

Integration without Membership: Israel and the European Union^{*}

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Abstract: *In June 2008 the EU-Israel Association Council expressed the political will to intensify EU-Israeli relations as well as agreed to upgrade these relations gradually within the framework of the European Neighbourhood Policy (ENP). Based on this decision, in December 2008 the EU External Relations Council unanimously adopted guidelines for strengthening the political dialogue structures with Israel. The success of this upgrade of the relations process, however, requires, among other things, that Israel and the EU both agree on how they want to craft a tailor-made model for their relations. The article tries to address this EU-Israeli need. The article first describes the bilateral relations between the EU and Israel and then turns to presenting a new model for an ever-closer partnership between the Union and Israel under the ENP. The proposed 'Euro-Israeli Partnership' (EIP) is a new model of aligning Israel with the EU below the level of full EU membership. The article also proposes an institutional structure that includes common decision-making and management bodies.*

Keywords: *European Union, Israel, Barcelona Process, Common Foreign and Security Policy, European Neighbourhood Policy, Union for the Mediterranean*

Introduction

Historically, geographically and even religiously, it has been argued that 'Israel is from Europe, but not in Europe' (Diner 2007), and indeed the European Union (EU) is Israel's economic, cultural and, in many respects, political hinterland. Today Israel enjoys a unique status in the EU, a status that grants Israel extensive rights in many areas such as research and development and economics.

Yet for all its desire to partake of the European project, Israel is only now beginning to think thoroughly about its relationship with the EU. However Israel has not yet made a strategic determination as to its desired relations with the EU.¹ To this effect, on March 5, 2007 it established, together with the European Commission and the Council Secretariat, the so-called 'Reflection Group,' which was charged with examining areas in which cooperation between Israel and the EU could be enhanced. Based on the preliminary work that was done in the meetings of this Reflection Group, the EU-Israel Association Council convened in Luxembourg on June 16, 2008, and expressed the political will to intensify EU-Israeli relations as well as agreed to develop these relations gradually within the framework of the European Neighbourhood Policy (ENP). In December 2008 the EU External Relations Council unanimously adopted guidelines for strengthening political dialogue structures with Israel. The success of this upgrade process, however, requires, among other things, that Israel and the EU both agree on how they want to craft a tailor-made model for their relations.

This article tries to address this EU-Israeli need. The article first describes the bilateral relations between the EU and Israel and then turns to presenting a new model for an ever-closer partnership between Israel and the EU under the ENP. The 'Euro-Israeli Partnership' (EIP) is a new model of aligning Israel with the EU below the level of full EU membership. As a new form of association, the EIP should significantly upgrade EU-Israeli relations, first and foremost in economic terms, but also in political, security as well as research, cultural and social/human fields. The article also proposes an institutional structure that includes common decision-making and management bodies.

The article departs from the assumption that following the June 2008 statement of the EU-Israel Association Council (the 'Luxembourg Statement of 2008') to 'mark a new phase' in EU-Israeli relations and to 'upgrade' them (General Secretariat of the Council 2008: 1), as well as the December 2008 call of the EU Council for 'the joint examination by the European Commission and Israel of the usefulness and modalities of closer involvement by Israel in the Community's main measures and programmes' (Council of the European Union 2008: 3), the time has come to implement the Essen Declaration of 1994. In this Declaration, the European Council stated that it 'considers that Israel, on account of its high level of economic

development, should enjoy a special status in its relations with the European Union on the basis of reciprocity and common interest' (Council of the European Union 1994: 10). The proposed EIP model is based on the premise that a closer partnership between the EU and Israel would benefit both sides and would contribute to the improvement of mutual understanding and trust.

Finally, the article holds that the EIP model is also a prerequisite to success if the ENP is ever going to evolve into anything other than expressions of European *noblesse oblige*. The current proposals to beef-up the ENP are unlikely to suffice. The EIP could serve as a model and as a springboard from which the consolidation process of the Euro-Mediterranean neighbourhood area can begin to take shape.

EU-Israeli Relations: A History of Intensive Cooperation

Israel and the EU first established diplomatic relations in 1959. The two share a long history, marked by growing interdependence and cooperation. In 1975 Israel and the EC signed their first Co-operation Agreement and since then trade, economic, political and cultural cooperation have consolidated EU-Israeli relations. Today, the EU has become Israel's most important trading partner. It is Israel's biggest source of imports and is its second largest export market. Israel, of course, is a much smaller trading partner for the EU, yet it is one of the EU's biggest trading partners in the Euro-Mediterranean area. In 2008 Israel was ranked as the EU's 25th major trade partner,² with total trade between the two economies amounting to approximately EUR 25.3 billion (EU-Israel Association Council 2009: 10). For Israel, that meant that 34 per cent of its imports (excluding diamonds) came from the EU, and 33 per cent of its exports (excluding diamonds) were directed to the European market (Central Bureau of Statistics 2009: 1–2).

