

Going West: Guidelines for Israel's Integration into the European Union

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Introduction

It has been argued that historically, geographically and even religiously “Israel is from Europe, but not in Europe.”¹ Indeed, the European Union (EU) is Israel's economic, cultural and, in many respects, political hinterland. Yet for all its desire to partake in the European project, Israel is only now beginning to evaluate its relationship with the EU. Israel, however, has not yet made a strategic determination as to its desired relations with the EU.² In June 2008, the EU–Israel Association Council expressed the political will to intensify EU–Israeli relations and agreed to upgrade them gradually within the framework of the European Neighbourhood Policy (ENP).³ In December 2008, the EU External Relations Council adopted guidelines for strengthening political dialogue structures with Israel. The success of this process, however, requires that Israel and the EU both agree on how they want to craft a tailor-made model for their relations.

This article attempts to address this EU–Israeli need. It first briefly describes the bilateral relations between the EU and Israel and then turns to presenting a new model for an ever-closer partnership between the two entities 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. The article also proposes an institutional structure that includes common decision making and management bodies.

Following the statement of June 2008, 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,”⁴ it was believed that the time had come to implement the Essen Declaration of 1994. In that declaration, the European Council stated that Israel “should enjoy special status in its relations with the [EU].”⁵

EU–Israel Relations: An Overview

Israel and the EU first established diplomatic relations in 1959. In 1975, Israel and the European Economic Community (EEC) signed their first Cooperation Agreement and since then, trade, economic, political and cultural cooperation have consolidated EU–Israel relations. The EU is Israel’s most important trading partner and it ranks first in the country’s imports and second in its exports.

Israel is a full partner in the Euro–Mediterranean Partnership (EMP/Barcelona Process) and participates in all its regional programs. As long as the Middle East Peace Process (MEPP) was proceeding, the EMP positively affected EU–Israel relations, but as soon as the process started to derail, the EMP negatively affected the bilateral relations.⁶ While the direct economic impact of the EMP on Israel is negligible, politically it has enhanced Israel’s regional legitimacy.

Israel is also a full partner in the Union for the Mediterranean (UfM) and, as agreed by the November 2008 Marseille Summit of Foreign Ministers, an Israeli representative will be one of the five UfM deputy secretaries.⁷ Yet it remains to be seen what the added value of this membership in the UfM for Israel will be, if any.

To intensify their relations, Israel and the EU signed the “EU–Israel Association Agreement” (AA) in 1995 in the framework of the EMP. The Agreement came into force in 2000 and forms the legal basis for EU–Israel relations. The Agreement is much more than a free trade agreement, and it enables continuing dialogue and cooperation between Israel and the EU in a wide variety of fields.

Israel is one of the only two non-European countries fully associated with the EU’s research programs (FP) since 1996. Israel is an active member in these programs and has proved to be a source of innovation. The EU is now Israel’s second biggest source of research funding. Israel will contribute approximately 440 million euros to the EU’s Seventh FP over the period 2007–13.

Following the launch of the ENP, the EU and Israel adopted the “EU–Israel Action Plan” (AP) in April 2005.⁸ According to the AP, the two parties are 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 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 partners to participate

in the Union's programs. The AP has acted as a catalyst in boosting EU–Israeli relations and it “reflects a different starting point for Euro–Israeli relations.” The AP “is also indicative of the well-developed bilateral political and economic relations.”⁹

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. 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 in November 2005, and was viewed as a significant step forward for EU–Israel relations, since it was a precedent that marked the first time that Israel agreed to give the EU a responsibility in the “hard security” sphere.

In the wake of the Hamas takeover of the Gaza Strip in June 2007, the Mission has become inactive, having sent the observers back to Israel. Following the 2009 war in Gaza, High Representative Javier 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.”¹⁰

In August 2006, upon the cessation of the Second Lebanon war, EU members provided more than 7,000 soldiers to the upgraded UN Interim Force (UNIFIL II) in southern Lebanon. Although UNIFIL II is not an EU operation, the European national participation in the mission is the backbone of this force. As such, it testifies to the Union's growing involvement in the MEPP in the field of security, and underscores Israel's increasing faith in the EU. For the first time, European troops exert operational control in the MEPP. It remains to be seen whether the strong European component within UNIFIL II will also open a new chapter in the MEPP.

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 group, in June 2008 the EU–Israel Association Council expressed the political will to intensify EU–Israeli relations and agreed to develop these relations gradually within the framework of the ENP. The upgrade of relations is to be carried out in three areas: increased diplomatic cooperation; Israeli participation in European agencies, working groups and programs; and Israel's integration into the European Single Market. In order to implement this political decision, the EU and Israel began

reviewing the content of the EU–Israel AP. Meetings of all joint subcommittees are charged with developing 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 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 the director general of Israel's Foreign Ministry to one of the meetings held during its term of office; providing for hearings of Israeli experts by European Council of Ministers working parties and committees; organizing systematic and broader informal strategic consultations; intensifying exchanges on human rights and antisemitism; encouraging Israel to remain in line with Common Foreign and Security Policy positions; enabling cooperation in the context of the European Security and Defence Policy; encouraging Israeli integration and involvement in multilateral fora; and intensifying interparliamentary dialogue.¹¹ 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, the offer, as Benita Ferrero-Waldner, European Commissioner for External Relations, has recently stated, "still stands."¹²

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 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.

