainly by trade with Poland, Hungary and Cyprus. Note that dependence will increase in 2007 with the entry of Romania and Bulgaria, two important trade partners of Israel in recent years. Observe as well that Israel's exports to Cyprus in 2001 were larger than the ones to 7 of the (then) 15 EU Member States and that exports to Poland were larger than exports to Austria, Finland, Portugal and Greece. In imports, Israel's dependence on the EU increases by 0.8%, less than for exports.

and origin investigations and countermeasures, as well as to EU trade sanctions.¹¹

With a larger Single Market, the EU of 25 Member States becomes an even more attractive target for FDI than previously. Viewed from a neighbouring third country perspective, the impact on FDI is twofold. It is not only that the NMS will draw enhanced FDI as the result of joining the Single Market – as Spain and Portugal did in the five years following accession.¹² The present EU members will also attract more FDI as a result of belonging to an expanded Single Market. This is relevant for Israel especially insofar as the Euro-Mediterranean Partnership (EMP), which governs regional trade dynamics between Europe and the Southern Mediterranean countries, operates as a classic ‘hub-and-spoke’ system – in which FDI is drawn to the ‘hub’. From the point of view of a ‘spoke’, enlargement involves the strengthening of the hub; leading to further investment diversion away from itself. In this situation, according to one Israeli official, the spoke should either seek to unravel the hub-and-spoke system, and to facilitate the formation of a Free Trade Area with other spokes or, alternatively, it should seek to integrate itself economically into the hub. Ideally it should do both. In the estimation of most Israeli policy planners, the EMP hub-and-spoke system will not unravel any time soon, since the existing political relations between Israel and most of the other southern Mediterranean countries appears to preclude the realistic possibility of developing a network of FTAs between Israel and Arab countries party to the EMP.

For all the above reasons, the extension of the Single Market to the NMS is making Israeli policy chiefs anxious about the long-term effects of trade and investment diversion and the erosion of existing preferences. As the former Governor of the Bank of Israel (Israel’s Central Bank), Professor Jacob Frenkel, said in a November 2003 speech: ‘Israel stands aside and looks on, while Europe makes progress towards economic integration.’ The extension of the Single Market is also prompting Israeli decision-makers to consider the voluntary adoption of measures to harmonize laws and standards with those of the Single Market. Similarly, the possibility of politically motivated EU trade sanctions or even anti-dumping investigations involving Israel is greeted with greater apprehension and seriousness by Israeli decision-makers than in the past.

¹¹ Some indication of this trend is the arrangement which has been forced on Israel to make a distinction between goods produced inside the green line liable to benefit from the 1995 agreement and those produced in the territories occupied during the Six Day War, including East Jerusalem, which are not.

¹² A. Tovias, ‘The Southern European Economies and European Integration’ in A. Costa Pinto and N. Severiano Teixeira (eds), *Southern Europe and the Making of the European Union, 1945–1980s* (Columbia University Press, New York, 2002), p. 172.

2. *A New Trade Regime for the NMS*

According to the different Accession Treaties, the NMS are bound by international agreements concluded by the Community prior to their accession. This provision has important implications for pre-existing international commitments between the NMS and third countries, as the case of Israel clearly illustrates.

Apart from the 1995 EU–Israel Association Agreement, Israel has maintained, prior to May 2004, a total of twelve Free Trade Agreements (FTAs). Five of these bilateral arrangements (with the Czech Republic, Hungary, Poland, Slovakia and Slovenia) have been eliminated, as the result of these NMS becoming bound by the pre-existing EU–Israel trade regime. Looking ahead, the Israel–Bulgaria and Israel–Romania FTAs will reach a similar end when the two candidates accede to the EU (expected in 2007–2008); as will the Israel–Turkey trade regime, if and when Turkey is admitted to the club. All in all, therefore, EU enlargement will impact the majority of Israel’s existing free-trade arrangements.

Table 3. Free Trade Area Agreements to which Israel is party¹³

Party to the Agreement with Israel	Date signed	Date entered into force
Bulgaria	8 June 2001	1 January 2002
Canada	31 July 1996	1 January 1997
Czech Republic	20 May 1996	1 January 1997
EFTA	17 September 1992	1 January 1993
EU	20 November 1995	1 June 2000
Hungary	14 October 1997	1 February 1998
Mexico	10 April 2000	1 July 2000
Poland	21 July 1997	1 March 1998
Romania	30 January 2001	1 July 2001
Slovakia	22 May 1996	1 January 1997
Slovenia	13 May 1997	1 September 1998
Turkey	14 March 1997	1 May 1997
USA	22 April 1985	1 September 1985

Source: figures drawn from the Ministry of Industry and Trade, Jerusalem

¹³ For text of the Agreements see the Ministry of Industry and Trade (MOIT) website at <www.moit.gov.il>.

As Israeli decision-makers became conscious of the looming change in trade rules, different policy and legal considerations informed discussion on how best to adapt.

The relevant candidate countries were permitted, under a standard withdrawal provision in each of the FTAs, to terminate the Agreement without Israel's consent, by invoking a withdrawal procedure contained in each the agreements.¹⁴ Withdrawal is carried out by means of a written notification through diplomatic channels. The agreement is terminated six months following the date on which notification is received.

The reaction in Israel to the prospect of withdrawal was nuanced. On the one hand, Israel could not prevent or delay the termination of the bilateral arrangements; nor did it want to do so, given the context of the termination, and the effective replacement of the bilateral arrangements with the pre-existing EU–Israel regional trade regime. Broad political considerations also advised against protesting about the termination of the bilateral trade agreements. As one Israeli Ministry of Finance official put it: ‘The bilateral agreements with Israel were a small detail in a bigger picture of historic changes. . . . [We] felt that we should not complicate this important transition by making objections. It was more important for us to develop goodwill with the candidate countries and the Commission.’

At the same time, Israeli officials were concerned that the termination of the bilateral trade agreements would result in worsening terms of trade with the NMS in those sectors where the bilateral FTAs provided more favourable trade conditions (mainly lower tariffs and larger quotas) than the EU–Israel Association Agreement – especially in agriculture and textile products. This is by no means unique to Israel. Indeed, a document prepared by the Commission on the impact of the Enlargement on Mediterranean countries admits that if negative effects are detected (for instance, an increase in tariff barriers for certain products or a reduction in quota access), the affected country may demand compensatory measures.

