A blueprint for making the prospective Mediterranean free trade zone an environmental role model

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If not accompanied by strong environmental provisions, the prospective Mediterranean Free Trade Zone (MFTZ) is bound to increase existing pressures on scarce natural resources in the region. This article argues that the existing bilateral association agreements between the European Union and Southern Mediterranean countries are clearly insufficient from an environmental perspective. If the MFTZ were to be based upon those agreements, then it would represent a free trade agreement environmentally inferior to the North American Free Trade Agreement and even the World Trade Organization. To turn the MFTZ into an environmental role model instead, a number of provisions are indispensable: environmentally friendly preambular language, upward harmonisation of environmental standards, a comprehensive general exceptions clause, a prominent role given to the precautionary principle and the allocation of the burden of proof on the party challenging an environmental measure. Equally importantly, the European Union needs to step up financial, technical and other assistance as part of a wider regional environmental strategy and partnership. Doing so would ensure that the prospective MFTZ becomes a promoter not only of trade and economic growth, but also environmental protection in the Southern Mediterranean region.

INTRODUCTION

The promise to establish a Mediterranean Free Trade Zone (MFTZ) by 2010 forms, besides political and security issues, the most important aspect of the so-called Euro-Mediterranean partnership since its incorporation in the Barcelona Declaration adopted at the first Euro-Mediterranean conference in 1995. At the third conference in Stuttgart in 1999 ministers reaffirmed that the MFTZ 'remains at the heart of the Partnership' (Art. 19 of the Chairman's Formal Conclusions). Such a zone would encompass the EU member states plus the Southern Mediterranean countries including Jordan and a potential future Palestinian state, but excluding Libya, at least for the time being.

However, at the beginning of this decade the prospects for the MFTZ becoming reality are unclear. With the European Union (EU) deeply involved in and occupied with enlargement, particularly towards Central and Eastern European countries, and struggling to come to terms with the necessary institutional reforms to accommodate many more members, it does not seem out of the question that the MFTZ will never materialise. At the least, it seems fair to say that the MFTZ is far from being a top priority concern for the EU. On the other hand, the date 2010 is still far away and in politics deadlines matter a lot, but only if they come close enough to enter the rather short-sighted perspectives of policy makers. In other words, it is far too early to write off the MFTZ and this would remain true even if no substantial steps towards such a free trade zone were undertaken within the next five years or so.

Even if the eventual establishing of the MFTZ by 2010 could be taken as a matter of fact, it is far from clear, however, what it would look like. If the few bilateral Euro-Mediterranean Association Agreements, which have so far been signed and ratified and which are to form the basis for the MFTZ to build upon, were to provide the

blueprint for such a regional free trade agreement (FTA), then it will have three major characteristics:

* it would not be a comprehensive agreement as concerns binding provisions. The gradual abolition of tariffs on EU industrial exports and the opening of Mediterranean countries towards foreign investment by EU investors would form its only major objectives. Trade liberalisation in agricultural products would remain very limited, much to the frustration of Southern Mediterranean countries.
* it would cover a comprehensive list of aspects of economic, financial, social, environmental and cultural cooperation. However, cooperation would be based on mostly non-binding, general promises.
* it would have a rather rudimentary institutional structure only.

If, on the other hand, the only currently existing regional FTA to speak of between developed countries and a developing country – namely the North American Free Trade Agreement (NAFTA) – is of any guidance on how the MFTZ could eventually look like, then there will be many more detailed and comprehensive rules on, for example, sanitary and phytosanitary (SPS) measures as well as technical barriers to trade and there will be a stronger institutional structure dealing with, amongst other things, environmental matters.

This article focuses on environmental aspects of the proposed MFTZ in the context of a wider European regional environmental strategy. It assesses the existing bilateral association agreements from an environmental perspective and highlights their deficiencies. Modern agreements have so far been negotiated with Egypt, Israel, Jordan, Morocco, Tunisia, and the Palestinian Authority and they hardly differ from

country to country.[1] The article demonstrates how the MFTZ could become an environmentally friendly regional FTA that could serve as a model for similar undertakings elsewhere and how it could form the heart of an ambitious regional environmental strategy.