To intensify their political, economic and technological-scientific relations, Israel and the EU have established and implemented several contractual and political frameworks. The following are the major frameworks and instruments:

The Euro-Mediterranean Partnership / The Union for the Mediterranean (UfM)

Israel is a full partner in the Euro-Mediterranean Partnership (EMP/Barcelona Process/UfM) and participates in all its programmes. Because of the state of its economy, which is on par with that of many EU countries, Israel was not eligible for bilateral assistance under the MEDA Programme (the EMP's financial instrument). Israel has, however, been involved in a wide variety of Euro-Mediterranean regional programmes initiated under the MEDA Programme.

Israel is something of an odd partner in this regional partnership. Politically, Israel is neither a candidate for EU membership nor an Arab state. Economically, Israel is developed and advanced well beyond all other Mediterranean partners. As long as the Middle East peace process was proceeding, the EMP positively affected EU-Israeli bilateral relations, but as soon as the process started to derail the Partnership negatively affected the bilateral relations. Generally, Israel felt uncomfortable with the Union's regional and multilateral logic. For Israel, "promoting democratization and economic reform in its Arab neighbourhood is independent of the peace process, and being put into the category of 'Mediterranean countries' — particularly in economic terms — disregards Israel's 'European-type' political and economic features" (Del Sarto 2006: 111–112). While the direct economic impact of the Partnership on Israel is negligible, politically it has enhanced Israel's regional legitimacy (Dafni 2002).

Israel is also a full partner in the UfM and, as agreed at the November 2008 Marseille Summit, an Israeli representative will be one of the five UfM deputy secretaries.³ While behind closed doors Israeli officials continue to downplay the UfM, Nicolas Sarkozy's ostentatiously warm attitude toward Israel has led Israeli officials to express public support for the UfM. For the time being, however, the ongoing conflict between Israel and Palestine renders Israel's full participation in the UfM unrealistic. The 2009 war in Gaza is a case in point. Since that time, all Arab partners have stalled the process by refusing to establish the UfM institutional structure and to launch any UfM projects in which there is Israeli participation. Accordingly, it remains to be seen what the added value of membership in the UfM for Israel will be, if any.

The EU-Israeli Association Agreement (AA)⁴

Replacing the 1975 EC-Israel Co-operation Agreement, the AA, as part of the EMP, signed in 1995 and entered into force in 2000, the Agreement forms the legal basis for EU-Israeli relations. Although the Agreement is of a free trade area nature, it also enables continuing dialogue and cooperation between Israel and the EU in a wide variety of fields. The Agreement outlines the framework for regular political dialogue and aims at promoting peace, security and regional cooperation. It includes provisions for the strengthening of economic and socio-cultural cooperation on the widest possible basis, including freedom of establishment, liberalisation of services, unrestricted movement of capital, and free market competition. The Agreement reaffirms and strengthens the free trade arrangements for manufactured goods and other industrial products. Like all other Mediterranean AAs, the Agreement is overseen by an annual foreign ministers meeting (Association Council) and senior official level meetings (Association Committee). In order to strengthen cooperation between the two parties, the Association Council established several sub-committees.

The issue of rules of origin is a central element in the AA. The fourth protocol of the Agreement regulates and stipulates rules regarding origin of products. The rules also determine a verification mechanism of the origin certificates, which serve as a reference according to which the product complies with the origin requirements. In accordance with this mechanism and the awakening regarding violations of the rules of origin, in the mid 1990s, applications have been submitted to the Israeli customs authorities by customs authorities of some of the EU member states to verify the origin certificates on goods that Israel exported to the EU and that originated in the Jewish settlements in the occupied territories namely, the West bank, Gaza Strip, East Jerusalem and the Golan Heights. The certificates of origin indicated the goods' country of origin as Israel. Israel argued that trade with the Jewish settlements in the occupied territories is entitled to preferential treatment like the other internationally recognised areas of Israel, and therefore the AA incidence cannot be restricted on these territories. In contrast to Israel's stance, the EU insisted on its claim, according to which the occupied territories were not entitled to enjoy preferential treatment and the benefits bestowed on Israeli products.⁵

In 2005, the EU and Israel resolved the dispute. They agreed that the preferential treatment under the AA would be refused to goods for which the proof of origin indicates that the production conferring originating status took place in the Palestinian occupied territories (Commission of the EC 2005). This agreement manifests Israel's recognition of the ever-increasing importance of the Union, both economically and politically, and the resultant limits on Israel's power in a globalised, interdependent world (Harpaz 2005: 10). But above all, with this agreement the EU eventually enforced on Israel its 1967 territorial borders. In other words, the EU-Israeli 2004 agreement has wider political implications amounting to Israeli recognition of the illegality of its occupation.

EU-Israeli Agreements on Scientific and Technological Cooperation

Israel is the first non-European country fully associated with the EU's Framework Programmes for Research and Technological Development (FP) since 1996. Among the Associated Countries to the Seventh FP, Israel is the EU third biggest partner, after Switzerland and Norway, in terms of the programme's participation (EU-Israel Association Council 2009: 12). The EU is now Israel's second biggest source of research funding, after the Israel Science Foundation, and Israeli researchers participate in all activities covered by the FPs. Israel expects to contribute a total of EUR 440 million to the EU's FP7 over the period 2007–2013.

