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6. Bilateral cooperation between the European Union and Mediterranean countries: an introduction to the institutional framework and key issues

Jan Wouters and Michal Ovádek

I INTRODUCTION

At the risk of opening this chapter with a *cliché*, it must be recognized from the outset that much of the Mediterranean region, particularly where it overlaps with the Middle East and North Africa (MENA), finds itself in continued turmoil. Beset by military conflicts, terrorism, underdevelopment and political crises, the public association of the region with widespread human tragedy has been only strengthened in the last decade. During the same period, and in a number of cases linked to the events in the MENA, the European Union (EU or Union) has experienced its own share of crises. The two sides of the common Mediterranean neighbourhood have most notably come together in the migrant and refugee crisis that has dramatically spilled over the EU's borders in 2015. Although the present contribution has the relatively modest objective of presenting the legal-institutional framework in bilateral relations between the EU and its Mediterranean neighbours, it still cannot do without at least acknowledging the high degree of political, social and economic volatility present throughout the region.

The extent to which legal and policy instruments of bilateral cooperation can generate legal certainty in times of profound crises is, to say the least, uncertain. The utility of formal instruments is bound to be circumscribed in view of, for example, abrupt power transitions or rapidly changing foreign policy interests. This might partially explain the widely reported failure of the European Neighbourhood Policy (ENP), which, while not solely attributable to factors external to the policy, was not helped by momentous contextual changes, many of which were impossible to foresee at the time of the ENP's inception in 2004. In any case, despite some pervasive regional dynamics, the situation on the

ground differs markedly not only between the eastern and southern dimension of the ENP but also within the Mediterranean region.

In principle, the evolving differences between countries – and more primarily differences in their treatment by the EU – could be accommodated through the application of the principle of differentiation, a cornerstone of the ENP which has been strengthened, at least on paper, in the 2011 and 2015 revisions of the policy.¹ The extent to which the EU translates the principle of differentiation into practice, however, has been disputed in scholarly literature.² The present contribution discusses the formalized aspects of bilateral cooperation between the EU and countries of the southern dimension of the ENP and queries the degree of differentiation found therein.³ We will also highlight the distinctive challenges each bilateral relationship must grapple with.

The chapter proceeds first by briefly looking at the historical development leading to the current institutional framework. Second, it analyses in general three main instruments used in bilateral relations between the EU and Mediterranean countries: association agreements, ENP Action Plans and mobility partnerships. Third, it examines the specificities of bilateral arrangements in place on a country-by-country basis. Finally, we conclude with a few observations on the degree of differentiation made possible by the bilateral institutional framework.

¹ See, in general, Esther Barbé and Anna Herranz-Surrallés (eds), *The Challenge of Differentiation in Euro-Mediterranean Relations: Flexible Regional Cooperation or Fragmentation* (Routledge 2013).

² See, for example, Tobias Schumacher and Dimitris Bouris, 'The 2011 Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy' in Dimitris Bouris and Tobias Schumacher (eds), *The Revised European Neighbourhood Policy: Continuity and Change in EU Foreign Policy* (Palgrave Macmillan 2017) 16–17.

³ The focus on the ENP regrettably excludes other Mediterranean countries, most notably Turkey, as well as some Member States of the Union for the Mediterranean, such as Montenegro and Mauritania. Moreover, the chapter does not look at developments in those states that later acceded to the EU. The space of a single chapter is not sufficient to treat all Mediterranean countries in the necessary detail. For a survey on the bilateral relations between EU and Turkey, see Ott, Chapter 9 in this volume. Issues related to migration and mobility in the EU Eastern neighbourhood are analysed in Van Elsuwege and Vankova, Chapter 8 in this volume.

II INSTITUTIONALIZATION OF EU–MEDITERRANEAN BILATERAL RELATIONS IN HISTORICAL PERSPECTIVE

Prior to the 1990s, four structural factors can be seen as shaping in general the possibilities of Mediterranean cooperation: the state of European integration, past colonial relationships, the bipolar logic of the Cold War and the Arab-Israeli conflicts. The confluence of these factors yielded only modest cooperative outcomes.

Despite establishing an association, the first bilateral agreements signed between the European Economic Community (EEC) and Morocco and Tunisia in 1969 for a period of five years were limited in scope to the liberalization of trade in goods.⁴ The agreements provided only weak institutional frameworks: they intended to do no more than open the Community market to industrial goods and give preferential treatment to some of the less contentious agricultural products.⁵ Non-preferential trade agreements with Israel, one of the first countries to establish diplomatic relations with the EEC, and Lebanon, were signed even earlier (in 1964 and 1965 respectively), but harboured no more ambition.⁶ Next to these legal relations there were more obscure international agreements, such as the one on food aid provision to Tunisia.⁷

The EEC attempted to instil a degree of strategy and coherence into its Mediterranean approach in 1972 with the launch of the Global Mediterranean Policy.⁸ Similarly to the discussions of differentiation in the ENP today, the

⁴ Agreement establishing an Association between the European Economic Community and the Kingdom of Morocco [1969] OJ L197/5 (in French); Agreement establishing an Association between the European Economic Community and the Republic of Tunisia [1969] OJ L198/95 (in French). The Association Agreements were not comparable in scope with those concluded by the EEC with Greece and Turkey in 1961 and 1963 respectively, which in addition included signs of a membership perspective.

⁵ Richard Bailey, *The European Connection: Implications of EEC Membership* (Pergamon Press 1983) 191.

⁶ Trade Agreement between the European Economic Community and the State of Israel [1964] OJ P95/1518 (in French); Agreement on Trade and Technical Cooperation between the European Economic Community and the Republic of Lebanon [1968] OJ L146/2 (in French). A slightly more comprehensive trade agreement was signed with Israel in 1970: see Agreement between the European Economic Community and the State of Israel [1970] OJ L183/1 (in French). Lebanon had also signed a similar agreement on 18 December 1972, but it did not subsequently ratify it.

⁷ Agreement between the European Economic Community and the Republic of Tunisia on the supply of common wheat as food aid [1969] OJ L290/13 (in French).

⁸ Statement from the Paris Summit, 19–21 October 1972, Bull. EC. 10/1972 establishing Global Mediterranean Policy.

heterogeneity of the 17 Mediterranean countries included in the 'global' policy was not lost on contemporary commentators.⁹ In concrete terms, the policy entailed the conclusion of more encompassing international agreements with more broadly worded objectives than merely trade expansion, such as social and economic development.¹⁰ They were agreed both with countries which already had a contractual relationship with the EEC as well as with those which did not.¹¹ Apart from preferential access, this new wave of bilateral treaties – termed 'cooperation agreements' – provided for economic aid through protocols on financial and technical cooperation.¹² Protocols were agreed for a period of five years and comprised both direct budget lines and loans from the European Investment Bank (EIB).

The 1970s also saw the establishment of a political dialogue between EEC Member States and Arab countries. The dialogue came about primarily as a result of the twin forces of advancing European integration, with the launch of the European Political Cooperation – the predecessor of the Common Foreign and Security Policy (CFSP) – and the worsening situation in the Middle East that witnessed the 1973 oil embargo and the Yom Kippur war.¹³ Although the Euro-Arab dialogue has not been considered a particular success,¹⁴ not

⁹ Loukas Tsoukalis, 'The EEC and the Mediterranean: Is "Global" Policy a Misnomer?' (1977) 53 *International Affairs* 422–3.

¹⁰ See, for example, Article 1 of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria [1978] OJ L263/2: 'The object of this Agreement between the European Economic Community and Algeria is to promote overall cooperation between the Contracting Parties with a view to contributing to the economic and social development of Algeria and helping to strengthen relations between the Parties. To this end provisions and measures will be adopted and implemented in the field of economic, technical and financial cooperation, and in the trade and social fields.'

¹¹ To the chagrin of the Arab countries, the first such agreement was concluded with Israel. The Commission countered that this was purely by historical accident and that in any case the concessions granted to Israel were less than those offered to other countries in the MENA region. See Simon H. Langer, 'The Israel-EEC Free Trade Agreement: An Analysis of the Agreement and Its Effect on Investments' (1982) 9 *Syracuse Journal of International Law and Commerce* 63, 84.

¹² Four protocols on financial and technical cooperation were signed before the cooperation agreements were replaced by Euro-Mediterranean agreements. Most protocols entered into force in successive rounds in 1978, 1982, 1988, 1992. Financing under the protocols was later substituted by the Mesures D'Accompagnement (MEDA) instruments.

¹³ These factors had also undoubtedly inserted a sense of urgency into the Global Mediterranean Policy. See Soren von Dosenrode and Anders Stubkjaer, *The European Union and the Middle East* (Sheffield Academic Press 2002) 87.

