

Note from the Editors

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Editors

The first article of this issue of *CFSP Forum* offers a foreign policy analysis of the EU's external climate policy by Simon Schunz.

This issue pursues a theme touched on in the previous issue in focusing on recent events in Gaza and the EU's response. In an article contributed by Nathalie Tocci there is the assertion that the EU needs to change its policy on the Middle East. Alex Prichard offers a discussion of the concept of justice and its application to the study of the EU's role and responsibilities. The issue also introduces the work of a funded research group focusing on the role of the EU in democracy promotion in the Middle East.

We would very much welcome your comments on this issue and your suggestions for future content. Please contact us via email at cfspforum@lists.bath.ac.uk

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The European Union's External Climate Policy: A Foreign Policy Analysis¹

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In recent years, alarming scientific findings have transformed climate change from a soft, environmental issue into a 'defining challenge of our age' (Ban Ki-moon).² This challenge is essentially twofold. On the one hand, halting dangerous greenhouse gas emissions trends requires *domestic* political action: policies capable of performing the delicate task of modernising high-carbon economies must be designed and implemented. On the other hand, the protection of the earth's atmospheric-climatic system, a global common *par excellence*, demands *foreign policy* activities: negotiating the inevitable international deal on this highly sensitive issue is an intricate task for diplomats.³

¹ This contribution is based on ongoing research on the impact of the EU on the post-2012 climate negotiations. The author gratefully acknowledges the input of several interviewees from EU member states and the Commission, who, for reasons of confidentiality, wish to remain anonymous. He would also like to thank Rouba Al-Fattal for her constructive comments.

² 'Ban Ki-moon urges climate change breakthrough in Bali after dire report released', UN News Centre, 17 November 2007, <http://www.un.org/apps/news/story.asp?NewsID=24704&Cr=Climate&Cr1=>

³ See H. Ott, 'Climate change: An important foreign policy issue', *International Affairs*, vol. 7, 2001, pp. 277-296.

For the European Union (EU), climate change has always been both a subject of internal and external activities. Since the late 1990s, and largely in reaction to the international negotiations, the EU has been actively engaged in designing a regional climate regime. It is, above all, its internal policies that have successively earned the Union the reputation for being a leader in the United Nations (UN) climate regime.⁴ At the same time, its sustained attempts at influencing global climate negotiations have been met with varying degrees of success. Certainly, without the EU, the development of the UN regime would have been improbable during a time of US disengagement. Yet, when it comes to concretely promoting its positions internationally, the EU's impact on the negotiations has regularly appeared rather limited.⁵ One major reason for this has been the Union's disproportional need for internal coordination: during many negotiation sessions, member states spent much time in their 'bunker', discussing amongst themselves instead of reaching out towards third countries.⁶ In recent years, serious efforts have been made to rectify this and to focus more on developing a foreign policy strategy for defending Europe's position vis-à-vis the wider world.

Examining the time period since 2005, when the post-2012 climate regime negotiations were formally kicked off, this paper provides a sketch of the recent European foreign climate policy. Employing the tools of foreign policy analysis⁷, it briefly discusses: (i) the *international environment* that provides the demand for foreign climate policy; (ii) the EU's *foreign policy making* by analysing its position-building on the post-2012 global climate talks; and (iii) the institutional foundations and examples of the EU's *foreign policy implementation* to see how it confronts

the international environment.⁸ The contribution concludes with an assessment of the Union's evolving foreign policy strategy on climate change, highlighting its importance for the post-2012 negotiations.

The external environment: key actors and main challenges in the international climate negotiations

Current climate talks represent highly complex multilateral negotiations centred on the regime that has developed around the UN Framework Convention on Climate Change (UNFCCC) and its Kyoto Protocol. Within this arena, three major negotiating blocks attempt to broker a deal on the future of the regime: the EU; the Umbrella Group comprising the US, Australia, Canada, Iceland, Japan, New Zealand, Norway, Russia and Ukraine; and the G-77/China block of 130 emerging and developing countries, led by China and India.

The ultimate aim of current negotiations is to replace the Kyoto Protocol, which expires in 2012, with a new international agreement that more adequately reflects the mitigation necessities identified by recent climate science. At the 13th Conference of the Parties (COP) held in Bali, Indonesia, in December 2007, an Action Plan was adopted, which launched 'a comprehensive process to enable the full, effective and sustained implementation of the Convention through long-term cooperative action [...], in order to [...] adopt a decision at its fifteenth session', scheduled for December 2009 in Copenhagen.⁹ The plan identified five central building blocks for an agreement: a 'shared vision for long-term cooperative action, including a long-term global goal for emission reductions'; and enhanced action on mitigation, adaptation, technology development/transfer and finance.¹⁰ Thinking of the negotiations in terms of these issues contributes to reducing their complexity. To conclude a comprehensive agreement, parties will have to respond to three central questions:

⁴ See J. Gupta and M. Grubb, *Climate Change and European Leadership: A Sustainable Role for Europe?* (Dordrecht: Kluwer Academic Publishers, 2000).

⁵ S. Oberthür and C. Roche-Kelly, 'EU Leadership in International Climate Policy: Achievements and Challenges', *The International Spectator*, vol. 43, no. 3, 2008, pp. 35-50, p. 36.

⁶ S. Oberthür, and H. Ott, *The Kyoto Protocol. International Climate Policy for the 21st Century* (Berlin: Springer, 1999), p. 87.

⁷ See S. Smith, A. Hadfield, and T. Dunne (eds) *Foreign Policy. Theories, Actors, Cases*, (Oxford: Oxford University Press, 2008).

⁸ See E. Brighi and C. Hill, 'Implementation and behaviour' in Smith, Hadfield and Dunne (eds) *Foreign Policy*, p. 118.

⁹ *Bali Action Plan*, UNFCCC, Decision -/CP.13, 2007, pp.1-2.