The EU-Israeli Action Plan (AP)

Following the launch of the ENP in April 2005 the EU and Israel adopted the AP for a period of three years, which was extended until December 2009. The AP is a political document, tailored to Israel's economic and political situation and outlining the strategic objectives of cooperation between Israel and the EU. The AP calls on the two parties to intensify political and security cooperation, introduce a significant element of economic integration, boost socio-cultural and scientific cooperation and share responsibility in conflict prevention and resolution. The AP stipulates that the EU-Israeli political dialogue should also focus on the adoption of measures to combat anti-Semitism and on non-proliferation of weapons of mass destruction. As for the economic dialogue between the parties, the AP stipulates that it should focus on the promotion of liberalisation of investment and trade.

The AP reflects 'a different starting point for Euro-Israeli relations and it is also indicative of the well-developed bilateral political and economic relations' (Del Sarto et al. 2007: 43). The AP paved the way for Israel's participation in a number of EU initiatives with Israel being among the front-runners in making use of the new possibilities for ENP partner countries to participate in Community programmes and initiatives (General Secretariat of the Council 2008: 3).

While the AP has been called 'a real masterpiece of diplomacy' (Del Sarto et al. 2007: 43), it has also been criticised for being based on elusive and ambiguous commitments. The AP, moreover, reveals some major differences between the EU and Israel mainly in the areas and topics of shared values, regional and international issues, weapons of mass destruction and the Hamas boycott (Del Sarto 2007). All in all, the Action Plan has provided the platform for developing EU-Israeli cooperation across various fields (Commission of the EC 2008), and the ENP has acted as a catalyst in boosting EU-Israeli relations and putting them on a new and higher level.

The November 2005 Israeli-Palestinian Agreement on Movement and Access to and from the Gaza Strip

Following the Israeli withdrawal from the Gaza Strip in August 2005 and the November 2005 Israeli-Palestinian Agreement on Movement and Access to and from the Gaza Strip, Israel and the Palestinian Authority invited the EU to be the third-party at Rafah Crossing Point on the Gaza-Egyptian border. In response, the EU decided to launch the EU Border Assistance Mission (EU BAM Rafah), to monitor the operations of the Rafah border crossing point. The operational phase of the Mission began on 30 November 2005 for a duration of 12 months. In May 2007 the mandate of the Mission was extended until May 2008 and has since been extended again.

Following Hamas's takeover of the Gaza Strip in June 2007, the Mission has become inactive, having sent the observers back to Israel. In January 2008, Hamas

rejected the return of EU BAM observers to Rafah stating that the crossing point should only be operated by Palestinian and Egyptian forces. For its part, the EU holds that since the agreement was reached with Palestinian President Mahmoud Abbas and not with Hamas, its observers should return to Rafah to resume the Mission's activities as soon as the political situation in Gaza improves. For the time being, according to European sources, it is pointless to keep all the members of the Mission in the area and it is unclear how many observers of the original 87 members have actually remained in the region. Due to the situation on the ground, EU, Palestinian and Israeli officials do not expect that the Rafah Crossing Point will be opened on a permanent basis anytime soon. Nevertheless, following the 2009 war in Gaza, High Representative Solana declared that the EU is 'ready to return to Rafah and even to extend the mission...with monitors in Rafah and in other places' (Council of the European Union 2009: 2).

EU BAM Rafah was established in the framework of the European Security and Defence Policy (ESDP) and its observers are mainly seconded from EU member states. The Mission actively monitored, verified and evaluated the performance of the Palestinian border control, security and customs officials who worked at the Rafah Terminal. There are those who argue that the Mission was incapable, incompetent and irrelevant, pointing out that it failed to stop the smuggling of weapons, goods and human beings across the border. Yet it is important to emphasise that the Mission marked a significant step forward for EU-Israeli relations, mainly insofar as it established a precedent whereby Israel agreed to give the EU a responsibility in the hard security sphere.

United Nations Interim Force in Lebanon ('UNIFIL II')

UN Security Council Resolution 1701 of August 2006 ended the war between Israel and Hizbollah. The Resolution called for a full cessation of hostilities, it strengthened UNIFIL's (United Nations Interim Force in Lebanon) mandate and increased the number of UNIFIL troops in southern Lebanon from 2,000 to 15,000 (UNIFIL II). Resolution 1701 further called on UNIFIL II troops to assist the Lebanese military in taking steps toward the disarmament of armed groups. EU member states have provided more than 7,000 soldiers to UNIFIL II. For the first time, the EU plays a central and crucial role as a single entity in the Israeli-Lebanese/Hizbollah conflict.

Although UNIFIL II is not an EU operation, the European participation in the mission is the backbone of this new force. The remarkable and impressive contribution of EU member states to UNIFIL II clearly strengthens the EU relations with Israel and is a testimony to the EU's growing involvement in the Middle East in the field of hard security. It remains to be seen whether the strong European component within UNIFIL II will also open a new chapter in the Middle East peace process.

