



## Conflict Resolution in the Neighbourhood

### Comparing the Role of the EU in the Turkish-Kurdish and Israeli-Palestinian Conflicts

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#### Abstract

Much of the EU's foreign policy is in practice conducted through its bilateral contractual relations with third parties. These have taken different forms, ranging from the accession process to looser forms of association. Contractual ties are characterised by the delivery of specific benefits governed by mutual obligations, which can thus potentially transform the incentive structure underpinning conflicts within or between non-member states. The aim of this paper is to compare the manner in which the Union's bilateral relations have affected two key conflict areas in its neighbourhood: the dispute between the Turkish state and the Kurds, and that between Israelis and Palestinians. The two conflicts differ significantly, as do the Union's relations with the parties. Yet in view of these very differences, a comparison of the EU's role in each conflict could prove fruitful. It could offer important insights on the potential benefits and effective limits of the Union as a third party actor in conflict settlement and resolution in its turbulent neighbourhood.

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# CONFLICT RESOLUTION IN THE NEIGHBOURHOOD

## COMPARING THE ROLE OF THE EU IN THE TURKISH-KURDISH AND ISRAELI-PALESTINIAN CONFLICTS

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### 1. Introduction

The logic of and interest in comparing the European Union's role in the Turkish-Kurdish and Israeli-Palestinian conflicts is far from immediately obvious. Not only are the two conflicts significantly different in their historical trajectories and in their domestic, regional and international facets, but the role of the EU in these two regions has also been widely diverse. Following a brief overview of these differences, and in view of the diverse, yet comparable role played by the Union in both regions, this paper attempts a comparison of the EU's role and impact in the two conflict areas. It aims at highlighting some of the major benefits and shortcomings of the Union in contributing to an amelioration or resolution of ethno-political conflicts at its doorstep.

In analysing the EU's role, the first evident observation is that in neither conflict has the Union adopted a prime diplomatic mediation role. In the Israeli-Palestinian conflict, although the Union's role in the peace process was institutionalised through the formation of the 'Quartet' in 2001, its position has remained secondary to that of the United States. On the Kurdish question, the Turkish state has never invited any official international mediation, including that of the EU.

As such, this paper will focus on a different dimension of EU foreign policy, namely the EU's contractual ties with the conflict parties. The EU's contractual ties have taken different forms. They have included the full accession process as well as weaker forms of association, partnership and assistance. Recently, the Union's European Neighbourhood Policy (ENP) has attempted to bridge the gap separating accession from non-accession relationships.

As the name suggests, contractual relations foresee the delivery of EU-related benefits through different degrees of integration into the EU, in return for the fulfilment of specified obligations. The fulfilment of obligations can be *ex ante* or *ex post*, i.e. either conditions need to be fulfilled before the contract is agreed, or conditions specified in a concluded agreement need to be respected otherwise the contract may be lawfully suspended (or both).<sup>1</sup> The case of the Copenhagen criteria is an example of the former, while the 'human rights clause' in Euro-Mediterranean Association Agreements is an example of the latter. Obligations are political and economic as well as technical, legal and institutional, related to the EU's *acquis communautaire*.

Other than degrees of integration per se, this form of foreign policy is intended to foster long-term structural change in the political, economic, legal and institutional spheres, both within and between non-member countries.<sup>2</sup> Given the intent to expand the scope of EU governance beyond

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<sup>1</sup> Piotr Zalewski (2004), *Sticks, Carrots and Great Expectations: Human Rights Conditionality and Turkey's Path towards Membership of the EU*, Report 09/04, Centre for International Relations, Warsaw.

<sup>2</sup> Stephan Keukeleire (2000), *The EU as a Diplomatic Actor*, Discussion Paper No. 71, University of Leicester.

the EU's frontiers through the specification of benefits and obligations, contractual ties can affect conflicts by acting upon the domestic incentives underpinning them.<sup>3</sup> This often occurs through EU conditionalities on the conflict parties, on which the following sections largely focus.<sup>4</sup>

## 2. Setting the scene: The structural differences between the two conflicts

The Turkish-Kurdish and Israeli-Palestinian conflicts are structurally different in their underlying causes, subsequent manifestations and attempted solutions. In so far as this paper does not intend to compare the two conflicts as such, far from doing justice to their respective histories, it only outlines some of the major features distinguishing them. It does so in order to set the scene for the ensuing comparison of the EU's role in the two areas.

First, historically the two conflicts emerged in radically different ways. In Israel, the conflict emerged as an identity-based conflict, as the Zionist endeavour to construct a Jewish state in the Holy Land was resisted by the predominantly Arab and Muslim worlds, including the local Palestinian population (both Muslim and Christian) living under the British mandate. Following the Arab rejection of the 1947 partition plan (which provided for two, albeit not ethnically-cleansed, entities), the 1948 war and the ensuing flux of Palestinian refugees epitomised the crux of the identity-based conflict. Today, these aspects relate to the fate of the Palestinian refugees as well as to the status of the Palestinian minority in Israel. Touching on the key issue of the nature of the State of Israel, they represent by far the most intractable issues of the conflict. With the 1967 war, the conflict acquired a distinct territorial aspect. Through the occupation of the West Bank and the Gaza Strip (as well as the Golan Heights), the conflict became largely focussed on territory: on the one hand, there is Israel's construction of settlements, roads and walls and its seizure and destruction of land and property; on the other hand, there is the Palestinians' violent resistance, including the use of terrorism, against Israeli policies. Since the Oslo Process, the territorial aspects of the conflict (concerning settlements, borders and water) have become a major focus of negotiations. Yet paradoxically these represent the most amenable issues for compromise (with the exception of Jerusalem, which has both a territorial and religious meaning).<sup>5</sup> The PLO's 1988 effective acceptance of a two-state solution potentially meets the Zionist left's priority to secure a 'Jewish democratic state', and its consequent understanding of the need to withdraw from the Palestinian-inhabited occupied territories. Recent unofficial Israeli-Palestinian initiatives such as the 2003 Geneva Accords show that compromise could be possible. While radically different in nature and intent (in its fundamentally different view of what a two-state solution would look like), the current right-wing Israeli government's push to disengage from Gaza appears to stem from a similar demographic logic.

In Turkey, the Kurdish question evolved in reverse order. As opposed to Zionism, Kemalism (at least in principle) adopted a civic understanding of the Turkish nation, and for decades denied the existence of a specific Kurdish identity.<sup>6</sup> The Turkish Republic indeed recognised no minorities, other than three non-Muslim minorities defined in the 1923 Treaty of Lausanne (i.e. the Greeks, the Armenians and the Jews). All other citizens, irrespective of their ethnic, linguistic, cultural or religious background were conflated into one community. The choice of adopting a civic

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<sup>3</sup> Nathalie Tocci (2004), *Conflict Resolution in the European Neighbourhood: The Role of the EU as a Framework and as an Actor*, EUI Working Paper No. 2004/29, RSCAS, Florence.

<sup>4</sup> On EU political conditionality see Karen Smith (1998), "The use of political conditionality in the EU's relations with third countries: How effective?", *European Foreign Affairs Review*, Vol. 3, pp. 253-74.

<sup>5</sup> Asher Susser (2000), "Picking up the pieces", *Tel Aviv Notes*, No. 3, October (retrieved from <http://www.dayan.org/TAUnotes3.pdf>).

<sup>6</sup> On the conceptualisation of Turkish nationalism see Hugh Poulton (1997), *Top Hat, Grey Wolf and Crescent*, London: Hurst and Co.

conception of the nation was not in itself problematic. Indeed, in the early 20<sup>th</sup> century, when Europe was marred by successive wars in the name of ethnic nationalism, the adoption of a civic conception of the nation was highly progressive. Yet the problem emerged when in state policies, specific ethnic undertones began permeating Turkish nationalism. These undertones focussed on the primacy of the Turkish language and the Hanefi school of Sunni Islam. The predominantly Kurdish-speaking south-east bore the brunt of this evolution (although other minorities, such as the Christian Syrians or the Muslim Alevites did as well).<sup>7</sup> Past promises for local autonomy were denied, people were transferred (under the 1934 Law 2510), cultural and linguistic specificities were repressed, and during the decades of industrialisation and modernisation, the agricultural south-east was largely neglected. The seeds were thus sown for conflict, which initially centred largely on the territorial socio-economic conditions of the south-east. By the late 1970s, however, with rising ideological extremism followed by military rule and an exacerbation of repressive state policies, the Kurdish question acquired distinctly identity-related features. But rather than manifesting itself as a Turkish-Kurdish ethnic conflict, the Kurdish question was characterised by a Kurdish struggle against the Turkish state. The most visible and devastating manifestation of this conflict was the effective civil war between the separatist PKK and the Turkish armed forces in the 1980s and 1990s.

Second, the Israeli-Palestinian and Turkish-Kurdish conflicts have taken divergent courses when it came to attempted solutions. In Israel-Palestine, the compromise solution, accepted in principle by the two parties (with the exception of the most extreme actors) and supported by the international community, has been the two-state solution. Hence, it entails the establishment of two states, Israel and Palestine, bordering approximately on the 1967 lines, with Jerusalem as a shared (or divided) capital and a solution to the refugee problem largely based on compensation and re-settlement, rather than return to their original properties in Israel. Compared with other conflicts, this theoretical acceptance of a two-state solution is atypical. Normally, both the metropolitan state and the wider international community vehemently reject secession as a solution to an ethno-political conflict. The principle of territorial integrity is viewed as sacrosanct, even when realities on the ground evolve in diametrically opposite directions (e.g. in the conflicts of the South Caucasus, the Balkans, Moldova or Cyprus). In the Middle East, the opposite has been true. While the 'secessionist' party (i.e. the Palestinians) had originally called for a single, unitary multi-ethnic state, the metropolitan state (i.e. Israel) has always rejected the concept of a joint Jewish-Palestinian state, which ran counter to its core interpretation of Zionism.

In Turkey, the secessionist PKK organised its armed struggle in the 1980s ostensibly in order to establish a Kurdish state based on Marxist principles. Yet in practice, most of Turkey's Kurds never viewed secession as a first-best option.<sup>8</sup> Most Kurds view the respect for human and minority rights, as well as decentralisation and possibly federalisation within Turkey as far more desirable outcomes. Moreover, the Turkish state has forcefully opposed all actions that it viewed as supporting secession. State repression was applied equally to violent acts openly seeking secession, such as the war launched by the PKK, as well as to the peaceful articulation, through cultural or political expressions, of a distinct Kurdish identity. Hence, given the wishes of the Kurdish majority and the iron-strong will of the Turkish state, seeking a political (as well as

<sup>7</sup> Nathalie Tocci (2001), *21<sup>st</sup> Century Kemalism: Redefining Turkey-EU Relations in the Post-Helsinki Era*, Working Paper No. 170, CEPS, Brussels.

<sup>8</sup> A 1995 study by Professor Doğu Ergil conducted in three eastern provinces and three southern provinces showed that the overwhelming majority of the respondents favoured a solution within the confines of the Turkish state, with 36% of support for a federation, 17% for decentralisation and 11% for autonomy. Only 13% supported a separate state. See Doğu Ergil (1995), *Doğu Sorunu: Teşhisler ve Tesbitler*, Türkiye Odalar ve Borsalar Birliği, Ankara. The support for any 'territorial solution' (including federalism and autonomy), as opposed to a 'rights' solution falls considerably if Kurds living in Western Turkey are included in surveys.

socio-economic) solution within the confines of the Turkish state has represented the only feasible compromise strategy. As in the case of Israel-Palestine, while on the opposite end of the constitutional spectrum federal solutions have never been discussed seriously in the Turkish-Kurdish context.