¹⁴ See, for example, Haifaa Jawad, *Euro-Arab Relations: A Study in Collective Diplomacy* (Ithaca 1993) 160.

least because of its swift suspension following the 1978 Camp David Accords and failure to realize proposed projects,¹⁵ the fact that it was set up at all and attained some degree of institutionalization (a General Committee was to meet twice a year) in the face of numerous difficulties, ranging from recognition of the Palestine Liberation Organization (PLO) to exclusion of sensitive political issues, was an achievement in itself.¹⁶

It was only with the end of the Cold War that new possibilities for cooperation opened up in the Mediterranean region. The EU started off this era with the so-called Redirected (or New) Mediterranean Policy, which enhanced both the preferential trade aspect of the existing policy and substantially increased financial contributions through renewed financial protocols for the period 1992–96.¹⁷ Even though the policy also added other elements, such as more support for regional integration in the Southern Mediterranean and elementary engagement with civil society, it was not essentially different from its forerunner.¹⁸

The real institutional breakthrough, which has framed EU–Mediterranean cooperation ever since, came in 1995 in the form of the Barcelona Declaration.¹⁹ It endeavoured to create a comprehensive multilateral forum for the whole Mediterranean region by establishing the Euro-Mediterranean Partnership (EMP), also called the ‘Barcelona Process’.²⁰ The EMP comprised three seemingly equal baskets of partnerships: political and security; economic and financial; and social, cultural and human. In reality, it was clear from the outset that cooperation on political and security issues would be highly

¹⁵ European Commission, ‘The European Community and the Arab world’ (Europe Information: Development DE 38, June 1982) 33.

¹⁶ Alan R. Taylor, ‘The Euro-Arab Dialogue: Quest for an Interregional Partnership’ (1978) 32 *Middle East Journal* 429, 443.

¹⁷ Bichara Khader, ‘The European Union and the Arab World: From the Rome Treaty to the Arab Spring’ (2013) *PapersIEMed* 17, 15.

¹⁸ Ricardo Gomez, ‘The EU’s Mediterranean Policy: Common Foreign Policy by the Back Door?’ in John Peterson and Helene Sjursen (eds), *A Common Foreign Policy for Europe: Competing visions of the CFSP* (Routledge 1998) 140.

¹⁹ Final Declaration of the Barcelona Euro-Mediterranean Ministerial Conference, 27–8 November 1995, Bull. EU 11/1995, 136. The Declaration was signed by the 15 EU Member States and 12 neighbouring Mediterranean partners. The financial resources for the EMP came from the so-called MEDA instruments, which were de facto predecessors to the ENPI and ENI following the creation of the ENP. See, for example, Council Regulation (EC) 1488/96 of 23 July 1996 on financial and technical measures to accompany the reform of economic and social structures in the framework of the Euro-Mediterranean partnership [1996] OJ L189/1.

²⁰ Originally, a more circumscribed initiative for only North African countries was envisaged. The signing of the 1993 Oslo Accords, however, enabled the EU to expand the process.

contentious and difficult to achieve.²¹ On the other hand, the continued and even enhanced emphasis on economic liberalization of the Barcelona Declaration was perceived (presciently) with scepticism by some scholars in view of potential destabilizing effects, which seemed to run counter to the security-through-development logic underpinning the process.²² Overall, it was the failure to realize the proclaimed all-inclusive nature and ambition of the Barcelona Process – it aimed *inter alia* to establish a free trade area by 2010 – that made it later subject to considerable criticism.²³

In any case, the launch of the multilateral EMP did not spell death for EU-MENA bilateralism. On the contrary, it added impetus to the process of renegotiation of existing bilateral agreements, which had already started prior to the Barcelona Conference. The Barcelona Declaration itself stated that it regarded ‘this multilateral framework as the counterpart to a strengthening of bilateral relations which it is important to safeguard’.²⁴ In light of the non-binding character of the Declaration, however, a more cynical perspective could point out that rather than being ‘the counterpart’, the multilateral framework of the EMP was hollow without the muscle of the bilateral agreements.²⁵

The third generation of association agreements accompanying the Barcelona Process are generally known as the Euro-Mediterranean agreements establishing association (EMAAs), which are still in force today.²⁶ As with most association agreements, their legal basis in the EU Treaties is article 217 TFEU

²¹ Esther Barbé, ‘The Barcelona Conference: Launching Pad of a Process’ (1996) 1 *Mediterranean Politics* 25.

²² Eberhard Kienle, ‘Destabilization through Partnership? Euro-Mediterranean Relations after the Barcelona Declaration’ (1998) 2 *Mediterranean Politics* 1; Jon Marks, ‘High hopes and low motives: The new Euro-Mediterranean Partnership Initiative’ (1996) 1 *Mediterranean Politics* 1.

²³ See, for example, Ana Palacio Vallelersundi, ‘The Barcelona Process – A Euro-Mediterranean North-South Partnership’ (2004) 5 *Georgetown Journal of International Affairs* 145, 147; Raffaella Del Sarto and Tobias Schumacher, ‘From EMP to ENP: What’s at stake with the European Neighbourhood Policy towards the Southern Mediterranean?’ (2005) 10 *European Foreign Affairs Review* 17.

²⁴ Final Declaration of the Barcelona Euro-Mediterranean Ministerial Conference (n 19) 136.

²⁵ Fouad Zaim, ‘The Third Generation of Euro-Mediterranean Association Agreements: A View from the South’ (2004) 4 *Mediterranean Politics* 36, 39–40.

²⁶ Euro-Mediterranean Agreements were concluded establishing an association between the European Communities and their Member States, of the one part, and, respectively, Tunisia [1998] OJ L79/2; Morocco [2000] OJ L70/2; Jordan [2002] OJ L129/3; Egypt [2004] OJ L304/39; and Algeria [2005] OJ L265/2. An agreement with Syria was initialled in 2004 and again in 2008 but not formally signed or ratified. Negotiations regarding a framework agreement with Libya have begun in 2008 but were suspended in 2011 due to destabilization.

(formerly article 310 TEC).²⁷ In keeping with the objectives of the EMP, the EMAAs are comprehensive treaties covering many more aspects of bilateral cooperation than merely trade, such as regular political dialogue, justice and home affairs or social and cultural cooperation. EMAAs also include human rights and democracy clauses as essential elements of the agreements, although these clauses have never been invoked to suspend the agreements.²⁸ When it comes to the economic chapters of the EMAAs, the focus was at first firmly on trade in (industrial) goods, while other regulatory areas (intellectual property rights, public procurement and so on) were included or developed only gradually through additional protocols. However, even such ‘enhanced’ EMAAs fall short of the Deep and Comprehensive Free Trade Agreements (DCFTAs) agreed by the EU with some Eastern Partnership countries.²⁹ Following the Arab Spring, DCFTA negotiations have begun with Morocco, Tunisia and Jordan.

Taking into account the historical path of institutionalization chronicled so far, it should not come as a surprise that the ENP has not significantly altered the relative importance of bilateral cooperation and corresponding international agreements. The principle of differentiation, introduced by the ENP primarily through the so-called ‘Action Plans’, has merely reinforced the perception that bilateralism takes precedence over multilateralism and regionalism in Euro-Mediterranean relations.³⁰ However, the strengthening of differentiated bilateralism, particularly by the 2011 and 2015 reviews of the ENP, has led to questions over whether the legal framework of EMAAs can keep up or whether it is being overtaken by political commitments.³¹ In any case, the overlapping governance structures of the Barcelona Process and the ENP have been most recently further complicated by the establishment of the Union for the Mediterranean (UfM), where multilateral cooperation is institutionalized

²⁷ One notable exception was Israel’s cooperation agreement of 1975 which had as its legal basis the common commercial policy (then Article 113 of the EEC Treaty). An argument has been made, however, that the agreement was in nature closer to an association agreement. See Langer (n 11) 86.

²⁸ Lorand Bartels, *Human Rights Conditionality in the EU’s International Agreements* (Oxford University Press 2005); Barbara Brandtner and Allan Rosas, ‘Trade Preferences and Human Rights’ in Philip Alston, Mara Bustelo and James Heenan (eds), *The EU and Human Rights* (Oxford University Press 1999).

²⁹ Peter Van Elsuwege and Guillaume Van der Loo, ‘Continuity and Change in the Legal Relations Between the EU and Its Neighbours: A Result of Path Dependency and Spill-over Effects’ in Bouris and Schumacher (n 2) 107.

³⁰ Tobias Schumacher, ‘Conditionality, Differentiation, Regionality and the “New” ENP in the Light of Arab Revolts’ in Barbé and Herranz-Surrallés (n 1) 148.

³¹ Ibid.