¹⁰ *Ibid.*

(1) *What mitigation target(s) are they collectively and individually prepared to commit to?* Reports by the Intergovernmental Panel on Climate Change (IPCC) include manifold models, linking projections of temperature increases to mitigation efforts by specifying indicative emission reduction targets for the medium and long term. Parties would have to agree on one 'shared vision'.

(2) *Who is prepared to take on obligations?* Central to the climate regime is the principle of 'common, but differentiated responsibilities', embodied in Article 3 of the UNFCCC. According to a common interpretation, industrialized countries are supposed to lead the way in mitigation efforts because of their greater historic responsibilities and current capacities in comparison to developing countries. Under the Kyoto provisions, only industrialised 'Annex I' countries have binding reduction targets for the period 2008-2012. In the past, developing countries have strongly – and successfully – insisted that this differentiation be respected. From the perspective of climate science, reduction efforts from the more advanced developing countries appear however indispensable given their growing contribution to the overall problem.

(3) *Who will pay?* Financing of mitigation (and adaptation) and the diffusion of clean technologies obviously requires the preparedness of the industrialized world to support the South. Pledges to do so exist, but the reality has so far fallen short of developing countries' expectations.

Providing answers to these key, highly political questions – while not neglecting the manifold other technical issues that are on the negotiation table and may form part of the final package deal – demands a coherent and skilful foreign policy approach within and beyond the UN arena. An actor who desires to shape the negotiations will have to define a clear position regarding these three challenges and deploy all its diplomatic capacities to argue for it vis-à-vis the other negotiation blocks.

The EU's position: foreign policy making beyond 20-20-20 by 2020

The EU's negotiation position and strategy – foreign policy making on climate change – is

drawn up in the Environment Council. Prepared by national experts and the Commission, under the direction of the Presidency, in the Council Working Party on International Environmental Issues, formation Climate Change (WPIEI-CC), this position is ultimately approved by environment ministers, and, more recently, also the European Council.¹¹

The Union's position for the post-2012 negotiations has gradually taken shape. It comprises a vision of a future agreement that responds to all three of the central questions identified above. At its heart lies its desire to limit global mean temperature increase to 2° Celsius. Its contribution towards reaching this aim involves a threefold objective: until 2020, the EU pledges to reduce emissions by 20% (compared to 1990), increase its energy efficiency by 20%, and reach a share of 20% of renewable energy sources in its overall energy consumption.¹² Further, it pledges to raise its emissions reductions commitment to 30% if an international agreement is found that commits other industrialised countries to 'comparable emission reductions and economically more advanced developing countries to contributing adequately according to their responsibilities and respective capabilities'.¹³ In other words, industrialised countries should collectively commit to 30% reductions, while emerging countries 'would have to reduce their emissions by 15 to 30% below business as usual [...] in order to be consistent with the global emission reduction goal'.¹⁴ Finally, the EU has recently also made more concrete proposals on how to finance mitigation (and adaptation) efforts. The Commission's Copenhagen Communication, to be discussed by the environment and finance ministers and the European Council in March 2009, indicates that global net additional investment may need to rise to around €175

¹¹ See O. Costa, 'Who decides on EU foreign climate policy and why it matters. Actors, alliances and institutions', paper presented at BISA Annual Conference, University of Cambridge, 17-19 December 2007, pp. 8-10.

¹² European Council. Presidency Conclusions. Brussels, 8-9 March 2007.

¹³ Ibid. point 31, p. 12.

¹⁴ 'Preparations for the 14th session of the Conference of the Parties to the UNFCCC', General Secretariat of the Council, Brussels, 20 October 2008, point 15, p. 6.

billion per year in 2020.¹⁵ Funding, which should mostly go to developing countries, should be generated either through commitments by industrialised countries or through revenues from the auctioning of emission permits in global emissions trading systems.¹⁶

Crucial to whether the EU can defend these positions in the current negotiation context is its negotiation strategy, through which it implements its foreign policy decisions.

The EU's strategy and impact: foreign policy implementation and its influence on the post-2012 negotiations

Strategic foreign policy behaviour implies the effective use of all resources for the purposes of outreach and with the aim of attaining one's goals. It comprises a concrete conception of the actors to approach, the channels through which to work, and the instruments to employ.

In the global climate policy context, a distinction needs to be made between a narrow and a broader vision of EU outreach. A narrow perspective implies leaving the proverbial 'bunker' and actively engaging with partners *within* the realm of UN climate talks. A broader outlook means including climate change as an issue in various bilateral or multilateral interactions with third countries. A comprehensive foreign climate policy strategy would imply working towards achieving the EU's aims in both these arenas.

Considering the climate negotiation arena first, despite shared competences, it was the Presidency and not the Commission who formally represented the EU in most past climate talks. Under a system of rotating presidencies, this did not exactly contribute to the desired continuity in the EU's approach. Since 2004, an arrangement has therefore been introduced that assures greater consistency.¹⁷ Negotiations are now conducted by EU 'lead negotiators' from any member state or the Commission. These negotiators actively support the Climate Troika (current and future presidency and Commission), and are themselves backed up

by three to four national or EU experts referred to as 'issue leaders'. All in all, this system guarantees efficient pooling of expertise and continuous contacts with third parties. It also provides greater flexibility to the negotiators than in the past, even if the latter continue to be bound by the EU's common negotiation mandate. The impressive number of European negotiators (the EU and all member states' delegations taken together amount to several hundred persons) further assures its presence in all of the various negotiation groups within the UN post-2012 talks. On the basis of its commonly agreed mandate, the EU increasingly makes use of this capacity, holding – *inter alia* – numerous bilateral meetings between the Troika and other negotiating blocks or individual parties.

Transcending this arena, and concentrating solely on genuine EU diplomatic activities, the Union has, over the past years, undertaken wide-reaching efforts to institutionalise bilateral or multilateral dialogues and cooperation with important parties or regional actors in the climate talks. The EU's foreign climate policy vis-à-vis industrialized countries includes bilateral summits and issue-specific cooperation with, e.g., the US through the US-EU High Level Representatives on Climate Change, created in 2002 as a mechanism for dialogue, or with Canada under the 1975 EC-Canada High Level Dialogue on Environment.¹⁸ These and similar fora, such as the G-8, permit the Union to establish and maintain contacts beyond the UN negotiations, exchange views and best practices on climate legislation, and offer cooperation, for instance, on setting up a global carbon market.