The 'Luxembourg Statement' of June 2008 and the December 2008 Council Guidelines for Strengthening EU-Israel Political Dialogue Structures

In March 2007 Israel and the EU established the so-called 'Reflection Group,' which was charged with examining areas in which cooperation between Israel and the EU could be enhanced. Based on the preliminary work of this Reflection Group, the EU-Israel Association Council convened in Luxembourg in June 2008 and expressed the political will to intensify EU-Israeli relations as well as agreed to develop these relations gradually within the framework of the ENP. The upgrade of EU-Israeli relations is to be carried out in three areas: increased diplomatic cooperation, Israeli participation in European agencies, working groups and programmes, and Israel's integration into the European Single Market (General Secretariat of the Council 2008: 3). In order to implement this political decision, the EU and Israel began reviewing the content of the EU-Israeli AP. Meetings of all joint subcommittees are tasked to develop the content of the upgrade in each field, which is to be included in a document that will guide EU-Israeli relations in the future.

Finally, in December 2008 the EU External Relations Council reaffirmed its determination to upgrade bilateral relations and issued guidelines for strengthening the political dialogue structures with Israel. These guidelines call for the following: convening ad hoc summits at the level of Heads of State and Government as well as three meetings a year at Foreign Minister level; allowing for each EU Presidency to invite, on an ad hoc basis, the Director General of Israel's Ministry of Foreign Affairs to one of the meetings held during its term of office; providing for hearings of Israeli experts by Council working parties and committees; organising systematic and broader informal strategic consultations; intensifying exchanges on human rights and anti-Semitism; encouraging Israel to remain in line with Common Foreign and Security Policy (CFSP) positions; enabling cooperation in the context of the ESDP; encouraging Israeli integration and involvement in multilateral fora; and intensifying inter-parliamentary dialogue (Council of the EU 2008: 2, 4–5).

While the 2009 war in Gaza and the election of the right wing government of Benjamin Netanyahu have called into question the future of the upgrade process, European leaders have maintained that their decision concerning the upgrade of relations — as Jan Kohout, the Czech Foreign Minister and the President of the EU Council stated in June 2009 — 'is still valid.' As Kohout explained, 'we did not suspend what has been done in the past year...and we reiterate our will to further develop our relations with Israel.'⁶ Indeed, it is clear that the upgrade process is still awaiting concrete translation into action, and will require, among other things, that Israel and the EU also agree on how they want to craft a tailor-made model for their relations, going beyond past levels of cooperation to gradual economic integration and deeper political cooperation.

Some Principles for the 'Euro-Israeli Partnership' (EIP)

The EIP would open new economic integration and cooperation perspectives for Israel, and it would support Israel's aspiration to further integration into European economic and social structures. The EIP would deepen the process of approximation of Israeli legislation, norms and standards to those of the Union. In other words, the EIP is a new model of aligning Israel with the EU below the level of full EU membership. It should be emphasised that the EIP is not a stepping-stone to Israeli membership in the EU. Rather, it is a new form of association and cooperation, and should significantly upgrade EU-Israeli relations, first and foremost in economic terms, but also in political, security as well as research, cultural and social/human fields. As such, the EIP provides an alternative to EU membership.⁷

The Legal Basis of the EIP

The EIP finds its roots in the Barcelona Process, the UfM, the AA, the ENP, the AP, the Luxembourg Statement of June 2008 and the December 2008 Council Guidelines for Strengthening EU-Israel Political Dialogue Structures, and should be seen as the result of the long maturation of EU-Israeli relations. Therefore, from the point of view of both the EU and Israel, the EIP would fall within the legal category of an 'association.'⁸

The key article, Article 188 M of the Treaty of Lisbon,⁹ offers the fundamental legal basis of the EIP. The article states that: 'The Community may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.' Another legal source for the EIP is Article 7a of the Treaty of Lisbon.¹⁰ This article calls for the development of a 'special relationship' with neighbouring countries of the EU, including Israel. Although Article 7a uses different terms from Article 188 M, it has almost the same legal consequences. Both Articles 188 M and 7a are intentionally vague and they allow the development of an 'association' or a 'special relationship' that involves reciprocal rights and obligations as well as joint/common actions and special procedures. The articles leave open the actual content of the 'association' or the 'special relationship.'

The EIP is legally based on the vagueness of these two articles and on the flexibility that they allow for the development of EU-Israeli relations. A tailor-made deep and comprehensive partnership, the EIP might suit the interests and the needs of both parties. Since EU membership is restricted only to 'European states,' the EIP model would entail less than full EU membership but more than the current AA.

Since its establishment, the European Economic Community searched for models for developing closer relations with non-EU member states. Referring to this issue,

Walter Hallstein, the first President of the European Commission, stated on many occasions that the links with a non-member country 'can be anything between full membership minus 1% and a trade and cooperation agreement plus 1%' (Phinnemore 1999: 23).