On this issue there emerged differing Israeli opinions. Some Israeli decision-makers advocated simple acceptance of the change, citing political reasons but also arguing that the economic benefits of Single Market expansion will outweigh any losses sustained as a result of the change, and that proving to the Europeans that losses were actually sustained would be too arduous to be worthwhile. Israeli policy-makers were also aware that historically the Community has imposed new trade barriers as the result of expansion, notably following the accession of Portugal and Spain to the EC in 1986.¹⁵

¹⁴ See Article 40 in the Free Trade Area Agreements with Bulgaria, the Czech Republic, Hungary, Slovakia and Slovenia. See Article 41 in the Agreement with Poland and Article 42 in the Agreement with Romania.

¹⁵ See Accession of Portugal and Spain to the European Communities: Report of the Working Party, adopted on 19–20 October 1988, L/6405, 19–20 October 1988, GATT BISD

Others, mainly from the Agriculture, Trade and Justice ministries, argued that Israeli concerns should be brought before the NMS and the Commission, and that negotiations about possible compensatory adjustments should be guided by WTO provisions governing regional trade agreements (RTAs).

The NMS – all of whom are WTO members – are bound by the provisions of Article XXIV of the GATT, dealing with the establishment of RTAs covering trade in goods.¹⁶ RTAs such as the Single Market are by their nature discriminatory and are permitted as a derogation of the Most Favored Nation (MFN) principle. Accordingly, WTO rules permit the establishment of RTAs only where these do not undermine global, multilateral rules of trade liberalization.¹⁷ Article XXIV applies to the formation of regional FTAs and Customs Unions (CUs), including accessions to existing RTAs.

Israeli decision-makers did not contemplate challenging the legality of the extension of the Single Market to the NMS under WTO rules. However, they did consider the possibility of invoking GATT Article XXIV(6). Under this provision, where the creation of a CU is consistent with GATT Article XXXIV(5)(a) but the rate of duty is subsequently raised in relations with another WTO member, the procedures in GATT Article XXVIII – allowing for negotiations over possible compensatory adjustment – may be invoked.

In reality, the option of pursuing WTO procedures was dismissed by Israeli decision-makers, as being unwise for a number of reasons.

First, differing interpretations by WTO members on the meaning of WTO rules relating to RTAs have made it extremely difficult to conduct examinations of RTAs for consistency with WTO rules, let alone to obtain and enforce a decision on inconsistencies.¹⁸

Second, there was considerable doubt whether Israel would actually suffer significant loss as the result of worsening trade conditions in specific sectors. With regards to industrial goods, the customs rate in both the bilateral FTAs and the EU–Israel Association Agreement regimes was nil, so that trade conditions were unlikely to be worsened in these sectors. Also, in the case of agriculture and textile products, the conditions of trade under the bilateral

(35th Supp.). Also 2 WTO GATT Analytical Index: Guide to GATT Law and Practice (1995), pp. 796–797.

¹⁶ See European Commission, White Paper on the Preparation of the Accession Countries for Integration into the Internal Market of the Union (1995), COM(95) 163 Final, Brussels. For commentary and analysis see Sungjoon Cho, ‘Breaking the Barrier between Regionalism and Multilateralism: A New Perspective on Trade Regionalism’ 42 *Harvard International Law Journal*, 419; Thomas Cottier, ‘The Challenge of Regionalization and Preferential Relations in World Trade Law and Policy’ (1996) 1 *EFA Rev.* pp. 149–167.

¹⁷ See World Trade Organization, ‘Regionalism – friends or rivals?’ at the WTO website <www.wto.org/english/thewto_e/whatis_e/tif_e/bey3_e.htm>.

¹⁸ Jo-Ann Crawford and Sam Laird, ‘Regional Trade Agreements and the WTO’, Research Paper No. 00/3, Centre for Research in Economic Development and International Trade (CREDIT), University of Nottingham.

FTAs were preferable to those that will exist post-enlargement, but trade volume in these products is moderate, and the powerful agriculture lobby in Israel did not perceive the change to be a critical issue.

Finally, and most importantly, the Israelis considered that engaging representatives from the NMS and the Commission in direct negotiations about the coming change in trade rules, would provide an opportunity to gain new trade concessions and enhance EU–Israel cooperation in other fields. In this situation, it was determined, bargaining in the shadow of the law was preferable to invoking WTO procedures. During September and October 2003, Israeli trade representatives met with their counterparts from the NMS and with representatives of the Commission, to discuss the transition from bilateral FTAs to a common EU–Israel regime. Israel argued that NMS unilateral abandonment of their bilateral agreements would harm two vulnerable sectors of its economy and that therefore, some adjustments in the EU–Israel trade rules were needed. In particular, Israel asked for a reduction of quotas for Israeli export products which did not fill the existing allotted quotas under the Association Agreement, in return for an increase in quotas for those agricultural and textile products in which Israel wanted to increase exports to the EU. According to Israeli sources, representatives of the Commission were prepared to discuss this option, but the issue was subsumed in broader negotiations about future EU–Israel economic relations in the context of the ENP initiative.

III Movement of Persons: Migration and Workers

For the Member States and Community institutions, the May 2004 enlargement raises a host of important issues concerning migration and the free movement of persons, tensions and interplay between the economic and social nature of the Union, the meaning of EU citizenship, as well as the treatment of third country nationals under EU law. As the case of Israel starkly illustrates, third countries can be significantly impacted by the changes brought about in these fields, in ways that the architects of EU enlargement could hardly have anticipated.

1. Movement of Persons from an Enlarged EU to Israel

Israel is a country of immigrants that has attracted citizens from all the NMS as well as the remaining candidate countries (even prior to its independence in 1948) – especially from Poland, Hungary, Bulgaria, Romania, the Czech Republic, Slovakia and Lithuania.