Third, the two conflicts have been marked by diverse regional and international dimensions. The Israeli-Palestinian conflict has been among the most internationalised conflicts of the 20<sup>th</sup> century, not least owing to its specific history and wider geopolitical significance. Particularly since the 1970s, the conflict has witnessed muscular US mediation, as well as the constant interest of major European states and increasingly the Union as a whole. By contrast in Turkey, the Kurdish question has seen no international mediation at all. This has been not least because the conflict has retained a predominantly domestic dimension and because the Turkish state has resisted international interference, both official and unofficial. The Turkish state initially tackled the Kurdish armed insurgency exclusively through military means. Yet unlike other ethno-political conflicts, in which the secessionist minority succeeded through violence in affirming *de facto* (albeit not *de jure*) sovereignty, in the case of Turkey, the relative ‘victory’ of the Turkish armed forces against the PKK meant that the Kurdish question has been confined within the boundaries of the state. With the end of large-scale violence, in recent years the state has embarked on different, non-military avenues to resolve the Kurdish question. But it has retained exclusive control over the specific solutions adopted, despite the rising indirect involvement of official European as well as civil society actors.

Both conflicts have also had important, albeit different, regional dimensions. In the case of Israel-Palestine, the first evident regional dimension has been the wider conflict between Israel and the Arab world, and since the 1979 revolution, also with Iran. A related regional dimension, closer to the specificities of the conflict in question, is given by the Palestinian refugees, who have only partially integrated in host countries such as Syria, Jordan and, most problematic of all, Lebanon.<sup>9</sup> In Turkey, the regional dimension derives from the fact that the Kurds are scattered among Turkey, Iraq, Iran and Syria. Although cross-country political links between Kurds are loosely developed, their very presence has greatly affected regional politics.<sup>10</sup> When relations between Turkey and its southern neighbours have been tense (i.e. after the 1979 revolution in Iran or in the 1990s when water disputes over the Euphrates soured Turkish-Syrian relations), the Kurdish question was used as a source of leverage against Turkey (i.e. through Syrian and Iranian support for the PKK). Yet since the run-up to the 2003 war in Iraq, the Kurdish question has brought the countries of the region closer together. Their shared fears of a disintegrating Iraq and the emergence of a Kurdish state have led to enhanced cooperation between Syria, Iran and Turkey.

Finally, and coming closer to the question underlying this paper, the contractual ties linking the Union to these two conflict areas have been very different. Although projected into a long-term future, since the 1963 Association Agreement Turkey has always had the prospect of joining the Union.<sup>11</sup> As a culmination of the association process, in 1996 Turkey formally entered the EU’s customs union. A qualitative step further was made in 1999, when the European Council in Helsinki, in the midst of uncertainties, accepted Turkey’s EU candidacy. Following a European Council decision in December 2004, the Union is expected to open accession negotiations with Turkey in October 2005.

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<sup>9</sup> Tanya Salem (2003), *Palestinian Refugees: How can a Durable Solution be Achieved?*, Middle East Working Paper No. 6, CEPS, Brussels, July.

<sup>10</sup> On the cross-country dimension of the Kurdish question, see David McDowall (2000), *A Modern History of the Kurds*, London: I.B. Tauris.

<sup>11</sup> Turkey’s eligibility for membership has been based on Art. 28 of the Association Agreement; although it does not commit the Union to Turkey’s full membership it did not exclude this eventuality.

In contrast, neither Israel nor the Palestinian Authority (PA) has ever had any membership prospects. Although Israel concluded its first trade agreement with the Community back in 1964, the relationship never included the option of full integration into EU structures. That is not to say that the relationship has been static. On the contrary, it has deepened significantly and continues to do so. The Community and Israel have also signed complementary agreements on procurement, the liberalisation of agriculture, Israel's inclusion in EU scientific and technical cooperation and the European Global Navigation Satellite System (Galileo). The Israel Action Plan under the emerging ENP maps out a wide scope for further integration.

Owing to the absence of a state and the humanitarian and economic conditions in the occupied territories, bilateral relations between the Union and the Palestinians evolved later and with a greater emphasis on aid over trade. In 1986, the member states allowed preferential trade access to specific Palestinian products. In the context of the Oslo process, the member states stepped up their economic support to the Palestinians, directed primarily towards the PA, the embryo of a future Palestinian state. In 1997, the EC-PLO Interim Association Agreement came into force, upon which was the Union's anticipation of Palestinian statehood was underlying. The aim was to further trade liberalisation and to establish a framework for political dialogue with the PA. Like Israel, the PA is also included in the ENP.

Hence, Turkey, Israel and the PA have all enjoyed different, albeit important, contractual ties with the Union. The difference in these relationships opens the scope for an interesting comparison. To what extent has the Union used the potential influence embedded within these ties to positively affect the respective conflicts? If the EU's potential has not been fully realised, what explains its deficiencies?

### **3. EU objectives in the two conflicts**

To determine the effectiveness of the EU's role, the natural starting place is an overview of the EU's objectives in these regions. The following sections then attempt to determine to what extent EU goals have been met, and most importantly how and why they were fulfilled or otherwise.

The EU's objectives in the Middle East conflict have been articulated around two interconnected pillars, which consolidated over the decades into a relatively well-defined view of the conflict and its resolution by the turn of the century. The first pillar has been the need to respect the collective rights of the Israeli and the Palestinian peoples. The EC/EU has historically recognised Israel's right to statehood and to live in peace with its neighbours within secure and internationally recognised boundaries. The European position towards the Palestinians has instead been defined progressively over the decades. From open-ended support of Palestinian self-determination in the 1980 Venice Declaration, by the end of the Oslo process in 1999 the Union asserted that "the creation of a democratic, viable and peaceful sovereign Palestinian state...would be the best guarantee of Israel's security".<sup>12</sup> With the eruption of the second intifada, the EU felt emboldened to further articulate its vision for a peaceful Middle East.<sup>13</sup> This entailed the creation of two states, Israel and Palestine, living in peace and security within internationally recognised borders. The state of Palestine would be viable, independent, sovereign and democratic, and it would be established along the 1967 borders, with minor and mutually agreed adjustments if necessary.

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<sup>12</sup> See the European Council's (1980) Declaration on the Situation in the Middle East by the European Council in Venice, 12-13 June, point 7; and also the European Council's (1999) Presidency Conclusions in Berlin on 24-25 March.

<sup>13</sup> See the European Council's (2001a) Declaration on the Situation in the Middle East by the European Council in Laeken on 14-15 December; see also the Presidency Conclusions from the European Council (2002a) in Seville on 25 June.

The second pillar of EU goals has been the importance of respecting human rights, democracy and international humanitarian law. Most EU declarations on the Middle East conflict since the 1970s have condemned Palestinian violence and terrorism, pointing to the violations of rights and law that such acts entailed. The member states have also condemned Israeli settlements in the occupied territories, whose construction contravenes the Fourth Geneva Convention governing the laws of occupation.<sup>14</sup> With the collapse of the Oslo process, the Union intensified its calls to halt and reverse settlement construction, and denounced the whole array of human rights and humanitarian law violations, ranging from Palestinian suicide bombings, to Israeli incursions, extra-judicial killings and forms of collective punishment.<sup>15</sup> It repeatedly affirmed that Israeli security and Palestinian self-determination should be pursued within the confines of international law. Over the course of the intifada, two final issues featuring prominently in EU declarations have been Israel's barrier/wall constructed in the West Bank, and issues of democracy, governance and reform within the Palestinian Authority. Hence by the turn of the century, EU declarations stipulated clearly both what their ultimate vision in the Middle East was and what were the necessary means to achieve this. The aim was that of a two-state solution on the basis of the 1967 borders. The means were to be negotiations and the respect for human rights, democracy and international law.

When it comes to Turkey's Kurdish question, the Union has never specified to the same level of detail its preferred solution. Although in a 1990 resolution the European Parliament (EP) called for an autonomous Kurdish region in south-eastern Turkey, such degree of specification has been the exception rather than the rule.<sup>16</sup> Beginning with the 1998 progress report on Turkey, the Commission has called for "a political and non-military solution to the problem of the south-east".<sup>17</sup> Yet it barely defined what such a solution entailed in constitutional, socio-economic or political terms. In 1998 it simply stated that "a civil solution could include the recognition of certain forms of Kurdish cultural identity and greater tolerance of the ways of expressing that identity, provided it does not advocate separatism or terrorism".<sup>18</sup> In its 2004 report, in the light of existing progress in the region, the Commission only went a tentative step further. It recommended that "the normalisation of the situation of the south-east should be pursued through the return of displaced persons, a strategy for socio-economic development and the establishment of conditions for the full enjoyment of rights and freedoms by the Kurds".<sup>19</sup> In other words, the EU's prescriptive steps regarding the Kurdish question have remained extremely vague and open-ended.

That is not to say that the Union has not spelled out sufficiently precise guidelines and recommendations on issues that are directly or indirectly relevant to Turkey's Kurdish question. When taken collectively, these recommendations give a clear idea of the Union's overall goals concerning Turkey's Kurds. On top of the EU's wish-list has been the need for Turkey to respect

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<sup>14</sup> See the Declaration of on the Middle East by the European Council (1990) in Dublin on 25-26 June. Art. 49 of the Fourth Geneva Convention states that "the occupying power shall not deport or transfer parts of its own civilian population into the territories it occupies".

<sup>15</sup> See the European Council's (2001b) Declaration of the Presidency on behalf of the EU, "Israeli settlement activities", 7590/01, Presse 134, 4 April; and also the General Affairs Council's (2001) Draft Declaration of the EU for the Second Meeting of the EU-Israel Association Council, Brussels, 14 November; and the Conclusions on the Middle East by the General Affairs and External Relations Council (2003), 29 September.

<sup>16</sup> See the European Parliament Resolution on 11 July 1990, JO 1990, C231/172, 17 September 1990.

<sup>17</sup> European Commission (1998), *Regular Report on Turkey's Progress towards Accession*, p. 20 (retrieved from <http://www.europa.eu.int>).

<sup>18</sup> Ibid.

<sup>19</sup> European Commission (2004a), *Regular Report on Turkey's Progress towards Accession*, SEC(2004) 1201, Brussels, 6.10.2004, p. 167 (retrieved from <http://www.europa.eu.int>).



the individual human rights of all its citizens, including its Kurdish population. The Commission's successive progress reports and its two accession partnership documents (in 2001 and 2003) have repeatedly stressed the need to guarantee non-discrimination, women's and children's rights and the freedoms of thought, expression, association, peaceful assembly and religion. The Commission's documents have also called for the abolition of the death penalty (including the non-execution of Kurdish leader Abdullah Öcalan's capital punishment), the eradication of torture and the respect of rights and standards in trials and detention periods.

Several Commission recommendations on individual human rights have been specifically tailored to the Kurds. Particularly when the war against the PKK was raging in the south-east, the Commission condemned the destruction of villages and the ensuing displacement of persons. Until 2002, it repeatedly called for an end of the state of emergency rule in the south-east. Indeed lifting the state of emergency was a short-term recommendation in the first Accession Partnership. In its most recent reports in 2003 and 2004, the Commission has called for the return of internally displaced persons (IDPs) to their original settlements and has expressed concern over the persisting presence of the 'village guard' system.<sup>20</sup> The Commission has also called for bridging regional disparities through an adequate socio-economic development plan, aimed at improving health, education and water facilities in the south-east.

Beyond recommendations on individual human rights, the Commission has also made specific demands concerning cultural rights, affecting principally (but not exclusively) the Kurds. Hence, the Union has called for the right to use Kurdish names and the rights to broadcasting and education in languages other than Turkish (most notably Kurdish). The Commission has also made successive remarks on effective political participation in Turkey. It has viewed with displeasure the banning of pro-Kurdish political parties (DKP, DEP, HADEP and the current proceedings against DEHAP) and has repeatedly pointed out the lack of movement on the highly restrictive 10% electoral threshold (which essentially prevents parliamentary representation of pro-Kurdish parties largely concentrated in the south-east). Finally, and again without either entering into specific proposals or referring to the Kurdish question, it has viewed positively Turkey's first tentative moves towards decentralisation in 2003-04.

#### **4. The record so far**

In the light of the EU's explicit and implicit goals in the two conflict areas, what has been the record on the ground so far?