THE IMPORTANCE OF AN ENVIRONMENTALLY FRIENDLY MFTZ

Why worry about the environmental friendliness or not of the prospective MFTZ? First, it could become a test case for judging the credibility of the EU's commitment to integrate environmental and wider sustainability concerns in its quest for further trade liberalisation. This article argues that if the weak environmental provisions in the existing bilateral association agreements were simply taken over into the MFTZ without amendments and additions, this would render the MFTZ an anachronism as it would establish a FTA environmentally inferior to NAFTA and even the World Trade Organization (WTO), which itself is hardly known for being an environmentally advanced agreement. Even the recently negotiated bilateral US-Jordan FTA contains substantially stronger environmental provisions than the typical bilateral FTA between the EU and Southern Mediterranean countries, including Jordan.

Second, as experience with the failed negotiations for a Multilateral Agreement on Investment (MAI) and the chaotic circumstances at the last WTO meeting in Seattle have shown, NGOs might successfully mount enough resistance to bring down agreements that they oppose. Whether 'civil society', as it is sometimes called, would be strong enough to bring down a non-environmentally friendly MFTZ is unclear,

[1] The association agreement with Turkey is somewhat different as it implements the final phase of a Customs Union and Turkey has been awarded the status of a potential candidate for EU membership.

however, since NGOs in Southern Mediterranean countries are relatively weak and the ones in EU countries might not have the resources available to mount enough resistance on their own. But the experience referred to above should give the EU a clear warning about what might happen should it choose to ignore the demands from 'civil society'.

Third, the Southern Mediterranean region suffers from immense environmental problems in terms of natural resource degradation and environmental pollution. The World Bank (1995, p. 10) estimates that the implied monetary costs are in the range of US$ 12-14 bn per year or roughly 3 per cent of regional Gross Domestic Product. If it is not ensured that the MFTZ will become an environmentally friendly FTA, then the increase in economic growth following from trade liberalisation will likely worsen the situation with respect to, for example, scarcity of water resources, soil erosion, pressure on coastal areas, the marine environment and the urban infrastructure as well as air and water pollution. Water scarcity in particular represents a problem. If it is not comprehensively addressed it will become a drag on agricultural productivity and economic development more generally and will remain a security problem destabilising the whole region.

A properly designed MFTZ could do more than mitigate negative environmental impacts, however. Meaningful regional environmental cooperation would open the prospect for positively improving environmental conditions in the whole area. In a more long-term and visionary perspective, the MFTZ could form the basis for a renewable energy partnership, where Southern Mediterranean countries use their solar potential to replace their own fossil fuel dependency, but more importantly that of the EU member countries as well (Brauch 1996; Rhein 1997).

PREAMBULAR LANGUAGE

Every FTA starts with a preamble, which lays down its objectives and guiding principles. Astonishingly, there is typically no environmentally friendly preambular language in the Euro-Mediterranean association agreements as there is, for example, in the Treaty establishing the EU, the NAFTA or even in the Agreement establishing the WTO. There is no talk of 'a harmonious, balanced and sustainable development of economic activities', let alone 'a high level of protection and improvement of the quality of the environment' (Art. 2 Treaty establishing the EU), as the guiding principles of these agreements. No promotion of sustainable development and no strengthening of the development and enforcement of environmental laws and regulations is promised as in the preamble of NAFTA, no assurance of the importance of environmental protection and preservation is given as in the preamble of the Agreement establishing the WTO. Instead all there currently is, are two clauses within the non-binding sections on economic cooperation, which list 'sustainable economic and social development' among the objectives and 'the preservation of the environment and ecological balances' as a central component of economic cooperation (for example, Art. 42:2 and 43:4 of the association agreement with Morocco).