Table 4. Immigrants from some CEECs by period of immigration

Period	Bulgaria	Hungary	Poland
1919–1947	7057	10342	170127
1948–1951	37260	14324	106414
1952–1960	1680	9819	39618
1961–1964	460	1115	4731
1965–1971	334	1486	9975
1972–1979	118	1100	6218
1980–1989	180	1005	2807
1990–2000	3872	2329	2925
2001	127	115	139

Source: Statistical Abstract of Israel

In theory, enlargement would be expected to adversely affect Jewish emigration from Europe to Israel, since it is set to improve standards of living in the acceding countries and create greater mobility within Europe; thus reducing the economic incentives for emigration to Israel. In practice, however, potential migration from the candidates to Israel is extremely limited, since the remaining Jewish population there is small and aging. According to 2001 figures, the Jewish population in Central and Eastern Europe stands at 78 000 people, concentrated mainly in Hungary (51 000). In addition, it is estimated that the Jewish population of the three Baltic republics attained 34 000 people in the early 1990s (mainly concentrated in Latvia with 23 000 people). Recent rates of migration from Central and Eastern Europe to Israel have been very low, when compared both with past trends and with immigration coming from other areas of the world (such as countries of the former Soviet Union and the USA). Future migratory potential to Israel is also extremely low, since the total Jewish population in the candidate countries is now less than 150 000 people.

Israel's rapid economic growth in the 1990s, coupled with its rising need for labour – especially in the construction, nursing and agriculture industries – has made it a target destination for substantial numbers of migrant workers from Central and Eastern Europe over the last 15 years. According to figures released by the Israeli Ministry of Foreign Affairs in 2001, the total population of foreign workers in Israel at the time stood at approximately 250 000 – of which 100 000 were legal migrant workers and 150 000 illegals. This

represents 13 per cent of the total labour force – twice the numbers witnessed in most developed countries.¹⁹

Approximately 70 per cent of this population (both legal and illegal) came from Central and Eastern Europe – predominantly from Hungary, Romania, Bulgaria and Slovakia, but also from Poland, the Czech Republic, Ukraine, Russia and Turkey. Indeed, a four-year study published by the Israeli Authority for Manpower Planning at the Ministry of Labour and Welfare in 2001 concluded that the typical foreign worker in Israel is a 36-year-old East European skilled male, married, with 11 years of schooling, who has opted to work in Israel to increase his earnings and standard of living.²⁰

The combined effect of Israel's economic downturn and worsening security problems since the renewal of violent conflict with the Palestinians in October 2000 (which has claimed the lives of several central and eastern European foreign workers) and the extension of the Single Market to the NMS (to Bulgaria and Romania in 2007) is expected to significantly reduce movement of both legal and illegal central and eastern European workers to Israel over the next few years. Certainly here EU enlargement plays a partial role by drawing European migrant workers away from Israel with increased economic opportunities at home. Also, the effects of enlargement on Israel, in this context, are expected to manifest themselves over a protracted period of time, for two reasons. First, since wages and living standards in the NMS (as well as Bulgaria and Romania) are expected to rise to EU average standards over a period of decades, the financial allure of employment in Israel will fade out only gradually. And second, the prospect of higher wages for NMS workers in the richer EU countries will also materialize only gradually, because of the temporary restrictions imposed by most of the richest EU Member States on the movement of NMS workers into their labour markets.

Nonetheless, the assessment of the Israeli Ministry of Labour and Welfare is that as the result of EU expansion to Central and Eastern Europe, fewer migrant workers will arrive from the NMS and Bulgaria and Romania; increasing the demand for labour from other countries (notably Ghana, Nigeria, Colombia and the Philippines) as well as for Palestinian workers.

2. Movement of Persons from Israel to the Enlarged EU

Whereas the migratory potential from the enlarged EU to Israel is low, the

¹⁹ Ministry of Foreign Affairs, 'World Conference Against Racism – Durban: Foreign Workers', available under <www.mfa.gov.il>.

²⁰ Ruti Sinai, 'Foreign Workers in Israel – Statistics', *Haaretz Daily Newspaper*, 4 April 2001.

prospect of significant migration in the opposite direction, as an indirect result of enlargement, is far greater.²¹

Over the last four decades, Israeli immigrants have primarily headed for North America, not Europe. This is largely explained by reference to the former offering greater economic promise, the presence of large and established Jewish diaspora communities in the USA and Canada, as well as anti-Semitism and the negative historical experience and memory of Europe. The expansion of the EU into Central and Eastern Europe, coupled with worsening security and economic conditions in Israel and tougher restrictions on immigration to the USA after the terrorist attacks of 11 September 2001, could significantly alter this pattern of migration.

Official Israeli sources estimate that the May 2004 accession will result in approximately 1 million Israelis – 18 per cent of the population – either acquiring full citizenship of an EU Member State, or becoming eligible for such citizenship by virtue of personal or ancestral links to the NMS.²² Over 340 000 Jews have in the past immigrated to Israel from Poland alone, and special legal regimes in several NMS provide opportunities for relatively unhindered acquisition of citizenship for Holocaust survivors and their descendents. Of course, the acquisition of NMS nationality (which also bestows an additional ‘layer’ of citizenship – namely citizenship of the Union) is unaffected by enlargement itself, since this remains a matter of exclusive national competence.²³

The actual scope of immigration from Israel to Europe as the result of the May 2004 changes is difficult to predict, but there is evidence to suggest that it may become considerable. Indeed, in the period 2001–2003, worsening security and economic prospects at home are already prompting significant numbers of Israelis to seek NMS passports, and the numbers may swell as restrictions on the movement of persons from the NMS to the rest of the EU are gradually removed. During 2002 and 2003 the Polish Embassy in Tel-Aviv reported a ‘huge leap’ in the number of Israeli applicants for Polish citizenship; with ‘several thousands’ of applications submitted in 2002.²⁴ The embassy of Slovakia, for example, is reported to have issued 200 passports to Israelis in 2002 and it expected to double that number in 2003. A similar pattern is reported from the Czech and Hungarian embassies.²⁵

²¹ On migration issues in the EU see H. Werner, ‘Mobility and Migration of Labor in the European Union’ in CEDEFOP, *Mobility and Migration of Labor in the European Union and Their Specific Implications for Young People*, 1999.

²² D. Lipkin, ‘One million Israelis set to become European Citizens’, *Maariv*, 17 December 2002.

²³ Case C-192/99, *R. v. Secretary for the Home Department, ex parte Kaur* [2001] ECR I-1237. See S. Hall, ‘Determining the Scope Ratione Personae of European Citizenship: Customary International Law Prevails for Now’ (2001) 28 LIEI, 355.