##### **4.1 Violating rights and pre-empting a viable two-state solution in the Middle East**

In the Middle East, with the eruption of the second intifada in September 2000 and the ensuing final blow to the Oslo process, the region has seen a mounting cycle of violence that has entailed violations of human rights, democracy and international law, as well as a steady reversal from the accomplishment of a viable two-state solution. The intifada has witnessed Israel's effective reoccupation of all Palestinian territories. The reoccupation has led to mounting human rights and humanitarian law violations, resulting in an ever-rising number of Palestinian casualties and a deepening humanitarian crisis in the occupied territories. Israel has been held responsible for the use of excessive force, targeted assassinations and for sweeping restrictions on movement through closures, checkpoints and curfews. Furthermore, the West Bank in particular has

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<sup>20</sup> The village guards are Kurdish civilians, armed and paid by the state to fight the PKK. The number of village guards rose from 18,000 in 1990 to 63,000 in 1994. Their continuing presence has acted as one of the impediments of IDP return.

witnessed an expanding network of Israeli settlement blocs and highways connecting them. In addition, in June 2002, the Israeli government approved the construction of a barrier/wall in the West Bank. The wall cuts deep into Palestinian territories, resulting in a *de facto* annexation of land. Owing to its route as well as its human rights effects, the International Court of Justice (ICJ) has deemed the barrier illegal in July 2004.

Palestinian militant groups have also perpetrated grave violations of human rights and international law. These have primarily taken the form of suicide bombings, principally targeting Israeli civilians within the State of Israel. The identified responsible groups have been Hamas, the Islamic Jihad, the Popular Front for the Liberation of Palestine and the al-Aqsa Martyrs Brigade. Suicide bombings and other attacks aimed at civilians are prohibited by Protocol 1 of the Geneva Conventions. Yet a legal difficulty has arisen from the fact that the Conventions only refer to the obligations of states and state-like actors. Moreover, the criminal provisions of humanitarian law are based on the doctrine of command responsibility, according to which persons in positions of authority who fail to take adequate preventive measures are also held accountable. An issue has therefore been to what extent the PA, as a state-like actor, should be held responsible for attacks against Israeli civilians. Human Rights Watch did not find evidence that the PA planned, ordered or carried out suicide bombings or other attacks on Israeli civilians.<sup>21</sup> The leadership was criticised, however, for failing to take adequate action to prosecute those responsible for the attacks.

The developments in the last four years have also reduced the prospects of a viable two-state solution. On the Israeli side, the policy of ‘cantonisation’ has worked against this end-point. The first element of this policy has been the ongoing settlement expansion in the West Bank, gradually reversing facts on the ground. Initially West Bank settlements were isolated enclaves in Palestinian territory. Now Palestinian towns are increasingly becoming isolated enclaves in Israeli territory. So far, the West Bank has been sub-divided into over 50 enclaves, East Jerusalem has been separated from the rest of the West Bank and the northern sections of the West Bank have been separated from the southern sections. The construction of the West Bank barrier/wall forms part of the same logic, given its *de facto* annexation of 60% of the settlements and 90% of the settler population.

The most recent element in Israel’s cantonisation strategy has been the ‘disengagement plan’, first outlined by Prime Minister Ariel Sharon in December 2003. The plan foresees Israeli troop and settlement withdrawal from the Gaza Strip and four settlements in the northern West Bank. As the Israeli right became increasingly sensitive to the ‘demographic threat’, which had historically formed the core logic of the Zionist left, it put forth the disengagement plan as a formula to maximise Israeli land annexation while minimising the number of Palestinians included in it. Many in Israel, Palestine and abroad have acclaimed the plan. Even those hoping to see the emergence of a viable Palestine optimistically expect a peaceful disengagement from Gaza to have a domino effect on settlement dismantlement in the West Bank. Yet, while these spin-off effects may bear fruit, so far the plan remains in line with the vision of the Israeli right. To date, the plan’s more likely evolution is a disengagement from Gaza as a means to consolidate Israel’s grip on large portions of the West Bank, thus contributing to the strategy of cantonisation at clear odds with the emergence of a viable Palestinian state. Israel’s ongoing plans for settlement construction in the West Bank and its re-routing of the fence to comprise the expanded settlement blocs appear in line with this unchanged strategy.<sup>22</sup>

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<sup>21</sup> Human Rights Watch (2002), *Erased in a Moment: Suicide Bombing Attacks against Israeli Citizens*, HRW, New York, October.

<sup>22</sup> Palestine Media Centre (2005), “PNA: Israel Cannot Have both Settlements and Peace – Israeli Housing Minister: Gaza Jewish Settlers Could Move to West Bank”, PMC, 16 February.

Finally, the dynamics within Palestinian politics have also lent support to Israeli strategies and arguments. Two clearly discernible questions are those of violence on the one hand and good governance and democracy on the other. While remaining distinct issues, there are inter-linkages between the two. On the question of violence, the criminal acts perpetrated by Palestinian militias and the Authority's ineptness and perceived unwillingness to quell them discredited the goal of an independent and sovereign Palestine and supported the thesis that owing to the absence of a Palestinian 'partner for peace', Israel should proceed with unilateral actions.

On the wider questions of Palestinian democracy and good governance, prior to the intifada, criticism against the PA and its leadership had mounted from the inside. Segments of the population resented the leadership for having failed to deliver peace, democracy and better standards of living. Further, they resented the widespread corruption, inefficiency and authoritarianism of the PA. In response to internal and external pressures, the PA did launch a process of reform in 2002, aimed at strengthening good governance and democracy. In 2002, the Basic Law was adopted, and it was revised in 2003 to allow for a prime ministerial post. A Law on the Independence of the Judiciary was passed. Significant progress was made in the management of the PA's finances, thus curbing the potential for corruption. Yet more often than not reforms have been superficial. In 2003, the creation of the prime minister's post did not come with its effective empowerment, as most control remained in the president's hands. The cabinet was reshuffled in 2002, but apart from a few exceptions, the changes were largely cosmetic. In the security sector, the bulk of the reform has yet to be undertaken. In the fiscal sector, the late President Yasser Arafat retained approximately 8% of the budget, i.e. enough to persist in the nepotism that lies at the fore of the corruption and concentration of powers in the president's hands.

The death of Mr Arafat opened the space for a reshaping of Palestinian domestic politics, not least through new elections and an enhanced dialogue with the Islamic parties. Since Mr Arafat's successor, Mahmoud Abbas, has taken the reigns of power, a far more genuine process of reform has been in the making. There has been a greater empowerment of the prime minister, with President Abbas and Prime Minister Ahmed Qureia sharing (not without difficulties) powers between them. Greater transparency in PA public finances through the control of the president's funds is underway. The security sector is undergoing a more systematic process of reform. Dialogue between the Palestinian factions has enhanced and improved, opening the prospects for the Islamic parties' co-option into the political system and an ensuing narrowing of polarisations within Palestinian politics. In short, the successes of the early days in Mr Abbas's presidency are evident on most fronts. Nevertheless, without underestimating these steps, key challenges remain ahead. These are not only related to the evolving dynamics within the major Fatah bloc and between Fatah and the Islamic parties. They are also pivotally linked to the manner in which Israel, in practice, will choose to respond to these shifts. In other words, it remains to be seen whether the post-Arafat era will see greater coherence and unity among Palestinians or increased chaos and fragmentation in the occupied territories.

In conclusion, to date the pre-emption of a viable two-state solution is relentlessly progressing. Beneath the day-to-day voices, events, hopes and despairs, the fundamental trends persist unabated. Without their radical overhaul, a worst case scenario could see Israel withdrawing its settlers and soldiers from selected territories and relocating them in large annexed areas of the West Bank. Beyond the barrier, Palestinians would be relegated to enclaves connected by tunnels and roads. A submissive Authority would be charged with providing services to its population, with varying degrees of success in terms of democracy and good governance depending on the success of PA reform. If the Palestinians and the international community so wished, these enclaves could also be called a 'state'. Again depending on the success of a reformed PA, Palestinian violence could reduce, although it is unlikely to cease so long as the situation on the ground remained fundamentally unaltered. This tragic scenario has many pitfalls. It would

require Israel's ability to peacefully evacuate some of its settlers, without an internationally sponsored peace process. Moreover, it would entail that the Palestinians would stay put with Gaza and approximately half of the West Bank. The unlikelihood of this happening suggests that instability would persist and continue to spill over into Europe in increasingly complex and dangerous ways. To date, with the partial exception of Palestinian reform, EU ties with the parties do not appear to have significantly altered these underlying trends.

## 4.2 Reforms and pending restrictions in Turkey

In Turkey up until the turn of the century, the Kurdish question either deteriorated or failed to improve beyond cosmetic gestures. Yet contrary to the Middle East, since 1999 a process of normalisation has been ongoing in Turkey's south-east with an accompanying improvement of human rights and the rule of law for all Turkish citizens. These ongoing reforms have approximated (although not fully met) the Union's recommendations and conditions.

Particularly since 2000, Turkish governments have pursued an ongoing and unprecedented process of domestic political reform. Irrespective of the limits of the reform process, what appears irrefutable is that an important process of democratic change is in the making and that this affects, for the better, the condition of Turkey's Kurds. More specifically, in October 2001, the Turkish Grand National Assembly approved 34 constitutional amendments, most of them in the area of human rights.<sup>23</sup> These were followed by a set of seven harmonisation packages passed in 2001-03, which amended the laws of the Penal Code and the Anti-Terror Law.<sup>24</sup> A further set of constitutional amendments was passed in May 2004.<sup>25</sup> This was followed by an eighth harmonisation package and the adoption of a new Law on Associations and on the Penal Code in July and September 2004 respectively.

Most reforms, while improving the situation of all Turkish citizens, also improved that of the Kurds. For example, considerable steps were taken towards protecting the freedom of expression by amending or abolishing restrictive constitutional provisions as well articles in the Penal Code or Anti-Terror Law. By removing constitutional restrictions on the use of any 'language prohibited by law', these steps also safeguarded the freedom of expression of linguistic minorities such as the Kurds. The right to a fair trial was enhanced with the provision to allow for retrials of cases found contrary to the European Convention on Human Rights. This has led to the retrial of the Kurdish MPs Leyla Zana and co., who were ultimately acquitted by the Turkish Court of Cassation. Constitutional amendments and the new Law on Associations also lifted major restrictions on the freedom of association, providing more space for the establishment and operation of associations founded by and seeking to serve Kurdish citizens. In terms of effective political participation, the constitutional amendments and harmonisation packages increased the difficulty of banning political parties. These reforms should in future allow the survival of pro-Kurdish political parties.

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<sup>23</sup> Law No. 4709 Türkiye Cumhuriyeti Anayasasının Bazı Maddelerinin Değiştirilmesi Hakkında Kanun [Law on the Amendment of Certain Provisions of Constitution of the Republic of Turkey], 3 October 2001, published in the Official Gazette No. 24556, 17 October 2001.

<sup>24</sup> These reform packages, called a variation of 'Çeşitli (bazı) Kanunlarda Değişiklik Yapılmasına İlişkin (dair) Kanun' [Law on the Amendment of Various Laws] had the following numbers and were adopted by the Parliament on the following dates: 1) Law No. 4744 on 6 February 2002; 2) Law No. 4748 on 26 March 2002; 3) Law No. 4771 on 3 August 2002; 4) Law No. 4778 on 2 January 2003; 5) Law No. 4793 on 23 January 2003; 6) Law No. 4928 on 19 June and 15 July 2003; and 7) Law No. 4963 on 30 July 2003.

<sup>25</sup> The May 2004 package provided for amendments to Arts. 10, 15, 17, 30, 38, 87, 90, 131, 143 and 160 of the constitution.

Other reforms were adopted with the stated purpose of bringing a legal solution to the Kurdish question. These measures responded most notably to the long-sought Kurdish demands for language and cultural rights. The wide-ranging third harmonisation package granted linguistic groups broadcasting (radio and television) and private education rights in languages other than Turkish. Under the sixth harmonisation package, the broadcasting law was further amended to allow non-Turkish broadcasting in private radio and television stations. The foreign language law was amended in the seventh package to extend the rights to private language courses in Kurdish.