Regarding the EU's foreign climate policy vis-à-vis G-77/China, a distinction has to be made between emerging and least developed countries. Vis-à-vis the former, the EU created a climate-specific partnership with China in 2005 and recently intensified dialogue on climate issues within the framework of its strategic partnerships with, *inter alia*, India and South Africa.¹⁹ Other than regular summits, the EU organises

¹⁵ 'Towards a comprehensive climate change agreement in Copenhagen', European Commission Communication, Brussels, 28 January 2009, COM 39 (2009), p.7.

¹⁶ Ibid. p.9.

¹⁷ Interview, January 2009.

¹⁸ http://ec.europa.eu/environment/international_issues/relations_usa_en.htm;

http://ec.europa.eu/environment/international_issues/relations_canada_en.htm

¹⁹ http://ec.europa.eu/environment/climat/non_eu_countries_en.htm

numerous workshops and other events that allow for a regular exchange of ideas. Further, substantial technological cooperation projects exist, e.g. with China on low-emission coal technologies.²⁰

Concrete projects also lie at the heart of the Union's approach towards the less and least developed countries.²¹ Through the Global Climate Change Alliance, initiated by the Commission in 2007, the EU proposes to exchange experiences with, and to financially support, countries most vulnerable to climate change. Another instrument, the Global Energy Efficiency and Renewable Energy Fund (GEEREF), publicly launched during COP 14, is to support smaller clean energy projects in developing countries. Beyond these projects, continuous dialogue with countries from the South has recently been institutionalised, for instance in the EU-Africa partnership or the Regional EU-ASEAN Dialogue Instrument (READI).

Finally, on top of these continuous activities, which involve environment experts and diplomats from the Commission and the member states, a major concerted diplomatic effort has been made via the Green Diplomacy Network, an informal network of environment experts within the foreign ministries of the 27. Since the start of the post-2012 talks, the Network carried out demarches to explain the EU's position in selected countries before each COP.²² In 2008 local Green Diplomacy Networks were also being created in some countries, cooperating notably on climate change.²³ At the same time, the Commission's Directorate General for External Relations has started to encourage outreach on climate change through members of its delegations in about 20 countries, including the US, China and India.²⁴

With all these foreign policy activities within and beyond the UN climate regime framework, the EU pursues its overarching objective of assuring a global agreement that limits temperature increase to 2 degrees. A conclusive analysis of whether these

activities have actually had an impact on the post-2012 negotiations would be premature. Current climate talks have not yet entered a stage where concrete answers to the three major questions outlined earlier can be formulated. To date, the EU's foreign policy has therefore not yielded significant advances. While countries have generally pledged to work towards an ambitious agreement, they have only begun stating indicative emission reduction targets for 2020 or 2025 and 2050, and a 'shared vision' has yet to emerge. Further, the North-South cleavage around the question of historic responsibility has not been overcome. Finally, concrete proposals on the financial architecture for the future treaty are scarce, and the EU has yet to explain its recent financial proposal to the wider world. In conclusion, the Union may certainly claim a share of influence – together with the IPCC, the NGO community and others – regarding the overall agreement on the need for a new, ambitious accord. It has, however, so far not succeeded in convincing negotiation partners of the substantial elements of its position.

Assessing the EU's foreign climate policy

Over the past few years, the EU's foreign climate policy has doubtlessly undergone major, positive changes. Regarding foreign policy making, the EU is among the few actors who have made considerable efforts to define a coherent, moderately ambitious position responding to the main challenges current climate negotiations are faced with. Its position is bolstered by a package of internal policies designed to enhance its credibility. As for its foreign policy implementation, the institutional reforms concerning the external representation arrangements have had a positive impact on its functioning. More time can be spent on outreach within the UN arena. Moreover, and in contrast to earlier negotiation rounds, the EU's broader outreach activities have immensely increased and diversified. The diversification through country and region-specific approaches gives the impression that the EU has begun sketching out the contours of a targeted grand strategy.

Despite these positive signs, however, it is precisely the implementation of the EU's foreign policy that still lacks efficiency and coherence. Firstly, the Union does not yet fully exploit its considerable diplomatic, budgetary and knowledge resources for

²⁰ <http://ec.europa.eu/environment/climat/china.htm>

²¹ http://ec.europa.eu/environment/climat/pdf/brochures/asia_en.pdf

²² http://ec.europa.eu/external_relations/env/objectives.htm

²³ Ibid.

²⁴ Interview, January 2009.

attaining its aims. Secondly, if there is a unified EU foreign climate policy position today, the EU's message is not coherently diffused beyond the immediate orbit of the negotiation arena. Although it is too early to assess the EU's real impact on this negotiation round, both shortcomings may be detrimental to its future performance in the climate negotiations. With the new American administration claiming climate leadership, and the ongoing power struggles between the world's two largest absolute emitters, the US and China, all other actors risk being sidelined.