²⁴ Aluf Benn, ‘The Polish Dream’, *Haaretz Daily Newspaper*, 13 November 2003.

²⁵ *Ibid.*

In practice, Israeli immigration to the expanded EU will depend not on the acquisition of citizenship rights per se but on the numbers choosing to exercise these rights, and the manner in which these rights will be exercised – from gaining easier tourist access to the EU, to pursuing higher education opportunities in Europe, to working or living in the Member States.

In its fuller manifestations, Israelis who become NMS nationals and reside in the territory of the expanded EU will be entitled to the same rights and privileges accorded to NMS nationals, including the exercise of Single Market freedoms,²⁶ reliance on Community social rights,²⁷ and the protections afforded by EU law in the area of fundamental rights.²⁸ As EU citizens also, they will benefit from certain political rights at the supranational level. For example, in a country where their own Member State is not represented they will have the right to the protection of the diplomatic authorities of any Member State.²⁹ They will have the right to petition the European Parliament, apply to the Ombudsman,³⁰ and receive a written answer from any of the Community institutions. Subject to effective enforcement, these rights could potentially serve to promote issues that are of interest to Israelis holding European citizenship.³¹

The acquisition by Israelis of NMS passports carries some additional, unforeseen and unintended consequences. For example, since the segment of the Israeli population eligible for NMS citizenship is almost exclusively Ashkenazi, their gaining of new freedoms of travel and residence in Europe is viewed by some non-Ashkenazi groups (mainly Sephardi Jews and Israeli Arabs) as further privileging what many of them already see as an economically and even politically privileged group. Indeed, one leading commentator has warned that this by-product of EU enlargement could deepen ethnic rifts in an already divided society.³²

Moreover, Israeli foreign policy planners estimate that should the number of Israelis acquiring dual nationality increase considerably, EU Member State governments may become increasingly involved in the Arab-Israeli conflict

²⁶ For a good overview see P. Craig and G. De Burca, *EU Law: Text, Cases and Materials* (3rd edn, Oxford University Press, Oxford, 2003), chapters 14–18.

²⁷ See for example F. Weiss and F. Woodridge, *Free Movement of Persons within the European Community* (Aspen, 2002).

²⁸ See for example K. Lenaerts and E. De Smijter, 'A Bill of Rights for the EU' (2001) 38 CML Rev, p. 273; P. Alston, J. Heenan and M. Bustelo (eds), *The EU and Human Rights* (Oxford University Press, Oxford, 1999).

²⁹ Article 20 (ex Article 8c).

³⁰ Articles 194 and 195 provide that non-citizens resident in the EU can also do so.

³¹ Professor Joseph Weiler has expressed concern about lack of effective enforcement of Union citizenship rights by Member States. See J. Weiler, 'Citizenship and Human Rights' in J. Winter *et al.* (eds), *Reforming the Treaty on European Union: The Legal Debate* (Brill, Leiden, 1996).

³² Aluf Benn, note 24 above.

under the pretext that they are acting to protect the safety and rights of their own nationals. Such an argument was in fact made by Russian president, Vladimir Putin, in a meeting with the Israeli prime minister, Ariel Sharon, in November 2003, Putin claiming that his efforts to advance a peaceful settlement between Israel and the Palestinians are justified because of Russian concerns for the large Russian-born population living in Israel.³³

IV Cypriot Accession and the New Geographic Proximity

Cypriot accession carries special implications for Israel because of the new geographic proximity it produces between the latter and a NMS – now governed by EU rules.³⁴ The new proximity has several immediate legal consequences, particularly in the areas of fishery policy and air transport, and is expected to prompt European and Israeli policy-makers to seek enhanced cooperation in areas of shared interest, such as environmental protection. Moreover, although EU expansion to the eastern Mediterranean has so far not managed to induce Greek Cypriot leaders to accept a compromise for settlement of the longstanding Cyprus conflict – something that at the time of writing has not taken place in view of the refusal, by referendum, of the so-called Annan Plan by the Cypriot people in late 2004 – the future resolution of the Cyprus conflict with a material EU role cannot be entirely excluded.³⁵ Had the Annan Plan for the unification of Cyprus in the context of EU accession in fact succeeded – in the sense that it were approved and implemented by all parties – the perception of the EU as a peacemaking power capable of transforming seemingly intractable conflicts in the eastern Mediterranean would have been greatly bolstered. This would have had potentially far-reaching consequences for rethinking the regional context of the Arab-Israeli conflict.

³³ Aluf Benn, note 24 above.

³⁴ Protocol No. 10 of the Treaty of Accession provides that the application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control. Presumably, this ‘suspension’ is to be lifted if and when a political settlement that will unite Cyprus under one form of government is reached. For commentary on the Cyprus–Greece–Turkey–EU dynamic, see P.R. Hugg, ‘Cyprus in Europe: Seizing the Momentum of Nice’ (2001) 34 *Vanderbilt Journal of Transnational Law*, 1293. The application of the *acquis* will, for the foreseeable future, extend only to those territories effectively controlled by the government of the Republic of Cyprus, and will not apply in the parts of northern Cyprus that are under the control of the Turkish government there.

³⁵ Turkish, Greek and Turkish Cypriot leaders had accepted the Annan Plan. On the role of Europeanization in conflict resolution in the European peripheries, see B. Coppetiers, M. Emerson, M. Huysseune, T. Kovziridze, G. Noutcheva, N. Tocci and M. Vahl, *Europeanization and Conflict Resolution: Case Studies from the European Periphery* (Academia Press, Gent, 2004).

The modern historical legacy of the eastern Mediterranean has left a great deal of uncertainty about international land and waterway borders in the region. Through the latter half of the twentieth century, Israel avoided formalizing territorial issues with Cyprus, since Israeli decision-makers were concerned that doing so could undermine Israel's bargaining power vis-à-vis Syria and Lebanon when a peace agreement between the antagonists would eventually be negotiated. Since November 2000, however, Israel and Cyprus have conducted negotiations to delimit an exclusive economic zone for the island.³⁶ While these negotiations are pursued bilaterally, without EU-level involvement, Israeli officials suggest that Cypriot accession is likely to both strengthen Cyprus's position in the negotiations and generate European pressure on Israel to hasten agreement.