In terms of good governance, the Turkish government initiated a process of public administration reform with a view of decentralising governance and transferring some of the competences of the central authority to local government. Although this process of reform is still in its infancy, it represents the first step towards a gradual overhaul of the highly centralised Turkish system.

Finally, the territorial situation in the south-east has been gradually moving towards normalisation. By 2002, the state of emergency had been progressively lifted in all provinces, putting an end to almost 15 years of emergency rule in the south-east. In an effort to remedy the legacy of the state-of-emergency regime, in 2003 the government enacted an East and Southeast Action Plan, covering measures related to public administration, economy, health and education. The Action Plan also includes a resettlement scheme known as the Return to Village and Rehabilitation Programme for the IDPs from the region.

This is not to say that the reforms adopted are flawless and complete. Less still that the reforms are all effectively respected and implemented. Indeed, when it comes to the Kurdish question, two sets of problems remain to be tackled. First, important omissions in the amendments retained some of the most problematic constraints on the exercise of rights and freedoms. These are the very restrictions that had been enacted and/or disproportionately enforced against Kurds or pro-Kurdish groups and associations. For example, in terms of Kurdish political participation, a political party can still be banned if it is viewed as threatening the state's 'indivisible integrity with its territory and nation'. Indeed, in March 2003, the Constitutional Court ruled to permanently dissolve the pro-Kurdish party HADEP on this very basis. The procedure to dissolve its successor DEHAP is ongoing. The 10% electoral threshold remains unaltered. In terms of language rights, the law still bans Kurdish public education as well as private education in (rather than only of) Kurdish. Turkish also remains the only official language of the state, creating problems for the legal rights of non-Turkish speaking citizens. The retention of these provisions is not necessarily problematic from a strictly human rights perspective. Nevertheless, they do indicate that the reforms were not (and were not intended to be) situated within a minority protection framework.

Second, the tensions within some of the new laws and regulations render the legal system susceptible to abuse in implementation and enforcement. Many of the reforms, particularly in the area of language rights, were followed by restrictive implementing regulations adopted by the executive and the administration. These regulations toned down the forward steps made in the laws and constitutional amendments. For example, while an amendment of the Civil Registry Law removed the restriction to use names deemed 'politically offensive', a September 2003 circular restricted the scope of the law to names containing letters of the Turkish alphabet only. It thus banned names involving the letters of q, w and x, commonly used in Kurdish. Despite amendments, the broadcasting regulations remain restrictive. They preclude regional or local broadcasting, require state authorisation, establish direct state control over content and restrict the timing of the broadcasts. The object and purpose of the new laws were also hindered by overly activist prosecutors who took advantage of legal gaps and tensions to operate against the letter and spirit of the reforms. Finally, and not least because of the persistence of the village guard system, the implementation of the return-to-village programme continues at a slow and uneven pace.

## 5. Assessing the effectiveness of the EU's role

The previous sections have set out the EU's goals and the extent to which developments on the ground have corresponded or moved towards them. Regardless of whether EU goals were or are being met, the underlying premise of this paper is that the EU, as an external actor could not alone have determined events in these two regions. In both cases, developments have been dictated predominantly by domestic determinants, interacting with wider regional and international factors.

In the Israeli-Palestinian context, the inherent flaws of the Oslo Process, the failure of the Camp David II summit, the unwillingness and inability of the late President Arafat to reign in the intifada in its early stages, the election of Mr Sharon's Likud and the subsequent escalation of violence, counter-violence, human rights and international law violations acted as key determinants of the events documented above. Internationally, the post-9/11 aggressive stance towards the Middle East and its accompanying neglect of the Israeli-Palestinian conflict reinforced existing trends. More recently, intra-Israeli dynamics have led to the Sharon government's move towards disengagement, while intra-Palestinian dynamics have been largely responsible for the energised reform movement in the occupied territories.

In Turkey, the end of the war against the PKK with the capture of Abdullah Öcalan in 1999 both set the context and provided the necessary momentum to embark on a non-military solution to the Kurdish question. The ongoing self-reassessment of the role of the Turkish military, following four military coups in the Republic's history is another key factor. Perhaps most notably, the November 2002 election of the Justice and Development Party (AKP) with a wide parliamentary majority has meant that for the first time since the Turgut Özal years in the 1980s, Turkey has had a strong government, which is also strongly motivated to embark on a radical reform agenda. The ensuing strengthening of civil society as a result of the reforms in turn added to the momentum towards self-generating change in Turkey.<sup>26</sup> On the negative side, the remaining tensions between progressive and conservative forces in Turkey and the potentially destabilising effects of the ongoing war in Iraq at least partly explain the remaining limits of Turkey's reform process.

Irrespective of its power, status and resources, the EU has also been a major external actor in both the Israeli-Palestinian and Turkish-Kurdish conflicts. The underlying questions tackled below are thus the following: in the light of the EU's relations with the parties and its ensuing potential influence on them, has the Union put to best use its instruments in order to contribute to a realisation or approximation of its stated goals in these regions? Comparing across the two cases, what have been the major advantages of the Union's role and what have been its most glaring shortcomings?

### 5.1 The value of EU benefits

The potential effectiveness of the EU's contractual ties and the conditionalities that may come with them depends pivotally on the benefits on offer and the costs of compliance with contractual obligations. Only if the potential gains relative to the costs are perceived to be sufficiently high, could the Union meaningfully attempt to exert some form of influence on the two conflicts.

#### 5.1.1 *The objective value of the benefits*

As noted at the outset, the EU enjoys categorically different relations with the parties in the two conflicts. With Israel and the PA, since the mid-1990s the Union has had an association

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<sup>26</sup> On the role of the military, civil society and party politics in determining Turkey's reforms see the Special Issue on Turkey in *South East European Politics and Society*, spring 2005.

relationship. In the case of Israel, association has been far reaching, while in the case of the PA it has been complemented with high levels of assistance. As such, the objective value of these two relationships should not be underestimated. Certainly when compared to the Union's contractual ties with non-candidate countries, both Israel and the PA rank high on the EU's list of priorities, judging by the relationship both parties enjoy.

Nevertheless, the categorical difference with Turkey remains stark. As opposed to the Middle East, the Union has never excluded Turkey's prospects of membership and indeed its 1963 association included the possibility of entry. Yet, in terms of the ensuing influence of the Union, the Turkish precedent shows how the actual jump from association to accession has been crucial. Between Turkey's 1987 application for membership and the 1999 Helsinki Council, EU actors refrained from giving the green lights to Turkey's accession course. The nadir of EU-Turkey ties came at and after the 1997 Luxembourg European Council, in which the Union opted to open accession negotiations with the Central and Eastern European countries as well as with Cyprus and Malta, while not recognising Turkey as a candidate for membership.

During the 1990s, in view of the mounting violence in the south-east, EU institutions became increasingly vocal on the Kurdish question, spelling out long lists of political recommendations to Turkey. But EU calls and conditions largely fell on deaf ears. With the exception of a few and largely cosmetic gestures, the EU impact on the Kurdish question was virtually nil. For example, in the run-up to the 1996 customs union agreement, aware of the need to secure the European Parliament's ratification, Turkey pledged to address its human rights situation.<sup>27</sup> The EP had delayed the ratification of the agreement following the arrest of the Democratic Labour Party (DEP) members of parliament in Turkey and the EP-Turkey Joint Parliamentary Committee had been frozen. The Turkish government, however, refused to release the Kurdish MPs in response to European pressure. The Turkish parliament did approve an amendment to the infamous Art. 8 of the Anti-Terror Law in October 1995. This proved sufficient to assuage the EP and ensure its ratification of the customs union agreement. Yet in practice the amendments were superficial and fell way below the EU's expectations. Again, in the run-up to the Helsinki European Council, to secure a positive decision, the Turkish parliament amended Art. 143 of the constitution thus removing military personnel from state Security Courts. It also responded to EU pressure to allow Council of Europe monitoring of Mr Öcalan's prison conditions and trial. Nevertheless, these changes, while adding to the momentum in favour of Turkey's candidacy, did not significantly alter the status or situation of the Kurds.

Indeed, the first two Commission progress reports on Turkey (in 1998 and 1999) were largely negative. Furthermore, up until the accession process was launched, Turkey responded to EU (and Council of Europe) criticism with equal criticism and disdain. For example, when in a report in October 1994 the President of the Parliamentary Assembly of the Council of Europe Miguel Martinez called for amendments to the Turkish constitution and warned of a possible suspension of Council of Europe membership, Turkey simply stopped attending meetings of the Parliamentary Assembly. It only recommenced when in 1995 the Ministerial Committee of the Council of Europe overruled the decision of the Assembly.

The change of approach since Turkey was accorded EU candidacy in 1999 could not be starker. Although Turkey's reform process gained momentum slowly and was crucially linked to ongoing domestic developments, the beginning of Turkey's accession process had a fundamental, positive impact. The concrete prospect of joining the Union triggered an unprecedented reform process. The reforms were undertaken with the stated aim of fulfilling the Copenhagen political criteria (necessary to open accession negotiations). The gap between Turkey and the other candidates

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<sup>27</sup> Stefan Krauss (2000), "The European Parliament in EU External Relations: The Customs Union with Turkey", *European Foreign Affairs Review*, Vol. 5, pp. 215-37.

remained wide, both in terms of the timeframe for accession and the Union's political and material commitment to enlargement.<sup>28</sup> Yet relative to Turkey's own history of relations with the EU, not to mention the Union's ties to other southern neighbours (including Israel and Palestine), a categorical jump had been made. This rise in value empowered the most reform-minded circles in the country, tilting the political balance in their favour.

Drawing from the Turkish experience, logic would suggest that the Union's potential impact on countries it does not intend to include would be far lower. Both Israel and the PA fit squarely in this category. Although Israel enjoys highly developed ties with the EU, it is not included in the customs union, it does not enjoy the relationships characterising members of the European Economic Area and it does not have any prospects of entering the accession process. The Palestinians, while receiving key sums of money, are even further away in terms of their degree of integration into the Union. Even the provisions for preferential trade included in their Association Agreement remain largely unimplemented. The ENP, in which both Israel and the PA are included, in principle aims at blurring the lines separating EU inclusion and exclusion. But to date the policy falls far short of this objective.<sup>29</sup> In addition, particularly when it comes to the Palestinians, the additional benefits envisaged within the ENP are hardly discernible.

### 5.1.2 *The subjective evaluation of the benefits*

The qualitative gap between the Union's contractual ties with Turkey on the one hand and Israel and Palestine on the other is wide and in itself provides one explanation of the different influence of the Union in these two cases. But this alone cannot explain the results. Just as important as the objective value is the subjective importance the parties attribute to their respective ties to the Union. Naturally, accession is an inherently more appetising prize than association, neighbourhood or financial assistance. Yet it is only so to the extent that the parties desire full membership.

The Turkish establishment has long viewed EU accession as the natural corollary of the modernisation and Westernisation movement, pioneered by the founder of the Republic, Mustafa Kemal Atatürk. In other words, the very concept of membership has been internalised to become the ultimate destination of a secure and prosperous Turkey. In turn, it is hardly surprising that for the sake of accession, Turkish authorities have been willing to go the extra mile in terms of the reforms undertaken.

This willingness has not been simply the product of a rational calculus by elite actors. Fundamental to Turkey's reform process, particularly when key players such as the military are taken into account, is the notion of security embedded within the accession process. When over the course of the 1990s, EU actors called upon Turkey to undertake reforms, the authorities rebuffed the Union, viewing these changes as too risky and threatening for the country's security. The persistence of Turkey's 'Sèvres syndrome' exacerbated these views. The 1920 Treaty of Sèvres, pushed forth by the Western victors of the First World War, allowed for the possibility of Kurdish secession. Since then, Turkish policy-makers have often viewed foreign proposals in favour of the Kurds as an attempt, in the legacy of Sèvres, to dismember Turkey. In other words, reforms were viewed as costly *because* they were demanded by Europeans. As and when 'Europe' made the qualitative choice to include Turkey, it signalled an increased willingness to share the burden of Turkey's security. Turkey's candidacy symbolically demonstrated a European readiness to contribute, through inclusion, to Turkey's stability and security.