A tentative explanation for the deficits of the EU's foreign climate policy implementation is institutional: getting 27 states and the Commission to act strategically on such an important issue is a Herculean task, and no institutional remedies have been put into place to address this. Presidencies can hardly act strategically under a system of rotation. The Commission has neither the mandate nor the resources to do this. Hopes must thus be placed on the creation of the European External Action Service which, - led by a double-hatted Union High Representative for Foreign Affairs and Security Policy - may facilitate foreign climate policy implementation, provided its staff possesses sufficient expertise on the issue.²⁵ For the time being, the EU is well-advised to further coordinate its activities. Having a clear negotiation position early enough before the final talks in December 2009 may help keep all efforts in line. Time will tell if it is also enough to convince others of its position. ♦

Research Group on the EU and Democracy Promotion in the Middle East

Dr Michelle Pace, Senior Research Fellow and RCUK Fellow, Political Science and International Studies Department, University of Birmingham

Paradoxes and Contradictions in EU Democracy Promotion Efforts in the Middle East is a three year Economic and Social Research Council (ESRC) funded research project that has been awarded to Dr Michelle

Pace of the Political Science and International Studies (POLSIS) department at the University of Birmingham, UK. This research project seeks to cast empirical and theoretical light upon an increasingly important aspect of international politics: attempts by the European Union to export democracy to other regions, specifically the Middle East. While acknowledging that the EU is not the only actor with a democratisation agenda for this region and that there are strategic reasons for the EU's involvement in the Middle East, the research examines whether a self-reflexive process on the part of EU actors on the precise nature of the 'normative' element in the EU's democratisation agenda for the Middle East may be long due, if EU policy is to be effective. By focusing on the specific case of the EU, this project seeks to explore how EU actors' self-construction of the EU as a 'normative power' shapes conceptions and policies of democratisation. It also seeks to investigate whether EU actors' self-constructions are shared by 'agents of change' in Middle East areas where the EU seeks to export its norm of democracy. The research thus aims to explore any inherent paradoxes, contradictions and challenges in equating conceptions of the EU as a normative power with EU engagement in the promotion of democracy in the Middle East, and the ways in which the EU's initiatives are playing out in the region. Both Egypt and Palestine have been chosen as case studies in order to gauge how EU actors' understandings are received within target countries of the EU's democratisation policy. The research focuses on the period from the 1990s - since this coincides with one of the defining periods when the EU opted for democracy promotion as a key external relations instrument - to date.

Complementing the research project an EU Democracy Promotion in the Middle East research group has been set up aiming at discussing, debating and analysing theoretical and empirical issues revolving around various themes concerning EU democracy promotion in the Middle East. The working structure of the research group is in the form of seminars, workshops and reading sessions.

Anyone from the academic, policy-making or civil society communities wishing to join this research group can email Dr Michelle Pace at m.pace@bham.ac.uk

²⁵ Treaty of Lisbon, Arts. 13a (3) and 9e.

Lessons from Gaza: Why the EU Must Change its Policy

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During the entire duration of the Egyptian-mediated six-month truce agreement (19 June – 19 December 2008), the humanitarian crisis generated by the lack of food, water, sanitation, gas, fuel, and electricity in Gaza reached unprecedented levels. Truckloads of food and medical aid allowed into the Strip in December 2008 were a mere 16 per day, down from 123 in October 2008, and 475 in May 2007. Of Gaza's total population of 1.5 million people, over 1.3 million are now dependent on food aid for survival. In tightening the siege on the Gaza Strip, Israel has persistently violated its basic duty under International Humanitarian Law (IHL) to allow and facilitate a rapid and unimpeded access of relief. It is in this context that Hamas, accusing Israel of not keeping to its side of the truce deal (i.e. relaxing the siege by opening border crossings) and reacting to Israel's killing of six Hamas militants on 4 November, ill-advisedly resumed rocket and mortar fire, triggering Israel's war on the beleaguered Gaza Strip.

During Israel's assault on Gaza in December 2008 – January 2009 the situation precipitated. The scale of military force applied by Israel during Operation Cast Lead was unprecedented in the decades of Israeli occupation. During the three-week assault, densely populated neighbourhoods were bombarded from air, sea and land. The combination of lack of medical care and shortage of basic commodities made the population dramatically vulnerable to the war situation that evolved. In its attack, the Israeli Defence Forces (IDF) failed to differentiate between military and civilian targets as obliged to according to customary international law. This was not simply the result of 'collateral damage', in so far as civilian targets such as schools, mosques, hospitals and private homes were deliberately targeted by the IDF on the grounds of presumed links to Hamas militants. Such indiscriminate and disproportionate attacks constitute serious breaches of the Geneva Conventions and

may constitute war crimes. Furthermore, the fact that neither Israel nor Egypt opened their borders for refugees fleeing from violence meant that the 1.5 million inhabitants of the Strip were trapped in a small and highly populated territory without safe place to seek refuge. Consequently, when Israeli forces started withdrawing from Gaza, the operation had cost more than 1,300 Palestinian lives, more than 4,000 buildings were destroyed and another 20,000 severely damaged, leaving 100,000 Gazans displaced and 400,000, i.e. just under one third of the population, without running water.

As these dramatic events unfolded, how did the EU react? And what are the longer-term lessons and implications for EU policies towards the Israeli-Palestinian conflict?

The EU's response

The EU reacted to the war on 30th December (three days following the launch of the Israeli attack), with a statement calling for an 'immediate and permanent ceasefire', which entailed an 'unconditional halt to rocket attacks by Hamas on Israel and an end to Israeli military action' and should be followed by a 'normal opening of all border crossings, as provided for in the 2005 Agreement on Movement and Access'.²⁶ France, during the last days of its EU Presidency, went further, proposing a 48-hour cessation of hostilities to allow for humanitarian access and talks on a lasting ceasefire. As the war continued into 2009, EU efforts to secure a ceasefire persisted. French President Sarkozy and the EU 'troika' led by Czech Foreign Minister Karel Schwarzenberg (holding the EU Presidency as of 1 January 2009) and including French Foreign Minister Bernard Kouchner and Swedish Foreign Minister Carl Bildt, as well as External Relations Commissioner Benita Ferrero-Waldner and EU High Representative Javier Solana travelled to the region on 4 January to present ceasefire proposals alongside Egypt. European and above all Egyptian efforts persisted unabated and led to UN Security Council Resolution 1860 calling for the unimpeded access of humanitarian aid and for an intensification of efforts to bring about

²⁶ See <http://www.franceonu.org/spip.php?article3201>

a durable ceasefire.²⁷ The calls in the Resolution went unheard by Israel as its onslaught on the Strip persisted until 17 January.