Putting aside the complex issues inherent in the lack of a formalized territorial-waters regime in the eastern Mediterranean, some legal questions relating to law of the sea remain. In particular, will the forthcoming accession of Cyprus alter significantly relations between the two countries in such matters as maritime transport, fisheries and exploitation of sea resources?

The answer is that, in the short term, the impact of enlargement will be felt in certain sectors but not in others. For instance, maritime arrangements between the two countries will be unaffected by new rules since they are governed by International Maritime Organization (IMO) rules (that deal mainly with maritime safety, prevention of marine pollution, liability and compensation, and salvage) and public international law pertaining to the law of the sea.³⁷

On the other hand, with regards to exploitation of fisheries in the eastern Mediterranean, Cypriot relations with third countries (including Israel) alters completely, since with accession Cyprus became subject to the EU's Common Fisheries Policy (CFP). The significance of this shift for third countries lies in that the Community is exclusively competent to manage external fishery policy. Post-enlargement, therefore, it is the Community, not Cyprus, which is exclusively authorized to negotiate and conclude all external matters relating to fisheries.³⁸ In other words, 'Blue Europe' is extended to the eastern Mediterranean. So, for instance, Israeli vessels fishing in Cyprus's exclusive economic zone (200 nautical miles southward of the island) now have to abide by EU fishing regulations.³⁹ Moreover, whereas Cyprus has so

³⁶ Simultaneous bilateral talks are conducted between Cyprus and Egypt, Lebanon, Syria and Turkey.

³⁷ For IMO legal texts and commentary see the IMO website (<www.imo.org>).

³⁸ For additional information see The Commission, 'Fisheries, Fisheries Agreements with Third Countries' at <europa.eu.int/comm/fisheries/doc_et_publ/factsheets/facts/en/pcp.htm>.

³⁹ Legal assistance for this and related matters was received from Dr N. Papadakis, Press Councillor at the Greek Embassy in London.

far adopted a rather weak enforcement regime towards boats illegally fishing in its exclusive economic zone, its accession to the Common Fisheries Policy is expected to significantly strengthen enforcement in this field. The same applies to the exploitation of seabed resources such as oil and gas.

The cross-border implications of enlargement for a neighboring third state can also be illustrated with reference to air transport. The vast majority of Israel's civil aviation traffic passes through Cypriot territorial airspace (with a substantial amount also entering the airspace of other NMS). Air transport relations between the two countries have traditionally been governed by international regimes – primarily the Chicago Convention system on international civil aviation and rules of the International Civil Aviation Organization (ICAO) – but European rules and regulations are assuming a growing role in this field. As a member of EUROCONTROL and the European Civil Aviation Conference (ECAC), Cyprus has been subject to certain regional commitments on air transport even prior to accession. With enlargement, Cyprus assumed the existing *acquis* in the field, covering air traffic management,⁴⁰ air safety,⁴¹ noise and other environmental standards, and it will become bound by future European rules as a more integrated regional regulatory system is pursued.⁴² Commission efforts to create a Single European Sky policy for civil and military airspace management in

⁴⁰ Council Directive 93/65 on the definition and the use of compatible technical and operating specifications for the procurement of air traffic management equipment and systems, OJ L 187, 29 July 1993, amended by the Commission Directive 97/15 of 25 March 1997 and the Commission Regulation (EC) No. 2082/2000, OJ L 254, 6 September 2000, adopting Eurocontrol standards amended by Commission Regulation (EC) No. 980/2000, OJ L 150, 8 June 2002, 4 June 2002, p. 38–43.

⁴¹ Council Regulation 3922/91 on the harmonization of technical requirements and administrative procedures in the field of civil aviation, OJ L 373, 31 December 1991, adapted to scientific and technical progress by Commission Regulation (EC) No. 1069/99 and No. 2871/2000, OJ L 333, 29 December 2000, p. 47; Council Directive 94/56 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents, OJ L 319, 12 December 1994; Regulation of the European Parliament and of the Council (EC) 1592/2002 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, OJ L 240, 7 September 2002, p. 1–21; Regulation of the European Parliament and the Council (EC) 2320/2002 establishing common rules in the field of civil aviation security, OJ L 355, 30 December 2002, p. 1–22.

⁴² Council Directive 80/51 on the elimination of noise emissions from subsonic aircraft, OJ L 18, 24 January 1980; Council Directive on the limitation of noise emissions from subsonic jet aeroplanes, OJ L 363, 13 December 1989; Council Directive 92/12 on the limitation of the operation of aeroplanes covered by Part III, Chapter 2, Volume I of Annex 16 to the Convention of International Civil Aviation, second edition (1998), OJ L 76, 23 March 1992, amended by Council Directive 98/20, OJ L 76, by Commission Directive 99/28 and by Commission Regulation (EC) 991/2001, OJ L 138, 22 May 2001, p. 12–14; Directive of the European Parliament and the Council on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports, OJ L 85, 28 March 2002, p. 40–46.

the EU territory are still in planning phases. However, negotiations on the establishment of a European Common Aviation Area (ECAA) are now near completion. The ECAA will comprise approximately 30 European countries (including all EU Member States), and will be responsible for setting common rules, based on existing and future law applicable in the EU. It is foreseen that with growing regional integration in this sphere, and with more and more countries coming under an increasingly harmonized air transport regime, Israel will come under market and regulatory pressure to adjust its own rules and standards in these areas to those of the EU.⁴³

Cypriot accession is already prompting intensification of cooperation between Israel and the EU on issues that relate to their new geographical proximity. Among these are: customs, environment, energy, transport and Justice and Home Affairs (particularly terrorism, organized crime and illegal migration). The 1995 EU–Israel Association Agreement provides a broad legal basis for enhanced cooperation in these areas. Enlargement per se does not of course create any new obligations between the parties, but as Christiansen, Petito and Tonra observe, countries immediately surrounding the EU: ‘attract attention from policy-making institutions of the EU and, over time, become targets of significant “policy export” from the Union.’⁴⁴

V The European Neighbourhood Policy

In the autumn of 2002, the former EU Commission president, Romano Prodi, began speaking about the development of a ‘proximity policy’ – later referred to as a ‘Wider Europe’ initiative and now called ‘European Neighbourhood Policy (ENP)’ – which would need to address the countries bordering the future EU of 28 Member States, including Israel, and which would provide for ‘the extension of principles, rules, standards and sectoral cooperation’ to this new category of EU ‘neighbours’.⁴⁵ Later Commission documents mentioned the possibility of offering neighbours ‘a stake in the Internal Market’. Other documents indicated willingness to consider a trade regime

⁴³ On recent developments regarding the EU’s ‘open skies’ policy and relations between the Community and third countries in the field of air transport, see The European Commission, Communication from the Commission on the consequences of the Court Judgments of 5 November 2002 for European air transport policy, COM (2002) 649 final; The European Commission, ‘Proposal for a European Parliament and Council Regulation on the negotiation and implementation of air service agreements between Member States and third countries’, COM(2003) 94 final.