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<sup>28</sup> Gamze Avcı (2001), "Putting the Turkish Candidacy into Context", *European Foreign Affairs Review*, Vol. 7. No. 1.

<sup>29</sup> Nathalie Tocci (2005), "Does the ENP Respond to the EU's Post-Enlargement Challenges?", *The International Spectator*, forthcoming spring 2005.



Equally important is the prime value accorded to EU accession by Kurdish political actors and public opinion. In some cases support has been instrumental and linked to narrow personal interests. For example, following his capture, Mr Öcalan stated that the most important task facing Turkey was its fulfilment of the Copenhagen political criteria, which in Turkey's case entailed lifting the death penalty.<sup>30</sup> Yet in general, support for EU accession by Kurdish and pro-Kurdish groups, while deriving from an expectation of political and economic gains through reforms, appears far more genuine. As put by DEHAP's leader Tuncer Bakhiran: "DEHAP supports Turkey's EU membership. We find it positive despite the fact that the adaptation laws have not been implemented, or rather that only some have been implemented...The adaptation laws include requests that our party and party members have been expressing for years."<sup>31</sup> Kurdish public opinion conveys a similar message. While support for accession is well over 70% throughout Turkey, the highest peaks of support come consistently from the south-eastern provinces.<sup>32</sup>

When it comes to the subjective value of relations with the EU held by Israel and the Palestinians, it is indisputable that in different ways and for different reasons both accord high importance to their ties with the Union. Israel is a small country, whose openness to international trade is key to its economic survival. The EU is Israel's largest trading partner. Israel's political dependence on Europe is far more controversial. In recent years, Israelis have frequently referred to the 'crisis' in EU-Israeli relations. Israel's strategic relationship with the US has also overshadowed the murkier political ties with the EU. But Israel lives at the EU's doorstep, it is surrounded by real and perceived enemies and the US remains on the other side of the Atlantic. Beyond the rhetoric, Israel's political links to Europe are valued highly and the desire of finding a place of belonging is deeply embedded in Israeli society. As one Commission official put it: "Israel is separated from both Europe and the US by a lake. The lake separating it from the US is very deep and covered by a smooth layer of thin ice. The lake separating Israel from Europe is very shallow, and the hard rock lying on its bed is covered by a thick layer of mud."<sup>33</sup> The EU's potential influence on the Palestinians is even higher. In economic terms, the EU (including member states) represents by far the largest donor to the Palestinians. Without EU aid since 2000, the PA may well have collapsed. Palestinian political dependence on Europe is also high. Like Israelis, Palestinians frequently accuse Europe of its inadequate political role in the Middle East. Unlike Israelis, however, they would warmly welcome a stronger European involvement in the conflict.

But that is not to say that Israel and the Palestinians, unlike Turkey, aspire to join the EU. As such, their exclusion from the enlargement process cannot in itself account for the Union's significantly lower impact. In the case of the Palestinians, the question is clear-cut. Neither have Palestinian elites nor the public ever expressed the desire to join the Union. The Palestinians would welcome a more active EU role in the region. Nevertheless, this role is viewed exclusively within the domain of foreign policy and is linked to their prime objective of securing viable statehood. It is not connected to the aim of seeking European integration per se.

As far as Israel is concerned, the picture is far more nuanced. At first glance it appears that the prospect of EU accession could have a strong hold among Israelis. A recent poll revealed that 85% of Israelis would back an application for EU membership.<sup>34</sup> Lately, prominent Israeli

<sup>30</sup> Michael Gunter (2000), "The continuing Kurdish problem in Turkey after Öcalan's capture", *Third World Quarterly*, Vol. 21, No. 5, p. 864.

<sup>31</sup> "Did DEHAP's defects appear after the elections?", *Turkish Daily News*, 24 September 2003.

<sup>32</sup> Presentation by Ali Çarkoğlu at a conference on Turkey and the EU, organised by the British Council and the Centre for European Reform, Istanbul, 15 October 2004.

<sup>33</sup> This remark was made at a workshop held at the European University Institute, Florence, October 2004.

<sup>34</sup> The poll was conducted by the Dahaf Institute of the EC Delegation in Tel Aviv, February 2004 (p. 8).

politicians, including Likud members such as Binyamin Netanyahu have aired the possibility of Israel's inclusion into the Union. Yet scratching beneath the surface, these statements appear to stem more from a general desire to exit the turbulent Middle East and enter a European security community, than from a thorough realisation of what membership would entail. Most Israeli analysts are well aware that full EU accession would not be in Israel's political interests, in so far as it would require a radical transformation of the Zionist project (through the adoption of the Copenhagen political criteria). To date, it appears that while the majority of the Israeli population would be willing to compromise on the '1967 conflict' issues (i.e. issues predominantly related to territory), there is hardly a domestic constituency willing to compromise on the '1948 conflict' issues, related to the nature of the State of Israel. Hence, even in the hypothetical situation in which EU membership were on offer, it seems unlikely that the Israeli public and political system could be mobilised to actively pursue this goal.

Far more appetising to most Israelis would be other forms of 'virtual membership'. Virtual membership would allow Israel to benefit economically and politically from close association with the EU, without the intrusive political conditionality that full accession entails. Indeed this is what the ENP could offer to Israel. The EU-Israel ENP Action Plan already sets out a long list of EU benefits in many areas, ranging from reinforced political dialogue to economic and social cooperation, trade and internal market integration, cooperation in justice and home affairs and in the areas of transport, energy, environment, information society, research and people-to-people contacts. These and other measures would arguably be more in line with Israeli interests, the way they are currently conceived, than full membership. To achieve these goals and in line with the apparent wishes of a silent majority of the Israeli public, the EU's potential influence could be far higher on the territorial aspects of the conflict.<sup>35</sup>

The above discussion on Israel brings us back to a crucially important point about Turkey. Far more so than in Israel, large segments of the Turkish political system, from the nationalist right to the nationalist left and within both civilian and military circles, have only paid 'lip-service' to the goal of EU membership. More accurately, their support for membership was high until it became a more realistic goal through the initiation of Turkey's accession process. As and when the process began and it became increasingly evident how extensive the expected transformation of the country was, their effective support rapidly dwindled. This transformation was viewed as too costly and undesirable to enact for the 'sake of membership'. Some right-wing nationalists preferred to establish closer links to Turkic Eurasia than to see Turkey's full integration with Western Europe. Traditional Kemalists objected to the principles and applications of multiculturalism and multi-level governance within the EU. Others opposed the rising interference of Brussels in Turkish domestic political life, and were more inclined to pursue Turkey's Western orientation through closer ties with the US. Indeed, often spurred by the US, conservative elements within the Turkish establishment argued that Turkey should be admitted to the Union on laxer conditions given its strategic importance.

The AK party's 2002 landslide victory dramatically tilted the balance within the party political system in favour of genuinely pro-European reformists. Indeed the internal balances within the country seem to be in the process of a radical overhaul as yesterday's conservatives have become today's reformers, whereas the most vociferous critics of the reforms speak in the name of the 20<sup>th</sup> century Republican project. In other words, today's reforms, while being supported by the more liberal elements of the establishment, are being spearheaded by exponents of a previously religious-based and anti-establishment party. Reforms are also supported by other 'anti-establishment' groups such as pro-Kurdish organisations and parties. Resistance against change has instead come from the most conservative elements of the establishment. The rhetoric of these

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<sup>35</sup> A recent poll conducted in December 2004 revealed that a majority of Israelis (as well as Palestinians) would support a peace settlement based on the 2003 Geneva Accords.

critics has been marked by an unwavering attachment to the status quo, out of fear that change would undermine the state-building project inspired and initiated by Kemal Atatürk.

### 5.1.3 Time inconsistency

Whereas in terms of the objective value of the benefit, accession clearly ranks above association or neighbourhood, particularly in the case of a drawn-out accession process, the value of the benefit is eroded by the expected timeframe for its receipt. Accession comes with *ex ante* conditionality. In other words, expected reforms are demanded in the short and medium term but the actual delivery of the benefits (i.e. membership) occurs in the long term. This generates two sets of problems. First, expected long-term gains are valued less than short-term ones. The unpredictability of the long term reduces the value of the benefit and in turn the incentives for reform. The timeframe for accession may also induce domestic policy-makers to delay reforms until the delivery of the benefit is closer. This may occur particularly when reforms are considered risky and potentially threatening. As discussed above, EU membership can be viewed as a means to hedge against risk, owing to the security guarantees embedded in accession. As such, candidate countries may be reluctant to pass reforms until the prospect of membership is closer and surer.

In the case of Turkey, even if accession negotiations begin as scheduled in October 2005, membership itself is expected to occur at least a decade later. In its conclusions, the December 2004 European Council made it clear that the ‘long-run’ would be after 2014, because of the need to revise the EU’s financial perspectives then. In other words, the expected delivery of the conditional benefits to Turkey remains in the distant future. The uncertainty of the process both related to its timing and the developments that will unfold in the meantime inevitably negatively affects Turkey’s incentives to engage in difficult reforms in the short term.

The opposite is true for Israel and the PA. In the case of the Association Agreements, the potential for conditionality is *ex post* rather than *ex ante*. In other words, the benefit (i.e., association) is delivered in the short term, based on an understanding that its obligations, including those on democracy and human rights (i.e. the ‘human rights clause’) would be respected. Otherwise, the Union reserved the right to suspend the agreements. As argued at length below, however, for a variety of reasons *ex post* conditionality is rarely applied. In turn, the second, opposite problem of time inconsistency arises. Lying on the opposite extreme of the time inconsistency spectrum, the Israeli and Palestinian EU associations have been front-loaded with the benefits and back-loaded on the obligations, reducing the potential impact of the EU’s role.

EU aid to the PA on the one hand and, potentially, the emerging Neighbourhood Policy on the other could represent a far more effective formula in this respect. As the PA became critically dependent on EU budgetary transfers over the course of 2002-03 (because of Israel’s refusal in those years to transfer tax revenues to the Authority), the Commission refined its techniques of delivering assistance in return for and in compliance with strict conditions and monitoring. Indeed, at specific moments in 2002-03, EU threats to withhold budgetary aid generated the necessary incentives to pursue reforms, in particular in the judicial and fiscal domains. The ENP could also serve to rectify the problem of time inconsistency inherent in the enlargement process. This is because the benefits, being far more varied and graduated than the carrot of membership, could be delivered over time, in response to fulfilled conditions.

## 5.2 The credibility of conditionality

An effective policy of conditionality certainly requires valuable gains. But if gains are on one side of the equation, obligations are on the other. In other words, for an effective EU role conducted through contractual relations, it is imperative for conditionality to be credible.

Credibility in turn depends on the recipient's perception of the donor's capacity and willingness to carry out declared commitments. In the case of *ex ante* conditionality (often described also as positive conditionality), this is related to the Union's track record in delivering its promised gains, when and only when the necessary conditions are fulfilled. In the case of *ex post* conditionality (or negative conditionality), credibility is related to the EU's track record in withdrawing benefits in cases of consistent violations of specified and agreed obligations. What can be said about the credibility of EU conditionality in the two conflict areas?

### 5.2.1 *The limits of ex post conditionality*

In the case of Turkey, its 1963 Association Agreement did not include any *ex post* conditionality related to democracy and human rights, which could have been used by the Community to exert leverage on the Kurdish question. Yet by the time the Euro-Mediterranean Association Agreements were signed, *ex post* conditionality was included through the human rights clause. The clause included in the agreements with both Israel and the PA included two components. The 'essential elements' article established human rights and democratic principles as key features of the agreements (Art. 2). The 'non-execution' article called for "appropriate measures" that "least disturb the functioning" of the agreements, in the event of their material breach (Art. 79). Under the 1969 Vienna Convention on the Law of Treaties (Art. 60.3), a material breach is a violation of a "provision essential to the accomplishment of the object and purpose of the agreement". In principle, the violation of the human rights clause could justify the suspension of the Association Agreements; in other words, it could allow for the use of *ex post* conditionality.