(permanent Secretariat in Barcelona) and functionalist (driven by projects).³² Yet, bilateralism in the region stands as strong as ever.³³

III EU INSTRUMENTS OF BILATERAL COOPERATION IN THE SOUTHERN NEIGHBOURHOOD

For all the rhetoric about differentiation in academic and policy circles, the EU's toolkit for bilateral cooperation with the Southern Mediterranean countries revolves around only a handful of legal and policy instruments. Nonetheless, as a result of strategic considerations, the EU has been able to update some of the instruments throughout the years, such as the association agreements, while also being able to introduce novel tools, such as the mobility partnerships. The following paragraphs look at three important bilateral instruments, but many more international agreements, mostly of a technical nature, form part of the bilateral legal environment.³⁴

A Association Agreements

As mentioned above, currently in force in all southern neighbourhood countries with the exception of Syria and Libya are the EMAAs. They represent the backbone of the whole network of bilateral relationships of the EU with third partners in the Mediterranean region. Although the EMAAs represent the most comprehensive legal framework for bilateral relations in the region to date, they are still a far cry from the agreements already concluded by the EU with some of the countries of the eastern dimension of the ENP.³⁵ In addition, while some differences in language, emphasis or trade concessions between the various EMAAs exist, the overall template and key characteristics of the agreements are shared.

³² Paul James Cardwell, 'EuroMed, European Neighbourhood Policy and the Union for the Mediterranean: Overlapping Policy Frames in the EU's Governance of the Mediterranean' (2011) 49 *Journal of Common Market Studies* 219.

³³ Raffaella Del Sarto, 'Plus ça change ...? Israel, the EU and the Union for the Mediterranean' (2011) 16 *Mediterranean Politics* 117, 133–4; Oliver Schlumberger, 'The Ties That Do Not Bind: The Union for the Mediterranean and the Future of Euro-Arab Relations' (2011) 16 *Mediterranean Politics* 135, 144.

³⁴ To name a few: agreements on conformity assessment and acceptance of Industrial Products (ACAAs); technology and science agreements, aviation agreements, readmission and visa facilitation agreements, fisheries partnership agreements, agriculture and fisheries protocols. These are de facto separate treaties, but they are often attached to the core legal framework – the EMAA – as a protocol.

³⁵ Van Elsuwege and Van der Loo (n 29) 107.

While most features of the EMAAs are not novel or unique, that does not lessen their importance for bilateral relations. One such long-standing cornerstone of association agreements with the EU is the creation of association councils and committees, which can be found in each EMAA under the title on institutional provisions. The councils and committees represent in essence the institutionalization of political dialogue – which itself is also explicitly prescribed in EMAAs, but not limited to the meetings of the association council – between the EU and third countries. Representation in association councils consisted prior to the Treaty of Lisbon of members of the Council of the EU and of the European Commission, on the one hand, and members of the government of the partner country, on the other. Today, the role of the Council of the EU is fulfilled by the High Representative of the Union for Foreign Affairs and Security Policy, with the support of the European External Action Service (EEAS).³⁶ Nonetheless, the Council, in accordance with article 218(9) TFEU, still adopts a decision on the common EU position to be taken in the association council. Association councils are chaired by each party in turn, operate according to their own rules of procedure, and should meet at least once a year at the ministerial level.³⁷ In practice, meetings of the councils may be postponed, most often due to a downturn in bilateral relations. Association councils may also set up ad hoc working groups for the implementation of the EMAAs, or delegate their powers to association committees which bring together officials of the EU, represented by the EEAS, and of the government of the partner country.

Crucially, association councils and committees can take binding decisions for the purpose of attaining the objectives of EMAAs, which must be implemented by the parties. The provisions of the association agreements specify the matters that require the adoption of a decision or a non-binding recommendation by the association council.³⁸ EMAAs furthermore allow association councils to act as a dispute settlement body for the parties to the agreement. Binding decisions in disputes are adopted after the appointment of arbitrators.

An important novel aspect brought about by EMAAs was the inclusion of respect for democratic principles and human rights as ‘essential element’ clauses in the agreement. Such clauses have become part and parcel of prac-

³⁶ The High Representative may still delegate its representative role to an EU Member State, normally the holder of the rotating presidency of the Council of the EU.

³⁷ The frequency of meetings of the association council tends to reflect the state of the bilateral relations. See, for example, Vera Van Hüllen, ‘Europeanisation through Cooperation? EU Democracy Promotion in Morocco and Tunisia’ (2012) 35 *West European Politics* 117.

³⁸ See, for example, articles 64 and 65 of the EU-Israel EMAA, which require a decision by the association council in matters of social security.

tically all international agreements concluded by the EU since the 1990s. The wording of the clauses differs among the EMAAs, but it ultimately binds the parties to respect human rights and democratic norms as part of the agreements.³⁹ By constituting an essential element of the EMAAs, the democracy and human rights clauses could serve as a basis for the suspension of the agreement or for taking any other ‘appropriate measures’ (‘non-execution clause’).⁴⁰ Lorand Bartels formulated an argument in support of this conclusion but his analysis also pointed to counter-arguments, and as such, the legality of a potential exercise of the non-execution clause on the basis of human rights violations could be disputed.⁴¹

In order to obtain an overview of the level of differentiation among the various EMAAs, it is worth looking at the objectives enshrined in article 1 of each of the agreements and point to their similarities and differences. Table 6.1 (see Annex) deconstructs the objectives and identifies the commonalities and differences.

It is clear from the overview of the objectives that a degree of differentiation is present in the EMAAs. The level of differentiation should not be overstated, though: often the differences stem from minor linguistic modifications that are most likely inconsequential in terms of legal or political impact.⁴² The same is in fact true for the rest of the text of the EMAAs, where a plethora of minor discrepancies in language can be found among the agreements.

What such minor – but also the more obvious – divergences can testify to is the fact that each agreement is a result of an individual bilateral negotiation which, to a varying extent, reflects some of the idiosyncrasies of that particular bilateral relationship between the EU and the partner country. Arguably the most dissimilar article 1 is the one in Israel’s EMAA. This appears to echo that Israel is by far the most developed country in the region with an already well-established trade relationship with the EU. The trade liberalization objective is therefore much more concrete than those contained in other EMAAs. Elsewhere, subtle linguistic nuances capture the regional sensitivities: whereas the regional objectives of the Maghreb countries aim for integration, the agree-

³⁹ One of the more significant differences is the reference to the Universal Declaration on Human Rights (UDHR) in all but the Tunisian EMAA (article 2), which refers to the domestic and international practice of the parties.

⁴⁰ See, for example, article 79 of the EU-Israel EMAA. Such provisions can be, however, found in all the EMAAs.

⁴¹ Lorand Bartels, ‘A Legal Analysis of Human Rights Clauses in the European Union’s Euro-Mediterranean Association Agreements’ (2004) 9 *Mediterranean Politics* 368.

⁴² See, for example, the difference between ‘reciprocal’ and ‘mutual’ interest in the objective of cooperation in other areas.

ments of the Mashreq countries strive for peaceful coexistence in view of the Israeli-Palestinian question.

The differences found among the objectives are in general eclipsed by the shared commonalities of EMAAs and their objectives. In other words, the EMAAs constitute a single instrument of legal bilateralism involving the EU and Southern Mediterranean countries with a set structure and purpose. Any differences, as can be seen in the objectives, are accommodated within the common structure. The same wording of individual objectives is normally replicated across a number of EMAAs. In some cases, the text of article 1 is entirely identical (Morocco and Tunisia) or nearly identical (Palestine and Egypt). Even where deviations exist, these still fall under the same set of topics towards which the EMAAs are geared.⁴³ The uniformity of EMAAs also points to the predominant position of the EU in the bilateral negotiations.

B ENP Action Plans

ENP Action Plans (APs) are one of the main innovations of the ENP when it comes to instruments of bilateral cooperation available to the Union. APs are in essence political agreements between the EU and the partner country which set out the agenda and priorities for the bilateral relationship in the short- to medium-term (three to five years) with a view to implement the broader objectives of the association agreement. Despite being adopted by association councils, APs are not legally binding; rather, they ‘give orientation’ for cooperation between the EU and the partner country.⁴⁴ The association council, and any other designated body established under the association agreements, is also responsible for monitoring and aiding the implementation of the APs. As a result of this embeddedness in the overall legal framework of the association agreements,⁴⁵ APs are only adopted once the contractual bilateral relationship is already in place.

Even a cursory glance at the ENP APs agreed with Southern Mediterranean countries reveals that they have been overwhelmingly concerned with domestic reforms in the partner countries with few to no reciprocal commitments requiring internal adaptation of the EU.⁴⁶ Instead, the EU has focused on

⁴³ A notable outlier is the omission of a regional cooperation objective from the EU-Lebanon EMAA, which is otherwise universally present in some form in the rest of the agreements.

⁴⁴ See, for example, the EU-Egypt Action Plan, adopted March 2007, 35.

⁴⁵ While APs explicitly refer to and rely on the legal relationship established by association agreements, the EMAAs contain no reference to APs.