⁴⁴ Thomas Christiansen, Fabio Petito and Ben Tonra, ‘Fuzzy Politics Around Fuzzy Borders: The European Union’s “Near Abroad”’ (2000) 35/4 *Cooperation and Conflict*, pp. 389–415, at 410.

⁴⁵ Euromed Report (2002), ‘Europe and the Mediterranean: time for action’, speech by the President of the European Commission Romano Prodi, Issue 52, p. 3.

akin to the European Economic Area (EEA) or at least the conclusion of ‘deep integration’ agreements of the type that the EU had bilaterally signed with Switzerland in 1999.⁴⁶

The main elements of the Commission’s new initiative can be found in the March 2003 Communication and the European Council Conclusions of June 2003.⁴⁷ In October 2003 the Council asked the Commission to prepare detailed proposals for Action Plans, to be taken forward by June 2004. Following broad discussions within the Commission, with relevant Council working groups and with some of the neighbourhood countries, the Commission published a European Neighbourhood Policy Strategy Paper in May 2004, as well as a series of Country Reports on the countries consulted: Israel, Jordan, Moldova, Morocco, Tunisia, Ukraine and the Palestinian Authority.⁴⁸ On 9 December 2004, Israel’s Action Plan, among several others, was approved by the European Commission and later endorsed by the European Council on 13 December 2004. The Action Plan⁴⁹ is a political document, with a projected timeline of between three and five years, renewable by mutual agreement. It can be criticized for being too broad, a sort of ‘wish list’ of priorities. It clearly lacks depth rather than length. Optimists will say that it is now time for the parties to beef it up. One might ask if, in the new crisis context prevailing in the EU since May 2005, there will much appetite for that on the European Commission’s side.

Well before that crisis, the Commission had prepared a detailed proposal in October 2004, requesting that the Council and Parliament adopt a regulation establishing a European Neighbourhood and Partnership Instrument (ENPI) to replace the existing assistance programmes by 2007 with a single instrument, as part of a broader reform of EU administered external assistance.⁵⁰ The still-valid proposal includes, inter alia, expanding funding to the ENP from approximately EUR8.4 billion to EUR14.9 billion, for the 2007–2013

⁴⁶ For a complete listing of official documents of the European Commission on the ENP see europa.eu.int/comm/world/enp/document8en.htm.

⁴⁷ COM(2003)104 final, 11 March 2003, ‘Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours’, Council Conclusions on Wider Europe – New Neighbourhood, Thessaloniki European Council, 19–20 June 2003; see also Commission Communication on the Instruments for External Assistance under the Future Financial Perspective 2007–2013, COM(2004), 626 final, 29 September 2004; European Commission, ‘European Neighbourhood Policy: The First Action Plans’, IP/04/1453, press release, 9 December 2004.

⁴⁸ Commission Communication, ‘European Neighbourhood Policy: Strategy Paper’, COM(2004) 373 final.

⁴⁹ Commission Communication, ‘Commission Proposals for Action Plans under the European Neighbourhood Policy (ENP)’, COM(2004)795 final.

⁵⁰ European Commission, ‘Proposal for a regulation of the European Parliament and of the Council laying down general provisions establishing a European Neighbourhood and Partnership Instrument’, COM(2004) 628 final, 29 October 2004.

financial perspective, representing a 60 per cent increase. The June 2005 row between Britain and France over the EU budget, however, has been interpreted as undermining chances of a substantial increase in financial assistance to the southern Mediterranean countries – a key ENP instrument.

Contrary to the Barcelona Process initiated in 1995, the European Neighbourhood Policy documents speak of ‘preferential relations within a differentiated framework which responds to progress made by the partner countries in defined areas, in particular political and economic reform’. In return for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms, countries neighbouring the EU who currently are not eligible to be considered for membership will be offered the prospect of a stake in the EU’s internal market, as well as other advanced forms of cooperation in key fields of mutual interest. This includes further integration and liberalization to promote the free movement of persons, goods, services and capital, as the countries concerned make progress against agreed benchmarks and targets contained in individual action plans taking account of their specific circumstances. Thus, in principle, the new structured relationship envisaged by the ENP would allow neighbours such as Israel to participate in almost all areas of EU policy, beginning with trade in goods, capital and services. References have been also made to the EFTA experience, but eventual EU membership was and is not part of the proposed initiative. Most experts concur that the initial offer was to create with the neighbours a kind of EEA ‘minus’ (simply excluding free labour movements) using maybe the ‘à la carte’ approach applied since 1999 to Switzerland–EU relations (focusing on so-called ‘second-generation issues’). As shown below, the package on offer has been gradually whittled down. Clearly the ENP has not been designed with Israel specifically in mind. The EU stresses the need for economic and democratic reforms, employing concepts and instruments adapted from the enlargement to Central and Eastern Europe, including positive conditionality, in order to encourage underdeveloped, authoritarian regimes into a process of socioeconomic modernization and political liberalization. Despite Israel’s high level of socioeconomic development and democratic character, the EU seems concerned with the export of some of its economic and political norms and standards to Israel. The general approach suggested by the European Commission in its March 2003 report was then the conclusion of new Neighbourhood Treaties financed by a new instrument⁵¹ (a mix of PHARE, TACIS and MEDA) with a high priority on cross-border cooperation (which, incidentally, would not apply to the case of Israel).