While investing a huge amount of time and political capital in securing a ceasefire, EU (and Egyptian) efforts bore fruit only when and because of the parallel roles played by the US vis-à-vis Israel and, to a lesser extent, Turkey, Egypt and Syria vis-à-vis Hamas. Israel declared a 'unilateral ceasefire' (rather than a bilateral and negotiated one) only a few hours after signing a Memorandum of Understanding with the US, in which Washington committed itself to aiding Israel combat the smuggling of weapons into the Strip.²⁸ Paradoxically Israel's onslaught on Gaza ended not following a mediated agreement with its enemy Hamas, but with its ally the US. The EU also failed to influence the other side of the conflict: Hamas. Handicapped by its self-imposed ban on communication with Hamas, the EU lacked both the channels for dialogue and the sources of leverage to compel Hamas to a deal. Indeed, whereas the US was critical in securing Israel's 'unilateral' ceasefire, Turkey, walking through the door left wide open by the absence of the EU and the US, and Egypt's tarnished reputation in Gaza, encouraged Hamas to pursue its own 'unilateral ceasefire'.²⁹ It should be noted in fact that Turkey never followed the EU (and Quartet) line to boycott and sanction Hamas, but retained open political channels with Hamas, particularly after its electoral victory in January 2006.

With the end of violence, the EU has engaged in efforts to provide humanitarian aid, dispatching Commissioner for Development and Humanitarian Aid Louis Michel to the region and allocating an additional 60m Euros to the occupied territories. The EU, calling for the reopening of border crossings, has also declared its readiness to re-dispatch the EU BAM (Border Assistance Mission) to

Rafah and examine the possibility of extending its assistance to other crossing points. Yet both during the war and since then the EU has persisted in its refusal to engage Hamas. Hence, its refusal to mediate a ceasefire agreement with Hamas (with mediation being carried out by Turkey and Egypt instead), and its refusal to engage with Hamas in the provision of humanitarian aid, despite the fact that Hamas remains firmly in control of the internal governance of the Gaza Strip.

An EU policy rethink?

What we have witnessed in recent weeks is the widely-predicted effect of Europe's, and the international community's, imbalanced policies towards the Israeli-Palestinian conflict. The policy of boycotting Hamas and besieging the Gaza Strip in an attempt to 'defeat' Hamas, unconditionally supporting Israel, and engaging and financing the Fatah-controlled West Bank has made the situation worse. It is not a road to peace, but makes peace less likely. The massacre in Gaza is precisely the culmination of this approach, with Israel's evident attempt to erase the Hamas regime. Yet the EU's ongoing response to the crisis and its aftermath suggest that as relative 'calm' settles, the EU is returning to the same set of failed policies. Learning from the past, a new approach could comprise four elements. First, Hamas must be engaged.³⁰ Not because Europe should acquiesce to the movement's more radical formal positions. If it does not engage it cannot hope to positively influence Hamas in the way Turkey for example (which has far less international clout than the EU) is attempting to do with some success. By contrast, the EU has outmanoeuvred itself. Moreover, the EU's lack of engagement has strengthened the more hard line elements within Hamas since the electoral victory of January 2006, as most policy makers will admit, at least in private. The policy of boycott and isolation has pushed Hamas to lose confidence in political dialogue, strengthen international ties elsewhere (e.g. Iran) and return to militancy. The EU's boycott has not, alone,

²⁷ See <http://www.un.org/News/Press/docs/2009/sc9567.doc.htm>

²⁸ 'Text of U.S.-Israel agreement to end Gaza arms smuggling', *Haaretz*, accessible at <http://www.haaretz.com/hasen/spages/1056175.html>

²⁹ 'Turkey key to convincing Hamas on Gaza cease-fire', *Turkey NY.com*, accessible at <http://www.turkishny.com/tr/ingilizce-haberler/1639-turkey-key-to-convincing-hamas-on-gaza-cease-fire-.html>

³⁰ On this see for example the plea by former Commissioner Chris Patten (2009) 'Writing cheques for Gaza is easy. Politics is the tricky bit', *The Guardian*, 27 January, accessible at <http://www.guardian.co.uk/commentisfree/2009/jan/27/gaza-israel-hamas-eu-us>

triggered Hamas' re-radicalisation; yet it has been an integral element of a set of international and Israeli policies that have led to this result. If the EU wants to mediate it has to deal directly with all conflict parties.

Second, the EU must give a longer-term and different political orientation to its aid to the Occupied Palestinian Territories. Particularly since the 2006 Palestinian elections, EU aid has become overtly politicised, being channelled to avoid the democratically elected Hamas administration while bolstering the unelected Fatah administration in the West Bank. In doing so EU aid has concomitantly reduced Palestinian appetite for internal reconciliation and belief in democracy. Continuing to favour Fatah as the supposedly reliable and 'moderate' partner in peace talks is part of the problem, not of a solution. A different political approach to aid delivery should involve respect for Palestinian democracy. It must be recognised that a vibrantly pluralistic politics offers the best way to generate Palestinian 'ownership' of any peace agreement. The EU must not understand 'supporting reform' to mean favouring moderate figures seen as 'our allies,' thus overtly giving preference to those deemed 'helpful moderates.'

Third, the EU must acknowledge and act upon the difficult issues bedevilling the Euro-Mediterranean Partnership, European Neighbourhood Policy and now Union for the Mediterranean. The EU has erred in assuming that such forums can be effective if the EU 'depoliticises' its strategy. So far the results have been negligible. Palestinian trade with the EU has not taken off, hindered by Israel's non-recognition of the EU-Palestinian Liberation Organisation (PLO) Interim Association Agreement; the EU-PA Action Plan has remained a dead letter and not helped move the Palestinian economy away from its vulnerable dependence on the Israeli economy; and the EU has not been able to ensure that Israel abide by the 2005 Agreement on Movement and Access. The various trilateral forums set up by the EU to foster transport, trade and infrastructure links between Israel, the Occupied Territories and the EU have had little impact. In addition to its now-stalled Rafah border monitoring mission, the EU's police mission in the West Bank has also struggled to induce an efficient, and above all legitimate, depoliticised and democratically accountable Palestinian security force.