Principles for the Euro–Israeli Partnership (EIP)

The EIP would open new perspectives for economic integration and cooperation for Israel, and it would support Israel's aspiration to further integrate 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 emphasized 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 and research, cultural and social/human fields. As such, the EIP provides an alternative to EU membership.¹³

The Legal Basis of the EIP

The EIP 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.”

The key article in the EU Treaties is Article 188 M of the Treaty of Lisbon. It offers the fundamental legal basis of the EIP and states: “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. This article calls for the development of a “special relationship” with neighboring countries of the EU, including Israel. Although Article 7a uses different terms than Article 188 M, it has almost the same legal consequences.

Both Articles 188 M and 7a are intentionally vague and 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 Articles 188 M and 7a and on the flexibility that they allow for the development of EU–Israeli relations. A tailor-made 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 EEC has searched for models for developing closer relations with non-EU members. Referring to this issue, Walter Hallstein, the first president of the European Commission, stated on many occasions that the links with a non-member “can be anything between full membership minus one percent and a trade and cooperation agreement plus one percent.”¹⁴

In like manner, in July 2008, the European Parliament adopted a resolution in which the Parliament took the view that with regard to those EU neighbors 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 ... [that] ... should be shaped jointly with the participating countries on the basis of specific decision making mechanisms ... as a first step, these relations should translate themselves into the establishment of a Free Trade Area, to be followed by closer relations

along the lines of a European Economic Area Plus (EEA +), of a European Commonwealth or of specific regional cooperation frameworks.¹⁵

The “special closer relations” with non-EU members have also been inferred by a ruling of the European Court of Justice (ECJ). In its *Meryem Demirel Case*, the ECJ observed that the Community may conclude “an agreement creating special, privileged links with a non-member country.”¹⁶ The Court further affirmed that in this context the non-member country “must, at least to a certain extent, take part in the Community system.”¹⁷ 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.¹⁸

The last component of the EIP is its institutional framework. By using the term “special procedures,” the Treaty (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.¹⁹ And indeed, the EIP would be equipped with its own institutional system and decision making mechanism.

Objectives and Means

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 would promote continuous strengthening of economic trade and political relations between the two parties with a view to creating a “homogeneous partnership economic area.” The homogeneity objective is a cornerstone of the EIP and means that Israel would follow closely the Union’s *acquis communautaire*,²⁰ and on a periodic basis would integrate relevant Community legislation. Israel would also have to follow major developments in the EU.

The fundamental means to achieve the Partnership’s objectives would be the Four Freedoms,²¹ 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. In view of Israel’s existential concerns, the EIP should allow Israel the freedom to make hard security decisions.

The Institutional Framework of the EIP

Under the EIP, EU–Israeli relations must achieve new levels of integration by strengthening the sense of close partnership. Given the recent institutional structures proposed for the UfM, 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 loose institutional framework of EU–Israeli relations — namely, the Association Council, the Association Committee and its subcommittees and working groups.

In order to become a proactive partnership that would engage the partners in an equitable manner, the institutional framework of the EIP should be based on two pillars: the EU institutions, and the current loose institutional framework of the parties. Yet, some new common institutions are needed, particularly for joint decision making and dispute settlement. It is hoped that the EIP institutional framework would reflect the Partnership’s principle of cooperation, would strengthen EU–Israel relations, would turn the EIP into a mechanism for consultations and negotiations and would limit the EU-centric character of the relations.²²

The EIP Council

Meeting at the 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 providing 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 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 partnership and ensuring that the parties fulfil their EIP commitments. 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 from the EU Commission and the Israeli government. 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 parties. 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 European Parliament (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 not have any decision making powers but would be able to adopt resolutions and submit reports to the EIP Council.

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. 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 members 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 interministerial coordination and consultation. The

Committee would also facilitate the elaboration of decisions to be taken on the EIP level.

The Committee would consist of representatives of all Israeli ministries, relevant institutions and agencies. Normally (and as often as on a monthly basis), the Committee would meet at the level of high officials. In addition, and as necessary, the Committee would meet at a ministerial level.

Decision Shaping

Any new Community legislation relevant to the EIP would be incorporated into the Partnership upon a joint decision. Israel would be able to take part in “decision shaping” when the EU judges the Community legislation relevant to 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 relevant to the EIP, the Commission would notify Israel and 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. 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, the EIP Joint Monitoring Committee would decide on the incorporation of the legislation into the Partnership. 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 in Israel.

All decisions to extend Community legislation to the EIP would be published in a special EIP Section of the Official Journal of the EU. Translation into Hebrew would be published in a special EIP Series of Israel’s Official Gazette.

Maintaining Homogeneity

The homogeneity objective is a cornerstone of the EIP. Both partners would have to maintain uniform interpretation of the relevant provisions of the Community legislation. This means that the Partnership would have its own limited legal

system, which would be based on Community law. For the sake of 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. As noted above, Israeli courts would be allowed to ask the EIP Court for an advisory opinion on the interpretation of the Partnership.