Regarding this new financial instrument, what we already know is that Israel will not benefit from EU aid directly, given its level of socioeconomic

⁵¹ Which as we saw above has been meanwhile renamed as the ENPI.

development. Israel did not benefit from the EMP's bilateral MEDA funding either, but in the case of the EMP, under the 1995 Israel–EU Association Agreement, it was not pressured to implement intrusive economic and political reforms,⁵² as the ENP framework seems to require. But EU Commission officials dealing with the case of Israel say that technical support to revamp Israel's regulatory framework and institution building as well as sharing best practices with the EU might be available as the so-called TAIEX mechanism – very successful in the context of the EU accession process – could be extended to Israel.⁵³ That means, for instance, that the EU and Member States' civil servants would be made available, with the help of bilateral ENPI funds, to give seminars in Israel. The application of EU technical assistance activities to Israeli institutions represents a potentially important development. If pursued by the EU and accepted by Israeli actors, this will create forms of enhanced bureaucratic engagement and institutional interaction which did not exist in the past. Simply stated, in all likelihood, Israel's potential for absorbing funds and for performing well in achieving benchmarks (two criteria to be used by the Commission in determining bilateral allocations of funds) will play in its favour. But the amount involved will be marginal, most likely for the activities of the above-mentioned technical support.

Questions also persist about the extent to which the ENP will generate new value. What economic and political incentives will go into the ENP package remains to be clarified, in view of the lack of depth of the Israel's Action Plan. At the rhetorical level at least, the EU is offering 'a stake in the EU's Single Market' to Mediterranean non-member countries (including Israel) which so desire and are prepared to adopt the relevant *acquis*. For the EU, 'a stake in the Internal Market' implies adopting the *acquis* in the relevant fields selected. One of the reasons for the Commission lowering expectations regarding participation in the Internal Market is the difficulty in persuading the relevant Commissioners and Directorates that opening the Internal Market to Israel is desirable for the EU. And the EU Commission has stated clearly that most action is to be expected in the domain of goods, much less so in services and freedom of establishment, while labour movements will be practically left out.

Let us come back briefly to the short-term costs and risks for Israel associated with implementation of trade and other policy reforms as a result of having to adopt the existing *acquis* and change the regulatory environment. These adjustment costs could be numerous with often not only substantial opposition by the Israeli business community but also by parts of the public or civil society at large as well. Suppose, that in order to comply with the *acquis*, Israel would be expected to revise its religious laws, for example regarding

⁵² Since EU originating imports entered Israel tariff-free at least since 1989.

⁵³ Interviews conducted at the European Commission on 3 June 2005.

the import of pork products or animal protection. What would be the reaction of the public at large and religious groups in particular? We are not touching here on pedestrian financial matters, but on matters of national identity.

In term of EU trade concessions, the ENP seems to be fairly significant and a real innovation in relation to the current market-access status of Israel in the EU dating back to 1977 (when all EC industrial tariffs were eliminated. Non-tariff barriers (NTBs) on Israeli exports of goods and services to the EU-25 would disappear in all those areas of economic activity regarding which Israel would choose to adopt the EU's internal *acquis*. Potentially much more important is that there would no longer be any reason for third-country or European multinationals to locate themselves in the EU-25 to benefit from the EU's Single Market. Investing in Israel would lead to comparable benefits. This could be highly relevant for high tech, food-processing or chemical companies, where Israel has comparative advantage. In fact, the EU's concession, in this context, is on par to the one afforded to full Member States.

The ENP is a case of front-loaded EU concessions which we must consider in conjunction with the incentive for Israel to deviate from economic- and/or political-reform commitments. Clearly we have here a case enabling the Israeli government to strike alliances with Israeli export-oriented producers against competing importers and enabling it to hold firm in front of interest groups wanting to derail policy reforms, a situation contrasting very positively with the lopsided 1995 bilateral Association Agreement signed under the EMP (which did not add much to what Israel had already obtained under the EC-Israel Free Trade Agreement of 1975).

According to the Director for the Middle East and South Mediterranean at the Directorate for External Relations of the EU Commission, who gave a selected audience at the Ministry of Foreign Affairs a talk on the new EU approach vis-à-vis Israel in September 2003, the EU would propose going beyond trade and market opening and not only focus on narrow trade issues (although surely agriculture would not be forgotten). Negotiations should also deal with energy, transnational networks, the environment, migration and money laundering. All this comes close to the agenda of the Luxembourg Summit of 1984 between the EC and EFTA countries, which, by the way and somewhat ironically, was called Wider Europe (although the actors were other countries) by those launching the project.

In December 2003, the Jean Monnet Chair at the Hebrew University hosted Dr Leigh, Head of the Task Force on the ENP and Deputy Director General at the DG External Relations of the European Commission, who spelled out for the audience the program contemplated by the Commission,⁵⁴ although he

⁵⁴ Notes taken by one of the co-authors.

immediately stressed that the list was open and that Israel could come up with other proposals. The five areas of concern were the following:

- 1) Core aspect: the Single Market's four freedoms, mutual recognition of professional qualifications, consumer protection, conformity assessment.
- 2) Justice and Home Affairs: police and judicial cooperation, money laundering, terrorism, drugs, trafficking in human beings.
- 3) Connecting the neighbourhood: telecoms, electricity grids, energy. This is called networking.
- 4) People-to-people contacts: education, links between universities, cultural and scientific cooperation.
- 5) Political dialogue: promote convergence in threat perceptions, protection of minorities, dialogue on administrative detention, access to justice.

The EU Commission's Senior Official stressed that the idea was to use, in the case of the EU's neighbours, some of the methodology of the EU developed in enlargement negotiations to transition economies. Note that the European Commission officials referred to the approach taken with transition economies. In fact the reference was to the Europe agreements preceding accession rather than to the negotiations for accession themselves. The Europe agreements of the 1990s contained association institutions, political dialogue, free trade in industrial goods, economic and financial cooperation, and cultural cooperation. The agenda to be applied to Israel thus comes quite close to the latter's and is quite far from the EEA agenda. For these European Commission officials, neighbourhood agreements would look like Europe-'plus' agreements; not like the bilateral agreements Switzerland has with the EU. Compared to the Swiss approach, it contains political dialogue and networking. And in principle all is negotiable. According to experts and recent literature on the Swiss approach to the EU consulted by the authors,⁵⁵ the former goes much beyond Europe agreements or the 1995 Customs Union Agreement the EU has with Turkey. To a degree, the 1995 Association Agreement between Israel and the EU has already gone further than the Europe Agreements and other Association Agreements, particularly concerning agriculture or textiles. Thus, Israeli decision-makers are not very encouraged when told that the model is not the EEA model nor the Swiss one but rather the East European one.