⁴⁶ Seven countries of the southern dimension of the ENP have adopted APs: Egypt (2007), Jordan (2005, 2012), Israel (2005, extended until 2012), Lebanon (2007, 2014), Morocco (2005, 2013), Palestine (2005, 2013) and Tunisia (2005, 2013).

providing (mainly financial) support and absorbing the ‘target’ countries within its external governance framework where desirable.⁴⁷ Although the EU’s external governance is capable of spreading also in other ways,⁴⁸ what is most often witnessed in the Mediterranean region is a ‘*quid pro quo*’ offered by the EU to the partner countries to incentivize implementation of the APs and EMAAs. The use of positive (providing aid, extending cooperation) or negative (withdrawing aid, suspending cooperation) conditionality, which has been relatively successful in the context of EU enlargement,⁴⁹ has been deemed less successful in the context of the ENP.⁵⁰ Positive conditionality has been significantly enhanced in the wake of the Arab Spring, but on the whole the instruments relied upon by the EU have adapted precious little despite the marked change in context.⁵¹

Similarly to EMAAs, APs in the Mediterranean region are comprehensive and cover a plethora of issue areas. Unlike EMAAs, however, APs allow for more differentiation: the document is less of a straitjacket and the EU seeks to tailor the priorities of each AP in accordance with its interests and the specific situation in the partner country. The input and room for assertiveness on the part of the partner country in the negotiation of the AP depends on the relative power (im)balance (or presence/absence of leverage) and ranges from more equal partnerships (Israel, Algeria) to more deferential ones (Morocco, Tunisia).⁵²

The comprehensiveness of the APs and the difficulty of measuring many of their goals present a monitoring challenge for the European Commission,

⁴⁷ Sandra Lavenex, ‘EU External Governance in “Wider Europe”’ (2004) 11 *Journal of European Public Policy* 680.

⁴⁸ Sandra Lavenex, ‘A Governance Perspective on the European Neighbourhood Policy: Integration beyond Conditionality?’ (2008) 15 *Journal of European Public Policy* 938.

⁴⁹ Frank Schimmelfennig and Ulrich Sedelmeier, ‘Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe’ (2011) 11 *Journal of European Public Policy* 661.

⁵⁰ Sühal Şemşit, ‘The EU’s Enlargement and Neighbourhood Policy Strategies: The Role of Political Conditionality’ in Sieglinde Gstöhl (ed.), *The European Neighbourhood Policy in a Comparative Perspective: Models, Challenges, Lessons* (Routledge 2016) 230; Nariné Ghazaryan, *The European Neighbourhood Policy and the Democratic Values of the EU: A Legal Analysis* (Hart Publishing 2014) 175–6.

⁵¹ Gergana Noutcheva, ‘Institutional Governance of European Neighbourhood Policy in the Wake of the Arab Spring’ (2015) 37 *Journal of European Integration* 19, 27–8; Jan Wouters and Sanderijn Duquet, ‘The Arab Uprisings and the European Union: In Search of a Comprehensive Strategy’ (2013) 32 *Yearbook of European Law* 1.

⁵² Raffaella Del Sarto, ‘Wording and Meaning(s): EU-Israeli Political Cooperation According to the ENP Action Plan’ (2007) 12 *Mediterranean Politics* 59.

which evaluates the progress of the partner countries in delivering on the APs.⁵³ In theory, the Commission progress reports should exert a large amount of influence over the decisions on the size of the EU's (financial) support to the partner countries, as these are dispensed from unilateral EU financing instruments, chiefly the European Neighbourhood Instrument (ENI).⁵⁴ In practice, there is evidence pointing to the more than occasional dissociation of Commission evaluations of progress – which in any case struggle with partiality and politicization – from the eventual amount of EU funding disbursed to individual ENP countries.⁵⁵ The problem is at its most acute when it comes to applying benchmarks to the stated objectives of APs to promote democratization and human rights in the partner countries.⁵⁶ The EU has promised in response to apply stricter conditionality and greater differentiation in both the latest ENP review and the ENI Regulation replacing the former European Neighbourhood Policy Instrument (ENPI).⁵⁷ Lately, the EU can be seen trying to deliver on its promise of greater differentiation – and of more joint ownership – by replacing APs with 'partnership priorities' (see below). At this point it remains to be seen whether the change from APs to partnership priorities will have a significant impact on bilateral relations around the Mediterranean.

C Mobility Partnerships

Mobility partnerships (MPs) were conceived together with the Global Approach to Migration in 2005 and have become an established part of the cooperation framework on migration since its subsequent revision as Global Approach to Migration and Mobility in 2011.⁵⁸ Geographically, the negotiation of MPs focuses on the EU neighbourhood, which, of course, includes the southern dimension of the ENP. So far, MPs were concluded with Morocco in 2013, and with Tunisia and Jordan in 2014.⁵⁹

⁵³ Ghazaryan (n 50) 155–68.

⁵⁴ Regulation (EU) 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument [2014] OJ L77/27.

⁵⁵ Ghazaryan (n 50) 165–72.

⁵⁶ Raffaella Del Sarto and Tobias Schumacher, 'From Brussels with Love: Leverage, Benchmarking, and the Action Plans with Jordan and Tunisia in the EU's Democratization Policy' (2011) 18 *Democratization* 932.

⁵⁷ European Commission and High Representative of the Union for Foreign Affairs and Security Policy, 'Review of the European Neighbourhood Policy' JOIN (2015) 50 final.

⁵⁸ European Commission, 'The Global Approach to Migration and Mobility' COM (2011) 743 final.

⁵⁹ See Joint Declaration establishing a Mobility Partnership between the Kingdom of Morocco and the European Union and its Member States, Brussels, 7 June 2013;

MPs are in essence legally non-binding political declarations concluded between the EU and partner countries in order to establish a more specific framework for cooperation on migration issues than the general commitments provided for in association agreements.⁶⁰ On the side of the EU, individual Member States may also decide to sign up to the political declaration and indeed a number of them have done so. The declarations are flexible in the sense that other EU Member States may join the MP, as well as because they constitute evolving documents by virtue of amendments to agreed-upon priorities, activities and projects.

The MPs have a multi-layered character.⁶¹ They contain both political commitments with respect to various aspects of migration – perhaps most importantly, the parties commit to negotiate a visa facilitation and a readmission agreement – and a list of initiatives and projects to be implemented, involving the operational level. The implementation of the MPs is furthermore monitored by the parties in the context of an ongoing structured dialogue on migration and mobility, which has led to the conclusion of the MPs in the first place. The MPs are intended to represent an anchor for long-term cooperation and dialogue between the EU and partner countries in the area of migration.⁶² The bilateral dialogues take place concurrently with complementary regional dialogues supported by the EU and the intergovernmental International Centre for Migration Policy Development (ICMPD), such as the Rabat Process and the Mediterranean Transit Management (MTM) Dialogue. It should be noted, however, that the regional dialogues in migration governance in the Mediterranean have been criticized as haphazard and ineffective.⁶³

While MPs in theory allow the participating parties to determine their content bilaterally, the core objectives in all MPs hitherto concluded converge on a basic template with four pillars of cooperation: managing legal migration and labour market; enhancing the nexus between migration and development;

Joint Declaration establishing a Mobility Partnership between the Hashemite Kingdom of Jordan and the European Union and its participating Member States, Luxembourg, 9 October 2014; Joint Declaration establishing a Mobility Partnership between Tunisia and the European Union and its participating Member States, Brussels, 3 March 2014.

⁶⁰ See, for example, the MP with Morocco, para. 46: ‘The provisions of this joint declaration and its Annex are not designed to create legal rights or obligations under international law’.

⁶¹ Stefan Brocza and Katharina Paulhart, ‘EU Mobility Partnerships: A Smart Instrument for the Externalization of Migration Control’ (2015) 3 *European Journal of Futures Research* 1, 2.

⁶² See, for example, the MP with Morocco, para. 38.

⁶³ Michael Collyer, ‘Geopolitics as a Migration Governance Strategy: European Union Bilateral Relations with Southern Mediterranean Countries’ (2016) 42 *Journal of Ethnic and Migration Studies* 606.

combating illegal immigration and smuggling, while promoting returns and readmission; and supporting the effectiveness and capacity for international protection of refugees. An effective implementation of these broad objectives is meant to deliver a 'triple-win' of 'offering legal opportunities to migrants, supporting the development of countries of origin and supplying the EU countries with much needed skilled labour'.⁶⁴

However, not all the objectives are equal. From the perspective of the EU, which tends to dominate the partnerships, MPs are driven by a security imperative that requires the stemming of illegal immigration and installation of a degree of control over migration flows.⁶⁵ The commonality of objectives and of the overall text of the political declarations across the three MPs with Morocco, Tunisia and Jordan underscore the prevailing EU interest to establish the partnerships. This supports the argument that MPs are in the first place about the implementation of the EU's external migration policy to which the expectations of neighbour countries must be fitted.⁶⁶ Whereas the EU places strategic value on the management and curbs on illegal migration in the region,⁶⁷ the three MENA countries which have so far entered into MPs with the EU have done so with a view to securing financial resources or improving labour mobility, not out of security concerns.⁶⁸ More space for differentiation can be found in the project part of the MPs, where the types of initiatives agreed reflect better the demands of the EU's partners as well as the involvement of different Member States.⁶⁹ In any case, despite the misalignment of interests and perceptions, experience from pilot MPs has shown that the partnerships are at least beneficial for intensifying cooperation and putting emphasis on migration in bilateral relations.⁷⁰

⁶⁴ Stefan Angenendt, 'Mobility Partnerships – the Future of European Migration Policy?' (2012) 1 *Migration and Development* 216.