In order to safeguard 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 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 to enable the Israeli legal system to conform to 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 could enter into force.

Support of the New Israeli Government for the EIP Model

While the EIP model has not yet been discussed as such by the new Israeli government, there is ample evidence supporting its underlying logic. In the past, Prime Minister Netanyahu expressed great interest in Israeli integration in 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 assistance in order to achieve this goal.²³ In his capacity as finance minister, Netanyahu stated in 2003 that Israel might consider joining the Eurozone.

Foreign Minister Avigdor Liberman has 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."²⁴

Be that as it may, the pace of the upgrade in EU–Israeli relations must also depend on developments in the peace process, and on the new Israeli government's

readiness to move toward a two-state solution. Positive progress in the Israeli–Palestinian context should speed up negotiations on the implementation of the EIP, while negative developments are expected to freeze any upgrade process.²⁵

Conclusions

Over time, the EIP 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 aim at contributing to the improvement of mutual understanding and trust. Likewise, the EIP 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 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 upgrade its relations with the EU, then strengthening EU–Israeli relations along the lines outlined in this article should be considered seriously.

Notes

¹ Dan Diner, *Europa–Israel* (Tel-Aviv, 2007).

² For a discussion on principles underlying a future Israeli strategy toward the EU, see Y. Dror and S. Pardo, “Approaches and Principles for an Israeli Grand Strategy towards the European Union,” *European Foreign Affairs Review*, 11:1 (Spring, 2006),
³ 17–44.

General Secretariat of the Council, *Eighth Meeting of the EU–Israel Association Council: Statement of the European Union*, June 16, 2008 (Luxembourg, 2008), p.1.

⁴ Council of the European Union, *Council Conclusions: Strengthening of the European Union’s Bilateral Relations with Its Mediterranean Partners* (Brussels, 2008), p. 3.

⁵ Council of the European Union, *European Council Meeting on December 9 and 10, 1994 in Essen. Presidency Conclusions* (Essen, 1994), p.10.

⁶ Raffaella A. Del Sarto, *Contested State Identities and Regional Security in the Euro–Mediterranean Area* (Basingstoke, 2006), p. 111.

⁷ 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 request of Turkey; Euro-Mediterranean Foreign Ministers,
⁸ *Final Statement: Marseille, 3–4 November 2008* (Marseille, 2008), p. 6.

The AP expired on April 30, 2009 and a decision on its fate is expected in the next

- meeting of the EU–Israel Association Council on June 15, 2009. The parties could decide to extend the AP for another period, during which the parties will resume negotiations on a new instrument or declare that the AP has come to an end.
- 9 Raffaella A. Del Sarto et al., *Benchmarking Democratic Development in the Euro–Mediterranean Area: Conceptualising Ends, Means and Strategies* (Lisbon, 2007), p. 43.
- 10 Council of the European Union, *Summary of Remarks to the Press by Javier Solana, EU High Representative for the CFSP, on the Gaza Crisis* (Brussels, 2009), p. 2. The mandate of the Mission was extended three times until November 24, 2009.
- 11 Council of the European Union (2008), op. cit., 2, 4–5.
- 12 Benita Ferrero-Waldner, “The Offer on the Table,” *Haaretz*, April 17, 2009.
- 13 In a survey from April 2009, an overwhelming majority of 69 percent of the Israeli public supported the idea that Israel should join the EU. In addition, about 40 percent of the Israelis were identified as eligible for EU citizenship; Konrad Adenauer-Stiftung and Sharon Pardo, *Measuring the Attitudes of Israelis towards the EU and Its Member States* (Jerusalem, 2009).
- 14 David Phinnemore, *Association: Stepping-Stone or Alternative to EU Membership?* (Sheffield, 1999), p. 23.
- 15 Parliament of the European Union, *European Parliament Resolution of 10 July on the Commission’s 2007 Enlargement Strategy Paper (2007/2271(INI))* (Strasbourg, 2008), Para. 18–20.
- 16 Court of Justice of the European Communities, *Case 12/86, Meryem Demirel v. Stadt Schwäbisch Gmünd* ECR 1987: 3719–55, Para. 9.
- 17 Ibid.
- 18 Phinnemore, op. cit.
- 19 Ibid.
- 20 The rights and obligations deriving from EU treaties, laws and regulations; Israel would face a cardinal challenge of incorporating the relevant parts of the *acquis*, which the EIP would incorporate.
- 21 The Four Freedoms are the free movement of goods, services, capital and persons (labor) across national frontiers.
- 22 The following sections draw on Thérèse Blanchet, Risto Piipponen and Maria Westman-Clément, *The Agreement on the European Economic Area (EEA): A Guide to the Free Movement of Goods and Competition Rules* (Oxford, 1994).
- 23 “Israel Should Join the European Union,” *Galatz-IDF Radio*, November 9, 2002.
- 24 “Avigdor Liberman: Israel Should Press to Join NATO, EU,” *Haaretz*, January 1, 2007.
- 25 See also Ferrero-Waldner (2009), op. cit.