⁵⁵ See, for example, R. Schwok and N. Levrat, 'Switzerland's Relations with the EU after the Adoption of the Seven Bilateral Agreements' (2001) 6 *EFA Rev*, pp. 335–354; L. Goetschel, 'Switzerland and European Integration: Change Through Distance' (2003) 8 *EFA Rev*, pp. 313–330; R. Schwok, 'Pourquoi la Suisse n'en finit pas de ne pas adhérer à l'Union Européenne?' in 'La Suisse: Est-elle Toujours Heureuse?' (2003) 13 *Nouveaux Mondes*, pp. 13–27; R. Schwok, 'Un Rapprochement . . . Qui Eloigne La Suisse D'Une Adhesion' (2004) 483 *Revue du Marche Commun*, pp. 645–50.

VI Conclusions

Over and above the new physical proximity between the expanded EU and Israel, the two are likely gradually to become much closer mentally and culturally. This is because new Member States have, on the whole, more political, social and cultural affinities with Israel than older Member States. On the other hand, clearly of all the countries covered by the new ENP initiative, the one coming closer economically and politically to the conditions prevailing in the countries which experimented with sector-specific agreements (Switzerland) or with membership in the European Economic Area (Norway or Iceland) is Israel.

An analysis of the operation of the EEA in practice shows that the EEA model seems quite constraining.⁵⁶ This is something that led some EFTA countries to have had second thoughts after being offered membership by Jacques Delors and finally take the plunge and ask for EU accession. Among the remaining EFTA countries, only Iceland sees the EEA as a long-term arrangement; while Norwegian public opinion continues to hesitate regarding future EU membership.⁵⁷ For instance, in a trade war between the USA and the EU – a likely scenario of high concern for Israel – the Swiss model would give Israel more freedom of manoeuvre than the EEA model. Israel would not be part in any way of the EU trading block in the eyes of the USA. This is much less clear in the event of EEA membership.

The current EU-Swiss model of institutional relations is certainly more relevant to Israel than the model which the EU applies in its relations with Norway, namely the EEA. The bilateral ‘à la carte’ approach can suit both sides, Israel and the EU. It seems however that in practice the EU, in designing the new European Neighbourhood Policy, has been drawing on its experience in negotiations with central and eastern European countries of the early 1990s, when the so-called ‘Europe agreements’ were concluded with them. The EU draws as well from its experience in accession negotiations with the same batch of countries. In fact the ENP’s methodology and terminology are inspired by the accession process in recent enlargement negotiations, based on the same concepts such as action plans, monitoring, country reports,

⁵⁶ T. Gould, ‘The European Economic Area as a Model for the Wider Europe’, background paper presented for the EFTA meeting of Members of Parliament and Social Partners, Kristiansand, Norway, 26 June 2003, unpublished; H. Graver, ‘Mission Impossible: Supranationality and National Legal Autonomy in the EEA Agreement’ (2002) 7 EFA Rev, pp. 73–90; M. Emerson, M. Vahl and S. Woolcock, ‘Navigating by the Stars. Norway, the European Economic Area and the European Union’, Brussels, CEPS, 2002.

⁵⁷ But then we can say that, as odd as this may sound, Israel and Iceland are not so different in terms of their respective positions vis-à-vis the EU (both are in the EU’s outer periphery, isolated from the EU and not immediately contiguous, and equidistant from the USA and the EU in trade and strategic terms).

promise of upgrading and twinning schemes. Until now, there is no trace of inspiration drawn either from the EEA or from the Swiss experiences in the Israeli AP, but Commission officials have intimated to the authors that that does not mean that after the 3–5 years the AP is supposed to last that could change. Neither is participation in ‘decision-shaping’ (a hallmark of the EEA process) contemplated for Israel. Instead the Commission envisages that an obligation to exchange information on future directives related to the Internal Market would be inscribed in a new Neighbourhood Agreement (something Switzerland has gotten in the relevant bilateral agreements), possibly to be adopted at the very end of the implementation of the Action Plan. And, according to the Commission, Israel could be progressively involved in agencies and committees relevant to the Internal Market such as in European standards bodies (CEN, CENELEC, ETSI) either as an observer or as a full member.⁵⁸ However, bluntly put, this very cautious approach is rather fastidious and annoying for Israel, in that economically and politically Israel has more features in common with Switzerland than with central and eastern European countries.

The EU will want to conclude a balanced package of bilateral agreements between both sides and not a juxtaposition of agreements. And by ‘balanced’ the EU might include in the package some politically charged agreements and understandings (for example on weapons of mass destruction, human rights or minority rights).

All in all, the analysis above reflects that the situation is somewhat more encouraging for Israel regarding the ENP launched by the EU in 2003 than regarding the current Association Agreement. The economic concessions that the EU offered to Israel in the context of the Barcelona Process for the establishment of a ‘zone of shared prosperity’ through a ‘real partnership’ were not only insufficient but were also too back-loaded to entice Israeli politicians to ‘tie their hands’ into the EU’s evolving regional governance system. What we mean here is that the attractiveness of the ‘old’ EMP as an anchor for policy reforms in Israel (desired by the EU) could have been increased had the 1995 Association Agreement contained more tangible and immediate trade concessions – especially in agriculture, processed food and with respect to cumulation of origin rules. The opening of new export markets through EU concessions reduces the domestic pressure on any reforming Israeli government directly and allows the Israeli political class to strike alliances with export-oriented producers. This is exactly what the new European Neighbourhood Policy is all about in the economic realm. In fact, we would conclude by saying that ‘offering a stake in the EU’s Internal Market’ could paradoxically be the economic and political roadmap imposed

⁵⁸ Israel has already asked for participation in the European Environmental Agency but to no avail thus far.

by the EU for exporting its norms to Israel. On the other hand, we would expect some, if not considerable, opposition to reform not only by competing local importing firms (such as financial institutions and insurance companies) or production factors (such as unionized port workers), as is the case with sheer tariff liberalization in the context of the old EMP, but also by sectors of the public and/or the civil society at large, because integration in the Single Market could be seen by many as questioning national identity.