⁶⁵ Peter Seeberg, 'Mobility Partnerships and Security Subcomplexes in the Mediterranean: The Strategic Role of Migration and the European Union's Foreign and Security Policies towards the MENA Region' (2017) 22 *European Foreign Affairs Review* 91, 108.

⁶⁶ Noutcheva (n 51) 25.

⁶⁷ To this end, the Commission has been since 2015 operating the Emergency Trust Fund for stability and addressing root causes of irregular migration and displaced persons in Africa. All the North African countries are eligible for funding under this scheme.

⁶⁸ Although securitization was to some extent present in the case of Jordan, which hosts a large number of refugees and was involved in the war in Syria, the Jordanian government was chiefly keen on sustaining the financial support of the EU in the management of the refugee crisis. Seeberg (n 65) 108–10.

⁶⁹ Agnieszka Weiner, 'Cooperation on Migration and the Revised European Neighbourhood Policy' in Bouris and Schumacher (n 2) 275.

⁷⁰ Angenendt (n 64) 223.

IV KEY ISSUES IN BILATERAL RELATIONS WITH THE EU PER PARTNER

Whereas the previous sections of this chapter looked more at the formal commonalities found in the bilateral relationships of the EU with Southern Mediterranean countries, the present section will highlight the key issues of each relationship. Although some countries are easier to cluster together than others, there are nonetheless distinctive specificities across the board, all of which have in some way influenced bilateral relations. It should go without saying that the list of highlighted issues below is not by any means exhaustive.

A Algeria

Due to the peculiar ways of history, the territory of Algeria formed part of the original European Economic Community and was specifically mentioned in article 227(2) EEC Treaty. Following Algeria's independence from France in 1962, the country has signed a cooperation agreement with the EEC around the same time (1976) as most countries in the Mediterranean region, despite holding in general a more antagonistic stance vis-à-vis Europe than its neighbours in the Maghreb, Morocco and Tunisia.

What, however, distinguished Algeria the most from Morocco and Tunisia were the increasingly more prominent revenues from hydrocarbons. Energy trade remains to this day the single most important determinant in EU-Algeria relations and one which has manifested itself also in the formal side of the bilateral relationship. Unlike its neighbours, Algeria was able to derive a degree of leverage from the mutual interdependence with the EU which rests, on the one hand, on the centrality of energy exports for the Algerian domestic political economy, and on the other, on the EU's considerable energy demands combined with a desire for differentiated and stable energy supply, which has been furthermore affected by tense relations with Russia.⁷¹ As a consequence – but linked more broadly to the interests of the Algerian political leadership⁷² – Algeria has been hesitant to subscribe to the formal bilateral instruments championed by the EU around the whole Mediterranean Sea. After finally signing an EMAA in 2002, Algeria has been for a number of years negotiating its first ENP AP, while its neighbours have already adopted two successive

⁷¹ Hakim Darbouche, 'Decoding Algeria's ENP Policy: Differentiation By Other Means?' (2008) 13 *Mediterranean Politics* 371.

⁷² Hakim Darbouche, 'EU-Algeria Trade and Energy Interests in the Framework of the EMP: The Politics of "Specificity" in an Interdependent Relationship' (2009) 17 *Mediterranean Politics* 369.

APs. Intransigence has been to some extent overcome when the two sides signed a *memorandum* establishing a strategic energy partnership in 2013, to which a high-level dialogue on energy was added in 2015.⁷³

A more general uptick in EU-Algerian relations was the recent conclusion of a *prima facie* novel bilateral document entitled ‘Shared Partnership Priorities’.⁷⁴ More than anything, the document is a statement of political commitment to the mutual bilateral relationship, as the priorities identified for the period 2018–20 are hardly ground-breaking. What is more important is that the EU appears to have responded to the criticism of the irrelevance of the prior frameworks for engagement with Algeria.⁷⁵ It has also delivered on its promise to ‘discuss the possibility to jointly set new partnership priorities, which would focus each relationship more clearly on commonly identified shared interests’ by substituting the pursuit of the more rigid and onerous AP by the more streamlined partnership priorities.⁷⁶ Accommodating in this way the ‘Algerian specificity’ in the overall ENP framework is therefore a prime example of greater differentiation avowed in the 2015 revision of the ENP.⁷⁷

B Egypt

In the past decade, the political leadership of Egypt has swung from authoritarian to democratic before a military *coup d’état* ousted the first democratically elected Egyptian president, Mohamed Morsi. The subsequent election was accompanied by a crackdown on opposition and was won overwhelmingly by the former leader of the military coup, Abdel Fatah al-Sisi. Such political turmoil would represent a challenging environment for any international actor, including the EU.

In line with its long-held position of ‘stability first’ in the Mediterranean, the EU has been keen on incorporating, as it has also done elsewhere, Egypt into its network of bilateral relations, despite the latter being long ruled by its authoritarian president Hosni Mubarak.⁷⁸

⁷³ See Dialogue énergétique de haut niveau entre l’Algérie et l’Union européenne, Alger, 5 May 2015.

⁷⁴ EU-Algeria Association Council, ‘Shared Partnership Priorities of the People’s Democratic Republic of Algeria (Algeria) and the European Union (EU) under the revised European Neighbourhood Policy’, Brussels, 7 March 2017.

⁷⁵ Darbouche (n 72).

⁷⁶ European Commission and High Representative of the Union for Foreign Affairs and Security Policy, ‘Review of the European Neighbourhood Policy’ JOIN (2015) 50 final, 4.

⁷⁷ Ibid.

⁷⁸ Michelle Pace, ‘Paradoxes and Contradictions in EU Democracy Promotion in the Mediterranean: The Limits of EU Normative Power’ (2009) 16 *Democratization* 39.

Research has shown that in doing so, the EU's behaviour has been, for all its internal specificities,⁷⁹ hardly different from other external actors in the region.⁸⁰

As a result, Egypt's formal bilateral cooperation with the EU has for the most part pragmatically adhered to the regional standard, regardless of a frequent lack of enthusiasm. Although Egypt concluded both an EMAA (in 2001) and an AP (in 2007), it successfully resisted prior to the 2011 revolution any significant political reforms that would conform to the EU's normative agenda. Similarly, the ENP framework first failed to contribute to the development of democratic movements in Egypt,⁸¹ and in the aftermath of the Arab Spring was unable meaningfully to bolster the momentous institutional change.⁸² Moreover, Egypt's preference to focus on the trade and economic aspects of the bilateral relationship could have been witnessed in its reluctance to enter into negotiations and so far agree to a mobility partnership with the EU.⁸³ As in the case of Algeria, EU-Egypt relations could potentially move forward thanks to greater differentiation under the revised ENP, specifically after, as expected, a declaration on partnership priorities has been signed in 2017.⁸⁴

C Israel

Israel is by far the most developed country in the EU's southern neighbourhood. This means that the EU's bilateral financial assistance is minimal – as opposed to the hundreds of millions of euros spent in aid in other partner countries – while the bilateral instruments in place focus on the more advanced aspects of trade expansion than is the case with other countries, as can be seen, for example, in the concrete wording of the trade objective in the EU-Israel EMAA (see Table 6.1 below). Israel has also been the first Mediterranean country to sign an Agreement on Conformity Assessment and Acceptance

⁷⁹ Ingeborg Tömmel, 'The New Neighborhood Policy of the EU: An Appropriate Response to the Arab Spring?' (2013) *Democracy and Security* 19; Noutcheva (n 51).

⁸⁰ Tanja A. Börzel, Thomas Risse and Assem Dandashly, 'The EU, External Actors, and the Arabellions: Much Ado About (Almost) Nothing' (2015) 37 *Journal of European Integration* 135.

⁸¹ Patricia Bauer, 'The Transition of Egypt in 2011: A New Springtime for the European Neighbourhood Policy?' (2011) 12 *Perspectives on European Politics and Society* 420.

⁸² Federica Bicchì, 'The Politics of Foreign Aid and the European Neighbourhood Policy Post-Arab Spring: "More for More" or Less of the Same?' (2014) 19 *Mediterranean Politics* 318.

⁸³ Seeberg (n 65) 100–1.

⁸⁴ <https://www.consilium.europa.eu/media/23942/eu-egypt.pdf> accessed 29 March 2020.

Of Industrial Products (ACAA) in 2010.⁸⁵ The ACAA – concluded as an additional protocol to the EMAA – is an important step towards removing technical barriers to trade. So far, the only mutually recognized product under the agreement are pharmaceuticals.