Neither the wording of these two clauses, nor their location within and restricted to the section of economic cooperation is satisfactory. Instead, the MFTZ should additionally contain environmentally friendly language in its preamble, embracing sustainable development and the achievement of a high level of environmental protection as objectives combined with progressive environmental improvements as a guiding target. NAFTA's reference to a strengthening of the development and enforcement of environmental laws and regulations is also laudable and should be

followed in the MFTZ, as the non-enforcement of laws and regulations is responsible for a great many environmental problems, even within the EU (see Macrory (1992) and Somsen (1996)).

POTENTIAL HARMONISATION AND THE LEVEL OF ENVIRONMENTAL PROTECTION

As mentioned above, it is not entirely clear how far reaching the MFTZ will become. The existing association agreements do not contain harmonisation provisions beyond a general clause stating that cooperation should help the associated countries bringing their legislation closer to that of the Community (for example, Art. 52 of the agreement with Morocco). It seems inevitable, however, that the MFTZ will contain more far reaching, if rudimentary, provisions for the harmonisation of, amongst others, environmental laws and regulations, as harmonisation facilitates the free movement of goods. In principle, harmonisation of national standards can occur at high, medium or low standards. From an environmental perspective, the MFTZ should encourage harmonisation at high environmental standards and should call for the continuous improvement of these standards.

The Treaty establishing the EU itself contains such provisions in its Art. 95 and 174. In NAFTA, upward harmonisation is not explicitly encouraged. Art. 714:1 merely states that 'without reducing the level of protection of human, animal or plant life or health, the Parties shall, to the greatest extent practicable (…), pursue equivalence of their respective sanitary and phytosanitary measures' (similarly Art. 906:1 for technical standards). At the WTO level, while GATT itself does not contain any relevant provisions, two other WTO agreements do. The Agreement on Technical Barriers to Trade (TBT Agreement) encourages the adoption of international technical

regulations (Art. 2:4), the harmonisation of regulations (Art. 2:6) and even the adoption of foreign regulations (Art. 2:7) to prevent such regulations from hindering the free flow of goods. Similarly, Art. 3:1 of the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement) encourages the harmonisation of standards and the adoption of international standards, guidelines or recommendations. Importantly, none of these articles contain any provision calling for a 'high level of environmental protection' as a base or aim for harmonisation. The MFTZ should go beyond the provisions in the WTO agreements and in NAFTA and should embrace upward harmonisation of environmental standards as an objective. As this would practically always mean to raise standards in Southern Mediterranean countries to EU levels, this would be compatible with the requirement in the existing association agreements that the associated countries should bring their legislation closer to that of the Community.

THE WORDING OF THE GENERAL EXCEPTIONS CLAUSE

The association agreements contain a general exceptions clause stating that the agreement 'shall not preclude prohibitions on imports, exports or goods in transit justified on grounds of (…) the protection of health and life of humans, animals or plants' (Art. 28 of the agreement with Morocco, identical wording in other agreements). This safeguard is, however, subject to the requirement that 'such prohibitions or restrictions shall not (…) constitute a means of arbitrary discrimination or a disguised restriction on trade between the Parties' (ibid.). This clause, which does not explicitly mention environmental measures, is practically identical in wording to Art. 30 of the Treaty establishing the EU. For the EU, it is not particularly relevant that its Art. 30 does not cover environmental protection measures in general and

measures aimed at the conservation of exhaustible natural resources in particular. This is because the relevant case law of the European Court of Justice (ECJ) has made it clear in the wake of the so-called *Cassis de Dijon* doctrine that environmental protection constitutes a mandatory requirement potentially justifying trade restrictive measures (see Neumayer 2001a). The ECJ case law would not necessarily be valid for the MFTZ, however, so that the wording spelling out the coverage of the general exceptions clause does matter. The formulation chosen in the general exceptions clause of the MFTZ should therefore explicitly encompass all measures aimed at environmental protection in general and the conservation of living and non-living exhaustible natural resources in particular.