Nevertheless, the conditions justifying suspension are hard to meet, detracting from the credibility of negative conditionality. Legally, the violation of human rights could justify suspension only if it represented a material breach of the agreements. But the object and purpose of the Association Agreements are not the promotion of human rights and democracy per se. It is rather that of promoting free trade, political dialogue and the dialogue between societies. Hence, only if a breach of human rights hindered these aims could it motivate negative conditionality.<sup>36</sup> Politically, there are also a plethora of reasons preventing the use of negative conditionality. The suspension of one Association Agreement could set a precedent justifying the suspension of all agreements, given that no country in the Barcelona Process has a glittering democracy and human rights record. This is an outcome that all member states want to avoid. The Union considers that maintaining and expanding relations with the southern Mediterranean is important both politically and economically. In addition, several member states have particular protégés in the south and are adamant about expanding their commercial and political ties with them.

In the specific case of Israel-Palestine, despite the grave human rights and international law violations, no attempt has been made to impose *ex post* conditionality, let alone arms embargoes or sanctions.<sup>37</sup> In turn, the relevance of the human rights clause has been more to engage in soft forms of pressures and inducements through political dialogue. This has been more in line with the EU's overall foreign policy ethos, preferring 'constructive engagement' based on dialogue, support and encouragement.<sup>38</sup> Yet in the case of both Israel and the PA, this form of EU influence

<sup>36</sup> Susan Rockwell and Charles Shamas (2004), A Human Rights Review of the EU and Israel – 2003-2004, (draft), EMHRN, Brussels.

<sup>37</sup> See European Commission (2004b), "Sanctions on Israel?", FAQs, The EU and the Middle East Peace Process, DG External Relations, Brussels (retrieved from [www.europa.eu.int/comm/external\\_relations/mepp/faq/index.htm](http://www.europa.eu.int/comm/external_relations/mepp/faq/index.htm)); and also the Foreign & Commonwealth Office (2004), "Imposition of Trade Sanctions and Breaking off relations with Israel", FCO, London, (retrieved from <http://www.fco.gov.uk>).

<sup>38</sup> European Commission (2001), Communication on the EU's Role in Promoting Human Rights and Democratisation in Third Countries, COM(2001) 252, final, 8.5.2001, Brussels, p. 8.

has not led to any discernible effects. Reforms and policy shifts in line with the European Union's objectives have not occurred in response to soft EU pressure through political dialogue.

### 5.2.2 *The successes, constraints and pending questions in ex ante conditionality*

*Ex ante* conditionality has been far more effective as it has been exercised towards Turkey in the context of accession and towards Palestine in the context of financial assistance. In both cases, *ex ante* conditionality started in 1999, when on the one hand the Union launched Turkey's accession process, and on the other it became increasingly sensitive to issues of Palestinian reform.

In the case of Turkey, whereas the 1999 Helsinki European Council accorded Turkey candidacy, it refrained from opening accession negotiations on the basis that Turkey's political system was not yet sufficiently aligned with EU standards. More specifically, Turkey was to fulfil the Copenhagen political criteria before it could be given the green light to open accession negotiations. In light of the generality of these criteria, in 1998 (i.e. before Turkey's candidacy) the Commission began to publish annual progress reports on Turkey. The explicit aim of the reports was that of assessing 'progress' (or lack thereof) in Turkey's alignment with the EU's requirements. With the effective launch of the accession process, the progress reports became more detailed. From 2001 the Union has also published Accession Partnership documents, which pinpoint the specific recommendations that Turkey should follow in its bid to fulfil the criteria.

Since 1999, the six-monthly European Councils regularly voiced their views on Turkey's track record. In doing so they displayed relative consistency. In the first year and a half following its candidacy, the slow pace of Turkey's reforms meant that no additional expectations were raised. But as and when the reform process accelerated the conclusions of European Council meetings took note of the process of change. When Turkey changed gears in its reform path by adopting its National Programme in March 2001 and implementing the first set of constitutional amendments in October 2001, the Laeken European Council in December of that year concluded that recent developments had "brought forward the prospect of opening accession negotiations with Turkey".<sup>39</sup> In December 2002, in view of the visible commitment of the new AKP government to reform (as well as to peace in Cyprus), the European Council in Copenhagen, while deeming that Turkey did not yet meet the Copenhagen political criteria, decided to review the situation in December 2004. If at that time the European Council considered Turkey to have met the criteria, accession negotiations would be opened "without delay".<sup>40</sup> In light of the successive constitutional amendments and harmonisation packages over 2002-04, the 2004 progress report and recommendation on Turkey advised that, given "sufficient" fulfilment of the Copenhagen political criteria in Turkey, accession negotiations could be opened.<sup>41</sup> In turn the December 2004 European Council decided to open negotiations on 3 October 2005. The overall conclusion from the 1999-2004 period is that EU institutions did display an overall level of consistency in their political message to Turkey. The ensuing credibility of EU conditionality paid off in terms of Turkey's progress on human rights, democracy and peaceful reconciliation.

Turning to the Palestinians, particularly in the case of EU budgetary assistance in 2002-03, EU threats to withhold assistance at key points in time have proved pivotal in securing reforms related to fiscal transparency and the independence of the judiciary. In view of the Authority's

<sup>39</sup> European Council (2001a), Presidency Conclusions of the Laeken European Council on 14-15 December, SN300/01, para. 12.

<sup>40</sup> European Council (2001b), Presidency Conclusions of the Copenhagen European Council on 12-13 December, SN 400/02, para. 19.

<sup>41</sup> See European Commission (2004c), Communication on the Recommendation of the European Commission on Turkey's Progress towards Accession, COM(2004) 656 final, Brussels, 6.10.2004; and also European Commission (2004a), *Regular Report on Turkey's Progress towards Accession*, SEC(2004) 1201, Brussels, 6.10.2004.

dependence on EU transfers and of the credibility of EU threats, the Union added important momentum to the early stages of the reform process. Yet that is not to say that EU involvement in PA reform was unambiguously successful. At times reforms have been superficial and implemented for the sole aim of pleasing EU (and US) interests. Indeed, the post-Arafat period teaches us that only in view of an endogenous change within Palestinian politics has the reform movement become more genuine and thus substantial.

By contrast, in the case of Israel no attempt has been made to exert *ex ante* conditionality. Carrots have been rarely dangled and normally given. Apart from a few exceptions, such as the European Parliament's delayed ratification of EC-Israeli trade agreements in 1987-88 and in 1995-2000, the Union has never attempted to exert any form of conditionality on Israel. A key EU incentive to Israel would be that of threatening to suspend aid to the PA, thus triggering its collapse. It has been repeatedly suggested that EU (and other donor) funds to the PA have effectively 'subsidised' the Israeli occupation in so far as they have lightened Israel's onerous legal responsibilities, as the occupying power, to provide basic services to the Palestinians. Yet because of the expected humanitarian crisis this would entail, the Union is unlikely proceed on this track.<sup>42</sup> And Israel is well aware of it, eliminating any credibility of a possible EU conditionality of this kind. The absence of any positive or negative conditionality has led to several paradoxical incidents damaging the EU's credibility. The most recent was in the autumn of 2004, when the Commission negotiated an ENP Action Plan with Israel following the ICJ ruling condemning Israel and the EU Council's own criticisms of the Israeli raids in Gaza.

In principle the ENP could offer the scope to introduce and deepen *ex ante* conditionality *vis-à-vis* the Israelis and the PA respectively. In its early stages, the ENP contained elements of a possible use of *ex ante* conditionality. The 2003 Wider Europe communication explicitly stated that "in *return* for concrete progress demonstrating shared values and effective implementation of political, economic and institutional reforms...the EU's neighbourhood should benefit from the prospect of closer integration with the EU".<sup>43</sup> By 2004, however, this approach had been weakened significantly, as the prevalent line of reasoning tilted towards the questionable notion of partnership and shared values with the neighbours. By that time the Commission had made its stance on conditionality in the ENP clear: "the EU does not seek to impose priorities or conditions on its partners...these will be defined by common consent and will thus vary from country to country".<sup>44</sup>

The ensuing method of the ENP followed suit. In the EU-Israel Action Plan there has been no effective attempt to formulate political conditionality. The Action Plan does mention the peace process, security, human rights and international law, but specific references are only included as subjects for discussion in reinforced political dialogue. In its obligations ('priorities for action'), only one in six bullet points refers to the conflict and human rights. But the scope for positive conditionality is extremely weak. The plan only loosely states that "progress in meeting these priorities will be monitored...On this basis, the EU and Israel, will review the content of the Action Plan."<sup>45</sup> The lack of linkage between benefits and obligations is in clear contrast to the

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<sup>42</sup> Muriel Asseburg (2003), "From Declarations to Implementation: The Three Dimensions of European Policy towards the Conflict" in M. Ortega (ed.), *The EU and the Crisis in the Middle East*, Chaillot Paper, EUISS, Paris, pp. 11-26.

<sup>43</sup> European Commission (2003), Communication on Wider Europe – Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours, COM(2003) 104 final, Brussels, 11.3.2003 (author's italics).

<sup>44</sup> European Commission (2004d), Communication from the Commission to the Council on the European Neighbourhood Policy Strategy Paper, COM(2004) 373 final, Brussels, 12.5.2004, p. 8.

<sup>45</sup> European Commission (2004c), "Proposed EU-Israel Action Plan", Brussels, 9.12.2004, p. 3 (retrieved from <http://www.europa.eu.int>).

political conditionality developed in the EU-PA Action Plan, which goes as far as stating that the very *raison d'être* of the PA's inclusion in the ENP is that of promoting the PA's political and economic reform.<sup>46</sup>

That is not to say that *vis-à-vis* Israel, the Union should specify in minute detail how economic, institutional and social benefits should be conditioned to unrelated political and legal obligations. But neither would the opposite extreme of abandoning the option of conditionality and merely discussing democracy and human rights within political dialogue be an effective way forward. Between these two extremes there is wide room for manoeuvre, in which the Union, both formally and informally, could generally condition economic, social and institutional benefits to political and legal conditions.

The same question may soon arise *vis-à-vis* Turkey. The December 2004 European Council concluded that Turkey only sufficiently fulfils the Copenhagen criteria. It follows that EU institutions would wish to continue to exert political conditionality over the course of negotiations. Indeed, both the Commission's 2004 recommendation and the European Council's conclusions stated that the Union would continue to monitor Turkey's progress on the basis of revised Accession Partnerships. Yet EU actors provided little clarity to bolster the credibility of their claims. In its recommendation, the Commission simply stated that "the pace of reforms will determine the progress of negotiations" and that "by demonstrating determined implementation of continued reform... Turkey would be able to ensure a successful conclusion of the whole accession process".<sup>47</sup> No attempt was made to specify in any detail what would be the precise link between political reforms (beyond *acquis* harmonisation) and negotiations. The lack of detail becomes all the more questionable in a context in which over the course of negotiations, the Commission becomes increasingly preoccupied with the minutiae of *acquis* conditionality and consequently tends to set aside political conditionality.

The Commission and the European Council were clearer in stating that in the event of a reversal of the reform path, negotiations would be suspended.<sup>48</sup> Nevertheless, with the opening of negotiations, although the ultimate carrot of membership has yet not been delivered, similar logics pertain to those afflicting the use of *ex post* conditionality. In other words, once the decision to open negotiations has been taken, although the Union could halt the talks in principle, in practice it may well become difficult to do so. With the opening of negotiations, the accession process acquires an increasingly self-generating momentum. In view of the sunk costs entailed in the process, the threat of ultimately not delivering the membership prize reduces over time. Therefore, the extent to which EU actors will succeed in exerting political conditionality on Turkey in the period ahead remains to be seen.

### 5.2.3 Undermining credibility through the disrespect of international law

The sections above discussed how the Union has been ineffective in exerting negative conditionality on all parties. In the case of positive *ex ante* conditionality, important successes were achieved particularly with respect to Turkish and Palestinian reform. Key questions persist, however, concerning how *ex ante* conditionality could be exerted progressively over time and linked to seemingly unrelated benefits. In the case of Israel, the Union has failed to exert political influence not least because it has abdicated the use of conditionality in favour of approaching sensitive issues exclusively through political dialogue.