However, there is also inherent tension in the EU-Israel bilateral relationship, as a result of which the EU-Israel association council has not convened since 2012. The EU is one of the key supporters of Palestine and of the two-state solution in the Middle East Peace Process, as underlined in the instruments of bilateral cooperation applicable to EU-Palestine relations (see below). The EU recognizes, in line with international law, the June 1967 dividing line between the State of Israel and Palestinian territories. As a consequence, contrary to the interpretation found in Israeli domestic law, the Golan Heights, the Gaza Strip and the West Bank, including East Jerusalem are, in the perspective of the EU, not a part of Israeli territory.

The question of sovereign territories also has, understandably, very concrete implications for bilateral relations with the EU, particularly when it comes to trade.⁸⁶ As was made clear by the Court of Justice, products originating from Palestinian territories do not qualify for preferential treatment under the EU-Israel EMAA,⁸⁷ nor can such goods be certified by Israeli customs authorities instead of the Palestinian authorities designated in the EU-PLO EMAA.⁸⁸ Moreover, the Commission has published a non-binding interpretative notice on indication of origin of goods from occupied Palestinian territories, which recommends a clear indication of whether products originate from Palestine or from Israeli settlements in Palestine.⁸⁹ This can be of particular relevance when the indication of origin is mandatory as a matter of EU consumer protection law.⁹⁰

⁸⁵ Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, on Conformity Assessment and Acceptance of Industrial Products (CAA) [2013] OJ L1/2.

⁸⁶ Christian Hauswaldt, 'Problems under the EC-Israel Association Agreement: The Export of Goods Produced in the West Bank and the Gaza Strip under the EC-Israel Association Agreement' (2003) 14 *European Journal of International Law* 591.

⁸⁷ Case C-386/08 *Brita* [2010] ECLI:EU:C:2010:91, paras 47, 53.

⁸⁸ *Ibid.*, para. 58.

⁸⁹ European Commission, 'Interpretative Notice on indication of origin of goods from the territories occupied by Israel since June 1967' C (2015) 7834 final 4.

⁹⁰ *Ibid.*

D Jordan

Since the outbreak of the Syrian crisis, relations between the EU and Jordan have noticeably intensified. Jordan's role in accommodating hundreds of thousands of Syrian refugees has been instrumental for the EU on account of its own migration quagmire and the resulting anti-immigration sentiments seeping into official EU policy. As for Jordan, the EU is its biggest trading partner and development aid donor. Therefore, it should come as no surprise that EU-Jordan cooperation is among the closest in the southern dimension of the ENP. Jordan has to date already signed up to an EMAA, two ENP APs, an agreement on scientific and technological cooperation,⁹¹ an aviation agreement,⁹² and a mobility partnership. The two parties are furthermore in talks regarding a visa facilitation and readmission agreement in line with the objectives of the MP, in addition to negotiating a DCFTA and an ACAA.

Most recently, and with some significance, the EU-Jordan association council adopted partnership priorities for the period 2016–18, which replaced the second AP.⁹³ The partnership priorities, born out of the 2015 ENP review, are accompanied by the so-called EU-Jordan Compact, which sets out 'mutual commitments as well as review mechanisms', and which intends to facilitate the implementation of the priorities. More precisely, the document is a political restatement of the international compact agreed at a conference in London in February 2016, which was organized with the purpose of mobilizing international partners to provide vital assistance for dealing with the impact of the Syrian refugee crisis. The agreed-upon mutual commitments are often considerable and concrete: for example, in exchange for Jordan employing Syrians and educating Syrian refugee children, the EU has temporarily (until 2026) relaxed its rules of origin for specific products and in designated economic zones benefiting Syrian refugees, in addition to a host of other trade and development measures.⁹⁴

⁹¹ Agreement between the European Community and the Hashemite Kingdom of Jordan on Scientific and Technological Cooperation [2011] OJ L159/108.

⁹² Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the Hashemite Kingdom of Jordan, of the other part [2012] OJ L334/3.

⁹³ EU-Jordan Association Council, 'EU-Jordan Partnership Priorities', Annex to Decision No 01/2016 of the 12th EU-Jordan Association Council of 20 December 2016 agreeing on EU-Jordan Partnership Priorities.

⁹⁴ See Addendum 1 in Annex to EU-Jordan Partnership Priorities.

E Lebanon

As a country with first-hand experience with the Syrian conflict and the ensuing refugee crisis, the situation of Lebanon is similar to that of Jordan. After signing the EMLA, Lebanon went on to conclude two APs, the second one of which expired in 2015. In late 2016, the two sides agreed on partnership priorities and commitments under the EU-Lebanon Compact,⁹⁵ thus confirming the region-wide trend of concluding and renewing bilateral instruments in a more focused and differentiated manner following the 2015 ENP review.

The fraught domestic political landscape in Lebanon has been a near-constant source of hesitation for EU policy choices in the country and region. In particular, the dual role of the influential Hezbollah as militant group and political party in Lebanon poses difficulties for the EU's engagement and it has been part of the reason why the EU has oscillated between a normative and a realist agenda in Lebanon.⁹⁶ This has ultimately undermined the effectiveness of the ENP framework and the ability of the EU to stabilize the situation in the country and beyond through conflict resolution.⁹⁷

F Libya

Throughout most of the history of EU-MENA engagement, Libya, long under the authoritarian rule of Muammar Gaddafi, has been a notable outlier. Libya was not interested, for example, in concluding a bilateral agreement with the EEC in the 1970s when virtually all other countries in the region had opted to do so. Nor was Libya included at the outset in the Barcelona Process due to the application of UN sanctions linked to the Lockerbie incident. Only after the two suspects of the bombing were surrendered by Libya in 1999 the UN lifted sanctions, prompting the inclusion of the country in the EMP as an observer. The ensuing improvement in international relations has, nonetheless, so far

⁹⁵ EU-Lebanon Association Council, 'EU-Lebanon Partnership Priorities', Annex to Decision n 01/2016 of the EU-Lebanon Association Council of 11 November 2016 agreeing on EU-Lebanon Partnership Priorities.

⁹⁶ Peter Seeberg, 'The EU as a Realist Actor in Normative Clothes: EU Democracy Promotion in Lebanon and the European Neighbourhood Policy' (2009) 16 *Democratization* 81; Chiara Ruffa, 'Realist-normative Power Europe? Explaining EU Policies toward Lebanon from an IR Perspective' (2011) 9 *Comparative European Politics* 562.

⁹⁷ Tamirace Fakhoury, 'The European Union's Engagement in Conflict Processes and Conflict Spillovers: The Case of Lebanon Since the Onset of the Syrian War' (2017) 22 *European Foreign Affairs Review* 39, 56–7.

failed to yield a bilateral legal framework, which in turn impedes Libya's ability to participate in the ENP.⁹⁸

Desirable as more legal certainty in EU-Libya relations may be, the absence of an international agreement with the EU has been the least of Libya's problems in light of the country's domestic situation, resembling a failed state after the uprising and military intervention that led to the death of Gaddafi in 2011.⁹⁹ From the perspective of the EU, however, the conclusion of an agreement has been sought for more than a decade, primarily on the ground that it could help realize the most important EU interest in Libya, which has since risen to the absolute top priority of EU foreign policy in the region: curbing irregular migration.¹⁰⁰ Subsidiary commercial interests – Libya is an oil-rich country – which played a part in the prior normalization of relations with Libya have become of secondary importance at a time when political and military power is deeply fragmented.¹⁰¹

For years now – long before Mediterranean migration routes became a regular feature of media and political discourse – the EU, and in particular Italy, has been cooperating with Libya on migrant returns and border surveillance, often in violation of international conventions.¹⁰² Similarly, discussions exploring the possibility of extraterritorial processing of asylum claims in Libya, which have recently resurfaced, were already being conducted ten years ago.¹⁰³ Given the salience of the issue and the urgency of the situation, however, the EU is nowadays employing every instrument available: it has recently launched two Common Security and Defence Policy (CSDP) missions tasked essentially with countering human trafficking and smuggling in the Mediterranean, enhancing the capacities of the Libyan navy and coastguard,

⁹⁸ Negotiations on a framework agreement between the EU and Libya started in 2008 but were suspended in 2011.

⁹⁹ Alan Kuperman, 'Obama's Libya Debacle: How a Well-meaning Intervention Ended in Failure' (2015) 94 *Foreign Affairs* 66.

¹⁰⁰ Sara Hamood, 'EU-Libya Cooperation on Migration: A Raw Deal for Refugees and Migrants?' (2008) 21 *Journal of Refugee Studies* 19. See also Peter Seeberg, 'The Arab Uprisings and the EU's Migration Policies – The Cases of Egypt, Libya, and Syria' (2013) 9 *Democracy and Security* 157.