Fourth, the EU must seriously reassess its bilateral relations with Israel. Israel's war in Gaza should mark the end of the EU's rewarding of Israel irrespective of Israeli conduct in the conflict. The EU has never sanctioned Israel for its illegal actions in the occupied territories, nor has it attempted to employ positive conditionality to induce Israel to modify its actions in the territories in the context of the Association Agreement, the ENP Action Plan or the myriad of EU programmes of which Israel is part. On the contrary, at the June 2008 EU-Israel Association Council, the EU agreed to upgrade further the Association Agreement opening the way in due course to a new advanced agreement. This decision was taken in the context of a deepening Israeli siege on the Gaza Strip, and unrelenting expansion of settlements, closures and the infrastructure of occupation in the West Bank, all constituting serious violations of IHL.

It is time for the EU to stop its blind eye approach to Israeli actions and introduce the logic of international law and human rights as the cornerstone of its 'political' approach to Israel and Palestine. It must provide aid to the Palestinians in a manner that both induces reform and intra-Palestinian reconciliation, and does not absolve Israel from its legal obligations for the welfare of the Palestinians. Its bilateral relations should stop recognising, aiding or assisting internationally illegal acts, and any future measures of cooperation with Israel and the PA should have inbuilt within them safeguard measures to ensure the EU respects its duty of non-recognition of internationally unlawful acts. Status quo policies would mean that the Israeli-Palestinian conflict will keep on descending deeper and deeper into crisis. And this descent will further reduce the international political reputation of Europe and the West, and thence its capacity to influence the world. ♦

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Justice and EU Foreign Policy in the Middle East

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*'Fiat iustitia, et pereat mundus'*³¹

Debating the source and meaning of 'justice' has been central to political thought and practice throughout recorded history. Indeed, from the Hamurabi Code to the Universal Declaration of Human Rights, the persistence of multiple and cross-cutting struggles for justice have perhaps been the *sine qua non* of politics itself. Politics is, by this formulation at least, the means by which we mediate claims to justice either practically, diplomatically, institutionally or violently. The EU would seem to have resolved centuries of violent struggles for competing conceptions of justice by institutional innovation. But what of the remaining fractured regions of the world – those that exhibit fundamentally divergent conceptions of justice and the good life, and also seem inherently prone to violent conflict and war? What principles of justice ought to guide reconciliation and third-party intervention here? Indeed, are there principles of justice that can guide actors? Translating this abstract preamble into more concrete terms: is the EU helping to realise justice in the Middle East? That is what I will explore here.

Justice and conflict resolution: some current ideas

Let us look at one important contribution to the debate about justice and peacebuilding, to help frame this way of seeing things in current discourse. Rama Mani has unpacked the *ethical principles* and the practical failures of peacebuilding in the 1990s.³² Building a taxonomy of justice derived from Aristotle's work, Mani evaluates the record of third party conflict resolution. The tendency, she argues, has been to build what Galtung

called a negative peace,³³ one in which order is prioritised over justice. Mani argues that this negative peace will remain unstable for as long as the underlying structures of injustice remain untouched. By Mani's formulation, a positive peace will be more stable since it recognises and institutionalises deeper principles of justice. Mani looks at legal justice, rectificatory justice and distributive justice. While she does not focus on the EU as such, nor on the Middle East, her analysis is useful in helping to frame the evaluation of EU foreign policy to follow.

Mani argues that the tendency within peacebuilding efforts has been towards a 'programmatic minimalism' in developing legal justice. Thus third-party actors tend towards a thin, 'one size fits all' model of building legal capacity along western liberal lines. Recipient countries, however, are often ill prepared for these forms of legal process – either because they cannot afford them, they clash with indigenous conceptions of right, or they are short-termist, when what is needed is a deeper long-term programme of embedding the rule of law within society as a whole. Weak legal institutions, imposed from above or outside, can be manipulated by powerful elites. More embedded legal institutions take this form of justice out of the political sphere and into the hands of individuals and plural social groups, and embed it in due process and *de jure* social equality. Mani also argues that this social complex must be enshrined in a social compact, within societies and between societies and third-party countries. Without broad participation in the legal process and constitutionalism, the system is unjust and will break down.

To support the legal system, moves must be taken to develop rectificatory or 'reparative justice'. The tendency towards minimalist legal means to secure social reparations has consistently failed or overburdened weak and poor societies. The move towards truth and reconciliation commissions, for example has been an important means of redressing injustice through catharsis and moral or symbolic compensation. Often collective means of punishment through ostracism or forgiveness can work alongside more formal

³¹ 'Let justice prevail though the world should perish'. Popular maxim cited in Immanuel Kant, 'Perpetual Peace' in Hans Reiss (ed.) *Kant: Political Writings*, (Cambridge: Cambridge University Press, 1991), p. 123.

³² Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002)

³³ Johan Galtung, 'Twenty-Five Years of Peace Research: Ten Challenges and Some Responses' *Journal of Peace Research*, vol. 22, no. 2, 1985, pp. 141-158.

means to restore title to property or criminal convictions that, due to their often prohibitive costs, can take much longer to realise. Alternatives such as the Rwandan *gacaca* system are often mentioned as complementary alternatives to more expensive western forms of legal retributive justice. Here the aim is to ensure that retribution is indigenous as well as cosmopolitan, recognising the embeddedness of tradition as well as the universality of human dignity.

Finally, distributive justice. The issue of who gets what, when and how, is a politically sensitive one and is more often than not both the cause of conflict and central to resolving the issues at hand. Mani suggests a 'two-stage response to distributive justice'. She argues that unless the underlying socio-economic conditions that contributed to the outbreak of conflict are addressed, peace will be fragile and short-lived. Post-conflict societies are usually left in acute material need. Any third party intervention that fails to see the justice in alleviating that need will simply contribute to the breakdown of order in the long-term. This demands policies directed at improving the economic lot of the least advantaged in a society, rather than elites, since it is the exploitation and misery of the masses that leads to conflict.