THE ROLE OF THE PRECAUTIONARY PRINCIPLE

Scientific uncertainty poses a great problem for environmental protection measures. Uncertainty refers to a situation where the probability distribution over a set of possible states of the world and the resulting consequences cannot be known objectively (cf. Neumayer 1999, pp. 99-101). Because they cannot be known objectively, there cannot be definite scientific evidence. In these cases scientists can merely provide best guesses based on judgements – sophisticated and informed judgements, but guesses nevertheless. Scientists themselves will differ in cases of scientific uncertainty, and sometimes quite dramatically so, with respect to an assessment of the dangers posed by uncertainties.

Unfortunately, uncertainties do not merely exist on the fringe. Instead they are a central characteristic of modern life. Be it the potential danger that ‘mad cow disease’ (BSE) poses to human beings as well, or the potential health dangers from beef stemming from cattle raised with growth hormones, or the dangers from genetically

modified organisms (GMOs) – the central characteristic of these and other cases is the uncertainty of the danger posed. There is no scientific consensus on either the likelihood of the dangers occurring or the severity of the consequences should they occur. In order to deal with scientific uncertainty, policy makers may take recourse to the so-called precautionary principle. It says that preventive measures to avoid environmental harm should (or at least can) be undertaken before there is definite scientific evidence proving that certain activities cause environmental harm.

Neither NAFTA, nor the WTO agreements have fully integrated the precautionary principle. The SPS Agreement, for example, allows preventive action only provisionally until a 'more objective (sic!) assessment of risk' (Art. 5:7) is provided. Not surprisingly then, a WTO panel and appellate body have ruled against an European Communities (EC) import ban on beef from cattle raised with growth hormones, which is based on a precautionary approach given the difficulties in providing an "objective" assessment of risk for growth hormones (WTO 1998).

The Treaty establishing the EU is more advanced than the WTO's SPS Agreement or NAFTA in explicitly embracing the precautionary principle. Nominally, it can only be found at one point, namely in its Environment Chapter in Art. 174:2, which states that Community policy on the environment 'shall be based on the precautionary principle and on the principles that preventive action should be taken…'. The Commission itself insists, however, that the principle and its application must not be confined to this article (European Commission 2000, p. 10). Indeed, in various communications, the Commission has emphasised the relevance of the precautionary principle, especially with respect to consumer health and food safety. The case law of the European Court of Justice (ECJ) has tended to confirm the relevance of the principle in disputes over internal barriers to trade (Neumayer 2001a).

The MFTZ should follow the lead of the Treaty establishing the EU in embracing the precautionary principle. However, it should give it a more prominent and central role, making it clear that the precautionary principle can be invoked to justify environmentally motivated measures in general and with respect to SPS measures and technical standards and regulations in particular.

THE BURDEN OF PROOF

Normally, free trade agreements require the party enacting a trade restrictive measure to prove, if challenged before a dispute panel, that the measure is either consistent with the free trade obligations of the agreement or can be subsumed under one of the exception clauses. That the burden of proof need not necessarily rest with the party imposing the measure can be deduced from NAFTA, however, where the burden of establishing the inconsistency lies with the party asserting that a SPS measure (Art. 723(6)) or technical standards-related measure (Art. 914(4)) is inconsistent with the relevant NAFTA provisions. To require that a measure is deemed consistent until proven otherwise is in accordance with a fundamental principle in criminal law that the defendant is deemed innocent until proven guilty. As in criminal law, there will then certainly be cases where measures cannot be proven to be inconsistent with the free trade agreement even though they actually are. The justification would again be analogous to criminal law, namely to protect the defendant, here the country imposing the environmental measure: in case of doubt the defendant's rights trump those of the plaintiff's. This allocation of the burden of proof would grant environmental protection measures some special protection. The MFTZ should therefore allocate the burden of proof on the complaining party similar to NAFTA's provisions.