The case of EU-Israeli relations, however, also displays a categorically different particularity,

<sup>46</sup> European Commission (2004f), "Proposed EU-PA Action Plan, Brussels, 9.12.2004 (retrieved from <http://www.europa.eu>).

<sup>47</sup> European Commission (2004c), *op. cit.*, pp. 6 and 8 respectively.

<sup>48</sup> *Ibid.* p. 6.

which sets it apart from both Turkey and the PA (and indeed from most other non-member countries). Quite apart from conditionality, by far the most serious and atypical way in which the EU has related to Israel has been its progressive bending to illegal Israeli policies, to the extent of risking the distortion of its own law and practice. The dispute over the preferential export of Israeli goods produced in the settlements has received sparse attention from academia and civil society. Yet this problem lies at the very core of the conflict. This is not simply because it is connected to the settlements, but also because the issue exemplifies a key factor underlying the status quo: the international community's acquiescence of Israel's right to differ in its respect for international law.

To date, the EU has been aware but has failed to rectify Israel's material breach of its Association Agreement. The breach has derived from the fact that Israel has applied, illegally, its preferential trade agreements to the territories it has occupied since 1967. By failing to correct the resulting material breach, the member states have acted in violation of Art. 1 of the Fourth Geneva Convention.<sup>49</sup> As a result, the Commission and the member states have acknowledged the need to remedy the situation. Various avenues have been explored. All have either failed or represented partial and ad hoc measures to improve the situation. The last move in this ongoing saga has been the agreement on a 'technical arrangement', which came in effect in February 2005. Of all the attempted 'solutions', this arrangement and its possible consequences could most compromise the EU's position towards the conflict. This is because while lightening the administrative burdens on customs authorities on both sides, the arrangement does not require Israel to end its malpractice. By then using the arrangement as a legal basis on which to upgrade EU-Israeli ties, particularly on trade-related matters (for example by including Israel in the system of pan-Euro-Mediterranean cumulation), the Union could end up legally accepting Israel's definition of its territorial scope. In turn, EC law and practice would become incompatible with international humanitarian law and no EU political declaration to the contrary would alter this fact.

### 5.3 The clarity of conditions

A third cluster of issues determining the EU's impact is the clarity of the conditions embedded in its contractual relations. If the Union is to exert influence through conditionality, it follows that conditions need to be sufficiently clear in order for policies to be effective.

In this respect, the Union has been most successful *vis-à-vis* the PA. Beginning in 1999 with the EU-sponsored publication of the Rocard-Siegmán report, the Commission has devoted increasing levels of attention to the internal shortcomings of the Authority.<sup>50</sup> These deficiencies would not only hamper the establishment of a democratic and well-governed Palestinian state, but could also hinder the peace process through the internal erosion of the rule of law. The recommendations of the report became a first basis on which to specify EU conditions for the delivery of assistance. They were then complemented by the recommendations of the Palestinian Legislative Council in 2001, along with numerous Palestinian NGOs and the 100-day reform plan approved in June 2002. Stringent and specific conditions and IMF monitoring were set for the disbursement of EU budgetary assistance. In particular, EU conditions called for greater transparency in public finances through the consolidation of all revenues in a single IMF-monitored account, a freeze on public-sector hiring, the adoption on a Law on the Independence of the Judiciary and the passing and preliminary application of the Basic Law. A further step forward was made in the EU-PA Action Plan. The Action Plan goes far in specifying the

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<sup>49</sup> Art. 1 of the Fourth Geneva Convention prevents any state or their nationals from participating in, or facilitating, the Convention's violation.

<sup>50</sup> Yezid Sayigh and Khalil Shikaki (1999), *Strengthening Palestinian Public Institutions*, Task Force Report, Council of Foreign Relations, New York.



“priorities for action” in the areas of democracy, human rights, the judiciary, the legal system, the fiscal and security sectors, institutions and administrative capability.<sup>51</sup> Greater clarity in the reform objectives, to be monitored through EU-PA sub-committees, bode well for the effectiveness of conditionality towards the Palestinians.

Nonetheless, several issues deriving from the *sui generis* situation of the Palestinians bedevil the task of EU conditionality. First is the limited capability of the PA as a non-state actor. An effective policy of conditionality targeted at a non-state actor would need to distinguish between those reform priorities that the PA can and should meet, the priorities that require Israeli cooperation and those that need external support. Making such distinctions in practice is no simple feat. Measuring relative capability is not only open to subjective interpretation, but also requires continuous review in view of changing circumstances. To ease this task, however, is the fact that relative to cases of sovereign statehood, the Palestinian context is highly open and internationalised. As such, acquiring the necessary information for the specification of conditions and benchmarks may prove easier than in contexts of sovereign statehood. For example, in Turkey it was not until recent years that international NGOs such as Amnesty International and Human Rights Watch were able to operate freely in the country.

The second key question deriving from the specific Palestinian context and relating primarily to the security sphere is that of the plurality of domestic actors and the inability of the PA to exercise full control. When it comes to EU conditionality aimed at curbing Palestinian violence, the principal problem has been that the targets of conditionality have not been the direct authors of most violent acts perpetrated against Israel. The EU has had no direct official contact with and thus leverage on Palestinian actors such as Hamas (notably Hamas was included on the EU’s terrorist list in 2003). Its conditionality has targeted the PA, in direct opposition to the Islamic camp. It has been difficult to ascertain to what extent conditionality could have operated by inducing the PA to repress violence orchestrated by others. The degree to which the late President Arafat could have curbed violence, had he so wished, will be determined in the period following his death. To date, the early successes of Mahmoud Abbas’s presidency in securing a cease-fire point to the late President’s insufficient will on this front. Nevertheless, the suicide bombing in Tel Aviv, two weeks after the declaration of a cease-fire, equally points to the inability of the Authority (owing to its lack of sovereignty) to exercise effective control over the occupied territories. In this respect, the same situation could have arisen *vis-à-vis* the PKK in Turkey. Had the separatist group been a necessary interlocutor to secure peaceful reconciliation in Turkey’s south-east, the Union’s lack of contact with and leverage on this non-state actor could have hindered its potential positive impact on the Kurdish question.

A different set of problems has arisen in the case of Turkey’s Kurdish question. Compared with the Palestinians, despite the greater institutionalisation of relations with Turkey, EU conditions on the Kurdish question have been far vaguer than those specified to the PA. While conditions regarding general human rights in Turkey have been defined relatively clearly, recommendations specific to the Kurdish question have been extremely loose. The Union has refrained from advocating a specific solution to the Kurdish question. It has only limited itself to calling for a political and non-military solution (which included the recognition of a Kurdish cultural identity) that respects democratic practice and the rule of law, and provides all citizens with full human, political and socio-economic rights. Turkey’s Accession Partnerships, while calling for broadcasting and education in languages other than Turkish and referring to regional disparities, the return of IDPs and the full range of human rights, have never even mentioned the term ‘Kurd’.

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<sup>51</sup> European Commission (2004f), “Proposed EU-PA Action Plan”, Brussels, 9.12.2004, pp. 3-8 (retrieved from [www.europa.eu.int](http://www.europa.eu.int)).

This vagueness has had the merit of not antagonising Turkey and entrusting the authorities with the task of peaceful reconciliation with full freedom as to the means and forms this would take. Yet it has presented problems in terms of an assessment of whether and when the general conditionality applied to the Kurdish question would be respected. Without an exhaustive and detailed specification of expected reforms, minimum standards and benchmarks for assessment, Turkish authorities could (and have) claimed that all conditions have been met. At the same time, EU institutions could (and have) come up with new requirements over the course of the reform process.<sup>52</sup> The subsequent lack of clarity in the EU-Turkish relationship has hindered effective communication and thus eroded trust between the parties.

Finally, a major issue has been the specification of conditions on minority rights. In principle, minority rights are part of the Copenhagen criteria for accession. But while hinting at their desirability, the Commission has never specified that Turkey should accord minority rights to the Kurds. This has been not least because the EU legal framework does not have the adequate instruments to assure the protection of these rights. On the contrary, the emphasis in EU law is on individual human rights, which in some instances may contrast with the protection of minorities.<sup>53</sup> In practice, there is also a significant discrepancy among the minority policies of different member states and minority problems within the Union persist.

When it comes to Israel, the problem of condition specification becomes far more acute. Owing to the absence of any serious *ex post* or *ex ante* conditionality, EU political and legal obligations on Israel have been largely non-existent. In the EU-Israel Action Plan the only provisions approximating conditions with respect to the conflict are: “facilitating efforts to resolve the Middle East conflict, strengthening the fight against terrorism and the proliferation of WMD, promoting the respect for human rights, improving the dialogue between cultures and religions, cooperating in the fight against anti-Semitism, racism and xenophobia”.<sup>54</sup> It is clear that without further elaboration, these statements could not amount to credible conditions and would at best become subjects for discussion within political dialogue. This indeed appears to be the intention of the Neighbourhood Policy *vis-à-vis* Israel.

#### 5.4 Political imperatives

Rather than representing a cluster of problems in its own right, the role of political imperatives frequently provides the underlying explanation for the above-mentioned shortcomings in the EU’s role. It is often through political imperatives, operating beyond the blueprint of a contract, that problems arise relating to the value of the benefits, the credibility of conditionality and the clarity of conditions.

An effective EU contractual relationship would necessitate the automatic entitlement to rights when obligations are fulfilled and the automatic withdrawal or non-entitlement of benefits when they are not. Yet such automaticity is never present in practice. Beyond the contract lie the political imperatives of EU actors. Some degree of political discretion is inevitable. Nevertheless, when blatant violations persist without consequences or when benefits are not granted despite the general fulfilment of contractual obligations, then the EU’s own credibility is harmed. In other words, when other conditions unspecified in the contract govern the Union’s relations with non-member states, then EU policy loses its effectiveness.

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<sup>52</sup> Piotr Zalewski (2004), *op. cit.*

<sup>53</sup> Bruno de Witte (2002), “Politics versus law in the EU’s approach to ethnic minorities” in Jan Zielonka (ed.), *Europe Unbound*, London: Routledge, pp. 137-60.

<sup>54</sup> European Commission (2004e), *op. cit.*, p. 3.

Turning to the specificities of the two case studies, political imperatives do not appear to have significantly hindered the implementation of EU-PA contractual ties. Not least because of Israeli and American preoccupation with Palestinian reform since 2000, as well as Israel's accusations that EU funds had been re-routed to support terrorism, EU institutions have gone the extra mile to ensure the full respect of conditions under strict monitoring. The Commission has also initiated an independent OLAF enquiry on the matter, concluding that funds have been subject to careful monitoring.<sup>55</sup>

Yet in the case of Turkey and Israel, political imperatives have played a prominent role, albeit in diametrically opposite ways. In the case of Turkey, contractual ties have been bedevilled by the Turkish suspicion, often corroborated by EU actions and statements, of an underlying European reluctance to include Turkey in the EU club. Up until 2002-03, EU scepticism was rarely manifested openly in words. With a few notable exceptions, European declarations normally focussed on Turkey's shortcomings in the areas of democracy and human rights.<sup>56</sup> Nevertheless, Turkey's suspicions were motivated by hard facts. When the 1997 Luxembourg European Council denied Turkey candidacy while opening accession negotiations with Eastern European countries with far less-developed ties with the Union (and with serious political and economic shortcomings), Turks interpreted the decision as clear evidence of European double standards. The same suspicion arose in 2000, when the Nice European Council determined the guidelines for voting rights and representation in the enlarged Union, while excluding candidate Turkey from all calculations.