In like manner, in July 2008 the European Parliament (EP) adopted a resolution in which the EP took the view that with regard to those EU neighbours that at present do not enjoy membership prospects, but at the same time fulfil certain democratic and economic conditions, 'the EU should establish an area based on common policies ... shaped jointly with the participating countries on the basis of specific decision-making mechanisms ... these relations should translate themselves into the establishment of a [FTA], to be followed by ... a European Economic Area Plus (EEA+), of a European Commonwealth or of specific regional cooperation frameworks' (Parliament of the European Union 2008: Paragraphs 18–20).

The 'special closer relations' with non-EU member states have also been inferred by a ruling of the European Court of Justice (ECJ). In its *Meryem Demirel Case*¹¹ the ECJ observed that the Community might conclude 'an agreement creating special, privileged links with a non-member country.' The ECJ further affirmed that in this context the non-member country 'must, at least to a certain extent, take part in the Community system' (Court of Justice of the European Communities 1987: Paragraph 9). It follows then, that any 'common action' or 'joint activities' should be in line with the Union's objectives. These actions can cover any area under the competence of the Community and above all they must depend on the interests of the two partners. In the Union's jargon, the Partnership would be of a 'mixed agreement' nature, namely a partnership that covers areas under Community external competences and member states competences (Phinnemore 1999).

A last component of the EIP is its institutional framework. By using the term 'special procedures,' Article 188 M implies the creation of an institutional apparatus for the implementation of the agreement. It also follows that the 'special procedure' should be an extraordinary one (Phinnemore 1999). And indeed, the EIP would be equipped with its own institutional system and decision-making mechanism.

Objectives and Means of the EIP

The principal objective of the EIP is to develop an ever-closer relationship between the EU and Israel, going beyond past levels of cooperation to gradual economic integration and deeper political cooperation. The EIP is expected to promote continuous strengthening of economic trade and political relations between the two parties with a view of creating a 'homogenous partnership economic area.'¹² The homogeneity objective is a cornerstone of the EIP and means that Israel would follow closely the

EU *acquis communautaire*. Israel would face a cardinal challenge of incorporating the relevant parts of the *acquis*, which the EIP would incorporate.

The fundamental means to achieve the Partnership's objectives would be the Four Freedoms, competition rules and EU-Israeli cooperation in several key areas. Thus the economic objective of the Partnership should be achieved through the extension of the Community's common market rules and policies to Israel. That said it is expected that for political reasons the 'freedom of movement of persons' would touch a raw nerve in Israel and that Israel would therefore prefer not to implement this freedom in the short term. Accordingly, the EIP should stipulate that this freedom would be extended to the Partnership subject to a favorable change in the political situation in the region.

The EIP Institutional Framework¹³

Currently EU-Israeli relationship does not reflect the notion of an ever-closer partnership. Thus, under the EIP EU-Israeli relationship must achieve new levels of integration by strengthening the sense of close partnership. Moreover, given the recent institutional structures proposed by the December 2008 Council Guidelines for Strengthening EU-Israel Political Dialogue Structures and the Euro-Mediterranean Ministers in the Marseille summit of the UfM (Union for the Mediterranean 2008), the 'special procedures' under Article 188 M of the Treaty of Lisbon and given the dynamism and the wide scope of the EIP, it would be impossible to rely only on the current institutions¹⁴ and/or the loose institutional framework of EU-Israeli relations proposed in December 2008. For its full implementation and for its future development, the EIP would have to upgrade the current and/or the December 2008 proposed loose institutional framework and there would be a need to establish a new institutional system--one that will be even deeper and more comprehensive.

In order to become a proactive partnership that would engage the EU and Israel in an equitable manner, the institutional framework of the EIP should be based on three pillars: the EU institutions, the light institutional framework of the EMP-ENP and the December 2008 proposed loose dialogue structures.

Yet, some new common institutions are needed, in particular for joint-decision making and dispute settlement. The EIP institutional framework would reflect the Partnership's principle of cooperation, would strengthen EU-Israeli relations, would turn the EIP into a mechanism for consultations and negotiations and it is expected to limit the EU-centric character of EU-Israeli economic and trade relations.

The EIP Council

Meeting at ministerial level twice a year, the EIP Council would be the highest political body of the Partnership and would consist of members of the EU Council, the EU Commission and the relevant minister of the Israeli government. Based on the current Association Council, the new EIP Council would be responsible for giving the political impetus in the implementation of the EIP objectives, and would lay the guidelines for the work of the EIP Joint Monitoring Committee. The EIP Council would be chaired by a rotating presidency, and its decisions would be taken by agreement between the parties. The EIP Council would fully reflect the equality, the negotiating, decision-making and decision-shaping character of the EIP.

The EIP Joint Monitoring Committee

Based on the work of the current Association Committee, the new EIP Joint Monitoring Committee would be an independent committee charged with administering the day-to-day business of the Partnership and ensuring that the parties fulfil their EIP commitments. The establishment of the Committee is expected to develop EU-Israeli relations to a genuine and an equal partnership.