THE POLLUTION HAVEN PROBLEM IS EXAGGERATED

Many environmentalists are afraid that multinational corporations (MNCs) take advantage of low environmental standards in developing member countries of FTAs to re-locate their business in these so-called pollution havens (WWF 2000; FoEME 2000). They sometimes fear that those potential hosts of foreign investment will even lower their environmental standards in order to attract more investment. Most empirical evidence suggests, however, that the pollution haven phenomenon is largely exaggerated. For a whole range of reasons, which cannot be discussed here, differences in environmental standards do not induce MNCs to any significant amount to re-locate their business operations (see Neumayer (2001b) for detail). Nonetheless, it would do no harm if the MFTZ included a non-binding clause following the example set by NAFTA Art. 1114:2, which dissuades parties from encouraging investment 'by relaxing domestic health, safety or environmental measures'. Furthermore, the MFTZ could explicitly encourage MNCs to adhere to the Guidelines on Multinational Enterprises from the Organisation for Economic Co-operation and Development (OECD 2000), which calls inter alia for environmental management systems and a precautionary approach towards environmental uncertainty.

The last paragraph implicitly refers to manufacturing industries. Things are somewhat different, however, with respect to resource extracting industries. Instead of re-locating business from developed countries, their very aim is to establish business from scratch in developing countries if there are natural resources to be exploited. Experience with oil extraction in Nigeria and mining in Indonesia and Papua New Guinea shows that at times MNCs operate business with significantly negative environmental impacts either because environmental standards in those countries are low or because they are not enforced (Mabey and McNally 1999). Environmentalists

sometimes suggest that this can be avoided in requiring MNCs to apply the environmental standards of their home countries in the country of their investment (FoEME 2000, p. 22). While doing so is in principle possible, at least according to one legal doctrine, it would cause considerable difficulties in practice as it would extend the scope of domestic legislation beyond the territory of the home country and thereby override the legislative powers of the host country (Muchlinski 1995, pp. 123f.). Inevitably, this would be regarded by host countries as 'eco-imperialism'. The only way around this would therefore be to ensure that environmentally unfriendly operations by MNCs receive significant media attention and to put sufficient pressure on them to voluntarily refrain from such operations.

A MEA SAVINGS CLAUSE?

NAFTA was the first regional FTA to contain a savings clause for multilateral environmental agreements (MEAs). Art. 104 explicitly states that in the event of any inconsistency between NAFTA and a number of MEAs the provisions and obligations contained in the latter prevail provided that 'where a Party has a choice among equally effective and reasonably available means of complying with such obligations, the Party chooses the alternative that is the least inconsistent with the other provisions of this Agreement'. While this savings clause is often seen as a landmark event providing some credibility to the claim of NAFTA's environmental friendliness, I would argue that for a regional FTA such a savings clause is not necessary. This is for two reasons: First, the likelihood of a trade restrictive measure taken in pursuance of a MEA becoming challenged is very small even at the WTO level with a much more diverse membership than amongst the partners to a regional FTA, where such conflicts can be solved more easily (Neumayer 2000a). Second, and more importantly,

if there is potential for conflict between MEA provisions and free trade obligations, then this conflict must also be solved at the multilateral, rather than regional, level. In other words, the potential for conflict needs to be solved at the WTO level. I would therefore argue that the MFTZ should not include a MEA savings clause.

A SANCTIONED ENFORCEMENT CLAUSE MAY BACKFIRE

Apart from the MEA savings clause, NAFTA or rather the North American Agreement on Environmental Cooperation (NAAEC), NAFTA's environmental side agreement, is famous for its enforcement clause. Art. 5 of the NAAEC requests each NAFTA party to 'effectively enforce its environmental laws and regulations'. This enforcement is subject to monitoring by the NAFTA parties, which may request bilateral consultations, a NAAEC Council meeting and eventually even an arbitration panel to establish whether 'there has been a persistent pattern of failure by that other Party to effectively enforce its environmental law' (Art. 22).