¹⁰¹ Derek Lutterbeck, 'Migrants, Weapons and Oil: Europe and Libya after the Sanctions' (2009) 14 *The Journal of North African Studies* 169; Yahia H. Zoubir, 'Libya and Europe: Economic Realism at the Rescue of the Qaddafi Authoritarian Regime' (2009) 17 *Journal of Contemporary European Studies* 401.

¹⁰² Hamood (n 100). For a comprehensive review of the EU's and the Member States' international obligations see Violeta Moreno-Lax, 'Seeking Asylum in the Mediterranean: Against a Fragmentary Reading of EU Member States' Obligations Accruing at Sea' (2011) 23 *International Journal of Refugee Law* 174.

¹⁰³ Madeline Garlick, 'The EU Discussions on Extraterritorial Processing: Solution or Conundrum?' (2006) 18 *International Journal of Refugee Law* 601.

and improving border security.¹⁰⁴ The EU has also boosted the capacities of its own border management agency, formerly known as Frontex, which takes part in counter-trafficking operations.¹⁰⁵

G Morocco

In 1987, Morocco applied for membership of the European Communities, but it was rejected on the ground that it did not qualify as a ‘European State’ for the purposes of what is today article 49 TEU. The episode is indicative of Morocco’s long-standing desire to be incorporated into European structures. Indeed, insofar as formal bilateral cooperation is concerned, Morocco has always been one of the most EU-integrated countries around the Mediterranean Sea. The list of bilateral agreements between the two parties is lengthy: EMAA, fisheries partnership agreement, two APs, including conferral of ‘advanced status’, a protocol on partial liberalization of trade in agricultural products, an aviation agreement, an MP, a bilateral dispute settlement mechanism,¹⁰⁶ and others. Moreover, and despite slow progress attributable to a downturn in relations, Morocco is in the process of negotiating a DCFTA and visa facilitation and readmission agreements. The myriad of agreements with their underlying financial incentives have undoubtedly motivated a degree of domestic reform in Morocco,¹⁰⁷ but they have also been accused of ‘introduc-

¹⁰⁴ Council Decision (CFSP) 2015/778 of 18 May 2015 on a European Union military operation in the Southern Central Mediterranean (EUNAVFOR Med) [2015] OJ L122/31; Council Decision (CFSP) 2016/207 of 15 February 2016 amending Decision 2013/233/CFSP on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) [2016] OJ L39/45. In addition, a memorandum of understanding was signed between the Libyan Coast Guard and the EUNAVFOR Med Operation.

¹⁰⁵ See Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) 863/2007 of the European Parliament and of the Council, Council Regulation (EC) 2007/2004 and Council Decision 2005/267/EC [2016] OJ L251/1.

¹⁰⁶ Protocol between the European Union and the Republic of Tunisia establishing a Dispute Settlement Mechanism applicable to disputes under the trade provisions of the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Tunisia, of the other part [2010] OJ L40/76.

¹⁰⁷ Michael Willis, ‘Conclusion: The Dynamics of Reform in Morocco’ (2009) 14 *Mediterranean Politics* 229.

ing a growing level of complexity and confusion', especially in light of the concurrent overlapping regional initiatives.¹⁰⁸

One of the key stumbling blocks for the bilateral relationship is European reluctance to recognize the territory of Western Sahara as forming part of the Kingdom of Morocco. The UN and various actors in the international community have for decades failed to conclusively resolve the conflict between Front Polisario, the liberation movement representing the Sahrawi inhabitants of Western Sahara, and Morocco, which calls the territory its 'southern provinces'. The EU's position has been mostly neutral – with the exception of the more vocal European Parliament – but in practice it has done little to help the Sahrawis' self-determination cause, which was recognized as legitimate under international law, as this would damage the EU-Morocco relationship.¹⁰⁹

The Western Sahara issue has managed to nonetheless considerably sour bilateral cooperation as a result of a case brought before the EU judiciary by Front Polisario. In first instance, the General Court found that Front Polisario could not only bring an action for annulment against an agreement between the EU and Morocco regarding the liberalization of certain agricultural products (which was amending the EMAA), but that the agreement in question had to be annulled insofar as it applied to Western Sahara.¹¹⁰ On appeal, delivered almost exactly a year later in December 2016, the Court of Justice set aside the judgment of the General Court and ruled that Front Polisario could not challenge the EU-Morocco agreement. However, the Court of Justice made very clear, much to the anger of Morocco, that the EMAA – and by extension all other EU-Moroccan agreements with the same scope – does not apply to Western Sahara, as the territory is not part of Morocco under international law and its people have not consented to the liberalization agreement.¹¹¹ This means that the application of all EU-Morocco agreements to Western Sahara now requires a specific treaty provision to that effect, together with the consent of Western Sahara, making future bilateral agreements all the more difficult to conclude. Finally, it is noteworthy that the Court has found legally immaterial the fact that Morocco has been until now applying the EMAA to Western Sahara without any protest from the EU.¹¹²

¹⁰⁸ Iván Martín, 'EU-Morocco Relations: How Advanced is the "Advanced Status"?' (2009) 14 *Mediterranean Politics* 239.

¹⁰⁹ Karima Benabdallah, 'The Position of the European Union on the Western Sahara Conflict' (2009) 17 *Journal of Contemporary European Studies* 417, 425–6.

¹¹⁰ Case T-512/12 *Front Polisario* [2015] ECLI:EU:T:2015:953.

¹¹¹ Case C-104/16 P *Front Polisario* [2016] ECLI:EU:C:2016:973, paras 106–7.

¹¹² *Ibid.*, paras 118–25.

H Palestine

As the biggest financial donor, the EU plays a crucial role with respect to Palestinian state-building. The EU is also committed, at least rhetorically, to a two-state solution of the Israeli-Palestinian conflict. These two interconnected objectives are practically impossible to attain in the current context, where peace talks have effectively broken down and where Israel continues to expand its settlements in Palestinian territory. Although the European Parliament adopted a resolution supporting the recognition of Palestinian statehood in response to Israel's unwillingness to advance the peace process,¹¹³ thus attaching a 'sense of urgency' to the issue,¹¹⁴ the EU's overall performance in Israeli-Palestinian affairs has ranged from irrelevant to incoherent, especially in light of its simultaneous bilateral cooperation with Israel.¹¹⁵

Formal bilateral cooperation between the EU and Palestine is rendered more difficult as a result of the latter's disputed international status. This is reflected, among others, in the EMAA which was concluded with the PLO for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, as, in the absence of universally recognized statehood, the PLO holds the claim to represent the Palestinian people.¹¹⁶ The interim agreement was made possible in the first place by the 1993 Oslo Accords, which provided for Palestinian self-administration by the Palestinian Authority. Moreover, the explicit territorial scope of the interim EMAA as applying to the West Bank and the Gaza Strip gives the Palestinians an important legal foothold for the conduct of international relations vis-à-vis the EU without Israeli oversight and interference.¹¹⁷ The '*interim*' status of the agreement stems from the fact that at the time of its conclusion the two parties expected a permanent resolution to the Israeli-Palestinian question that would allow for the signing of

¹¹³ European Parliament, 'Resolution of 17 December 2014 on recognition of Palestine statehood' (2014/2964(RSP)).

¹¹⁴ Bruno Oliveira Martins, '"A Sense of Urgency": The EU, EU Member States and the Recognition of the Palestinian State' (2015) 20 *Mediterranean Politics* 281.

¹¹⁵ Rory Miller, 'Europe's Palestine Problem: Making Sure the EU Matters to Middle East Process' (2011) 90 *Foreign Affairs* 8; Martin Beck, 'How to (Not) Walk the Talk: The Demand for Palestinian Self-Determination as a Challenge for the European Neighbourhood Policy' (2017) 22 *European Foreign Affairs Review* 59, 74; Haim Yacobi and David Newman, 'The EU and the Israel-Palestine conflict' in Thomas Diez, Mathias Albert and Stephan Stetter (eds), *The European Union and Border Conflicts: The Power of Integration and Association* (Cambridge University Press 2008).

¹¹⁶ John Quigley, 'The Israel-PLO Interim Agreements: Are They Treaties?' (1997) 30 *Cornell International Law Journal* 717, 740.

¹¹⁷ See article 73 of the EU-PLO interim EMAA. See also the *Brita* case (n 87).

a standard EMAA. Needless to say, a permanent and balanced solution appears much less likely today than in the 1990s.