The Committee would decide on new legislation to be incorporated into the Partnership. It would meet once a month and would consist of an equal number of high officials and senior diplomats from the EU Commission and the Israeli government. The Committee would also be able to convene informal meetings to respond to urgent situations. As in the case of the EIP Council, the Committee would be chaired by the rotating presidency and decisions would be taken by agreement between the Union and Israel. To assist in its task, the Committee would be able to establish subcommittees and working groups.

The EIP Parliamentary Committee

The EIP Parliamentary Committee would be based on the current EP Delegation for Relations with Israel and the Knesset Delegation for Relations with the EP, and would be composed of an equal number of members of the EP and the Knesset. The Committee would act through dialogue and debate to ensure better understanding between the Union and Israel in the areas covered by the Partnership. The Committee would express its views on all matters relating to the EIP and in particular would monitor the 'homogenous partnership economic area.' The Committee would not have any decision-making powers but would be able to adopt resolutions and submit reports and recommendations to the EIP Council with a view to achieving the objectives of the EIP.

The EIP Court of Conciliation and Arbitration

In order to settle disputes that may arise between the EU and Israel in the framework of the EIP, the partners would establish a Court.¹⁵ The EIP Court would act by means of conciliation and, where appropriate, arbitration. Its rulings would be binding. To cut the Court's expenses, the Court would not be a permanent tribunal but rather a roster of conciliators and arbitrators from both sides. Accordingly, the Court would act as an ad hoc Conciliation Commission or an ad hoc Arbitral Tribunal, convening only when a dispute is submitted to it. In addition, Israeli courts would be allowed to ask the EIP Court for an advisory opinion on the interpretation of the Partnership. National courts of EU member states would be allowed to ask for preliminary rulings from the ECJ.

The EIP would establish an obligatory conciliation procedure leading to a non-binding concluding report. If within thirty days, the partners decide not to accept the report's conclusions, the report would be forwarded to the Arbitral Tribunal and its ruling would be binding.

Finally, if a dispute in question concerns the interpretation of Community legislation relevant to the EIP, it would be possible to ask the ECJ to rule on the interpretation of the relevant legislation. The ECJ ruling would be binding.

The Israeli Standing Committee

For its internal procedures, Israel would establish a Standing Committee responsible for decision-making procedures, administration and management of the Partnership, as well as inter-ministerial coordination and consultation. The Committee would also facilitate the elaboration of decisions to be taken on the EIP level.

The Israeli Standing Committee would consist of representatives of all Israeli ministries, including representatives of all relevant institutions and agencies. Normally (and as often as on a monthly basis), the Standing Committee would meet at the level of high officials. In addition, and as necessary, the Committee would meet at a ministerial level. The Committee might set up subcommittees and working groups to assist it in all its tasks. The decisions and recommendations of the Standing Committee would be taken by a majority vote and in some cases would also need the approval of the Israeli government.

Decision-Shaping and Decision-Making Processes

Decision-Shaping

As the EIP is based on the Union's legislation, the Union would continue to legislate using its own internal procedures. Any new Community legislation relevant

to the EIP would be incorporated into the Partnership upon a joint decision of both the Union and Israel. Israel would be able to take part in 'decision-shaping' when the EU judges the Community legislation to be relevant for the EIP. In such a case, Israel would only participate in the preparatory stages of the Union legislative process.

Under this process, once the European Commission drafts a new legislation in an area the EU judges to be relevant to the EIP, the Commission would notify Israel and would send it a copy of the draft proposal. If Israel wishes to discuss the proposal, a preliminary exchange of views would take place in the EIP Joint Monitoring Committee. Furthermore, the European Commission would ensure participation of Israeli experts in the '*Comitology* Committees.' The Commission may submit to the EU Council the views of the Israeli experts as well.

Decision-Making

Once a relevant Community legislation has been formally adopted by the Union's institutions, the EIP Joint Monitoring Committee would decide on the incorporation of the legislation into the Partnership. The Committee would also examine whether there is a need for technical amendments, transitional periods or derogations. Such incorporation is needed in order to guarantee the homogeneity of the EIP. The EIP Joint Monitoring Committee would make its decisions as soon as possible in order to allow a simultaneous application in the EU and the EIP.

A decision by the EIP Joint Monitoring Committee would be taken within a short period of time following the referral to it or from the date of entry into force of the relevant Community legislation.

All decisions to extend Community legislation also to the EIP would be published in a special EIP Section of the Official Journal of the EU. A translation into Hebrew would be published in a special EIP Series of the Israeli Gazette.

Maintaining Homogeneity

The homogeneity objective is a cornerstone of the EIP and both partners would have to maintain uniform interpretation of the relevant provisions of the Community legislation.¹⁶ This means that the Partnership would have its own limited legal system, which would be based on Community law. For the sake homogeneity, all the relevant Community legislation would have to be interpreted in conformity with the relevant rulings of the ECJ without prejudice to the independence of all EIP institutions, including of course the EIP Court of Conciliation and Arbitration. Both the EIP Joint Monitoring Committee the EIP Court of Conciliation and Arbitration would pay due account to the principles laid down by the relevant rulings of the ECJ. Finally,

it is recalled that Israeli courts would be allowed to ask the EIP Court of Conciliation and Arbitration for an advisory opinion on the interpretation of the Partnership.