These provisions have been criticised for a number of reasons: First, the process is a very slow one with many hurdles set up until an arbitral panel would issue a final report on a NAFTA party's alleged persistent failure of environmental enforcement and would impose monetary fines or, as a means of last resort, even the suspension of trade benefits if a party was found guilty and failed to implement the panel's recommendations (Part Five of the NAAEC). Second, the requirement that the failure of environmental enforcement needs to be 'persistent' in order to be eligible for a challenge has been criticised as 'leaving victims of one-time offenders with no recourse' (Katz 1998, p. 15). Third, while anybody may submit information asserting a NAFTA party's failure to enforce its environmental law, which under certain conditions could lead to investigations and a factual record prepared by the Secretariat

of the NAAEC's Commission for Environmental Cooperation, only NAFTA parties themselves have the right to initiate the formal procedure mentioned above. It is thus a purely inter-governmental process. Fourth, the Secretariat has substantial discretion in deciding on whether a submission from a private person or an NGO merits a response from the affected NAFTA party. The establishing of a factual record presupposes a two-thirds vote by NAFTA parties and it is only them who can provide information and comments on the record and decide, again by two-third majority, whether to make the record publicly available (Art. 14 and 15 of NAAEC). Of course, as mentioned above, only a NAFTA party would have the right to initiate a formal procedure following such a factual report.

These criticisms have some validity. However, I would argue here that the whole concept of threatening sanctions with regard to a failure to enforce environmental laws and regulations is fundamentally flawed, as it does not address the root cause of the failure, and may backfire, as policy makers might become deterred from enacting stringent environmental laws and regulations. On the first aspect, Neumayer (2001b) argues in great detail that the root cause of a failure to enforce environmental laws and regulations is likely to stem from political-institutional deficiencies rather than from a deliberate intent not to enforce. These deficiencies are not cured by threatening a country with sanctions for enforcement failure. Rather, what is needed is financial, technical and other assistance to help those countries in building enforcement capacity. On the second aspect, rational policy makers aware of deficiencies in their country's enforcement capacity will be deterred from enacting stringent laws and regulations if they have to fear that non-enforcement becomes punished. As more stringent laws and regulations are more difficult to enforce, there is a clear incentive to pass less stringent ones, which are easier to enforce.

It is this author's opinion therefore that while a MFTZ should contain a clause demanding enforcement of environmental laws and regulations, no sanctions should be threatened for non-enforcement. It should contain provisions for an appropriate institution undertaking investigations and writing a factual report and there should be much less obstacles to private persons and NGOs for an initiation of such undertakings than is currently the case in NAFTA and parties should not have a right to veto against them. Furthermore, the MFTZ should require parties to provide their own citizens and NGOs with the right to challenge their own government's failure to enforce environmental laws and regulations. But it should not threaten a MFTZ party with sanctions imposed by other parties. Instead, measures accompanying the MFTZ should provide assistance to building the capacity in the Southern Mediterranean countries to effectively enforce their environmental laws and regulations. This brings us to the next section, which deals with institutional and financial issues.

INSTITUTIONAL AND FINANCIAL ISSUES WITHIN A WIDER REGIONAL ENVIRONMENTAL STRATEGY

To leave member countries with substantial leeway in setting their own domestic level of environmental protection and to encourage the sustained improvement of environmental standards, represents an important part required to make the MFTZ an environmentally friendly FTA. Because the relationship between trade liberalisation and environmental harm is a very complex one (MCSD 2000), member countries need to be free in setting the environmental standards they deem appropriate. Of at least equal importance, however, are provisions on institutional and financial matters that would foster regional cooperation within a wider environmental strategy.

Existing financial assistance to the Southern Mediterranean countries has been roundly criticised by environmentalists as too limited in general with too little being done for the environment in particular. The process has also been criticised as slow, non-transparent and too heavily focused on the bilateral instead of regional level (WWF 2000, Wandel et al. 2000).