I Syria

Since 2011, when the repression of an uprising by the Syrian government led to the outbreak of a violent conflict, the EU has suspended all its bilateral cooperation with the government of Bashar al-Assad. Cooperation has been replaced by a range of restrictive measures against Syria and its officials.¹¹⁸ The EU still provides assistance to people in Syria and refugees displaced in neighbourhood countries through a number of financing instruments, not least the EU Regional Trust Fund in Response to the Syrian Crisis (also known as ‘Madad Fund’). Overall, the crisis in Syria has made financing under the ENP framework more conflict-sensitive.¹¹⁹

Even if bilateral relations between the EU and Syria were not suspended, the applicable legal framework has not been updated since the entry into force of the cooperation agreement in 1978.¹²⁰ This is not for want of trying: an EMAA with Syria has been negotiated since 1998 and it was initialled twice (in October 2004 and December 2008) without being once signed or ratified.¹²¹ The first time it was the EU, driven in particular by France, who hesitated with the signing of the agreement as a consequence of changes in political context in the region, triggered by the assassination of the prime minister of Lebanon, Rafic Hariri, who opposed Syrian influence in his country.¹²² The second time the Member States of the EU had unanimously agreed to sign the agreement in October 2009, only for Syria to request that the signing be postponed.¹²³

¹¹⁸ Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures against Syria [2013] OJ L147/14.

¹¹⁹ Nicole Koenig, ‘Libya and Syria: Inserting the European Neighbourhood Policy in the European Union’s Crisis Response Cycle’ (2017) 22 *European Foreign Affairs Review* 19, 36.

¹²⁰ With the exception of funding protocols in 1986 and 1994 which have not, however, altered the core substance of the cooperation agreement.

¹²¹ Initialing is the last step before signing a treaty – it signals the agreement of negotiators in principle regarding the final draft of the text.

¹²² Jörg Michael Dostal and Anja Zorob, *Syria and the Euro-Mediterranean Relationship*, St Andrews Papers on Contemporary Syria (Lynne Rienner Publishers 2008) 17.

¹²³ Council of the EU, ‘Council Decision on the signing on behalf of the European Community and provisional application of certain provisions of the Euro-Mediterranean Agreement establishing an association between the European Community and its Member States, on the one part, and the Syrian Arab Republic, on the other part’, Doc. 9921/09.

J Tunisia

In its general desire for close cooperation and integration with the EU, Tunisia has for the most part mirrored the quest of Morocco. By signing up to the multitude of agreements and initiatives of the EU, including a 'privileged partnership' in 2012, it has demonstrated its strategic orientation in international relations. Although Tunisia has in return become one of the main recipients of EU assistance in the ENP, the EU's general prioritization of its security and migration interests has been equally unwavering in its bilateral relations with Tunisia.¹²⁴ At the same time, Tunisia has as a result become well-integrated into the EU's security community.¹²⁵

Two aspects distinguish Tunisia from the Moroccan case and simultaneously permit a more positive outlook for EU-Tunisian relations, particularly from the EU's point of view. First, Tunisia has no territorial dispute comparable to the Western Sahara issue and is in general a smaller country with less of a need (and ability) to project its power internationally. Second, Tunisia is generally perceived as the main – if not the only – success story of the 2011 Arab Spring revolutions. However, examples of successful democratization around the Mediterranean are few and far between, which begs the question whether Tunisian democracy will be sustainable. It is also noteworthy that despite the EU's staunch financial and rhetorical commitment to Tunisia's democratic transformation, the EU's support prior to the 2011 revolt resulted at times in the partial reinforcement of the preceding authoritarian regime of Ben Ali.¹²⁶

V CONCLUDING REMARKS

Bilateral cooperation between the EU and Mediterranean countries consists of a dense network of agreements and initiatives, each of which allows for a varying degree of differentiation. The conduct of formalized bilateral rela-

¹²⁴ Jean-Pierre Cassarino, 'Channelled Policy Transfers: EU-Tunisia Interactions on Migration Matters' (2014) 16 *European Journal of Migration and Law* 97; Federica Zardo, 'Migration, Mobility and the Challenge of Co-ownership Exploring European Union-Tunisia Post-Revolutionary Agenda' (2017) 22 *European Foreign Affairs Review* 75.

¹²⁵ Assem Dandashly, 'The EU Quest for a Security Community with the Southern Neighbours: EU-Tunisia Relations' in Pernille Rieker (ed.), *External Governance as Security Community Building: The Limits and Potential of the European Neighbourhood Policy* (Palgrave Macmillan 2016) 135–62.

¹²⁶ Vincent Durac and Francesco Cavatorta, 'Strengthening Authoritarian Rule through Democracy Promotion? Examining the Paradox of the US and EU Security Strategies: The Case of Bin Ali's Tunisia' (2009) 36 *British Journal of Middle Eastern Studies* 3, 14.

tions has significantly intensified following the initiation of the Barcelona process and adoption of the EMAAs. The trend continues to this day and is chiefly led by agreements and cooperation in the framework of the ENP.

Countries have their specific contexts and these can be very powerful determinants of the possibilities of formal bilateral cooperation. Whereas the war and instability in Libya and Syria preclude the development of almost any formal relations, other countries around the Mediterranean Sea, such as Tunisia, have become significantly integrated in the EU's external governance frameworks. The instruments used to advance bilateral cooperation extend the reach of the EU's external governance while effectuating as little internal change as possible.¹²⁷ The greater burden to adapt and realize the objectives of bilateral instruments has always been predominantly on the EU's partners in the Southern Mediterranean, as clearly evinced by the MPs and ENP APs. The neutral legal and policy language of the instruments masks underlying power asymmetries and strategic interests of the EU, such as migration control.

Even though the EU tends to follow the same 'playbook' and relies on a set of nearly identical instruments in developing its bilateral ties to the countries of the region, the outcome on the ground is bound to be differentiated as a result of the peculiarities marking each bilateral relationship. The examination of the formal aspects of cooperation reveals that the EU has been looking for ways in which it could accommodate the country specificities without abandoning the common principles underpinning its strategy towards the region. The adoption of partnership priorities with southern neighbourhood countries is the latest manifestation of this balancing act. However, its potential to enhance bilateral cooperation in the ENP will depend strongly on whether there will be sufficient political will.

¹²⁷ Sandra Lavenex and Frank Schimmelfennig, 'EU Rules beyond EU Borders: Theorizing External Governance in European Politics' (2009) 16 *Journal of European Public Policy* 791.

ANNEX

Table 6.1 Comparison of objectives in article 1 of EMAAs

Topic	Wording of objectives	MAA with ...	Divergent wording
Political dialogue	<i>Provide an appropriate framework for political dialogue, allowing the development of close political relations between the Parties</i>	Egypt, Israel, Jordan	Palestine: <i>provide an appropriate framework [...]</i> <i>allowing the development of close political relations between the parties</i>
	<i>Provide an appropriate framework for political dialogue, allowing the development of close relations and cooperation in all areas they consider relevant to such dialogue</i>	Algeria, Lebanon, Morocco, Tunisia	
Trade liberalization	<i>Establish conditions for the progressive/gradual liberalization of trade in goods, services and capital</i>	Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia	Palestine: <i>establish the conditions for the progressive liberalization of trade</i>
	<i>Through the expansion, inter alia, of trade in goods and services, the reciprocal liberalization of the right of establishment, the further progressive liberalization of public procurement, the free movement of capital and the intensification of cooperation in science and technology to promote the harmonious development...</i>	Israel	

Topic	Wording of objectives	MAA with ...	Divergent wording
Development / Improvement of living standards	<i>Promote trade and the expansion of harmonious economic and social relations between the Parties, notably through dialogue and cooperation, so as to foster the development and prosperity of Lebanon/Morocco/Tunisia and its people</i>	Lebanon, Morocco, Tunisia	Algeria: <i>promote trade and the expansion of harmonious economic and social relations between the Parties</i>
	<i>Contribute to the economic and social development of Egypt/the West Bank and Gaza Strip</i>	Egypt, Palestine	
	<i>Improve living and employment conditions, and enhance productivity and financial stability</i>	Jordan	Israel: <i>foster in the Community and in Israel the advance of economic activity, the improvement of living and employment conditions, and increased productivity and financial stability.</i>
Regional integration / cooperation	<i>Encourage integration of the Maghreb countries by promoting trade and cooperation between Morocco / Tunisia and other countries of the region</i>	Morocco, Tunisia	Algeria: <i>encourage [...] trade and cooperation within the Maghreb group and between it and the Community and its Member States</i>
	<i>Encourage regional cooperation with a view to the consolidation of peaceful coexistence and economic and political stability</i>	Egypt, Israel, Jordan, Palestine	Lebanon: <i>no objective of regional integration or cooperation</i>

Topic	Wording of objectives	MAA with ...	Divergent wording
Economic, social, cultural and financial cooperation / relations	<i>Promote economic, social, cultural and financial cooperation</i>	Algeria, Morocco, Tunisia	Lebanon: <i>promote [...]</i> cultural, financial and monetary cooperation
	<i>Foster the development of balanced economic and social relations between the Parties through dialogue and cooperation</i>	Egypt, Jordan, Palestine	Israel: <i>promote the harmonious development of economic relations between the Community and Israel</i>
Cooperation in other areas	<i>Promote cooperation in other areas which are of reciprocal interest</i>	Israel, Jordan, Palestine	Egypt, Lebanon,: <i>promote [...]</i> which are of mutual interest