Mani's analysis does not ignore the role of the state, but her analysis would certainly suggest that states do not need to be thought of as the *sine qua non* of conflict resolution and post-conflict peace. Roland Paris' work, however, would suggest otherwise.³⁴ Paris has focused on the political failure of the United Nations (UN) and other third-party interveners in the past twenty years. Like Mani, Paris argues that the practice of exporting the 'Wilsonian model' of economic liberalisation and democracy promotion has largely failed. The assumption underlying the 'Wilsonian model' is that market democracies and republican states are inherently more peaceful and are a more just and more promising form of social organisation. Following Kant, Wilsonians argue that to build republican states in the hinterlands of the globe would bring peace,

and so Western liberal states have, since colonial times, sought to do just that.

Paris suggests that the flaw in these contemporary ideas is to ignore the *de facto* 'state of nature' that exists in war-torn societies. What the classical writers recognised that contemporary thinkers do not, Paris argues, is that strong states are needed before any market or political liberalisation can take place in a given society. In the absence of effective institutions, war-torn societies would be prone to further collapse. He labels this process 'institutionalisation before liberalisation', or the enforcement of a negative peace and the building of a rudimentary system of political power that can maintain peace *until* a given society is *ready* for economic liberalisation and democracy.³⁵ Despite leaning on the canon of modern European thought, Paris' conclusions and prescriptions are purely technical or functional, rather than normative. Justice is assumed rather than conceptualised. While this approach begs all the normative questions Mani's seeks to answer, this example nevertheless shows that any peacebuilding operation must be cognizant of what might be called institutional justice. One must also be aware that institutions are not politically and ethically neutral – they will entrench constellations of power, much as distributive justice, legal justice and rectificatory or reparative justice have the potential (at least) to transform existing ones.

Justice and EU foreign policy in the Middle East

Let us use the above to assess EU foreign policy in the Middle East. It must first be recognised that the EU's role in the Middle East is quite distinct from that of the UN in other conflict zones. Indeed, while the EU may be in the process of attaining the sorts of physical capabilities the UN possesses, it is doubtful it will achieve its universal legitimacy. At present, the EU seeks to influence the Middle East region through diplomatic and economic means, spearheaded by a discursive consensus

³⁴ Roland Paris, *At War's End: Building Peace after Civil Conflict* (Cambridge: Cambridge University Press, 2004).

³⁵ Roland Paris, 'Bringing the Leviathan Back In: Classical Versus Contemporary Studies of the Liberal Peace', *International Studies Review*, vol. 8, 2006, p. 434.

regarding what the EU stands for – the so called European normative power. However, this notion of Normative Power Europe is quite distinct from *justice* and ethics. According to the *OED*, 'normative' implies advocacy or the establishment of some sort of rule-based behaviour with only an implicit suggestion of right. Theories of justice and ethics, on the other hand, might be considered the standards by which to *evaluate* normative systems or advocacy. It is therefore of value to take a look at how the EU articulates its normative credentials in the areas of the rule of law, retribution, distribution and institutions, in order to evaluate them against the above theoretical/philosophical discussion, and the practicalities on the ground.³⁶ What we find in the EU policy documents is a *penchant* for legalism and state-building, while distributive and retributive justice barely features at all.

Legal Justice and the EU's Policy Discourse

The EU has strictly formal conceptions of justice. Justice is equated with a functioning judicial process. In other words justice is the *outcome* of a legal process. One would search in vain for references to justice in the EU's formal documents, treaties, or even speeches by ministers, which dealt with the concept of justice in non-judicial or *normative* ways. For example, the Commission's document 'Underwriting Justice for All' claims that its aim is to ensure that justice is 'accessible to all'. 'EU support in this area deals with judiciary, courts and prisons.' Also, 'transitional justice' refers to 'post-conflict situations [wherein] justice is often part of security sector reform approach.' Interestingly, the Commission invested €443 million between 2004-2006 in the 'development of effective justice systems across the world'.³⁷ The EU clearly sees law as an impartial set of rules, the normative content of which is largely assumed or ignored.³⁸ The EU is probably also pursuing what Mani calls 'programmatic minimalism' in

its conceptions of legal justice: seeking to uphold the rule of law without investigating the forms of social power which lie behind it. This approach reinforces the tendency towards the monopolisation of power in a given state and thus, the possibility at least, of its abuse. Without embedding legal accountability more deeply, both within and above states, states can and will ignore the rule of law: be that UN resolution 242 (1967) or the various non-proliferation treaties agreed in the Middle East region. Further examples abound.

Statebuilding and Institutional Justice

It is clear that the EU sees the establishment and effective maintenance of states as the first bulwark against the multiple threats it sees in the world today. Promoting and safeguarding the rule of law and democracy, as well as 'effective multilateralism' between states and other international organisations are all part of the broad EU security strategy. Central to each of these is maintaining an effective and functioning state apparatus. As the European Security Strategy makes clear:

The quality of international society depends on the quality of the governments that are its foundation. The best protection for our security is a world of well-governed democratic states. Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order.³⁹

In relation to the Middle East, the EU is committed to the Road Map and the two-state solution. However, official policy towards Hamas would seem to be undermining civil society engagement with the political process; EU support of Fatah is not matched by the Palestinians themselves. There is no functioning state in Gaza and the EU and other regional actors now seem unwilling to support one. Thus, surely, it is not the state which is of value but the

³⁶ Clearly the EU does not articulate its positions in relation to Aristotle's theory of justice, but this is as good a place as any to start our evaluation.

³⁷ European Commission, *Underwriting Justice for All*, available at

http://ec.europa.eu/europeaid/what/governance-democracy/justice/index_en.htm [Accessed 17/02/09]

³⁸ See Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press, 2005).