For safeguarding the uniformity of implementation and application of the Partnership rules, the European Commission and the Israeli Standing Committee would cooperate, exchange information and consult each other on surveillance policy issues and on individual cases. Both bodies would also be in charge of handling complaints from individuals. In case of a disagreement in relation to a complaint, each institution can refer the matter to the EIP Joint Monitoring Committee.

Implementing the Partnership

The EU and Israel would have to take all possible measures to ensure the fulfilment of the obligations arising out of the EIP. After the long process of negotiating the EIP Agreement, both partners would have to adopt the agreement and to set up the new institutions of the Partnership. It is clear that Israel would have to adapt its domestic legislation as well as take measures necessary to put the Israeli legal system in conformity with its EIP obligations. This would require a long transitional period and a heavy load of implementation work, mainly on the Israeli side, before the EIP Agreement can enter into force. As for the Union itself, it seems that, thanks to Article 188 L(2) of the Treaty of Lisbon, the Union would not have to amend the *acquis* in order to comply with the EIP obligations, as international agreements concluded by means of the procedure set out in Article 188 M of the Treaty of Lisbon are binding on the institutions of the Community and its member states. As the ECJ has put it: 'The provisions of such agreements and measures adopted by the institutions set up by such agreements become an integral part of the Community legal order when they enter into force' (Court of Justice of the European Communities 1991: Chapter I, Note 11).

European and Israeli Support for the EIP Model

While the EIP model has not yet been considered as such by the leaderships of either Israel or the EU, there is ample evidence on both sides that could support the logic behind it.

In September 2007, President Jose Manuel Barroso, President of the European Commission, declared that 'the ENP is not, and never has been, a one-size-fits-all policy...With each of our ENP partners we craft a specific and unique relationship... I expect we will see a more and more varied landscape, with as many different types of relationship developing as we have partners...' (Barroso 2007: 2).

The Commission has also taken the same approach. In a 2007 Communication, the Commission stated that, 'the country-specific approach within the ENP provides for flexibility and differentiation, and there are as many possible responses as there are partner countries, according to each partner's political situation, its level of ambition with regard to the EU, its reform agenda and achievements, and its level of socio-economic development' (Commission of the EC 2007: 3).

Former President of the EP Hans-Gert Pöttering has also expressed further support. In a June 2009 interview with a German newspaper, Pöttering said that he wanted to increase cooperation with Israel (along with Turkey and the Ukraine). In Pöttering's words, 'Israel can be a privileged partner for the European Union.'¹⁷

Key Israeli political leaders have also spoken in favour of the logic behind the EIP. In the past, Prime Minister Benjamin Netanyahu expressed great interest in Israeli integration into the EU. In 2002, in his capacity as Foreign Minister he said in a radio interview that Israel was considering joining the EU and that it would ask Italy for some help in order to achieve this goal.¹⁸ In his capacity as Finance Minister, Netanyahu stated in 2003 that Israel might consider joining the Eurozone. Foreign Minister Avigdor Liberman publicly announced his support for Israel's accession to the EU and NATO. In 2007, in his capacity as Minister for Strategic Affairs Liberman declared that, 'Israel's diplomatic and security goal must be clear: joining NATO and entering the EU.'¹⁹

Be that as it may, the pace of the upgrade in EU-Israeli relations must depend on developments in the peace process, and, quite specifically, on Israel's active promotion of peace with all its neighbours, including first and foremost with the Palestinians. Indeed, only the full implementation of a two-state solution should make the EIP possible. At the same time, lack of progress on Israel's part should freeze any future negotiations on the upgrade process.

Conclusions

In line with Jean Monnet's statement that 'great ideas and principles either take firm shape in the form of institutions, or disappear into rhetoric and finally die,' fourteen years after the Barcelona conference, five years after the launch of the ENP and about a year after the first two summits of the UfM and the December 2008 Council Guidelines, this article holds that for the establishment of a genuine Euro-Mediterranean neighbourhood area, there is a need to further strengthen the institutional foundation and structure of EU-neighbours relations in general and the EU-Israeli relationship in particular. In order to be effective the ENP should not be left to politicians and diplomats alone, a tattered flag to be waved during the meetings of the Association Councils and or Association Committees. There is a real risk

that without, solid institutional expression, the ENP will disintegrate into relatively meaningless political exercises rather than a true neighbourhood policy. Eventually like its predecessors, it would die.

The characters of the relations between the EU and its ENP partners must be altered, if the ENP is to attain its objectives. The EU-centric character of these relations, their decision-making mechanism and their current/proposed institutional structure, do not reflect an ever-closer partnership between the EU and its neighbours under the ENP. The relations between the EU and its neighbours should be urgently reshaped and institutionally restructured to more effectively identify and cultivate common interests and potential synergies.

As for Israel, this article departs from the assumption that following the June 2008 decision of the EU-Israel Association Council to 'mark a new phase' in EU-Israeli relations, as well as the December 2008 Council Guidelines, the time has come to implement the 1994 Essen Declaration in which the European Council declared that Israel 'should enjoy special status' in its relations with the EU.