As Turkey's reform process began gaining ground, other reservations not related to the Copenhagen criteria started being aired in various EU capitals. Key personalities in France, with an idea of a tightly integrated 'core Europe', have feared that Turkey's entry would dilute the loosely defined *esprit communautaire*. Actors in Germany, France, Holland and Austria have argued that Turkey's overall economic development and internal disparities would entail high levels of redistribution of EU funds, the need for an overhaul of the common agricultural policy and probably rising immigration. Least noble of all, key personalities, including Convention President Valéry Giscard d'Estaing, have been reluctant to embrace a country with an allegedly 'different' culture and religion. This spoken or unspoken concern tends to be prevalent among centre-right conservative and Christian-Democrat governments in Europe. Last but not least is Turkey's geo-political location, entailing an extension of the Union's borders to the volatile Middle East and Caucasus. Turkey's location has been used as an argument both against Turkey's 'Europeanness' and in favour of retaining Turkey as a buffer state between the EU and its turbulent south.

That does not mean that the Union has secretly decided against Turkey's membership. On the contrary, the Union has decided to open accession negotiations with Turkey in 2005. Nonetheless, these pending reservations led to a European Council decision that overemphasised the open-ended and long-term nature of the negotiations, the possibility of halting the talks, and most problematic of all, the prospect of 'permanent' restrictions to agricultural liberalisation and the free movement of persons from Turkey into the rest of the EU.

The very existence of a debate on the desirability of Turkey's membership has led to two spin-off effects. On the positive side, it has meant that EU institutions have been relatively strict in their observance of Turkey's progress in meeting the Copenhagen criteria adding to the credibility of

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<sup>55</sup> See Chris Patten, "Letter to the Jerusalem Post", 18 July 2002; see also European Commission (2002), Statement to the EP's Foreign Affairs Committee on EU Budgetary Assistance to the PA, 19/06/2002, Doc. SPEECH/02/293, Brussels, 19.6.2002.

<sup>56</sup> One notable exception was in March 1997 at a Christian Democrat Congress, when the Belgian Wilfried Martens declared that Turkey had no place in European civilisation.

the Union's calls for reform in Turkey. As documented above, EU calls have had an important effect in spurring reforms linked to the Kurdish question. On the negative side, the absence of a strong European commitment towards Turkey's accession has added to Turkey's sense of uncertainty and insecurity. This has been used as an argument against reforms by conservative forces in Turkey. Several key actors in Turkey have argued that there would be little point in passing reforms, given that 'Europe' would never accept Turkey into its club.

In the case of EU-Israeli relations, political considerations have operated in the opposite direction. The political imperative not to antagonise Israel has meant not only that the Union has abdicated on the use of conditionality, but also that it has bent its own legal system for the sake of accommodating illegal Israeli practices (as in the case of the origin rules). During the Oslo years the official reason against exerting pressure was the imperative not to upset the peace process. Indeed the entire peace process was conducted on the premise that, while Israel cooperated, the international community would accept its right to differ on the interpretation and application of international law.

Following the demise of the process, other political considerations have come into play. Most important, EU policies have been influenced by Israeli strategies towards the EU. A first pillar of Israel's strategy has been its criticism of Europe for its alleged anti-Israeli bias and its anti-Semitism. EU member states and particularly countries such as Germany and Austria, for evident historical reasons, have been highly sensitive to any criticism of this kind. A second major line of Israeli reasoning has been that of separating politics from economics, by compartmentalising the conflict from wider EU-Israeli ties and advancing EU-Israeli economic integration in view of the high level of Israeli development compared with its neighbours.<sup>57</sup> A final reason explaining why the Union has largely bent to Israel has been the leverage that Israel can exert on Europe. In economic terms, close EU-Israeli trade ties have benefited Europe as well as Israel (the Union enjoys a strong trade surplus with Israel). Even more importantly, Israel has been key to European security interests for peace and stability in the Middle East. While the ills of the Middle East by no means hinge on a resolution of the Arab-Israeli conflict, a solution has been considered in Europe as a main ingredient to the stability, peace and prosperity of the region.

## 6. Conclusions

Comparing the EU's role in two key conflicts in its neighbourhood reveals important lessons on the potential and actual effectiveness of its contractual ties with third parties. In the Israeli-Palestinian conflict, developments on the ground remain far removed from the Union's declared aims. Except for the partial successes *vis-à-vis* the promotion of Palestinian reform, underlying trends are moving steadily away from the EU's aims concerning the establishment of a viable two-state solution and the respect for human rights and international law. While the Union cannot alone realise these objectives, the effectiveness of its contribution has been marred by several defects of its contractual ties with the parties. While categorically different from the inherent value of the accession process, both parties have enjoyed important ties with the Union. These ties have been viewed as valuable by the parties and have not been afflicted by the problems of time inconsistency, which instead bedevil the accession process.

Rather than on the benefits side of the equation, the principal questions have arisen about the obligations. Here the Union's ties with Israel and the PA have been fundamentally different. With respect to the Palestinians, the Union has been increasingly successful in specifying clear conditions for the receipt of financial aid and it has been credible in its threats to suspend such support in the event of non-compliance. Key questions remain and relate primarily to the

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<sup>57</sup> Mark Heller (2004), *Israel-EU Relations: The Political Dimension*, paper presented at the IEPN meeting, 14 October, Berlin.

dilemmas of imposing conditionality on a non-state actor. But on a whole, the Union's efforts in this respect have been relatively successful. When it comes to Israel, the opposite has been true. By refraining from the use of conditionality and thus also failing to specify clear political and legal obligations, the Union has abdicated on a key instrument to exercise influence on the country. Worse still it has gone as far as risking the bending of its own laws in order to accommodate Israeli non-compliance. Underlying political imperatives have much to do with the explanation of events. Arguably these, rather than the EU's alleged anti-Israeli bias, are at the core of the Union's credibility problem in the region.

In the case of Turkey's Kurdish question, the value of EU benefits has risen considerably with the opening of the accession process. This process has been valued highly by key political actors in Turkey, helping to tilt domestic balances in favour of wide-ranging reform, which has also considerably benefited the Kurds. Problems remain and relate to the long timeframe for accession, the insufficient clarity of conditions and the underlying Turkish mistrust of the EU's goodwill in embracing Turkey into its club. Yet at the same time, the very scepticism in the European Union against Turkey's accession has also added to the credibility of the EU's political conditions.

The shortcomings in the Union's role analysed over the course of this paper are tightly inter-linked. First, the absence of sufficiently clear conditions signals the lack of credible conditionality. It follows that without sufficiently clear conditions a credible policy of conditionality cannot exist. In turn, the vagueness of conditions indicates a reduced EU readiness to stand by the letter of conditionality. To some extent this has been true of conditions specifically linked to the Kurdish question, where the Union – while strict on general human rights – has left the Turkish state to find specific solutions to its Kurdish question. Far more evident has been the lack of clear conditions towards Israel *vis-à-vis* its legal obligations and the peace process.

Second, the value of EU benefits is closely linked to the clarity of conditions, the ensuing credibility of conditionality and to the role of political imperatives. As in the case of time inconsistency, vague conditions and the absence of credible conditionality add to the uncertainty prevailing in the contract, which in turn reduces the perceived value of the promised gain. Likewise, the value of a carrot is reduced when its receipt is considered to be linked to conditions determined by political imperatives lying beyond the contract. If a recipient considers the delivery of the benefits to be linked to extra-contractual factors, its incentives to fulfil the obligations inevitably reduce. This appears true in the case of the more conservative voices in Turkey. Likewise, there is little incentive for Israel to heed EU recommendations if it is aware that the Union will deliver the promised benefits irrespective of its conduct.

Closing the circle, conditions are often vague and conditionality loose in order for EU actors to retain a wider scope for political manoeuvring. Extreme clarity in the specification of obligations reduces the EU's flexibility in its assessment of when and whether conditions are met. This has been true both in the case of Turkey's Kurdish question and Israel's conduct *vis-à-vis* the Palestinians. In the case of the Kurds, vague EU conditions have been used by pro-Turkish forces in the Union to argue that Turkey had met all the relevant conditions and by Turkey-sceptics to argue the opposite.

The overall conclusion points unequivocally to the need to tailor EU-related benefits to the wishes and expectations of the neighbours but to do so while minimising political discretion and maximising the clarity and credibility of the attached obligations. In the case of Turkey this would go far in curing the persisting Sèvres syndrome and bolster the efforts of domestic reformers towards greater democracy, respect of human rights and acceptance of multiculturalism and good governance. In the case of Israel and the Palestinians, greater EU clarity, consistency and thus credibility would shift the debate away from the relative bias of the European Union's

role in the Middle East. While not in itself leading to a peaceful, just and lawful resolution of the conflict, a shift in the EU's approach would also begin to prepare the ground for the solution that most parties, both internal and external, have advocated.

In both conflicts, and indeed in any ethno-political conflict within and beyond the EU's borders, the Union can only partly shape events, which will inevitably be determined predominantly by endogenous factors. Yet this paper has attempted to point to a frequently under-researched aspect of EU foreign policy. Namely that the effectiveness of the EU's external role is often determined less by the overall 'power' of its instruments, but far more by the precise ways in which such instruments have been deployed.

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## StrataGen - Strategic Agenda for the Greater European Neighbourhood

*A Programme of the Centre for European Policy Studies (CEPS), for 2005-2010*

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### StrataGen Mission Statement

- To define a vision for a Wider European order and the relationship between the enlarged EU and its Arab/Muslim neighbourhood;
- To develop these proposals in-depth and in policy-operational terms;
- To combine in-house research capacity with networks of individuals from leading research institutes in the EU and the neighbourhood, and to disseminate and advocate proposals throughout the region;
- To work independently from the EU institutions but in close interaction with them; and
- To decide on the sequencing and selection of priority topics with core stakeholders.

Over the last five years, CEPS has developed an exceptional expertise in European Union policies in the area often called the Wider Europe. This has been reflected in publications that have been both regional and thematic: *CEPS Plan for the Balkans* (1999), *Stability Pact for the Caucasus* (2000), *The Elephant and the Bear – EU, Russia and their Near Abroads* (2001), *Cyprus as Lighthouse of the East Mediterranean* (2002), *Norway, the European Economic Area and the European Union* (2002), *Europe's Black Sea Dimension* (2002), *The Rubic Cube of the Greater Middle East* (2003), *The Wider Europe Matrix* (2004), *Economic Transition in Central and Eastern Europe* (2004), *Europeanisation and Conflict Resolution* (2004), *Readings in European Security*, Vols. I (2002) and II (2004). These publications and related working papers are available from the CEPS' on-line bookshop, at <http://shop.ceps.be>

CEPS has decided to build on and strengthen its work in this broad area through the **StrataGen** programme over the five-year period 2005-2010. The rationale for this initiative follows from both the EU's historic enlargement on 1 May 2004, which now leads the EU to define a new neighbourhood policy, and the unprecedented turmoil in the Middle East in the aftermath of September 11<sup>th</sup> and the Iraq war, with its consequences for transatlantic relations.

The **StrataGen** programme will be organised under the following broad geographic areas:

- Northern neighbourhood policy, covering CIS states targeted by EU neighbourhood policy
- EU-Russian relations
- Southern neighbourhood policy, covering Mediterranean states, but reaching also into what is now officially called the Broader Middle East and North Africa (BMENA)
- Implications for transatlantic relations will be considered for all three regions above.

The analytical methodology will be multi-disciplinary: political science, international relations and European studies, economics and law.

The programme is led by Michael Emerson, CEPS Senior Research Fellow, together with Daniel Gros, CEPS Director. CEPS gratefully acknowledges financial support for the **StrataGen** programme from the Open Society Institute and the Compagnia di San Paolo.

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Founded in 1983, the Centre for European Policy Studies is an independent policy research institute dedicated to producing sound policy research leading to constructive solutions to the challenges facing Europe today. Funding is obtained from membership fees, contributions from official institutions (European Commission, other international and multilateral institutions, and national bodies), foundation grants, project research, conferences fees and publication sales.

## Goals

- To achieve high standards of academic excellence and maintain unqualified independence.
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- To build collaborative networks of researchers, policy-makers and business across the whole of Europe.
- To disseminate our findings and views through a regular flow of publications and public events.

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- Complete independence to set its own priorities and freedom from any outside influence.
- Authoritative research by an international staff with a demonstrated capability to analyse policy questions and anticipate trends well before they become topics of general public discussion.
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