With the Euro-Mediterranean partnership, the EU, to some extent in exchange for gaining duty free access for its industrial products over time, stepped up its financial aid to Southern Mediterranean countries. Between 1995 and 1999 some 900 million Euros were thus dedicated as part of the so-called MEDA programmes.[2] While this might seem a lot, Zaim (1999, p. 43) rightly points out that it translates into a mere 4.1 Euro per inhabitant per year in those countries, which is only about one third of the finance per inhabitant going into Central and Eastern European countries. Less than 10% of the financial assistance to Southern Mediterranean countries goes into the financing of environmental projects in a wider sense including water supply installations and the like. In addition, the Short and Medium-term Action Programme for the Environment (SMAP) provides finance for specifically environmental projects. The financial base of this programme is extremely limited, however, amounting to about 10 million Euros a year.

On top of this financial aid comes lending on concessional terms to Southern Mediterranean countries by the European Investment Bank (EIB), which was charged with lending up to 4 billion Euro between 1995 and 1999. While some of this money goes into environmental projects in a wider sense such as water supply and treatment facilities, the vast majority goes into projects with potential detrimental environmental

[2] MEDA is an acronym for measures d'accompagnement, i.e. accompanying measures.

impacts such as road infrastructure (FoEME 2000, p. 20). In another, but related context, EIB lending to Central and Eastern European countries encountered heavy criticism in a report from Friends of the Earth Europe (FoEE 2000). In order to avoid financial aid or concessional lending from having severe negative environmental impacts, all financial transactions should therefore become subject to comprehensive environmental impact assessment.

In order to make a real difference, the financial assistance in general and for environmental purposes in particular would also need to be increased substantially. The World Bank (1995, pp. 70ff.) estimates that at least $58-78 bn would need to be invested over a period of ten years to promote more environmentally sustainable development in Southern Mediterranean countries. While some of these financial resources could come from introducing and raising charges and fees on domestic consumers of scarce natural resources, the great poverty of the vast majority of the population in these countries puts clear constraints on raising these resources domestically. More external financial, but also technical and other assistance, is therefore urgently needed to finance environmentally friendly projects and to build capacity in Southern Mediterranean countries to develop and enforce stringent environmental laws and regulations as part of a national sustainability strategy. An analysis undertaken by Friends of the Earth Middle East has, not surprisingly, shown that Southern Mediterranean countries suffer from substantial gaps in this capacity, noting that 'while economic regulations will converge, there is no incentive within the Euro-Med framework to reduce the gap between EU and Southern Mediterranean environmental legislation' (FoEME 2000, p. 67). Assistance is also needed if the sustainability assessment of the MFTZ, which the EU has promised but still not commissioned, is to be accompanied by similar, but more focused, assessments in

each of the Southern Mediterranean countries. If undertaken, these sustainability assessment should not be undertaken merely once, but should form the starting point for a continuous assessment as the MFTZ develops.

On the institutional side of finance, it is striking that the finance is completely controlled by the EU and its institutions. There is very limited involvement on the side of the Southern Mediterranean countries and from NGOs. This would need to become rectified. In terms of participation from the weaker countries, NAFTA can again provide a role model. Both the North American Development Bank (NADB) and the Border Environment Cooperation Commission (BECC) are characterised by equal Mexican involvement. However, for the case of the MFTZ, the Southern Mediterranean countries should not be required to contribute approximately half the funding, as is the case with Mexico for the NADB. Indeed, they should not be required to contribute any funding at all. As concerns participation from NGOs, this could help making the management of finance a more open and transparent process. It could also help reducing allegations of corruption and mismanagement of European funds that have put the reputation of the EU and its institutions in so much doubt recently.

In order to facilitate and spur regional environmental cooperation, a comprehensive environmental regime needs to be in place. Currently, the Mediterranean Action Plan (MAP) provides the overall framework for environmental action in the region. A Mediterranean Commission for Sustainable Development (MCSD) and six regional activity centres form part of MAP. In addition, there is a Mediterranean Environmental Technical Assistance Program (METAP). Critics argue that the existing regime has not had any significant positive environmental impact so far. However, rather than creating a new environmental regime with new institutions, the

existing regime would need to become restructured to allow for stronger integrative coordination and the mandate of existing institutions would need to become extended. Whether this restructured environmental regime were to be part of the MFTZ agreement itself or would come in the form of an environmental side agreement, does not really matter. What matters is that the regime becomes better integrated with the prospective functions and operations of the MFTZ and that it can provide a platform on which regional environmental cooperation is based.