Designed to meet European and Israeli stated wishes to enhance their relations, this article presents a new model for an ever-closer, deep and comprehensive partnership between the Union and Israel. Called the EIP, the proposed model is based on the logic of the ENP and draws on its aim to remain sufficiently flexible to allow individual partners to self-differentiate according to their political situation, level of ambition with regard to the EU, their reform agenda and achievements, and level of socio-economic development (Commission of the EC 2007).

The EIP model would align Israel with the EU below the level of full EU membership. The Partnership would significantly upgrade EU-Israeli relations, providing an active institutional apparatus with common decision-making and management bodies. This Partnership would benefit both partners and aimed at contributing to the improvement of mutual understanding and trust.

Likewise, the EIP would provide the ENP with a mechanism to propel the Policy forward from the arena of declarations to one of implementation. It would equip both the ENP and EU-Israeli relations with partnership-building tools necessary to execute political, commercial and functional tasks. Successful implementation of the EIP is admittedly a daring and an immense challenge for both partners and one, which should not be underestimated.

If the EU and all its member states are committed to the existence, survival and prosperity of Israel, if the Middle East is indeed vital to the EU and if Israel truly wishes to participate in the European integration process, then strengthening EU-Israeli relations along the lines outlined in this article must be considered seriously.

The EIP model is also a prerequisite to success if the ENP is ever going to evolve into anything other than expressions of European *noblesse oblige*. The current proposals to "beef-up" the ENP are unlikely to suffice. The unique partnership proposed in

this article could serve as model and as a springboard from which the consolidation process of the 'ring of friends surrounding the Union' can begin to take shape.

Notes

- * This article draws on a study commissioned by EuroMeSCo (Pardo 2008) and on Pardo and Peters 2009.
- ¹ For a discussion on principles underlying a future Israeli strategy toward the EU, see Dror and Pardo 2006.
- ² Data reported by the European Commission in December 2008. Available at: http://ec.europa.eu/trade/issues/bilateral/countries/israel/index_en.htm (Accessed on June 7, 2009).
- ³ For the first term of office, the four other deputy secretaries will be from the following partners: Greece, Italy, Malta and the Palestinian Authority. A sixth deputy secretary may yet be added at the demand of Turkey (Euro-Mediterranean Summit 2008: 6).
- ⁴ AA is an agreement between the EU and a neighbouring country to develop close economic and political relations. The Commission negotiates the AA and the Council approves it subject to the European Parliament's assent. AA generally grants the associated country free access to the EU's market for most industrial products, reduced tariffs on agricultural products, and financial and technical aid; the associated country usually grants reciprocal concessions, although AA does not have to be symmetrical (Dinan 2000: 13).
- ⁵ For a further discussion see Zemer and Pardo 2003.
- ⁶ Jan Kohout (2009) 'Opening Statement by President J. Kohout of the Ninth EU-Israel Association Council', *Video Library of the Council of the EU*, June 15.
- ⁷ In a survey from April 2009, an overwhelming majority of 69 per cent of the Israeli public supported the idea that Israel should join the EU. In addition, following the January 2007 EU enlargement, about 40 per cent of the Israelis were identified as eligible for EU citizenship (Konrad-Adenauer-Stiftung and Pardo 2009: 26–29, 56).
- ⁸ See note number 4.
- ⁹ Article 310 of the Treaty Establishing the European Community [TEC]; Article 217 of the Treaty on the Functioning of the European Union [TFEU].
- ¹⁰ New Article 8 of the Treaty on European Union [TEU].
- ¹¹ The case involved a Turkish woman who came to Germany and was ordered to leave the country when her visa expired. The ECJ ruled that, at that time, the rights to family reunification were not covered by the 1963 EC-Turkey AA (Craig and De Búrca 2003: 343).
- ¹² The creation of a 'homogenous partnership economic area' is based on the EEA model. The two basic objectives of the EEA are the strengthening of trade and economic relations between the partners, and the creation of a homogenous EEA.
- ¹³ The following sections draw on Blanchet et al. 1994.
- ¹⁴ These are: the Association Council, the Association Committee and its subcommittees and working groups, the EP Delegation for Relations with Israel and the Knesset Delegation for Relations with the EP.
- ¹⁵ It should be stated that work is currently on going towards the establishment of a 'dispute settlement mechanism' for resolution of trade disputes in the framework of the AA (EU-Israel Association Council 2009: 10).
- ¹⁶ As in the case of the EEA, European Free Trade Area or the Swiss model of relations with the EU.

- ¹⁷ 'EU Parliament President, Hans-Gert Pöttering, Says Relations with Israel Linked to Acceptance of a Palestinian State,' *Al-Jazeera*, June 2, 2009.
- ¹⁸ 'Israel Should Join the European Union,' *Galatz-IDF Radio*, November 9, 2002
- ¹⁹ 'Avigdor Liberman: Israel Should Press to Join NATO, EU,' *Haaretz*, January 1, 2007.

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