³⁹ European Council, *European Security Strategy*, Brussels, 2003, p. 10

content and structure of it which matters. Have European leaders also forgotten that undermining state sovereignty rather than entrenching it has been the hallmark of European success? One of the ironies of EU democracy promotion in the Middle East is its failure to adequately democratise itself. Indeed, the tensions here are striking. As Caroline Lucas (MEP) observed, in response to a 2007 European Parliament 'fact-finding' delegation to Gaza, the Commission had to deliver assurances to the Israelis that the European Parliament did not make policy in foreign affairs.⁴⁰ The structure and ethical foundations of states are not made of Lego.

Economic Development and Distributive Justice

Development might be seen as a euphemism for some form of distributive justice. So what sort of justice is it? The principles are extensively detailed in the 'European Consensus on Development'.⁴¹ Here the EU takes a holistic approach to poverty eradication, prioritising the recipient country's 'ownership' of the development process. This ownership must be accompanied by institutional oversight or democratically elected officials at multiple levels of governance, and the building of the capacity of civil society and NGO groups to participate in this process. The 'Consensus' recognises the negative historical dominance of patriarchy (even if this is couched in terms of promoting 'gender equality') and also the development of more effective states. It also recognises that democracy, human rights and the rule of law are central to development.

Rhetoric aside, the EU is already the largest donor to the region and is also Israel's largest trading partner, and yet conflict persists. Benoît Challand has shown that funding seems to bypass grass-roots organisations in the region.⁴² As Rafaella Del Sarto has shown in some detail, despite some optimism that the European Neighbourhood Policy (ENP) Agenda with

Israel will produce important 'confidence building measures' between the two regions, it is short on meaningful concessions and structured in favour of the status quo.⁴³ The ENP agreement with Palestine was put on hold in 2006 after Hamas was elected into power, and ultimately the ENP has failed to produce much more than bilateral trade agreements between member states and third parties in the region. It would also seem that in the absence of evidence to the contrary, institution or state-building in the region seems to be a systematic process of building elite power – thus reinforcing patriarchy in the region. Anecdotal evidence suggests development aid for agricultural goods in the Palestinian territories is conditional on the requirements of the Common Agricultural Policy. The EU and Israel continue to withhold aid and tax receipts respectively due to the outcome of EU-supervised democratic elections. The salutary lesson here is that distributive justice demands a distributor and we should rightly worry about what might happen should it fail in its obligations and how that might be challenged. Civil society 'oversight' would seem a rather thin veneer of protection. Perhaps the problem lies with the permissiveness of state power, or the seemingly entropic tendency of states towards corruption. Finally, as Chris Patten has recently argued, throwing money at Gaza would seem to be throwing money away if, to paraphrase Marx, all that is solid is vaporised within years.⁴⁴ Distributive justice seems to be a long way off.

Retributive Justice

The proverbial elephant in the room is the question of retribution or reparations. That this issue is completely ignored is a symptom of EU unwillingness to face the facts on the ground. The attempt to build functioning liberal democratic regimes is pointless if the underlying injustices are not engaged with – be they the question of refugees, settlements, dealing with the aftermath of terrorism, the Holocaust, captive soldiers or political prisoners. The region would seem to

⁴⁰ Caroline Lucas, 'Europe's Wrong Call', *New Statesman*, 14 May 2007.

⁴¹ European Commission, *European Consensus on Development*, Brussels, 2005.

⁴² Benoît Challand, 'The Evolution of Western Aid for Palestinian Civil Society: Bypassing Local Knowledge and Resources,' *Middle Eastern Studies*, vol. 44, no. 3, 2008, pp. 397-417.

⁴³ Rafaella del Sarto, 'Wording and Meaning(s): EU-Israeli Political Cooperation according to the ENP Action Plan', *Mediterranean Politics*, vol. 12, no. 1, 2007, pp. 59-75.

⁴⁴ Chris Patten, 'Writing cheques for Gaza is easy. Politics is the tricky bit', *The Guardian*, 27 January 2009.

be a prime candidate for effective reconciliation measures rather than institution-building. More effective engagement with novel ways of coming to terms with the past is vital to a peaceful future for the region. However, this is simply not on the official agenda.

Conclusions

Clearly, how we define justice will determine how we think we can achieve it, and perhaps Mani's standards are too exacting. To conclude in this way would be to miss the point entirely. Unless demands for justice are taken seriously on their own terms, peace in the Holy Land will remain a mirage. Specifically, legal justice would seem to be some way off in the region if popular participation in the law-making process on the Palestinian side is unlikely. The EU's obsession with state-building as a route to peace and justice in the Middle East has also backfired spectacularly. When we look at the development discourse of distributive justice we can see that that too has failed. Reparative justice has not even been mentioned. It seems that understandings of justice in the region have been brushed aside in favour of one-size-fits-all notions of state-building and liberalisation. The social context within which struggles for justice take place seems to have been ignored with all too visible results.

Conceptions of justice are always caught up in a complex social matrix of counter-claims, and only by seeing the embedded nature of justice can the social mediation of conflict be realised politically. By this formulation, justice is less an *end* than an ongoing process mediated by institutions, values, power and other contextual parameters. So, a more adequate way of seeing the relationship between justice and conflict in the Middle East might be to recognise, as Ghandi once argued, that 'means are ends in the making'. This brings with it a certain degree of social and temporal responsibility. Moreover, recognising this notion of justice-as-prefigurative-process (where actors *prefigure* the ends they want to see in their *daily actions*), actors must exhibit reflexive responsibility as well as the political will to build the institutional structures that can help build trust and cooperation within and between conflict parties, third-party mediators and interest groups. As we can

see, this neither necessitates states, market economies nor legalism, nor does it assume their inadequacy. It demands more political sensitivity to the conditions on the ground and more coherent understandings of justice on the part of would-be third party actors.◊

Recently-published books on European foreign policy

Zaki Laidi *Norms over Force: The Enigma of European Power* (Palgrave, 2008).

Zaki Laidi (ed.), *EU Foreign Policy in a Globalized World: Normative power and social preferences* (Routledge, 2008).

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