At the moment, there is just one article among the 100 or so typically contained in an association agreement that deals with matters of environmental cooperation. Without exception, this article contains merely non-binding provisions. For example, Art. 48 of the agreement with Morocco states that 'the aim of cooperation shall be to prevent deterioriation of the environment, to improve the quality of the environment, to protect human health and to achieve rational use of natural resources for sustainable development'. The specific areas, for which environmental cooperation is promised, differ then from country to country. For example, while the agreements with Morocco and Tunisia merely mention soil and water quality, safety of industrial installations and waste as well as a monitoring and prevention of pollution of the sea, the agreement with the Palestinian Authority also places priority on matters relating to desertification, water resource management, salinization, environmental education and awareness and explicitly promises cooperation on the use of environmental tools such as environmental information systems (EIS) and environmental impact assessment (EIA). If regional environmental cooperation were to become a serious undertaking, then these rather rudimentary provisions would need to become integrated in a more comprehensive and binding framework. There would also need to be regular meetings

of the Environment Ministers from MFTZ countries to coordinate these cooperation efforts.

Furthermore, environmental issues would need to become integrated into other areas of cooperation as well, especially agriculture, coastal zone management, transport and energy, for which the already mentioned long-term oriented renewable energy partnership would hold great potential. The importance of this point must not be under-estimated. Experience from NAFTA shows that if environmental issues are merely treated separately instead of integrated into other issue negotiations, then the environment is likely to lose out in the end (Katz 1998).

CONCLUSION

The year 2010, the deadline for the MFTZ to be in place, is still some time away. As mentioned, it does not currently seem to be a top priority for the EU to transform the bilateral negotiations into multilateral ones. Indeed, keeping the negotiations on a bilateral rather than multilateral level is somewhat convenient for the EU as this maintains a rather unequal balance of power in its favour. It will therefore depend to some extent on the Southern Mediterranean countries to press for multilateral negotiations for a MFTZ to begin.

It is not too early to start thinking about how the MFTZ could be turned into an environmentally friendly FTA. If the deadline of 2010 bears any meaning, then negotiations will have to start some time in the near future. It will be important that environmental concerns are imputed into the negotiating process right from the start. It would be much more difficult to add them afterwards onto the negotiation outcomes and it would be next to impossible then to integrate environmental concerns into other policy areas.

If negotiators followed the blueprint outlined in this article, the MFTZ could become a green regional FTA. It would contain environmentally friendly preambular language and a comprehensive general exceptions clause, would aim for upward harmonisation of environmental standards, would give a prominent role to the precautionary principle and put the burden of proof on the party challenging an environmental measure. A MEA savings clause, on the other hand, is not necessary. Also, while the MFTZ should contain uncomplicated provisions for investigating enforcement efforts by parties and should require them to give their citizens the opportunity to challenge non-enforcement before domestic courts, it should not threaten parties with sanctions for non-enforcement. Sanctions do not target the root causes of non-enforcement, which should be addressed via financial, technical and other assistance to help the Southern Mediterranean countries to enforce their own laws and regulations. Even if sanctions were desirable, it would be highly unlikely that they could become incorporated in a MFTZ as Southern Mediterranean might regard them as a non-acceptable encroachment into their sovereignty. More generally, it seems important in an attempt to design a green MFTZ not to overburden the agenda with items that do not seem to be strictly necessary. Developing countries are generally resistant towards efforts to green FTAs and one needs to take into account their sensitivities if one wants to succeed (Neumayer 2000d; 2001).[3] The only way to overcome this resistance will be to make a green MFTZ also in the interest of Southern Mediterranean countries. Substantial financial and other assistance as part of a wider regional environmental strategy will be a precondition for making this happen.

[3] For example, Egypt, the most important Southern Mediterranean economy, is one of the leading developing countries resisting a greening of the WTO agreements

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